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## VOLUME 3B

## VOLUME 4

REPORT OF THE

**ROYAL  
COMMISSION  
AND BOARD  
OF INQUIRY**

INTO THE PROTECTION  
AND DETENTION OF  
CHILDREN IN THE  
NORTHERN TERRITORY

**VOLUME 3A**

29

CHILD PROTECTION  
EXPERIENCES



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# CHILD PROTECTION EXPERIENCES

## INTRODUCTION

To understand how the child care and protection system operated in practice, the Commission conducted a detailed examination of aspects of the interaction of 12 families with that system. The Commission heard evidence from seven young people who were or had been in care during the period covered by the Commission's terms of reference and seven parent or grandparent carers of children in care. The Commission also heard evidence from two former caseworkers, a foster carer and a kinship carer of young people who gave evidence.

The Commission obtained and examined child protection files in relation to each family and examined hundreds, and in some cases, thousands of documents from those files. Where relevant, the Commission also obtained and reviewed education, health, police and court records of the children and young people whose families were the subject of the case studies.

This chapter contains the stories of case studies of the 12 families. Given the length of time many families were involved with the child care and protection system, the case studies focus on aspects of the family's interaction with the system that illustrate where the system has failed or where the system worked to benefit the child.

These child protection experiences highlight systemic issues as the explored further in Chapters 30 to 39.



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# CASE STUDY: DG

The Commission has heard from children who experienced the child protection system in the Northern Territory. These included witness DG.

The Commission provided DG's witness statement to the Northern Territory Government and invited statements in response relating to certain identified systemic issues discussed below. The Commission requested and reviewed hundreds of DG's child protection files, received and considered detailed notes responding to DG's witness statement from the Northern Territory Government and provided the Northern Territory Government an opportunity to comment on DG's story.

The Commission heard evidence from one of DG's former case managers, DH. The Commission was unable, in the limited time available, to seek out other case workers and the many other people with whom DG came in contact over the many years of her interaction with the child protection system. Nor was any statement volunteered by the Northern Territory Government in response.

This is DG's story based on the Commission's investigation, including her witness statement, the witness statement of one of her case managers, DH, and the extensive documents and notes identified above. Other people involved from time to time may have different recollections. In publishing this story, the Commission does not make any findings in relation to DG, but notes the systemic issues which her story highlights as identified at the end of DG's story below.

## CHILDHOOD IN FOSTER CARE

DG entered care prior to the period covered by the Commission's Terms of Reference. Her early experience in care is outlined briefly in this section to understand her later circumstances, however, the focus of the case study is her time in care from August 2006.

DG entered care at the age of two with her older siblings. She was taken into care because of neglect arising from her parent's substance misuse and transient lifestyle. Initially DG was with her



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siblings in a kinship placement. The children were abused in that placement<sup>1</sup> and the Department of Children and Families (DCF) then placed the children with foster carers. These carers responded to the siblings' challenging behaviours with '*excessive physical punishment and verbal reprimands*'.<sup>2</sup>

When DG was nearly five this placement was terminated at the request of the carers and the children were separated. DG was subsequently placed with another carer who managed her behaviour using physical punishment.<sup>3</sup> These placements predated the period covered by the Commission's Terms of Reference.

### **'They wanted us to be apart'**

After DG and her siblings were separated they remained apart, except for a period of a few years when DG was placed with her sister. DG told the Commission that the separation from her siblings made her '*very upset ... I never saw them for months and months ... I needed the attachment [with my siblings] more than the carers*'.<sup>4</sup>

The primary reason for separating the children was their challenging behaviours. An internal DCF practice review of the siblings' files undertaken a few years into the Commission's Terms of Reference, when DG was in primary school (the first DCF review) found a lack of '*an informed, detailed understanding*' of the origins of the children's challenging behaviour in childhood abuse, and considered that questions could be raised as to what DCF had done to address and manage their behaviours.<sup>5</sup> The review considered that rather than separating the children, strategies could have been put in place to manage their behaviours.<sup>6</sup> Further, the review found that the siblings had been '*case managed in isolation*' and that there were extended periods of time during which the children did not have contact with one another despite their case plans stating that DCF should facilitate regular contact.<sup>7</sup> The review concluded that '*the documentation suggests that FACS [the Department of Family and Children's Services] have not honoured their commitment to the Court to facilitate access between the siblings*'.<sup>8</sup>

As the children grew older, contact between the siblings remained limited. Some DCF documents appeared to suggest that maintaining contact was primarily the siblings' responsibility. For example, one case plan stated that contact is '*up to [DG's brother]*', and notes DG's sister can visit '*if [she] is able to organise travel*'.<sup>9</sup>

DG's mother and some of DG's maternal extended family lived interstate. The siblings saw their mother for the first time in some years when DG was about nine, after DCF funded their mother and aunt to travel to the Northern Territory to see them.<sup>10</sup> DG visited her mother and sister the following year,<sup>11</sup> but several planned trips to visit DG's mother were cancelled or postponed for various reasons,<sup>12</sup> including DG's '*challenging behaviours*' and '*the financial implications*'.<sup>13</sup>

The possibility of reunification with DG's extended family interstate was raised while she was in primary school. One care plan notes, '*we may work towards reuniting her with her extended family*'.<sup>14</sup> Records from when DG was in her early teens note, '*to date no other appropriate extended family has been identified, without significant criminal history or with the capacity to deal with [DG's] challenging behaviours*'.<sup>15</sup> DG's sister, however, was ultimately placed in a kinship placement with family.<sup>16</sup> DG's former caseworker considered that there had been '*missed opportunities to explore some family connections*' at an early stage before DG's increasingly complex needs made family

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reunification more difficult.<sup>17</sup>

A further internal DCF review of DG's case management undertaken shortly before she left care (the second DCF review) found that:

*DCF was unaware of the whereabouts of [DG's] immediate family and despite repeated assertions in the care plans that efforts would be made to locate the family members and promote contact this had not occurred for a number of years.<sup>18</sup>*

### **'When you get taken away from the community, from culture way, it's really hard'**

Earlier DCF records indicated DG may have had cultural and family connections to regions in the Northern Territory and in two other states.<sup>19</sup> Some later Cultural Case Plans state that DG 'has no cultural links to the NT but with [another state]'.<sup>20</sup> Two of these plans state that 'the parents' culture tended to be more of the drug-alcohol culture, not Aboriginal culture'.<sup>21</sup> The second DCF review of DG's case found that DG's records 'do not indicate what Aboriginal people, country and language her family identify with' nor 'what efforts DCF made to support [DG] to remain connected with her culture'.<sup>22</sup>

For around three years, DG attended school in an Aboriginal community. DCF identified this as a means of meeting DG's cultural needs during this period.<sup>23</sup> However, her school principal raised his concern with DCF that DG's educational, cultural, social and emotional needs were not being adequately met at the school.<sup>24</sup> In relation to her cultural needs, he advised that '[DG] is not from this community and has some difficulty fitting into the culture here' as 'the only student who is not an English as Second Language student'.<sup>25</sup> Similarly, a disability assessment noted that DG 'is culturally inappropriate in that she will call the people in [the community] "my people" when this is not the case and it is not accepted by the community members but is tolerated'.<sup>26</sup>

The Northern Territory Government submitted to the Commission that DG's cultural needs were 'principally supported' by her longer term carer and one of the carers at her later residential care placement who was a relative of DG's and later became the carer for DG's child.<sup>27</sup> The longer term carer's capacity to support DG's cultural needs was based on the fact that the carer had 'completed the NTFC [Northern Territory Families and Children] cultural awareness training', had 'fostered many Aboriginal children' and had lived in the Northern Territory for some time.<sup>28</sup> One care plan stated that the carer 'teaches [DG] about her culture and has lived in Aboriginal communities'.<sup>29</sup> This did not provide DG with the connection to country, to her own culture and to family that she needed. It appears that the relative who later became the carer for DG's child was not identified as a potential carer for DG until DG was 16.<sup>30</sup>

DG's lack of ongoing connections with her siblings, family and culture had a profound impact on DG who felt she missed out on a sense of belonging to family and the opportunity to 'live in the community, learn culture way'.<sup>31</sup>

### **'Carers used to treat me wrong'**

Around the age of nine, DG was placed with a foster carer with whom she remained until she was in her mid-teens. This was her longest placement. Her sister was also placed with this carer for a

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few years. DG recalled that the carer and her husband *'started flogging my sister in front of me and I would cry and put myself in the middle and get flogged too'*.<sup>32</sup> When she was about 12, DG disclosed to a respite carer that the carer had belted her with a strap and hit her with a wooden spoon. DCF interviewed the carer who denied the allegation and DCF determined that the allegation was unsubstantiated.<sup>33</sup> In a memorandum recommending that DCF subsidise accommodation for DG and this carer in Darwin, DCF praised the carer for providing *'an amazing standard of care for [DG]'*<sup>34</sup> and stated that *'there have never been any issues with the standard of care [she] provides children in her care'*.<sup>35</sup>

DCF care plans repeatedly stress that DG was *'not to be left unsupervised on any occasion'*.<sup>36</sup> DCF determined that she was *"conditionally safe" due to the high level of supervision she is receiving'* from her foster carer.<sup>37</sup>

After DG left this placement DCF investigated the carer. DCF interviewed children who had been placed with this carer and found that *'a number of children in [her] care were subject to inappropriate and excessive physical discipline'*, and determined that the carer was responsible for causing emotional harm to DG.<sup>38</sup> The Northern Territory Government's submissions to the Commission note that the carer was *'well regarded'* at the time and that DCF monitored the carer through a re-registration process every 12 months, as well as announced and unannounced home visits.<sup>39</sup>

A later caseworker observed that DG's relationship with the carer, with whom DG spent her longest period in care, *'was abusive and it likely further compounded [DG's] challenging behaviours as a result of her unmet emotional needs'*.<sup>40</sup>

### ***'It was hard for me to explain all the problems that I was facing'***

DCF estimates that in the sixteen years DG was in care she had around 23 placements.<sup>41</sup> During her most stable placement of around seven years, DG was regularly placed in respite care with various foster carers and residential care providers.

A psychological assessment of DG when she was around five found she had been *'deprived of a stable caregiver during the critical periods for attachment, and this would have negatively impacted on her social and emotional development'*.<sup>42</sup> A later assessment found this had not changed, describing her as *'a 12 year old girl who has not had the opportunity to form a stable, secure attachment relationship with a significant other'*.<sup>43</sup>

DG experienced neglect and trauma from a young age. She recalled that she had difficulty learning to talk because of the fear and violence in her childhood.<sup>44</sup>

*When I was young I didn't know how to talk. Because there was too much violence in my childhood. I was too young and too scared. When I was really young, about 3 years old I was placed in a relative's house.... Because these things happened to me I didn't learn to speak because I was terrified.*<sup>45</sup>

DCF were aware from an early stage that DG had complex needs requiring intensive intervention.<sup>46</sup> As a young child DG was diagnosed with reactive attachment disorder and exhibited behavioural characteristics consistent with this, being poor concentration, outbursts of rage, indiscriminate

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affection, and poor social relationships.<sup>47</sup> She was also diagnosed with severe expressive language disorder and fetal alcohol spectrum disorder (FASD).<sup>48</sup> DG had difficulty seeing and hearing but was reluctant to wear her hearing aids as she was teased at school.<sup>49</sup> One disability assessment noted that DG only wore her hearing aids to appointments with her psychologist and that her reading glasses had been stolen at school.<sup>50</sup>

A psychological assessment of DG when she was around nine found that she had regressed in some areas since her assessment at age two when she came into care.<sup>51</sup> DG had difficulty understanding verbal directions particularly in the absence of visual cues,<sup>52</sup> and required *'practise and repetition in order to maintain previously learnt information'*.<sup>53</sup> DG struggled at school and by Year 7, her literacy and numeracy were equivalent to Year 2-4 level.<sup>54</sup> DG's learning difficulties were compounded by her *'trouble at home'*.<sup>55</sup> One of DG's schools noted, *'our grave concerns for [DG]'s mental and emotional health, and her sense of belonging somewhere need to be addressed before we can begin to deal with academic matters'*.<sup>56</sup>

DG received ongoing therapy with a psychologist from age eight, but it appears that some of her childhood carers and case managers did not adequately understand her needs and behaviours. The psychological assessment carried out when she was nine considered that previous carers *'could not offer the type of support [DG] required to overcome her trauma'*.<sup>57</sup>

DCF sought contraception for DG when she was 12 based on DCF's belief that *'[DG] is now sexually active without fully understanding the implications'*.<sup>58</sup> DCF repeatedly advised carers that DG needed constant supervision.<sup>59</sup> DG's paediatrician noted that DG's sexual behaviour *'is suggestive that she is still having ongoing difficulties or is being re-exposed to further inappropriate experiences'*.<sup>60</sup> DG's case worker did not appear to recognise this risk, describing her at one point as *'boy crazy'*.<sup>61</sup>

The records suggest that DG's psychological distress may have been misunderstood by her carer and those around her. The DCF documents refer to an incident when DG was around the age of 11. DG got into a fight with another student at school and started talking about killing herself and other students reported that DG had made previous suicide attempts.<sup>62</sup> The case worker contacted the carer who believed that DG *'may have been showing off'*.<sup>63</sup> DG's psychological assessment had described her as:

*'an extremely unhappy young child who is showing evidence of depressive symptoms ... related to the lack of stability she has experienced in her life and feelings that she does not belong'*.<sup>64</sup>

DG reported *'feeling sad all the time, believes she does many things wrong, feels like crying every day, feels alone all the time, and is unsure whether anybody loves her'*.<sup>65</sup>

The psychologist recommended *'a placement that will offer her support, consistency, adequate supervision and sensitivity to her special needs. Without this her [depressive] symptoms are likely to increase and result in severe compromise of her mental health'*.<sup>66</sup> The report predicted that if DG continued to experience instability *'her behaviour will deteriorate to a level that would challenge even the most experienced carer'*.<sup>67</sup> Despite ongoing therapy with a psychologist, DG's longest

placement broke down a few years later.

## GROWING UP IN OUT OF HOME CARE

### *'I started getting into trouble'*

Funded by DCF, DG and her carer moved to Darwin to enable DG 'to access specialist services' and education when DG was in early high school.<sup>68</sup> At that time DCF considered that DG's foster placement was stable and provided 'all the wellbeing support & high levels of care which [DG] requires'.<sup>69</sup> However, DG's behaviour deteriorated and she began absconding from school and from her placement.<sup>70</sup> DG increasingly engaged in high-risk behaviours including volatile substance abuse. DG gave evidence to the Commission that, 'I started getting high to make me feel no pain' and 'forget about welfare and forget everything'.<sup>71</sup>

The carer reported to DCF that DG's absconding and behaviour were becoming very problematic and 'advised that she was not aware of how to respond' to DG's volatile substance abuse.<sup>72</sup> DCF advised her to call an ambulance.<sup>73</sup> Despite frequent short-term respite placements, and additional weekly respite support through a non-government organisation, the placement with the longer-term carer broke down when DG, then in her mid-teens, assaulted the carer while under the influence of volatile substances.<sup>74</sup> The resulting DCF Placement Request Form recommended 'a family setting with strong boundaries' as the best placement for DG.<sup>75</sup>

DG was not placed in a family setting. DG was among an early intake of children and young people with high needs placed at a residential care facility. Her case manager, DH, regularly visited the facility and considered it 'poorly prepared to manage the complex needs of young people' due to the unsuitable physical environment and lack of appropriately skilled staff.<sup>76</sup> DH described the facility as a 'sterile and clinical environment'.<sup>77</sup> On the reportable incident form relating to an incident in which DG was 'abusive to workers', the 'response' section notes that the 'environment at [the facility] is not conducive for staff to spend time building relationships with children and young people' and 'staff appear to be spending too much time in the office'.<sup>78</sup> The 'outcome' section of the form is blank.

DG was placed at the facility with a boy who had been convicted of sexual offences against a child.<sup>79</sup> DCF considered him to be at 'very high risk of re-offending' and to require supervision at all times.<sup>80</sup> DCF was aware that DG entered into a sexual relationship with him at the facility.<sup>81</sup> DG was not aware of his offending history at the time she entered into a relationship with him.<sup>82</sup>

DG told the Commission that when DCF placed her in placements where she didn't want to live, 'I didn't feel safe'.<sup>83</sup> At one point while at the residential care facility, DG raised concerns about a relationship between two other residents of the facility. The boy involved told DG she had to change the statement she had made to staff at the facility. According to the incident report, DG reported that he was 'tormenting' her and 'getting other people involved to threaten and assault her'.<sup>84</sup> The carer told DG 'she [was] brave to tell the truth' and informed Central Intake of the situation.<sup>85</sup>

It was at the residential care facility that DG became involved in the youth justice system and first went into custody. DG told the Commission that she 'started getting into trouble with police'.<sup>86</sup> During this period DG engaged in offending behaviours with other children and young people, including others in residential care.<sup>87</sup> She told the Commission that she would 'hang out with some friends' which 'made me do wrong things but to me it just felt like it was the right thing because I have attachment' to her friends.<sup>88</sup>

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Around the ages of 16 to 17, DG was charged with offences such as assault, damage to property, breach of bail and stealing.<sup>89</sup> DG was held on remand at the former Don Dale Youth Detention Centre for two nights.<sup>90</sup> She had been sniffing petrol before she was picked up by police for breaching bail. The following year she was briefly held on remand at Holtze Youth Detention Centre.<sup>91</sup>

DG continued to engage in volatile substance abuse regularly during her placement at the residential care facility. It appears from the DCF records that both DCF and the facility staff members were slow to address this. Facility staff members completed numerous incident reports relating to DG's volatile substance abuse. Many of these incident reports do not disclose what was done to address the problem.<sup>92</sup> For example, on one occasion DG was escorted to hospital by police after 'sniffing and smoking gunja' and threatening self-harm.<sup>93</sup> The 'response' and 'outcome' parts of the relevant incident report are blank.

A care plan from this time does not identify substance abuse as a problem for DG.<sup>94</sup> After becoming DG's case manager when DG was around 16, DH was informed that 'there are a number of areas that the current case plan covers only in very general terms'.<sup>95</sup> Subsequent care plans and incident reports indicate that DG was referred to a substance abuse program and received support 'when in placement'.<sup>96</sup> However, during this time DG frequently absconded from her placement. DG required 'a high level of supervision and structure' in relation to 'daily living and personal safety'.<sup>97</sup> A cognitive assessment of DG aged around 16 concluded that DG's complex needs 'placed her at high risk of exploitation' and meant she 'requires close supervision and monitoring as she does not have the capacity to keep herself safe'.<sup>98</sup>

## **'I needed to be where someone cares about me'**

DG's 'pattern of absconding from placement and self-placing'<sup>99</sup> in the community continued when she was in residential care.

When she was around 16, DG began a relationship with an older man DCF knew to be a 'convicted child sex offender'<sup>100</sup> and frequently self-placed with him or members of his family. DCF recognised that the community in which the man's family lived provided DG 'with a sense of belonging' but also that it 'poses many dangers for [DG] in relation to threats of violence, physical and sexual assaults and other forms of exploitation'.<sup>101</sup>

Some staff members at the residential care facility returned DG to the community at times. On one occasion DG was brought back to the placement by police. She told facility staff members that 'her boyfriend ... physically assaulted her last night'.<sup>102</sup> The incident report states in bold that 'all staff were made aware of the allegations and mandatory reporting requirements in relation to domestic violence'.<sup>103</sup> Staff took DG for a pregnancy test and DEPOT injection and 'as she was going to abscond' dropped DG back at the community so that facility staff could 'gain the address ... where [DG] usually resides when she has absconded'.<sup>104</sup> Despite a two year non-contact Domestic Violence Order (DVO) imposed against the boyfriend, DCF and the residential care facility staff were aware that DG continued to see him.<sup>105</sup>

At times, DG absconded and self-placed in contravention of her bail conditions<sup>106</sup> and in breach of the DVO.<sup>107</sup> In some circumstances DCF staff sought police assistance believing that '[DG] was frequenting houses that are known drug houses and are not safe ... to visit unsupported'.<sup>108</sup> According to DCF

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records, police were *'reluctant to actively search for her'* and *'on one occasion when having located her, refused to transport her back to placement'*.<sup>109</sup> DH told the Commission that *'common feedback' was 'that if [DG] was located and found to be safe then police would not enact any powers to return her to placement, but would attempt to encourage her'*.<sup>110</sup> In relation to children and young people absconding in such circumstances, DCF staff felt they *'didn't have any powers to bring them back'*.<sup>111</sup>

The response of the residential care facility to DG's self-placing was *'to encourage [DG] to remain at [the placement] and actively seek her out when she absconds'*.<sup>112</sup> The records raise some questions as to how active the placement management and carers were in this regard. On one occasion, carers from the placement spent about two hours searching *'for clients that have not been sighted in a while'*.<sup>113</sup> A few months later, carers *'went out to search for [DG] as we have been directed to do so'* as she *'has not been seen in 8 days'*.<sup>114</sup> In one instance DG turned out to have absconded interstate.<sup>115</sup>

DG's former case manager, DH, considered that *'a more collaborative approach'* between DCF and police would have assisted in managing DG's absconding.<sup>116</sup> DH noted the absence of *'a system whereby children are routinely brought back to placements with the assistance of police or other services'* in the Northern Territory,<sup>117</sup> and the mechanisms available in jurisdictions such as Victoria to prevent children self-placing.<sup>118</sup> DH considered that the ability to issue a warrant for a child or young person who has absconded from care would convey to the child or young person the message that *'we care about them'*.<sup>119</sup>

Numerous incident reports about DG absconding state that *'all efforts [are] being made to encourage [DG] to remain at [the facility]'*.<sup>120</sup> However, DG did not feel safe or at home in the placement and she craved a sense of belonging to family, community and culture.<sup>121</sup> DH recognised that DG *'wanted to be a "community kid" and did not want to live "white fella way"'*.<sup>122</sup> In DH's view, DG would not have been exposed to such a high level of risk when absconding or self-placing in the community had she felt at home in her placement, or connected to her family or positive role models in the Aboriginal community.

The second DCF review noted that *'DCF received information from [DG], other children in care and professionals about the abuse she suffered while self-placing'*.<sup>123</sup> DG *'was punched, kicked, cut ... doused in petrol and threatened to be set alight'*.<sup>124</sup> Although this abuse took place away from the residential care placement, this abuse occurred while DG was still in care.

DH observed that some children and young people in care value a sense of belonging above their own safety:

*It's very evident that when young people don't feel connected to a placement and they don't feel that that's a home-like environment, they don't have – essentially their needs being met in that environment then it's quite common that they would try and seek that externally from the community. So [DG] and a lot of other young children would – young people would run and self-place with, you know, other homes in the community that often are not – these homes, there was a lot of risk taking behaviours happening in these homes, but I guess the young people felt at least it was a loving place for them to be, which they didn't find in their placements.*<sup>125</sup>

## ***'They just kept saying I was a bad person but they didn't know ... how I was hurting'***

A DCF 'inventory of high risk behaviours presented by [DG]' over a two year period in her mid-teens identified:

- 89 occurrences of 'absconding from placement'
- 45 occurrences of 'substance misuse (alcohol, cannabis and sniffing)'
- 9 occurrences of 'exploitation'
- 15 occurrences of 'suicide threats', and
- 15 occurrences of 'physical abuse / domestic violence'.<sup>126</sup>

DG displayed some challenging behaviours while in the placement at the residential care facility and volatile substance abuse was a significant trigger for aggressive and unpredictable behaviour.<sup>127</sup> On many occasions DG damaged property at the residential care facility and was physically or verbally abusive towards the staff. DG acknowledged that she 'got more upset and angry and [a] bit violence and all that'<sup>128</sup> and that she used to 'smash up the cars' at the facility.<sup>129</sup>

DG's behaviour could also be triggered by changes in boundaries at her placements. DG's perception was that the carers 'would change the rules and then growl me for doing the wrong thing'.<sup>130</sup> DH told the Commission that the rules of the residential care facility frequently changed creating 'great uncertainty for the clients'.<sup>131</sup> DG explained that changes in the rules 'made me frustrated and upset. They changed the rules about whether I could have a pet or not' and 'about whether I would get picked up'.<sup>132</sup> Rules may have been changed as a 'temporary behavioural management strategy' in an attempt to impose consequences for DG's behaviour and to protect the safety of DG or others.<sup>133</sup> However, as DH noted, DG 'lacked the cognitive capacity to reason effectively to understand consequences'.<sup>134</sup>

In many instances the police were called when DG's behaviours escalated.<sup>135</sup> Charges were laid against DG for damaging property on several occasions. At times police attended incidents that they considered could have been managed in other ways. The police response to an incident at a later residential care placement was that 'throwing food and threatening others' was 'not really a police matter', and advised DCF to 'remove [DG] from placement and this problem will stop'.<sup>136</sup> A cognitive assessment in early high school found that DG's cognitive capacity was comparable to that of an eight year old child<sup>137</sup> and that she met the diagnostic criteria for intellectual disability.<sup>138</sup> In DH's view, this meant that a 'punitive response in managing DG's behaviours which was focused on consequences' was inappropriate for DG.<sup>139</sup>

In DH's opinion, an inappropriate response to behaviours arising from DG's unmet needs provoked aggressive behaviours by DG and led to 'a range of unhealthy relational experiences between DG and care staff'.<sup>140</sup> DH considered that the staff members at the residential care facility lacked the training and skills necessary to provide effective therapeutic care.<sup>141</sup> While DG was at the placement DCF identified 'a pattern forming about how staff at [the facility] were responding to young people' due to the complex needs of the residents, inconsistent supervision, and a 'gap between care plan formation and implementation'.<sup>142</sup> DCF considered that these circumstances resulted in 'emotional responses by staff who need an increased level of support when working with extremely complex young people'.<sup>143</sup> DCF advised staff members that additional training and supervision would be



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made available, rosters would be reviewed to ensure appropriate breaks and regular placement meetings would be implemented *'to allow for greater coordination of cases and collaboration between residential care, case managers and other professionals'*.

DCF acknowledged that staff running one of DG's later residential care placements were *'not the most highly skilled'* and lacked *'training in dealing with intellectual delay and extreme trauma'*.<sup>144</sup> At times DH prompted carers to provide incident reports<sup>145</sup> and requested that carers are *'mindful of her expressed feelings of worthlessness'* and contact emergency services *'in any incidents or behaviours indicative of self-harm or suicide'*.<sup>146</sup> DH observed that in her experience, *'professionals and carers often struggled to separate DG and her behaviours and as a result they didn't provide her with the respect, warmth and nurturing that she so desperately craved'*.<sup>147</sup> DH noted that DG *'does have the ability to form positive relationships when care is shown to her and that has been demonstrated in her relationship with me and some other professionals and carers'*.<sup>148</sup>

### ***'I was just so happy that somebody was out there to ... feel what I felt'***

DH was DG's case manager for nearly two years in DG's mid-teens.<sup>149</sup> DG told the Commission that she had previously had various different case workers and she felt that *'all they read is bad history about me, but they didn't want to know me'*.<sup>150</sup> DG's perception was that *'I'm not even used to the first case worker'* when *'they go and change it again'*.<sup>151</sup> DH considered that her *'unusually limited caseload of particularly intensive clients'* allowed her to develop close relationships with the young people.<sup>152</sup> DH would *'routinely spend time with DG engaging with her outside the placement in order to build a relationship with her'*.<sup>153</sup> DH recognised the need for *'an understanding and an interest and respect around culture'*.<sup>154</sup> By showing an interest in and learning about Aboriginal culture, DH was able to break down *'a lot of the barriers'* in her work with children and young people.<sup>155</sup>

DH recognised DG's need for connection to family and culture and considered that her placement at the residential care facility was not *'culturally safe'*.<sup>156</sup> When DG was in her late teens DH accompanied her interstate to visit her maternal family. Due to *'barriers to communicating with the relevant department'* in the state where these family members lived, *'we made the decision simply to travel down to community'*.<sup>157</sup> In DH's experience, maintaining cultural and family connections often *'required persuasive advocacy'* by case managers and team leaders and that reconnecting with family and country interstate was an opportunity not afforded to many children in care.<sup>158</sup> DH noted that the visit *'assisted in establishing [DG's] identity and connection to family and country'*<sup>159</sup> and DG met some family members for the first time.<sup>160</sup>

DG's relationship with DH made a significant difference to her. She told the Commission that DH:

*made my life ... more happy than I've ever had. She made me experience that I could ... get all them bad things off my chest I needed to get off, that I wanted somebody else to hear but nobody wanted to sit down and take the time to listen to my story. They just kept saying that I was a bad person but they didn't know really what's going on inside my heart, how I was feeling and how I was hurting and I felt just like my heart was just crashing to pieces.*<sup>161</sup>

DG also told the Commissioners about the support she received from an Aboriginal carer at one of her residential care placements. DG explained that *'we didn't have much Aboriginal teaching, like community people come in and teach the kids'* at the residential care facility, but he *'knew about*

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*culture* and *'how to speak to Aboriginal kids* and *'feel what they was feeling'*.<sup>162</sup> This enabled him to de-escalate some situations.<sup>163</sup>

### ***'Placement options are limited'***

DG told the Commission that DCF would not let her move from the residential care facility: *'They said there is nowhere else for you to go'*.<sup>164</sup> The Multi-Agency Assessment and Coordination (MAC) Team acknowledged that the placement *'may not be working well'* but *'alternative placement options are limited'*.<sup>165</sup>

DH requested an alternative placement for DG so she could be closely supervised in accordance with a structured management plan by Aboriginal carers.<sup>166</sup> DH was informed that *'ACS [the Alternative Care Services team within DCF] does not have to hand the placement you have requested'*.<sup>167</sup> The request form noted that DG had not stayed overnight at her placement for the previous three months.<sup>168</sup> DCF staff advocated taking *'all reasonable steps ... to keep [DG] in placement'*<sup>169</sup> as *'all the carers and other professionals involved in her case believe she is at the highest possible risk of severe physical and/or sexual harm at this time'*.<sup>170</sup> A short time later DG was moved into a separate part of the facility as the sole client with both residential care workers and security staff to *'support / protect carers in preventing [DG] from absconding.'*<sup>171</sup>

The following year DG moved into a new placement jointly run by DCF and a non-government organisation where she was supported by two carers.<sup>172</sup> DH considered that this placement provided DG with *'a level of stability'* but it did not offer *'a therapeutic treatment model delivered by adequately skilled professionals'*.<sup>173</sup> DCF noted that although DG had *'made progress'* she continued to abscond.<sup>174</sup>

Five months after the placement with two carers began, the Out of Home Care Division of DCF advised that they were *'not approving any further placements re this young person ... I don't think we can justify another \$60K for a young person that is not remaining in placement'*.<sup>175</sup> Instead, DCF determined that DG could access the residential care facility she had lived in prior to the placement but would not have a bed reserved for her.<sup>176</sup> It appears that a placement back at the facility was subsequently approved. DCF noted that *'there are no other placement options and therefore this placement is required'* but *'there will be issues in regards to residential care staff's ability to manage the behaviours of this young person'*.<sup>177</sup>

### ***'Outcomes for [DG] remain exceptionally limited'***

The Northern Territory Government submitted to the Commission that *'significant time and resources were applied'* to meet DG's high needs.<sup>178</sup> The second DCF review found that in her last few years in care the interventions DG received were primarily in response to crisis points and that this likely distracted from planning for the long term.<sup>179</sup>

DCF identified concerns about the supports provided to address DG's needs in the first review. This internal review of the services DCF provided to DG and her siblings raised *'serious concerns'* about the care DCF provided to DG and her siblings.<sup>180</sup>

The first review noted a *'lack of clarity and documentation'* in relation to therapeutic interventions provided to the children.<sup>181</sup> The review considered that *'file records suggest that the Department*

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may have not followed up on all the recommendations [made by external professionals] or if this was intentional, no documentation to explain why the recommendations were not pursued'.<sup>182</sup> DCF determined there had been 'exceptionally limited' progress in achieving therapeutic outcomes.<sup>183</sup>

DCF identified a 'lack of case planning and case review processes to document the children's needs, identify strategies to address them and monitor compliance'.<sup>184</sup> While there were 'periods of sporadic case activity' there was 'a lack of aggressive intervention for the children likely to have affected the attainment of expected client outcomes'.<sup>185</sup> Further, poor record keeping meant that 'placement specific issues have not been documented'.<sup>186</sup> The case plans that did exist were 'typically broad and lack details of realistic, measurable outcomes to be achieved'.<sup>187</sup> In the second review conducted by the Practice Integrity Unit seven years later, many of the problems identified in the first review were still present.<sup>188</sup>

The second review concluded that 'notwithstanding the sheer amount of professionals involved the outcomes for [DG] remain exceptionally limited'.<sup>189</sup> Further, the review found that recommendations from professionals 'were repeatedly not incorporated into care planning and casework activity',<sup>190</sup> and the records 'do not indicate that there was a mechanism to bring the different therapeutic service providers together' and 'do not clearly indicate ... what outcomes were sought'.<sup>191</sup>

The poor record keeping and subsequent lack of follow-up to address DG's needs identified in the first review persisted. The second review noted that DG 'was provided the contraceptive device Implanon while placed with [the longer term carer]. DCF records do not indicate when the Implanon was inserted and what involvement DCF had in the decision making'.<sup>192</sup> When DG was around 16, DCF was informed by a doctor that her Implanon rod was too deep in her arm and may not be effective.<sup>193</sup> The doctor recommended that it be fixed as soon as possible. The records do not show whether DCF considered the medical recommendation and whether any plans were put in place plan to follow it.<sup>194</sup>

Despite the involvement of a number of professionals and services, it appears that DG did not always receive the interventions she required. For example, DG was medicated for ADHD in mid-primary school.<sup>195</sup> Three years later, DCF noted that 'her behaviour has been bizarre lately as her Ritalin medication is out of sync with her bigger body size as she has not had her medication reviewed for three years'.<sup>196</sup> The second DCF review noted that it is not clear from the DCF records whether DG ever received recommended interventions such as cognitive behavioural therapy<sup>197</sup> and an auditory processing assessment.<sup>198</sup>

DH told the Commission that in her experience, 'there just wasn't the services in place to provide [DG] with adequate therapeutic support and care'.<sup>199</sup> DG was deemed 'unable to participate' in a volatile substance abuse program 'due to her severe cognitive impairment'.<sup>200</sup> The second review noted that the records do not indicate whether the treatment DG did receive for substance abuse was delivered in a way that took her cognitive capacity and learning difficulties into account.<sup>201</sup> DH observed that 'until the underlying trauma is addressed through therapeutic healing approaches' DG is likely to engage in substance abuse 'as a means to self-medicate to manage her emotional distress'.<sup>202</sup> DG had an ongoing relationship with a psychologist and received regular counselling with her for six years. The capacity of this therapy to address DG's traumatic history may have been compromised by the fact that she continued to be abused during this time.

DG's absconding and substance abuse affected her access to education and support services.

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DG often missed appointments while self-placing or intoxicated.<sup>203</sup> DCF Therapeutic Services recommended the closure of her case 'due to [DG's] lack of engagement'.<sup>204</sup> DH considered that the programs offered 'largely failed to engage her in my view because they used a treatment approach that was not culturally safe or sensitive to DG's needs' and 'failed to address her disconnection from culture and community'.<sup>205</sup>

Mental health professionals repeatedly assessed DG's problems as primarily behavioural rather than mental health issues.<sup>206</sup> On one occasion in her mid-teens DG was brought to hospital after 'explicitly saying that she wanted to end her life' and engaging in self-harm.<sup>207</sup> She was highly distressed and was restrained and sedated.<sup>208</sup> It was determined that DG was 'not in an acute mental health crisis' and she was discharged to her residential care placement.<sup>209</sup> Whether or not the psychiatric assessments of DG were clinically correct, from a practical perspective, for DH this:

*'was a frustrating outcome, as those working within the field of mental health services would have been the most appropriately skilled professionals in Darwin to provide therapeutic input into her care plan and needs.'*<sup>210</sup>

In her mid-teens DG was referred to the MAC Team with the aim of achieving 'coordinated case management', an 'updated mental health assessment' and a 'secure or improved placement'.<sup>211</sup> The referral came from a nurse who had assessed DG as ineligible for a volatile substance abuse program due to DG's cognitive capacity and was 'frustrated because of the high risk and urgency' but lack of action in DG's case.<sup>212</sup> DH observed that the referral to the MAC Team created 'some traction with external agencies and their willingness to support [DG's] needs' and 'greater willingness to support more innovative care planning' within DCF.<sup>213</sup> The second DCF review found that although 'numerous internal and multi-agency case consultations occurred these opportunities were not utilised to their full potential despite engagement by senior professionals'.<sup>214</sup>

Some months after its initial involvement, the MAC Team 'determined that no further MAC involvement was necessary and case management and collaborative case planning had progressed significantly resulting in good outcomes for this young person'.<sup>215</sup> The difficulties associated with making arrangements for DG after she turned 18 demonstrated the need for an ongoing collaborative approach to address her needs.

### ***'All DG has ever wanted was a family and to be connected to other people'***

In her late teens DG became pregnant while in care. DH observed that 'DG was overjoyed to be pregnant as she had an overwhelming desire to have a family and the pregnancy was a step towards her achieving that goal'.<sup>216</sup>

DCF was aware of DG's desire to have the child but considered whether the pregnancy should be terminated in her best interests.<sup>217</sup> This was not pursued after DCF received expert advice that DG had the 'capacity to make informed decisions' about continuing the pregnancy and that rather than being in her best interests, terminating the pregnancy against her wishes would be 'mentally traumatic' for DG.<sup>218</sup> DCF provided a range of supports for DG during the pregnancy.

## LEAVING CARE

### *'I didn't know what I was doing'*

From the time DG was about 15 concerns were raised within DCF in relation to plans for DG after she turned 18 and her need for *'significant support from DCF post 18 years of age'*.<sup>219</sup> The second DCF review found that despite the legislative and policy requirements on planning for leaving care, preparation for DG *'leaving care had not commenced in a timely manner'*.<sup>220</sup> The review noted that *'young people need to be prepared for leaving care well before they actually leave care and planning should commence at 15 years of age'* and DG is *'likely to need more time to prepare'* given her cognitive impairment.<sup>221</sup> DG's care plan was reviewed shortly after she turned 15, but according to the second DCF review, this did not include any planning for leaving care.<sup>222</sup> The second DCF review found that two months before DG left care there were *'no concrete arrangements regarding [DG's] accommodation, education/training, employment, health services and counselling post leaving care'*.<sup>223</sup>

Internal DCF correspondence one month before DG left care noted that *'workers are struggling with this case and feel that they have exhausted all options without success'*.<sup>224</sup> The limited supports available could not adequately accommodate DG's needs<sup>225</sup> or wishes. One DCF staffer reflected that *'after I left yesterday I realised that we did not consider [DG's] wishes at all'*.<sup>226</sup> The second DCF review noted that *'DCF documents do not indicate what [DG's] wishes and feelings are ... regarding her future'* and that DG *'reports to be very stressed about what will occur when she leaves care'*.<sup>227</sup> DG told the Commission that she was *'very scared ... I didn't know what I was doing ... I had a little [child] ... I didn't want to live in the long grass with my own [child]'*.<sup>228</sup>

DCF extended DG's accommodation in the residential care home for a short time after she turned 18.<sup>229</sup> DG was under a guardianship order by this time. The Office of the Public Guardian contacted the Minister's office *'very concerned to discover that [DG] had been informed today that as of tomorrow she would no longer have accommodation under the care of DCF'* and noting that they had been asking for a transition plan for DG for some time.<sup>230</sup>

DCF determined that it would continue to support DG *'as defined under section 86 of the Care and Protection of Children Act (NT) but that support will not involve further funding of accommodation'* on the basis that it *'is not a provider of adult care services'*.<sup>231</sup>

Since leaving care DG has experienced periods of homelessness.<sup>232</sup> DG told the Commission that she did not feel she had the basic skills she needed to live independently.<sup>233</sup> She reflected that:

*I didn't know how to live, how to get a house, how to do all this stuff. I didn't know how to do all that because welfare didn't show me. Didn't take the time to show me. So I had to do a lot of things on my own so, like, to actually survive myself. And I did well but I would like welfare to help me a bit more, more – more time – they should actually take more time with me and learn more things about when you grow up because I didn't know a lot of thing about houses and all that. I didn't know. I was actually was going to live in the long grass really, but I choice myself to ... grow myself up and actually taught my own self, to teach my own self how to live in the house, clean the house and all that. I learnt my own self. It took time, but I would like the welfare to taught me more details ... They should tell me when I'm 16 in the first place. Not just*

*show me after when I'm – been out of welfare. That's not good enough for me. It's not really nice for a kid to actually live on the street. It makes – it actually makes them really sad and upset that you seeing kids do that, welfare do that to a kid.*<sup>234</sup>

## **'It's really hard for a kid to go back into a community and make their self Aboriginal again'**

Since leaving care DG has returned to the community where she lived in her initial kinship placement. She told the Commission that *'there's a lot of things that culture way ... kids need to learn'* but she had not had the opportunity to learn.<sup>235</sup> She said, *'I learned about mostly white people way'*.<sup>236</sup> DG found that *'it takes a while for a strange person to come into a community'* and *'there's a lot of things what might go wrong in the community if you don't know our culture way'*.<sup>237</sup>

In DH's opinion, DCF needs to ensure that children and young people in care are *'connected to culture, family and country wherever possible'*, and *'had this happened for DG, her story could have been a very different story'*.<sup>238</sup>

### ***I am going to stand up. I don't want to let other kids to get treated the way I got treated***

*No matter what colour of their skin, we are all one blood just different colour. Still love them like they are your own kid. Welfare needs to show that, no matter what kid comes in, treat them like your own children, don't treat them different than your own kid. Welfare needs to understand that.*

*Kids have a brain and heart and feeling, their hearts are soft and can break easy. But in their brain they remember everything. In their brain they are going through a hard life because what you are doing to them. They are trying to find a good track. But welfare take them off the track. If you treat them well they will turn around and have respect back and love you.*

*Think about that kid, hardships they are going through, they have been treated wrong, they have been flogged, they have been hurt, they are doing things they don't even know what they are doing, and they are doing wrong things. They need love and to be shown the right way.*

*When I see kids in welfare it makes me sad, it makes me cry. I want welfare to know: how you feel, the kids feel the same as you, they got one heart, if you cruel them it hurts them. We all have one heart. Show us love, respect and kindness like we're your own kid.*<sup>239</sup>

Vulnerable witness DG

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## SYSTEMIC ISSUES

DG's experience in care illustrates the following systemic issues:

*Territory Families<sup>240</sup> failed to take adequate steps to prevent or address harm to some children in care.*

DG suffered various forms of harm throughout her time in care. DCF determined that DG's long term carer was responsible for causing emotional harm to DG.<sup>241</sup> In residential care DG suffered harm while absconding and self-placing and engaging in high risk behaviours.<sup>242</sup> Despite DCF being aware of DG's background and vulnerability DG was placed in a residential care facility with another child who had been convicted of sexual offences. Experiences such as these suggest that Territory Families failed to adequately prevent or address harm to DG.

*Territory Families failed to adequately consider the wishes of some children in care, and some children leaving care, and failed to meet their complex needs.*

As outlined above, DCF was aware that DG had complex needs including cognitive disabilities, learning and hearing difficulties, and challenging behaviours arising from childhood trauma. The psychological assessment carried out when she was nine considered that previous carers 'could not offer the type of support [DG] required to overcome her trauma'.<sup>243</sup> Some later childhood carers and case managers did not adequately understand DG's needs and behaviours, for example:

- DG's paediatrician noted that sexual behaviours could suggest that DG was being exposed to inappropriate experiences. DG's case worker did not appear to recognise this risk and described her as 'boy crazy'.<sup>244</sup>
- DG's carer believed that DG was 'showing off' in an incident in which she spoke of suicide at school, suggesting that the carer did not recognise DG's psychological distress.<sup>245</sup>

Some of DG's identified needs were not met, or were not adequately addressed:

- The first DCF review and the records reviewed by the Commission suggest that DG did not receive the intensive early intervention necessary to address her complex needs.
- DG's ADHD medication was not reviewed for 3 years.<sup>246</sup>
- DG's psychologist recommended a placement that would provide stability, sensitivity and belonging.<sup>247</sup> DCF determined that DG's long term carer caused DG emotional harm.<sup>248</sup>
- DCF identified a family setting with strong boundaries as the best placement for DG.<sup>249</sup> DG was placed in residential care.
- DCF was aware that DG required a high level of supervision.<sup>250</sup> DG had a relationship with another child at the residential care facility who had been convicted of sexual offences and required supervision at all times. DG frequently absconded and self-placed where she was not supervised.
- The second DCF review concluded that outcomes for DG remained exceptionally limited despite the supports and services she did receive.<sup>251</sup>

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DG's trauma and unmet needs were a significant factor in DG's behaviours and may have contributed to the high risk behaviours she displayed:

- DG told the Commission that volatile substance abuse was a way of forgetting about negative experiences.<sup>252</sup>
- DG did not feel a sense of belonging or connection to community or culture at the residential care facility<sup>253</sup> and self-placed in the community looking for these things.

The second DCF review found that leaving care planning for DG did not commence when it should have and that no concrete arrangements had been made in key areas such as accommodation two months before DG left care.<sup>254</sup>

DG told the Commission she had wanted to 'live in the community, learn culture way'.<sup>255</sup> During the period of the Commission's Terms of Reference, DG was placed with a non-Aboriginal foster carer and then in residential care facilities. She did not feel connected to community or culture and found it difficult to return to community on leaving care because of the teaching she had missed.<sup>256</sup>

The second DCF review found that DG's wishes do not appear to have been taken into account in leaving care planning.<sup>257</sup> Some DCF staff involved in making leaving care arrangements felt that they had not considered DG's wishes.<sup>258</sup>

*Territory Families failed to make adequate support and services, including therapeutic and substance abuse supports and services, available to some children in care.*

As outlined above, DG received a range of interventions to address her needs during her time in care. However:

- The first DCF review and the records reviewed by the Commission suggest that DG did not receive the intensive early intervention necessary to address her complex needs.
- DG received regular psychological counselling, but the capacity for this therapy to address DG's traumatic history may have been compromised by the ongoing abuse DG experienced.
- DG had limited access to supports and services while self-placing or while intoxicated.
- DG was not eligible for one volatile substance abuse program due to her cognitive disability.<sup>259</sup> The second DCF review noted it was not clear whether substance abuse interventions that were delivered to DG were appropriate given her cognitive disability and learning difficulties.<sup>260</sup>
- DG did not engage with some services. At one point DCF Therapeutic Services recommended the closure of her case for this reason.<sup>261</sup> The recommendation noted that DG had been referred to another service but did not consider why DG was not engaging nor whether the other service would be more appropriate or effective for DG.
- The second DCF review found that in her last few years in care the interventions DG received were primarily in response to crisis points and that this likely distracted from planning for the long term.<sup>262</sup> DG's difficulties at this time may have been less acute had she received the ongoing and coordinated interventions she needed from childhood.
- The second DCF review concluded that outcomes for DG remained exceptionally limited despite the supports and services she did receive.<sup>263</sup>



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*Territory Families failed to adequately support connections to family and culture for some Aboriginal children in care.*

DCF records suggest that some DCF case workers had limited understanding of DG's family history and cultural background.<sup>264</sup> The second DCF review found that that DG's records 'do not indicate what Aboriginal people, country and language her family identify with' nor 'what efforts DCF made to support [DG] to remain connected with her culture'.<sup>265</sup>

DG had limited contact with her siblings after they were separated and several planned trips to visit DG's mother and extended family interstate were cancelled for various reasons.<sup>266</sup> If DCF considered that there were valid reasons why family contact could not be maintained, then more should have been done to ensure that DG was connected to culture and community. For example, the second DCF review suggested that DG would have benefitted from having an Aboriginal mentor.<sup>267</sup>

The steps DCF identified as meeting DG's cultural needs, such as enrolling DG at a school in an Aboriginal community<sup>268</sup> and placing DG with a non-Aboriginal foster carer who had lived in Aboriginal communities,<sup>269</sup> did not provide the connection to her own family, culture and country that she needed. The relative who later became the carer for DG's child was not identified as a potential carer for DG until DG was 16.<sup>270</sup>

DG felt that her cultural needs were not met in care and that she had not had the opportunity to 'learn culture way'. She told the Commission, 'I learned about mostly white people way'.<sup>271</sup>

*Territory Families failed to adequately supervise and support foster carers to the detriment of some children in care.*

DCF found that DG's long term carer caused DG emotional harm.<sup>272</sup> This carer expressed to DCF that she was struggling with DG and did not know how to manage DG's volatile substance abuse.<sup>273</sup> Although DCF provided respite care, the placement broke down. This suggests that the carer was inadequately supported and supervised to DG's detriment.

*Territory Families' use of residential care in group homes for some children under childprotection orders was detrimental to their development and well-being and was not in their best interests.*

The records before the Commission show that concerns were raised within DCF about the adequacy of the training and supervision of some staff members at the residential care facilities DG was placed in.<sup>274</sup> The response to escalations in DG's behaviours by the residential care facilities suggests a lack of understanding of DG's cognitive disabilities, and particularly a lack of understanding that behavioural management approaches focusing on reasoning about consequences were inappropriate for DG.

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The inadequate supervision and inappropriate mix of children at the first residential care facility DG was placed in are evident in DG's relationship with another resident of the facility.

The records suggest that the residential care facilities were slow to address DG's volatile substance abuse and pattern of absconding and self-placing in the community in situations where she was exposed to risk.

DG remained at a residential care facility that the MAC team considered was not working well due to the lack of alternative options.<sup>275</sup> An alternative arrangement was reached following advocacy by some DCF staff members.<sup>276</sup> Had this second placement provided a therapeutic environment and taken steps to address some of the reasons for DG's absconding, such as her desire for a sense of belonging and community, the placement may have remained viable.

*Territory Families' case management, oversight and record keeping were been inadequate in some cases.*

As outlined above, an internal practice review by DCF when DG was in primary school raised 'serious concerns' about the care DCF provided to DG and her siblings.<sup>277</sup> DCF identified a 'lack of case planning and case review processes to document the children's needs, identify strategies to address them and monitor compliance'.<sup>278</sup> While there were 'periods of sporadic case activity' there was 'a lack of aggressive intervention for the children likely to have affected the attainment of expected client outcomes'.<sup>279</sup> Further, poor record keeping meant that 'placement specific issues have not been documented'.<sup>280</sup> The case plans that did exist were 'typically broad and lack details of realistic, measurable outcomes to be achieved'.<sup>281</sup>

Despite the concerns identified in the review, the Practice Integrity Unit conducted no further internal review of DG's care for seven years. In a further review conducted by the Practice Integrity Unit seven years later, many of the problems identified in the first DCF review were still present.<sup>282</sup> This suggests that oversight of DG's case was inadequate.

*Territory Families failed to collaborate effectively with other government agencies and stakeholders such as external professionals and service providers in relation to meeting the needs of some children in care.*

DG's self-placing and absconding may have been better managed through a more collaborative approach between agencies including Territory Families and police.

As noted above, the MAC Team sought to achieve a coordinated approach to DG's case. The second DCF review considered that opportunities such as this were not utilised to their full potential.<sup>283</sup> The assessment that no further MAC involvement was necessary was overly optimistic. The difficulties associated with making arrangements for DG after she turned 18 demonstrated the need for an ongoing collaborative approach to address her needs.

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*Territory Families did not adequately prevent, or respond to, some children self-placing when in care.*

DG frequently absconded from residential care and self-placed in the community. DCF noted that DG absconded 89 times in two years during her time in residential care.<sup>284</sup> Despite being aware of DG's high vulnerability and lack of capacity to keep herself safe,<sup>285</sup> DCF failed to prevent her from self-placing in situations that exposed her to risk.

DG's continued absconding and self-placing suggests that any efforts that were made by DCF and residential care facility staff members did not adequately address the underlying reasons for DG's absconding, particularly her need for a sense of belonging to family, community and culture.

Although the abuse DG suffered while self-placing took place away from the residential care placement, this abuse occurred while DG was in care. This abuse may have been avoided had the underlying causes of DG's absconding been addressed and if mechanisms were in place to return DG promptly to placement.

When DG did self-place, attempts to locate DG and to return her to care or address the risks she faced when she self-placed were minimal. For example on one occasion no one from the residential care facility went to look for DG until she had been away from the placement for 8 days, despite DG's vulnerability.<sup>286</sup> On another occasion DG was returned to her self-placement by staff of the residential care facility despite their awareness of the dangers she faced where she was staying.<sup>287</sup>





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# CASE STUDY: CJ

The Commission has heard from children who experienced the child protection system in the Northern Territory. These included witness CJ.

The Commission provided CJ's witness statement to the Northern Territory Government and invited statements in response relating to certain identified systemic issues as identified further below. The Commission requested and reviewed extensive child protection files relating to CJ, received numerous notes on the files from the Northern Territory Government and provided the Northern Territory Government an opportunity to comment on CJ's story.

The Commission was unable in the limited time available to it to seek out case workers and the many other people with whom CJ came in contact during his interaction with the child protection system. The Northern Territory Government did not provide any statement in response.

This is CJ's story based on the Commissions' investigation, including his witness statement, and the extensive documents and notes identified above. Other people involved from time to time may have different recollections. In publishing this story, the Commission does not make any findings in relation to CJ, but notes the systemic issues which his story highlights as identified further at the end of CJ's story below.

## BACKGROUND

CJ was less than one year old when he was first the subject of notifications to the DCF,<sup>288</sup> now known as Territory Families. The notifications of neglect, physical and emotional abuse continued until he was taken into care at the age of 12.<sup>289</sup> CJ's parents separated when he was a baby, and he spent periods living with both his father and his mother from time to time.

When CJ was 12, his mother sent CJ to live with his father.<sup>290</sup> During this time, CJ lived a transient lifestyle and his father often did not know his whereabouts.<sup>291</sup> In the months leading up to CJ's

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removal, staff from CJ's school expressed concerns about his lack of school attendance and where he was residing.<sup>292</sup> Before CJ went into care, his father had not seen him for two weeks.<sup>293</sup>

When DCF caseworkers caught up with CJ he was taken into care. At this time he was living at a friend's house. DCF notes from the day CJ was removed indicate that when the caseworkers told CJ that they were concerned for his welfare, he agreed to come with them and be placed in foster care.<sup>294</sup> CJ told the Commission that when he was taken into care he agreed to go but he did not understand what was going on.<sup>295</sup>

Not long after he went into care, CJ absconded from his foster care placement.<sup>296</sup> He was located with extended family but then absconded again. CJ was reported missing to the police.<sup>297</sup> In the year he was first taken into care, CJ absconded a further 11 times.<sup>298</sup>

This was the beginning of a pattern of absconding that spanned the six years CJ was in the child protection system. CJ told the Commission, *'Ever since that day, I have been on the run from welfare. Every house they put me in, I have run from.'*<sup>299</sup>

CJ said he absconded from his placements because he wanted to be with his family. He told the Commission:

*'... [Y]ou don't just get taken away from your family out of the blue and expect to adapt. It's just human. It's the normal way to want to be with family.'*<sup>300</sup>

DCF documents confirm that in his time in care CJ had more than 25 placements, including 15 foster placements,<sup>301</sup> four residential care placements and one kinship placement, in addition to periods in youth detention.<sup>302</sup>

## FAMILY CONTACT WHEN IN CARE

CJ's perception was that DCF did not let him see his parents.<sup>303</sup> Documents indicate that DCF made efforts to arrange family access visits for CJ. However, family visits were infrequent due to a lack of engagement by CJ's parents.

When CJ was first removed, DCF attempted to engage with CJ's father but his father declined to take any responsibility for CJ's care.<sup>304</sup>

CJ had access visits with his mother and younger siblings in the first two years after he went into care.<sup>305</sup> When CJ was asked whether he wanted to see his mother on a weekly basis, CJ declined and said he would prefer for the visits to be from time to time.<sup>306</sup> CJ was visiting his mother when he absconded from placements, so he appears to have had contact with his mother in other ways.

Visits with CJ's mother decreased over time. A document from when CJ was 15 states:

*... the last involvement of the child's parents was 13 months ago aside from a phone call made to the child's mother to ascertain her views of the proposed carer (grandmother) visiting the child in Don Dale.'*<sup>307</sup>

## FAMILY PLACEMENT

When CJ first went into care, DCF asked his father whether there were any extended family members willing to take care of him. CJ's father said no family member could take him.<sup>308</sup>

During the first year that CJ was in care, some of his relatives approached DCF expressing an interest in caring for him. DCF discussed these proposed placements with CJ; however, he told DCF that he did not wish to live with these relatives.<sup>309</sup> When CJ was 13, CJ's uncle, who was in prison at the time, offered to care for CJ after he was released. CJ was reluctant to live with his uncle and the placement did not eventuate.<sup>310</sup> Other family members known to DCF were not considered to be suitable carers for CJ.<sup>311</sup>

Documents from the first year when CJ was in care indicate that DCF was aware there was a large extended family for both parents but had limited knowledge of them.<sup>312</sup> DCF did not prepare a cultural care plan for CJ in his first four years in care. Almost a year after CJ went into care, CJ's care plan stated under the heading 'child's cultural background' *'this information is to be gleaned from the paternal grandmother in the future.'*<sup>313</sup> A year later, CJ's care plan was still missing this information. The 'cultural case plan' component recorded *'NTFC to contact grandmother and find out this information.'*<sup>314</sup> DCF was in contact with CJ's grandmother within a year of him being taken into care.<sup>315</sup>

DCF notes from when CJ was 12 years old indicate that DCF was aware that additional information was required to complete the cultural case plan and that an Aboriginal Community Worker was assisting the case manager to complete this.<sup>316</sup> It took four years for CJ's cultural care plan to be completed.<sup>317</sup>

When CJ was 16 years old he was discharged from youth detention after serving an eight-month custodial sentence for theft and property offences<sup>318</sup> and placed into the care of his grandmother in another state. This was CJ's only family placement. CJ had previously spent school holidays with his grandmother, who had also contacted CJ when he was in youth detention.<sup>319</sup>

This placement was arranged after CJ's grandmother stated she was willing to care for him.<sup>320</sup> Caseworker notes from when CJ was 13 indicate that CJ's grandmother had previously expressed an interest in caring for CJ full time and spending time with CJ to build their relationship. However, a month later, she did not follow up the visit, and when it did eventuate, it was reduced to a day visit.<sup>321</sup> Caseworker notes from this time record *'[Grandmother] very much wants to care for [CJ] and put energy into him however the reality of the care [CJ] needs is beyond her capability and she is finding it hard to accept this.'*<sup>322</sup>

CJ's care plan from 2012 indicates that while DCF was responsible for some tasks such as arranging a case conference with CJ's new school, the majority of the responsibility for CJ's care fell on his grandmother. The care plan notes:<sup>323</sup>

- *'DCF to support the grandmother to connect [CJ] with community based youth offender programs'*
- *'the grandmother to discuss with [CJ] if he would like to attend counselling to support his emotional development'*
- *'grandmother to support [CJ] to take his ADHD medication' and*
- *'paternal grandmother to support [CJ's] re-integration into mainstream education.'*



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The care plan indicates that DCF would work with CJ's grandmother to stabilise him in his new placement, through weekly telephone calls.<sup>324</sup>

DCF did not complete a Request for Casework Assistance form to ensure that CJ had support while living with his grandmother and did not provide the relevant child protection agency in the new jurisdiction with CJ's case plan or the order he was subject to. An email from an Interstate Liaison Officer from the Northern Territory states '*[CJ] has been there for a month now and a request hasn't gone through in order to offer support and be involved in planning. The request for casework assistance needs to be sent through urgently in case things start to breakdown*'.<sup>325</sup>

When CJ had been with his grandmother for five months the Team Leader from the Department of Child Protection in the state CJ had moved to contacted DCF stating that she had only recently learnt that CJ was subject to orders in the Northern Territory.<sup>326</sup>

After five months with his grandmother, CJ absconded and made his own way back to Darwin.<sup>327</sup> CJ explained:

*I got suspended from school, and was breached, then some mates rocked up and they were going to Darwin. So I thought it would be better if I just went with them. I was missing home, so I jumped in the car.*<sup>328</sup>

DCF's delay in providing information about CJ to case workers interstate meant that case workers could not offer support to CJ's grandmother. This contributed to the breakdown of the placement.

## SUCCESSFUL PLACEMENT FOR CJ

CJ's only successful placement was with an Aboriginal couple who knew CJ's parents. CJ was first placed with this family when he was 13 and lived with them on and off for four years. CJ told the Commission that this was his best placement.<sup>329</sup> He viewed this carer as a father figure and said:

*Just him being an Indigenous person, no matter how far up in life, he understood. He understood me, he understood where I came from, and he knew of my mum and my dad.*<sup>330</sup>

This placement had a positive effect on CJ's behaviour. Notes from when CJ was 13 state '*[CJ] had shown signs of stabilising in this current placement. It is my belief that a strong role model (especially an Aboriginal man doing very well in life) is contributing to [CJ's] stabilisation*'.<sup>331</sup> CJ said his carer '*knew how to make me feel comfortable, at home ... I felt at ease. I felt comfortable. It felt like the right thing to be honest. You know, there was no feeling different*'.<sup>332</sup>

CJ continued to abscond and offend when he was in this placement, but he said that the family told him he could always come back, and sometimes he would not leave because he enjoyed living with the family.<sup>333</sup> CJ explained why he absconded from the family's care: '*I couldn't keep hurting [the people I was placed with]. I couldn't keep getting out of Don Dale and then chucking it back in their face*'.<sup>334</sup>

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## YOUTH JUSTICE SYSTEM

CJ has been involved with the youth justice system from an early age. When he went into care he had already had 39 involvements with police.<sup>335</sup> He first went into detention aged 12, and has been in and out of custody ever since. CJ told the Commission it became normal for him to spend time in youth detention, and later adult prison.<sup>336</sup>

Between November and December of the first year that CJ was taken into care, he was admitted to youth detention on five occasions.<sup>337</sup> When he absconded, he committed offences with other young people in Darwin. DCF documents state, *'these periods of "self-placement" usually ended by his arrest for a number of criminal charges.'*<sup>338</sup> CJ had a network of friends in custody, and from an early age wanted to go into custody to see his friends.<sup>339</sup> CJ said, *'I would just hang out with my crew and go stealing. But that's been my life. My friends are my family.'*<sup>340</sup>

CJ spoke about why he continued to break his curfew when he was on bail. He said he remembered promising that he would comply with curfew but would eventually come home at the wrong time. CJ said, *'Even if I was just five minutes late I'd just end up thinking, I'll get locked up anyway – I might as well make it worth it.'*<sup>341</sup>

DCF visited CJ in youth detention and attempted to assist him. When he was 13, DCF assisted CJ to attend an eight-day Balunu camp.<sup>342</sup> CJ's behaviour improved after he completed the camp, which he enjoyed and described as a *'good learning experience.'*<sup>343</sup>

During the second year that CJ was in care, he accessed therapeutic services, and NTFC developed a therapeutic treatment plan.<sup>344</sup> It is unclear how long he accessed this service. CJ's history of absconding made it difficult to engage him in support services. In youth detention, CJ also accessed counselling about his offending.<sup>345</sup> Despite the support of these services, CJ continued to offend.

When CJ was 16, he took himself interstate.<sup>346</sup> A Reportable Incident Form from the time records that when he first absconded, the police filed a report but cancelled it due to CJ's age and because he had regular contact with his carer and case manager.<sup>347</sup>

When CJ was interstate he received training and support through an organisation that he found out about through friends. CJ said:

*'I wanted to try and achieve something better than what I was doing in Darwin ... I heard of this [program] through a couple of mates, and I decided to enrol myself. Just did it all for myself really. I got there and started meeting the lads. Met the teachers and that.'*<sup>348</sup>

When he was living interstate CJ completed two trade courses.<sup>349</sup> However, he eventually reverted to offending. CJ said:

*'I was doing really well for myself, but I did a few crimes as well. I started drinking more ... I started missing home ... I don't know where it all went wrong. I was drinking heavily and was just always feeling depressed.'*<sup>350</sup>

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He eventually decided to return to Darwin, but during the journey back he offended and was arrested.<sup>351</sup>

## LEAVING CARE

DCF made efforts to assist CJ to develop social skills and transition out of care towards independent living. DCF referred CJ to the Anglicare Moving on Program.<sup>352</sup> After the referral, CJ attended a meeting to discuss the support he would receive from the program.<sup>353</sup> After CJ absconded interstate, support for CJ to attend the program was difficult. DCF made inquiries about where CJ was residing and offered to provide support while he was living interstate.<sup>354</sup> DCF also made attempts to review CJ's leaving care plan while he was interstate.<sup>355</sup>

Despite efforts to support CJ to transition out of care, CJ said he did not feel supported. He told the Commission:

*'There was a time when I turned 18 and they came, they brang me a laptop as a gift and she explained to me, she said that "we would support you for another year" ... she didn't explain like, what kind of support she could give me ... I just remember them doing that and that it was only until I turned 19.'*<sup>356</sup>

When asked about whether there's a role for welfare to help children and young people who have been in care when they're over 18, CJ said, *'Yeah ... like, I'm 20 years old. I still need help. Like, because of the life I lived, you know, still trying to understand a few things.'*<sup>357</sup>

## SYSTEMIC ISSUES

CJ's experience in care illustrates the following systemic issues:

*Territory Families' care plans were inadequate in some cases and statutory requirements for their implementation, modification and review were at times not complied with.*

While DCF were aware that CJ did not have a cultural care plan, DCF did not prepare a cultural care plan for CJ in his first four years in care. It is unclear why it took four years for CJ's cultural care plan to be completed, particularly as DCF was in contact with CJ's grandmother within a year of him being taken into care.

Further, the care plan in place when CJ went to live interstate with his grandmother was inadequate as much of the responsibility for CJ's care fell on his grandmother. This was not enough support given CJ's history of absconding.

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*Some of the practices Territory Families adopted in respect of the consultation with relevant stakeholders (such as the subject child and their family members) about the appropriateness and preference of placements and care planning and the application of the Aboriginal Child Placement Principle were deficient and contributed to high rates of placement breakdown and turnover in some cases.*

Although initially DCF discussed with CJ proposed placements with certain relatives or an Aboriginal placement, the records show that DCF made limited efforts to obtain further information about CJ's extended family and cultural ties.

After going into care, CJ repeatedly absconded from his foster care placements because he wanted to be with his family.

CJ's desire to be with family and the fact that his only successful placement was with an Aboriginal couple who knew his parents suggests that he may have benefitted from being placed in kinship care with suitable extended family or someone else with whom he was familiar.

*Territory Families did not ensure that some children with complex needs and substance abuse issues had adequate access, and support to access, counselling services and drug and alcohol rehabilitation.*

CJ had access to, and did access therapeutic services and counselling while in care and youth detention. However, CJ's regular absconding made it difficult to engage him in support services. That CJ sought out training and support on his own initiative, when he took himself interstate, indicates that he was motivated to seek support and suggests that the services available to him were not targeted to his needs.

*Territory Families failed to provide sufficient diversionary options, appropriate programs or intensive support for some children under child protection orders at risk of recidivism and detention.*

CJ already had 39 involvements with police when he went into care and has been in and out of custody since he was 12 years old. When CJ absconded from placements he would often commit offences.

While CJ had access to, and did access some counselling for his offending while he was in care, it was not effective in stopping his offending.



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# CASE STUDY: DD AND DC

The Commission has heard from parents of children who had experience of the child protection system in the Northern Territory. These included witness DD.

The Commission provided DD's witness statement to the Northern Territory Government and invited statements in response relating to certain identified systemic issues discussed below. The Commission requested and reviewed hundreds of child protection records produced by the Northern Territory Government, received numerous notes on the files from the Northern Territory Government and provided the Northern Territory Government an opportunity to comment on DD's story.

This is the story of DD, and her son, DC, based on the Commission's investigation, including DD's witness statement and the extensive documents and notes identified above. Other people involved from time to time may have different recollections. In publishing this story, the Commission does not make any findings in relation to DD and DC, but notes the systemic issues which their story highlights as identified at the end of DD and DC's story below.

## EARLY LIFE

DC is one of a number of children of DD, an Aboriginal woman from Western Australia who moved to the Northern Territory in 2005 hoping for a better life for herself and her children.<sup>358</sup>

DC was born prematurely with a low birth weight. He remained in hospital for the first few months of his life and struggled to put on weight. DC's parents separated when he was young and DC remained with his mother.<sup>359</sup>

DD told the Commission that DC was always different from her other children. He was hyperactive from an early age. When he started school he was happy and enjoyed it, but during his early years of primary school he started to be bullied. He would become angry and frustrated and was constantly in trouble at school. *'My other children were not like this. They did well at school and did not have the same problems.'*<sup>360</sup>

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DD suspected from the time DC was around three that he may have ADHD like his father. When she enrolled DC at school, and many times after that, DD raised with the school her concern that DC had ADHD. Eventually the school booked an appointment for DD to take DC to see a paediatrician. The paediatrician told DD that DC was '*just being a boy*' and it was normal for him to have that much energy.<sup>361</sup> DD was not offered any support to manage DC's behaviour. DC was eventually diagnosed with ADHD when he was 11. By that time DC had already been taken out of the mainstream class and placed in re-engagement.

The failure to provide support to DD and DC so they could manage DC's ADHD when it first emerged was the first of many missed opportunities to address DC's behaviour before it became more entrenched and harder to manage, and before DC became marginalised and excluded at school and falling behind his peers.

## Early involvement with Territory Families

As a result of the bullying DC experienced at school, in late primary school he stopped socialising with children his own age and started to mix with older children from the community. He was taught to sniff and siphon petrol by one of these children. DD tried to stop DC sniffing and to keep him at home but he often ran away.

DC started getting picked up by the police and DD believes the police reported DC to Territory Families. Territory Families workers started coming to the house and asking questions about DC.<sup>362</sup> At this time the family was already known to Territory Families. However, Territory Families contact with DC in relation to DD was limited to notifications when DC was younger about DD's past alcohol use and domestic violence in the family.<sup>363</sup>

DC was not a child with no one to look out for him. Just as she had done in relation to DC's ADHD, DD sought help with DC's behaviour and his sniffing. When he would run away, DD would go out looking for DC. She would contact Territory Families, who told her if DC was not home by a certain time to ring the police. When she rang the police they would usually say it was her job not theirs to find DC. DC was around 10 at this time.<sup>364</sup>

DD asked Territory Families for counselling for her and DC, and for a parenting course to teach her how to manage DC's behaviour.<sup>365</sup> An In Home Case Plan was developed, which recorded that DC needed a psychiatric and a paediatric assessment, and that DD needed assistance with parenting strategies and support to enter a rehabilitation facility.<sup>366</sup> Three months later, with the assistance of Territory Families, DC was referred to residential rehabilitation to get help with his sniffing.<sup>367</sup> DC was sent home after a few days after making threats against a staff member.<sup>368</sup> This was the first of a number of failed attempts to engage DC in a rehabilitation program to address his volatile substance abuse.

What followed was a challenging period for DD, who was trying to manage DC's escalating sniffing and absconding as a single parent with a number of other children and her own struggle with alcohol. DD tried to keep a close eye on DC but when her back was turned he would run away and '*go sniffing*'.<sup>369</sup> DD was actively seeking assistance from Territory Families but felt she was getting little help.<sup>370</sup>

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## ENTRY INTO CARE

DC first entered care when he was 11. On this occasion, DC was found sniffing aerosols by the police and, on the same night, DD was arrested and remanded in police custody. As a result of DD's incarceration and because an alternative caregiver could not be located, DC was placed into care for three days. He was initially assigned an emergency foster care placement before absconding and self-placing with his step-father, with whom he remained until the period expired. Territory Families notes record that DC's case notes were to be reviewed to identify family members who could care for DC. A phone number and address was listed in the case notes for DC's step father, but he was not consulted.<sup>371</sup>

The same month, with the support of Territory Families, DD was bailed to a residential rehabilitation program with her children. DD was later required to complete her program as part of her sentence. The program was an opportunity for DD to address her problems with alcohol, and for DC's volatile substance abuse to be addressed. DD told the Commission that DC '*only managed to sniff once or twice*' during this time because he was supervised all the time.<sup>372</sup>

There were some positives during the stay at the rehabilitation facility. DC was diagnosed with ADHD and DD was given information on how to manage DC's behaviour. DC was also given sleeping tablets to help manage his ADHD and DD thought they worked quite well.<sup>373</sup>

DD had been asking for training on managing DC's behaviour. While mother and son were in the rehabilitation program, Territory Families asked DD to complete a parenting course and she agreed. However, the parenting course they arranged for DD taught parents to look after babies. DD needed assistance managing a pre-teen with ADHD and a substance abuse problem.<sup>374</sup>

## FIRST RESICARE PLACEMENT

Three months after they entered the rehabilitation program, Territory Families was advised that DC would be removed from the program for damaging property. DD could not leave the program without being in breach of the conditions of her release. She felt her choices were to complete the program or go to prison. Feeling like she had no other option, DD agreed to DC being placed on a Temporary Placement Agreement for two months, to enable her to complete the rehabilitation program and to ensure that DC was in stable care.<sup>375</sup> A care plan was not attached to the Substitute Care Placement Agreement as a new plan needed to be completed following DC's change of circumstances.<sup>376</sup>

When DC went into care this time, Territory Families was well aware that he had a history of at-risk behaviours, including absconding and volatile substance abuse. He had also recently been diagnosed with ADHD.<sup>377</sup> DD told Territory Families that DC needed to be placed where someone could keep a close eye on him and give him lots of support to make sure he did not sniff.<sup>378</sup>

Rather than placing DC with someone who could give him one-on-one care and supervision, DC was placed in a residential group home (known as a 'resicare home') in Darwin, run by a non-government organisation. DD was given a phone number for the house but no other information about DC's placement.<sup>379</sup>



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DC was the youngest of four children in the home. The other three boys were aged 12, 13 and 15.<sup>380</sup> The Substitute Care Placement Agreement recorded that the intention of the placement was for DC 'to have stability of care and remain in a safe environment' while his mother completed her rehabilitation program.<sup>381</sup>

DC's behaviour that put him at risk escalated in resicare. DC began absconding from the placement with other boys from the house. DC told his mother that another child in the house had told him he could leave the house and come back whenever he wanted.<sup>382</sup>

At the time, Territory Families' policy and procedure required that:

*If the child is absent from their placement, the child's Case Manager must make every reasonable effort to locate the child ... All attempts to locate a child who is absent from their place of care must be documented in CCIS.*<sup>383</sup>

*When a child has absconded from their place of care the child's parents/family members and the Police should be notified and advised that all reasonable efforts are being taken by the Department to locate the child. If a missing child is located ... the child's parents and family should also be informed that the child has been located and be provided with information about the future placement of the child.*<sup>384</sup>

The Acting Executive Director of the Governance Division of Territory Families told the Commission that while it would depend on the type of order the child was on, if a child had absconded there would definitely be a sense of immediacy to notify the parent. She said that the notification would be directed back through the case management team to notify the family.<sup>385</sup>

The Territory Families Team Leader advised DC's carer that DD had been made aware that DC was absconding from the home with other young people at night.<sup>386</sup> However, DD told the Commission that Territory Families did not call her when DC ran away from his placement to let her know nor did the carer.<sup>387</sup> On at least three of the occasions on which DC absconded in the first 12 days he was in resicare, Territory Families' own notes support DD's contention that she was not notified that DC had absconded.<sup>388</sup> When DC absconded from resicare, the police would be notified but no one from Territory Families or from the organisation caring for DC would go out and look for the 11 year old boy on the streets overnight. DD told the Commission, 'I want to know why the carers would not go out and look for him themselves. If he is in my care and runs away, I go out and look for him myself.'<sup>389</sup>

Two weeks after DC was placed in resicare, a police officer contacted Territory Families and expressed concern about the level of care being provided to children at DC's resicare house. The officer said it appeared to police 'that the carers have no control over the children and the children are allowed to do what they like'.<sup>390</sup> The Senior Manager of the Territory Families Professional Practice Division at the time attended an internal meeting with other senior staff from Territory Families four days later in response to the police complaint. At that meeting, it was noted that the 'concerns raised are largely a by-product of systemic issues in these facilities'.<sup>391</sup> The meeting minutes went on to say:

*[The Senior Manager] explained that she believes that we need to stop and consider how we support placements to ensure they have the competency to care for children, and what constructive activities are in place to engage our children. [The Senior Manager] explained that our reportable incident data is very high, and the top issue is children absconding.*<sup>392</sup>

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In relation to the training of workers at residential facilities, the Senior Manager told the Commission that it was *'a workforce that would absolutely benefit from more training opportunities ... so certainly anything that upskills their capabilities and competencies to care for complex children is absolutely advantageous.'*<sup>393</sup>

At a placement meeting between Territory Families and the operators of the resicare home 18 days after DC was placed there, it was noted that DC had *'stepped up his behaviours since being at [the home]'* and his behaviour had escalated to *'drinking and bongs and smoking'.*

*It was agreed by all present at this meeting that this was not an ideal placement for [DC] to be in – 11 year old boy being allowed to do as he pleases and out at all hours of the night in Darwin CBD.*

Those at the meeting identified that the development of a care plan and behaviour management plan were a high priority, and that a behaviour management plan would be completed.<sup>394</sup>

On the same day, DC absconded again from the placement and self-placed with extended family. While the staff at the resicare home contacted the police, Territory Families notes suggest the case manager was frustrated at the lack of action taken and was concerned about whether DC was *'asleep or unconscious'*. On this occasion, the case manager took steps to locate DC, and DD was informed the following day when DC was located.<sup>395</sup>

Less than three weeks after the placement began, DC's caseworker summarised the breakdown of the placement in an Essential Information record:

*[DC] was placed with [the organisation], however he has been under the influence of other young people within that residence, has absconded with them, has experimented with alcohol (not done this before), sourced petrol and aerosol cans, and placed himself at high risk of harm, as well as being a target for bullying by the other young people who were older than [DC]. DCF determined a lack of supervision was occurring for [DC], he was at risk of harm, there was minimal structure and consistency of any school attendance or mental health follow ups, and this placement was not suitable or in his best interests.*<sup>396</sup>

DD told the Commission:

*'I thought that a DCF house would be strict. I thought it would be stricter than our house. But this was not what happened. DCF put him in a resicare home ... As soon as [DC] left my care and went to the [resicare] house, that is when he went totally out of control. It was from this point I feel I lost him. I believe he should never have been taken into care. I believe that many of the problems [DC] had afterwards come from his time in the [resicare] house.'*<sup>397</sup>

A new placement was sourced and DC was placed with a carer where he remained for one night before he absconded again.<sup>398</sup> Twenty-four days after being taken into care, DD was advised by a caseworker that DC's whereabouts had been unknown from Friday night to Sunday morning when DC self-placed with extended family.<sup>399</sup> With DD's agreement, the Temporary Placement Arrangement subsequently lapsed and it was agreed that DC would stay with an extended family member until DD finished her program.<sup>400</sup>

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## FAILURES OF CASE MANAGEMENT

DC was, at this stage, an 11 year old boy with ADHD, engaged in volatile substance abuse, frequently on the streets at night, entirely disengaged from education and, after being placed in resicare, experimenting with alcohol and other drugs. He was a child in need of intensive support.

Section 76 of the *Care and Protection of Children Act* requires that as soon as practicable after a child is taken into the Chief Executive Officer's care and where there is no protection order in force, the Chief Executive Officer must prepare and implement an interim care plan. At the relevant time, Territory Families procedure required a case manager to use an Out of Home Care Plan form for an Interim Care Plan, and noted that some domains in the form may remain incomplete until information is gathered because the child would have just entered care.<sup>401</sup> The policy clearly contemplated that not all information would be available, but recognised the importance of preparing a plan under the circumstances.

DC's first Out of Home Care Plan was not prepared until nearly three weeks after the Temporary Placement Agreement was confirmed and DC had entered the resicare home. By this time, DC's at-risk behaviours had escalated and the placement had broken down. The plan recorded that DC had not had a positive experience with his first placement, and that DD was not happy with the situation at the placement and was concerned about DC's safety.<sup>402</sup> The failure of Territory Families to prepare an Interim Care Plan that identified DC's needs and the measures to be taken to address these needs was in breach of the section 76 statutory requirement.

Four months after DC was placed in care, his mother was allocated a Territory Housing property and DC returned from living with an extended family member to live with his mother. DD observed that DC's behaviour had become a lot worse since he had entered care. He was now running away and locking himself in his room to sniff. He would no longer listen to DD.<sup>403</sup> DD spoke with Territory Families about what she should do about DC running away, but DD told the Commission the only advice she received was to call the police.<sup>404</sup>

After DC was returned to his mother's care and three months after it had been reported, a Priority 3 child protection investigation was completed. These investigations are supposed to be commenced within five days and then completed within 28 days.<sup>405</sup> The investigation found neglect as a result of DD's '*inability to keep [DC] from absconding, associating with unknown adults, sniffing volatile substances, not attending school, sleeping rough and protecting him from possible harm of unknown adults*'. The report concluded that it was unlikely placing DC in the care of Territory Families would reduce his high-risk behaviours, and recommended that DC and his mother be supported to strengthen their relationship, address DC's ADHD, substance use and absconding behaviours.<sup>406</sup>

This was another opportunity for intensive intervention and support to address DC's needs and increase DD's capacity to care for DC.

A month after the investigation was completed, a case conference was held to discuss DC. Territory Families staff, a mental health case manager and a nurse attended the case conference. The minutes of this meeting record that those present were of the view that while DD reported to be struggling to manage DC's behaviours, she was '*doing everything within her capacity*' to manage DC's behaviours and limit his capacity to engage in volatile substance abuse. It was noted that DD was '*engaging well with DCF, support services and Police*'.<sup>407</sup>

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## ENTRY INTO THE YOUTH JUSTICE SYSTEM

Only a few weeks after the case conference, DC entered Don Dale Youth Detention Centre for the first time on the basis of outstanding warrants.

DD told the Commission that she found it very difficult to find out any information from the police or the Department of Corrections about what was happening to DC when he was first taken to Don Dale Youth Detention Centre.<sup>408</sup> A complaint in relation to communication was later made to the Ombudsman and the police conducted a detailed investigation. The report found that an initial phone call was made to DD's house but there was no subsequent attempt to contact her, the lack of adequate police records was problematic and the failure to take further steps to contact DD contributed to a delay in taking DC before a magistrate.<sup>409</sup> Territory Families notes show that the case manager tried for her to visit DC with DD but she was told that this was not possible as 24 hours' notice was required for visits.<sup>410</sup> DC was held in custody for four days. He was still just 11 years old.

DC's challenging behaviour began to escalate as he continued to run away from home and sniff. This began a cycle of DC breaching his bail conditions and returning to Don Dale Youth Detention Centre. DD told the Commission that DC was given bail conditions not to sniff and not to be on the streets at night. DD felt those conditions were unrealistic for DC at the time, and that they resulted in him being returned to custody.<sup>411</sup>

A youth justice court report in this period recorded that DD was 'undertaking all actions within her capacity to reduce the risks to [DC]'. The report noted that:

*DCF are of a view that [DD] is willing and able to undertake all appropriate actions to ensure that [DC] is safe and well and therefore there are no plans at present for [DC] to be taken into the care of DCF. This option has been considered, however, at this stage, it is felt that such an action would not provide a positive change in relation to [DC's] absconding behaviour and use of volatile substances.<sup>412</sup>*

About five months later, DC was referred to and attended another rehabilitation program with the support of Territory Families. This was the first support offered to address DC's sniffing since he had been in rehabilitation with DD 12 months earlier. DD said she did not think this program would work because there were too many unrealistic conditions that DC would not be able to follow, such as attending school daily. DC had not attended school since he was first taken into care. The arrangement broke down shortly after DC arrived. DC was removed from the program for using volatile substances, arrested for breaching his bail conditions and transported to Don Dale Youth Detention Centre.<sup>413</sup> DC was arrested while in the rehabilitation program for engaging in the very behaviour that he was seeking assistance for from the program.

DD asked Territory Families for help from the time DC returned to live with her as his sniffing was 'out of control'. Around the time that DC was removed from the rehabilitation program, DD showed a case manager a photo of a large number of deodorant cans she had found in DC's room. DD told the Commission that she was 'really stressed and frustrated' and 'wanted to show [Territory Families] what was happening to try and prove that [she] needed help and support from them'.<sup>414</sup> DD also asked for a short period of respite but was told that short-term respite was not available.<sup>415</sup>

## SECOND RESICARE PLACEMENT

When DC's residential rehabilitation program broke down, Territory Families did not provide an alternative to address DC's sniffing, nor did they provide DD with respite care. Instead, Territory Families decided to seek a Protection Order for a period of one year. Territory Families notes show that the decision to apply for the order was made because DC's behaviours had not improved and his absconding and volatile substance abuse had escalated in the previous months. Further, it was observed that DD was *'struggling to cope and has little to no control over [DC's] behaviours'* and that the decision would enable the Department to *'take all the necessary actions to address [DC's] behaviours and to ensure his safety and wellbeing'*.<sup>416</sup> The first Out of Home Care Placement request sought a placement with a specialist foster carer.<sup>417</sup>

DD did not agree to a Protection Order. She told the Department that she did not want DC to go into a group home in town because she did not think it was in his best interests. She said that if a placement in town was the only option, it would be better for DC to live with her. However, she said that she would support the application if DC was placed in a rural area.<sup>418</sup>

The Territory Families notes recorded that the following actions would be undertaken by the Department while DC was in care.

- In light of DC's history of absconding from both home and previous placements, and his history of volatile substance abuse, the Department would *'draw up a behaviour plan to ensure that [DC's] difficult behaviours can be addressed appropriately'* and *'ensure [DC's] needs are met appropriately whilst in placement'*.
- A *'thorough and formal reunification plan will be made'* together with DC, DD and other services, and the *'plan will involve undertaking a full psychological assessment in relation to [DC] which will support the development of a detailed behaviour management plan'*.
- *'[DC] has not attended school since being in Darwin ... increasing [DC's] participation in education will be one of the primary goals while he is in the care of the Department'*.
- DD will be *'referred to appropriate parenting courses to improve her abilities to set boundaries and rules with [DC]'*.<sup>419</sup>

Territory Families did not undertake any of these actions while DC was in care.

DC was in Don Dale Youth Detention Centre for about 10 weeks. Upon his release, he was placed into the care of Territory Families.<sup>420</sup> Despite previously suggesting that DC would be placed with a foster carer, and over DD's objection, DC was placed in another resicare home run by a different non-government organisation in Darwin. DC was placed there for the majority of the next five months.

The Substitute Care Placement Agreement recorded that the placement was expected to provide:

*a safe place for [DC] which will ensure that all his needs are met at all times. It is hoped that this placement will support [DC] and his mother to address [DC's] challenging behaviours in relation to absconding and using VSA.*

It also noted that the case plan for DC would be completed in four days, when a copy would be provided to the placement.<sup>421</sup> This did not occur. The care plan was completed seven weeks after DC entered the Chief Executive Officer's care, in breach of the Territory Families policy and after a number of requests by DC's carers.<sup>422</sup>

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The monthly care reports prepared during this period detail DC's behaviour while at this placement.<sup>423</sup> They state that initially DC was settling into the resicare home and beginning to form attachments with staff members. However, he continued to regularly abscond, use volatile substances and commit offences.<sup>424</sup>

Not long after his arrival, DC was charged with a number of offences he had committed after he had absconded from the placement.<sup>425</sup> A few days later, DC was involved in a physical altercation with another child at the resicare home. The police were called and he was charged with breaching a bail condition that required he obey all reasonable directions of his caregivers.<sup>426</sup> As a result, DC was remanded again to Don Dale Youth Detention Centre. At a Territory Families meeting following DC's arrest, it was noted that as the placement was originally planned as an emergency placement, there was *'limited planning in establishing strategies for [DC]'*. It also recorded that there had been a *'breakdown in communication'* between Territory Families and the organisation with which DC had been placed.<sup>427</sup>

Nearly three weeks after DC was placed in the residential group home, the resicare provider and Territory Families held a placement meeting. The meeting notes record that the resicare placement for DC was *'high risk'* and that *'staff are not sure that they can manage the level of risk'* but *'will do the best we can with what we have got'*. The provider requested advice on what more they could do to manage DC, as well as a care plan, safety plan, behaviour plan and absconding plan. At a further meeting the following day, the provider and Territory Families discussed some actions to implement regarding DC's absconding behaviour and volatile substance abuse. They also agreed to weekly meetings between the case manager and placement management team.<sup>428</sup>

A week later, the provider again requested a copy of the care plan, safety plan, behaviour plan and absconding plan, and said that it was *'almost impossible for staff to offer [DC] the best service/support possible, including consistent responses, when staff don't have access to these documents therefore we need these plans asap'*. The case manager advised that the care plan was not currently finished and said she had written the safety, behaviour and absconding plans as agreed at the previous meeting.<sup>429</sup>

During the two months following DC's return from Don Dale Youth Detention Centre, the monthly care reports record that DC seemed *'to be a lot more settled in the placement'* and that DD had thanked staff for stabilising the placement. However, DC's behaviours had regressed by the end of this period and there were reports that he had caused property damage, absconded and been under the influence of volatile substances on a number of occasions.<sup>430</sup> Towards the end of this period, DC's care plan was finalised by his case worker. It recorded that although DC was enrolled in a learning program, he did not attend school. It also reported that DC's behaviours had improved significantly in the preceding month, and that DC had stated he liked being in the placement.<sup>431</sup>

Following this and after only two months in his new placement, DC's behaviour again escalated. He had *'numerous'* trips to the hospital for medical assessment following *'regular and at times daily'* volatile substance abuse. He also absconded frequently and breached his bail conditions many times. The monthly care reports stated that *'[a] new resident ... who was the same age as [DC] further impacted on [DC's] escalation of behaviours'*. The reports also record that the resicare provider still had not received a behaviour management plan from DC's caseworker.<sup>432</sup>

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Territory Families policy and procedure required that a caseworker must have face-to-face contact with a child *at least* once every four weeks. The policy noted that where a placement was not stable or where the child had a significant health issue, the frequency and intensity of contact would increase.<sup>433</sup> Despite the instability of DC's placement and his well-documented at-risk behaviours, his caseworker paid limited visits during this placement. According to Territory Families' notes, the last face-to-face contact with DC was about one month after he arrived at the resicare home, when he was transported to a paediatric assessment by a senior Aboriginal Community Worker. About two months later, a caseworker visited DC at his placement.<sup>434</sup> During this period, DC's care plan was completed, but contrary to Territory Families procedure it did not stipulate the arrangements for a case manager or third-party to have contact with DC and to monitor his safety and wellbeing.<sup>435</sup>

DC's engagement in education had been a challenge for both his mother and Territory Families. From as early as DC's first temporary placement, reports indicated that he did not attend school most days. A Youth Justice Court report prepared when DC was 12 noted that he was enrolled in re-engagement but '*does not attend school at present*'. It further noted that DD '*is constantly encouraging [DC] to attend school*'.<sup>436</sup> By the time DC entered the second resicare placement, Territory Families had identified increasing DC's participation in education as one of the primary goals while he was in the care of the Department.<sup>437</sup> This goal was not met. DC did not attend a single day of school or receive any alternative form of education during this placement. The monthly care reports record that discussions were being held as to whether DC would benefit from a private tutor and that alternative options were being explored, but no action was taken.<sup>438</sup> It was not until DC returned to his mother's care that action was taken. DD searched online for '*tutoring*' and asked the caseworker to find out where it was. Following this, DC began private tutoring with the assistance of Territory Families.<sup>439</sup>

DD felt the carers at the resicare home could not manage DC and that his behaviour was continuing to deteriorate.<sup>440</sup> The resicare home took children from 10 to 17, and their rules included the stipulation that children could stay out until 9:00 pm and smoke cigarettes. DD was concerned that her 11 year old son was able to stay out that late. When DC absconded, DD was not always notified. From time to time DD would find out that DC was missing when she rang the home to speak to him.<sup>441</sup>

Four months after DC's second resicare placement, DD assumed shared parental responsibility of DC for 12 months.<sup>442</sup> The following month, DC attended his fourth residential rehabilitation program, which was also unsuccessful. He left shortly after arriving.<sup>443</sup> After DC left the rehabilitation program he was returned to the care of his mother where he has remained since.<sup>444</sup>

## THE PRESENT

According to DCF progress notes, DC's volatile substance abuse and respite for DD were discussed at a meeting in early 2017. The notes state:

*In the past when [DC] was living with his mother (before he came into care), [DD] was doing everything to mitigate [DC's] sniffing behaviour however it became evident that she was not coping or able to manage his behaviours. TF applied for a protection order to assist [DC] to reduce the behaviours. During his time in care, his behaviours escalated into a cycle of sniffing and breaking the law. He was assessed as having doli incapax which prevented him from being charged for his offences. He had a period*

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*of a month where his VSA behaviour settled however it was observed that his VSA behaviour was no better in care of the CEO than it was living with his mother ... [Worker] advised that there would be no benefit in placing [DC] in care and that it would be a matter of providing [DD] with support to manage [DC's] behaviours in the home.<sup>445</sup>*

From the time DC became involved with Territory Families, DD continued to ask for support to attend a parenting course to help her manage DC's challenging behaviours. This was the primary priority the Department identified for DD.<sup>446</sup> In the initial Parent/Caregiver Plan for DD, Territory Families recommended that DD be 'referred and engages with parenting work in relation to managing teenagers behaviours' as soon as possible.<sup>447</sup> The later Parent/Caregiver Plan records that this did not happen. This later plan again identified that the most serious parent priority need was 'in relation to [DD's] ability to manage and control [DC's] behaviours' and again recommended that DD be referred to 'parenting work in relation to managing teenagers behaviours' as soon as possible. Once again this priority measure was not implemented.<sup>448</sup> In early 2017, DD's lawyers from the North Australian Aboriginal Justice Agency (NAAJA) wrote to Territory Families on behalf of DD, listed three parenting course options in the Northern Territory and asked to discuss these with Territory Families.<sup>449</sup> As at 21 June 2017, when DD appeared before the Commission, this had not occurred.<sup>450</sup> However, the following day, Territory Families staff met DD and agreed with her and her lawyer that they would 'investigate possible parenting courses, including ones specifically relating to ADHD/FASD/substance abuse' and would 'investigate appropriate psychologists who can meet with DD'.<sup>451</sup>

Both DD and Territory Families report that DC's behaviour is better since DC has returned to his mother's care.<sup>452</sup> DD is still seeking, but not receiving, respite care. DD takes DC for regular check-ups but they are still not receiving intensive ongoing assistance to help with DC's ADHD and sniffing.<sup>453</sup> DC was recently diagnosed with FASD. DD is seeking help to understand what this means for DC and how she can support him.<sup>454</sup> As at the date DD gave evidence before the Commission, that assistance had not been forthcoming.

DD told the Commission:

*'I just want what is best for [DC]. When I first started working with DCF I thought they were going to help me. They always made promises that they would get special care and special programs for [DC] and that's why it was better for [DC] to be in care. But this did not happen. I have never had as much stress as when I have dealt with DCF. DCF did not help us, they only made things worse. I think [DC] would have been much better off if he had just stayed in my care, and even better if he had stayed in my care with DCF giving us support.*

*DCF need to listen more to families because they are playing with people's lives and people's families. My experience is that DCF never listened to me or [DC]. They made plans for [DC] that were not appropriate for him without listening to us and it just made him run away and sniff more. They need to really sit down and listen to families and help them from when behavioural problems first start. It seems like DCF only really care when kids' behaviour is really bad or they are ending up in trouble with Police or in Don Dale.<sup>455</sup>*

DC was the only one of DD's children to be subject to a protection order or placed in care.<sup>456</sup>



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## SYSTEMIC ISSUES

The experiences of DD and DC illustrate the following systemic issues:

*Territory Families failed to provide adequate oversight of some residential care placements for children placed with non-government agencies.*

DC had a history of at-risk behaviours, including absconding and volatile substance abuse and he had recently been diagnosed with ADHD.<sup>457</sup> These risks should have indicated to Territory Families that DC required a placement providing a high level of supervision and support. Instead, DC was placed in residential care and regularly absconded.

Two weeks after DC was placed in residential care, police raised concerns about the care being provided. An officer told Territory Families that it appeared to police *'that the carers have no control over the children and the children are allowed to do what they like'*.<sup>458</sup> At a meeting held in response to the complaint, it was noted that the *'concerns raised are largely a by-product of systemic issues in these facilities'*.<sup>459</sup> DCF determined that there was a lack of supervision for DC at the placement.<sup>460</sup> Territory Families' oversight of DC in the residential care placement, and of those running the residential care facility was inadequate.

A new placement was later sourced. When DC entered a second residential care placement staff noted that they are *'not sure that they can manage the level of risk'*. The provider requested advice on what more they could do to manage DC and requested a care plan, safety plan, behaviour plan and absconding plan. A week later these had not been provided.

Territory Families was aware that the provider had previous involvement with DC and was concerned about managing DC's at-risk behaviours but had limited oversight of what would be done to manage the risk as these plans were not in place from the outset of the placement. While Territory Families regularly communicated with the placement provider about DC's case, the provider noted that it was *'almost impossible for staff to offer [DC] the best service/support possible ... when staff don't have access to these documents'*.

*Territory Families' use of residential care in group homes for some children under child protection orders was detrimental to their development and well-being and was not in their best interests.*

It was clear that DC required one-on-one care and supervision due to his history of at-risk behaviours including absconding and volatile substance abuse. Instead, DC was placed in a residential care placement with three older children and frequently absconded with them. DC told his mother that another child in the house had told him he could leave the house and come back whenever he wanted.<sup>461</sup>

In a placement meeting 18 days into his placement Territory Families noted that DC's behaviours had *'stepped up'* and escalated to *'drinking and bongs and smoking'*.<sup>462</sup> DD observed that the resicare home could not manage DC and his behaviour was deteriorating.<sup>463</sup> The placement only lasted 20 days.

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DC's case worker noted that DC:

*has been under the influence of other young people within that residence, has absconded with them, has experimented with alcohol (not done this before), sourced petrol and aerosol cans, and placed himself at high risk of harm, as well as being a target for bullying by the other young people who were older than [DC]. DCF determined a lack of supervision was occurring for [DC], he was at risk of harm, there was minimal structure and consistency of any school attendance or mental health follow ups, and this placement was not suitable or in his best interests.<sup>464</sup>*

An out of home care placement request made shortly before DC's second placement in residential care sought a placement with a specialist foster carer.<sup>465</sup> Instead, DC was again placed in residential care in a facility run by a different provider. He continued to regularly abscond, use volatile substances and commit offences.

This pattern of behaviour in residential care suggests that DC did not receive the supervision and support he needed from either residential care provider, and that residential care was detrimental to DC.

*Territory Families case workers did not make every reasonable effort to locate some children who absconded from their place of care and notify the child's parents/family members.*

DD told the Commission that Territory Families did not call her when DC ran away from his placement to let her know.<sup>466</sup> When DC absconded from his resicare placement, at 11 years of age staying out on the streets at night, the police would be notified but no one from Territory Families or from the organisation caring for DC would go out and look him. Territory Families notes suggest the case manager was frustrated at the lack of action taken. On one occasion, the case manager took steps to locate DC, and DD was informed the following day when DC was located.<sup>467</sup>

The Territory Families Team Leader advised DC's carer that DD had been made aware that DC was absconding from the home with other young people at night.<sup>468</sup> However, DD told the Commission that Territory Families did not call her when DC ran away from his placement to let her know nor did the carer.<sup>469</sup> On at least three of the occasions on which DC absconded in the first 12 days he was in resicare, Territory Families' own notes support DD's contention that she was not notified that DC had absconded.<sup>470</sup> While Territory Families may have taken steps to notify DD in some instances, more should have been done to locate DC and keep DD informed. DD gave evidence that she was not always notified when DC absconded from the second placement.<sup>471</sup> From time to time DD would find out that DC was missing when she rang the home to speak to him.

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*Territory Families did not comply with the statutory requirements to implement the measures identified in care plans to address the needs of children in some cases.*

Section 76 of the *Care and Protection of Children Act* requires that as soon as practicable after a child is taken into the Chief Executive Officer's care and where there is no protection order in force, the Chief Executive Officer must prepare and implement an interim care plan.

DC's first Out of Home Care Plan was not prepared until nearly three weeks after a Temporary Placement Agreement was confirmed and DC had entered residential care. By this time, DC's at-risk behaviours had escalated and the placement had broken down. There was no Interim Care Plan. The failure of Territory Families to prepare an Interim Care Plan that identified DC's needs and the measures to be taken to address these needs breached the section 76 statutory requirement. The Northern Territory Government submitted that the plan was prepared as soon as practicable given that DD, a representative of the residential care provider and several Territory Families staff contributed to the plan.<sup>472</sup> Given DC's young age and known history of at-risk behaviours, this plan should have been prepared sooner. At a meeting held three weeks after DC's second residential placement began, the provider requested a care plan for DC along with a safety plan, behaviour plan and absconding plan. A week later the provider again requested a copy of these plans from Territory Families, noting that without the documents it was '*almost impossible*' for staff to provide the care DC needed. The case manager advised that the care plan was not finished.<sup>473</sup>

While DC's carers may have had some information about DC, as DC's carers at the second residential care placement noted, without a Care Plan carers were inadequately equipped to manage DC's challenging behaviours. Territory Families' delay in preparing and providing care plans compromised their implementation.

*Territory Families case workers' sightings and physical visits to some children in out of home care were irregular and infrequent.*

Territory Families policy and procedure required that a caseworker must have face-to-face contact with a child at least once every four weeks. Where a placement was not stable or where the child had a significant health issue, the frequency and intensity of contact would increase.<sup>474</sup> Despite DC's well-documented at-risk behaviours, his caseworkers paid limited visits during his placements in residential care aside from accompanying him to appointments and attending '*stakeholder meetings*' with others involved in his care. Attending a meeting about DC, while important, does not make up for time spent engaging with DC.

Territory Families' notes show that there was face-to-face contact with DC about one month after he arrived at the resicare home and again about two months later.<sup>475</sup>

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*Some children in Territory Families' care with complex needs and substance abuse did not have access to, and support to access, sufficiently intense counselling services and drug and alcohol rehabilitation.*

When DC first sought assistance, Territory Families referred DC to a residential rehabilitation program for volatile substance abuse. Shortly after he entered care, DC accompanied DD to a residential rehabilitation program she was required to complete as part of her sentence. DC later became involved in the youth justice system and began a cycle of breaching bail conditions not to sniff. DC was referred to and attended a rehabilitation program with the support of Territory Families. DD said she did not think this program would work because there were too many unrealistic conditions that he would not be able to follow, such as attending school daily, which DC had not been doing since being taken into care. The arrangement broke down shortly after DC arrived. He was removed from the program for engaging in the very behaviour that the program was intended to address.

When DC's residential rehabilitation program broke down, Territory Families did not provide an alternative to address DC's sniffing, nor did they provide DD with respite care. Instead, Territory Families decided to seek a Protection Order for a period of one year, and placed DC in residential care where he continued to use volatile substances regularly. Two months into the placement, DC was engaging in 'regular and at times daily' volatile substance abuse. The Northern Territory Government submit that DC was referred to numerous counselling and drug rehabilitation services.<sup>476</sup> The capacity of these services to engage DC while he was in residential care may have been undermined by the lack of structure and supervision in these placements and his frequent absconding.

*Territory Families did not adequately investigate and provide options for addressing the needs of some parents, such as parenting support, to allow children to remain with their family rather than being placed in care in some cases.*

DD actively sought assistance from Territory Families. At one stage she sought a parenting course to enable her to better manage DC's ADHD and substance abuse, but the parenting course arranged for DD taught parents how to look after babies. DC's behaviour deteriorated during his initial residential care placement. Despite a Territory Families report recommending support for DD rather than placing DC in care, DD was told that respite was not available and Territory Families decided to seek a Protection Order to allow Territory Families to 'take all necessary actions to address [DC's] behaviours and to ensure his safety and wellbeing'. Since the break-down of DC's second residential placement, DCF noted that 'there would be no benefit in placing [DC] in care and that it would be a matter of providing [DD] with support to manage [DC's] behaviours in the home.'<sup>477</sup>

Planned interventions during DC's second placement in residential care included that DD would be 'referred to appropriate parenting courses to improve her abilities to set boundaries and rules with [DC]'.<sup>478</sup> That did not happen.

In the initial Parent/Caregiver Plan for DD, Territory Families recommended that DD be 'referred and engages with parenting work in relation to managing teenagers behaviours' as soon as possible.<sup>479</sup> The later Parent/Caregiver Plan records that this need was not met. This later plan again identified that the most serious parent priority need was 'in relation to [DD's] ability to manage and control [DC's] behaviours' and again recommended that DD be referred to 'parenting work in relation to managing teenagers behaviours' as soon as possible. This priority measure was not implemented.<sup>480</sup>

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*Territory Families' response to some children unwilling to engage with services and education, in particular to consider and address the underlying reasons for any lack of engagement, was inadequate.*

During his second resicare placement Territory Families notes recorded that: *'[DC] has not attended school since being in Darwin ... increasing [DC's] participation in education will be one of the primary goals while he is in the care of the Department'*.<sup>481</sup> DC did not attend a single day of school or receive any alternative form of education during this placement. The monthly care reports record that discussions were being held as to whether DC would benefit from a private tutor and that alternative options were being explored, but no action was taken.<sup>482</sup> It was not until DC returned to his mother's care that action was taken by DD, who asked the caseworker to find out about tutoring. Following this, DC began private tutoring with the assistance of Territory Families.<sup>483</sup>

*Territory Families failed to support some children in care adequately to avoid them coming into contact with people and pathways likely to lead to the youth justice system.*

With known risks of absconding and substance abuse, DC was placed in residential care, in circumstances where soon after the placement commenced police were concerned about the care being provided and where there was inadequate oversight of the placement by Territory Families. At the second residential care placement staff were not sure that they could manage the level of risk. DC began absconding from the placement with other boys from the house and other troubling behaviour increased. In a placement meeting 18 days into his Territory Families noted that DC's behaviours had *'stepped up'* and escalated to *'drinking and bongs and smoking'*.<sup>484</sup> DD observed that the resicare home could not manage DC and his behaviour was deteriorating.<sup>485</sup> DC's case worker noted that DC:

*'has been under the influence of other young people within that residence, has absconded with them, has experimented with alcohol (not done this before), sourced petrol and aerosol cans... DCF determined a lack of supervision was occurring for [DC], he was at risk of harm, there was minimal structure and consistency of any school attendance or mental health follow ups, and this placement was not suitable or in his best interests.'*<sup>486</sup>





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# CASE STUDY: CK

The Commission has heard from children who experienced the child protection system in the Northern Territory. These included witness CK.

The Commission provided CK's witness statement to the Northern Territory Government and invited statements in response relating to certain identified systemic issues discussed below. The Commission requested and reviewed hundreds of CK's child protection records produced by the Northern Territory Government, received numerous notes on the files from the Northern Territory Government and provided the Northern Territory Government an opportunity to comment on CK's story.

The Commission heard evidence from one of CK's former case workers, CX. The Commission was unable, in the limited time available, to seek out other case workers and the many other people with whom CK came in contact over the years of her interaction with the child protection system. Nor was any statement volunteered by the Northern Territory Government in response.

This is CK's story based on the Commission's investigation, including her witness statement, the witness statement of CX, and the extensive documents and notes identified above. Other people involved from time to time may have different recollections. In publishing this story, the Commission does not make any findings in relation to CK, but notes the systemic issues which her story highlights as identified at the end of CK's story below.

## BACKGROUND

CK grew up in Alice Springs and speaks English and an Aboriginal Language.<sup>487</sup> CK was mostly raised by her grandmother as her parents struggled with drug and alcohol abuse. CX, a caseworker who was then employed at a local non-government organisation working with young people, recalled that CK was *'an extremely smart young girl who was supported in primary school by her grandmother'*.<sup>488</sup>



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CK first went into care when she was 13 years old due to concerns about neglect and solvent abuse.<sup>489</sup> CK was initially sent to an outstation which offered rehabilitation services for young women who engaged in solvent abuse. However, after a short time, she absconded. She said, '*[s]ometimes I just ran away because the other girls staying there wanted to run away and I went too.*'<sup>490</sup>

CK was in and out of the child protection system until she turned 18.<sup>491</sup> This case study examines her experience of the child protection system from the beginning of the period covered by the Commission's terms of reference until she turned 18.

## ABSCONDING FROM CARE PLACEMENTS

By the time CK was 15 years old, she already had a history of substance abuse. Family and Children's Services (FACS), now known as Territory Families, often did not know where CK was staying. Notes from FACS at this time state that '*the exact details of where [CK] should be residing are not apparent from reading CCIS.*'<sup>492</sup> The Community Care Information System (CCIS) recorded '*varying placement details*' for CK. Progress notes indicated that CK had been residing with her grandmother at a town camp, her client details indicated an Alice Springs address and the placement service event indicated she was meant to be staying elsewhere.<sup>493</sup>

CK was often placed with her grandmother in Alice Springs. When she could not stay with her grandmother, CK was placed at a group home in Alice Springs or at a local youth support service.

FACS had a continuing obligation to provide suitable accommodation for CK. However, FACS often relied on CK's grandmother to find CK accommodation. Case management meetings from when CK was 15 record that '*[grandmother] cannot identify alternative placement for [CK] in Central Australia ... she will talk to [CK] about where she might be able to live for a while.*'<sup>494</sup>

CK's grandmother was also caring for several other children at this time.<sup>495</sup> Sometimes CK's grandmother struggled to take care of CK, and it was difficult for CK to stay with her due to overcrowding.<sup>496</sup> FACS documents state that some attempts were made to support CK's grandmother to care for CK.<sup>497</sup> For example, FACS attempted to organise respite for CK's grandmother.<sup>498</sup> However, CK's grandmother was left with most of the responsibility for caring for CK. A FACS worker said of CK's grandmother, '*she was the only one who speaks to [CK] about responsibilities etc. and it helps to have consistent reinforcement about this.*'<sup>499</sup> FACS also made attempts to contact and consult CK's mother but often had difficulty contacting her.

FACS documents indicate that when CK absconded, her carers and caseworkers would notify the police. Over a five-month period when CK was 15 years old, she was reported missing to the police on eight occasions.<sup>500</sup> Other than reporting to the police, there is no evidence to suggest FACS took any other steps to find CK.

Shortly after CK turned 15, her grandmother did not know where CK was and asked FACS what they were doing to help her. FACS notes record that the response was:

*I said we had very little contact with her and that she didn't come into the office for appointments ... we were unable to maintain contact with her due to not knowing where she was living.*<sup>501</sup>

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During her oral evidence, CK was asked who she thought was making decisions about where she would live and what she would do while she was in care, and she said, 'myself'.<sup>502</sup> CK said she did not feel supported by her caseworkers when she was in care. She told the Commission:

*'I had many case workers from FACS. Sometimes a new case worker would turn up to see me in my placement or in the police cells before the FACS boss even told me I had a new one.'*<sup>503</sup>

CK had five caseworkers in the three years before she turned 18.<sup>504</sup>

## ADDRESSING CK'S SUBSTANCE ABUSE

One of the reasons CK entered the care and protection system was her substance abuse. When CK was in care, FACS attempted to address CK's substance abuse by enrolling her in rehabilitation programs. This was difficult because there were limited rehabilitation programs available in the Northern Territory, and few programs would accept a child or young person under the age of 16 years.

When CK was 15 years old, a FACS Team Leader wrote:

*I have been exploring interstate services as there are no provisions for this client and four other female clients in the NT. She was placed on an outstation designed to provide an environment free of solvents and drugs ... she did very well, attended school and became very healthy. Unfortunately this ceased operation ... and we have been unable to locate a safe environment for her since this time. She was also placed with [another] program ... also designed to address solvent misuse but this program has since made a decision not to accept her again due to the language barrier. The client speaks [REDACTED] and the program is a Walpri speaking organisation.*<sup>505</sup>

Attempts to enrol CK in interstate rehabilitation services were unsuccessful because the services only accepted clients over 16 or 18 years old, whereas CK was 15 at the time.<sup>506</sup>

When CK was 16 years old, FACS organised for CK to attend a program for volatile substance abuse in Darwin. During the program, CK absconded with another girl.<sup>507</sup> Police located the girls and returned them to a program in Darwin but CK absconded again. After this, she was discharged from the program in Darwin.<sup>508</sup>

## LACK OF FACS SUPPORT FOR CK IN THE YOUTH JUSTICE SYSTEM

CK was involved in the youth justice system while in the care of the Chief Executive Officer. CX, a caseworker who worked with CK at this time, told the Commission that CK's substance abuse led to ongoing criminal behaviour and it was important to note that CK committed most of her crimes while intoxicated and in pursuit of further substances.<sup>509</sup>

CK was often granted bail on the condition that she remained in the care of her grandmother. This placed significant pressure on CK's grandmother, who was not always able to provide the level of care required to keep CK out of harm's way.

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There were occasions when CK's grandmother was not consulted about CK's bail conditions. When CK was 16 years old she pleaded guilty to minor dishonesty and driving offences. CK was granted bail on the condition that she reside with her grandmother. When a FACS worker took CK to her grandmother's house, her grandmother reported that she was leaving the community on Sunday and would leave CK with her sister. This would have put CK in breach of her bail conditions.<sup>510</sup>

Shortly after this, CK was again granted bail on the condition that she reside with her grandmother. Her grandmother was again unaware of the bail conditions until CK was dropped off at her house later that day.<sup>511</sup>

CX told the Commission that 'FACS repeatedly did not provide appropriate supports to [CK] when she was involved in the criminal justice system'.<sup>512</sup> CX referred to occasions when FACS failed to attend court for CK's criminal matters.

When CK was 16 years old, she was arrested for breaching bail and for another charge of entering a dwelling and was remanded in custody.<sup>513</sup> Progress notes from this time record that 'no legal guardian was present' in court for CK.<sup>514</sup> On that day CK's lawyer organised accommodation for CK and she was granted bail.<sup>515</sup>

Later that year CK was arrested for multiple offences. She was refused bail and remanded in custody and her matter was adjourned for three months.<sup>516</sup> When she returned to court for sentencing, no one from FACS attended court.

During the sentencing hearing, there was no information about where CK would stay if released. CK's matter was stood down so that a representative from FACS could attend court. CK told the Commission that she waited in the court cells 'angry and upset' that no one had attended for her.<sup>517</sup> When CK's matter resumed that afternoon, two FACS workers were present. The Magistrate informed FACS that it was unacceptable for children in the care and protection system, such as CK, to be in court without a responsible adult looking after their interests.<sup>518</sup>

CK was released to a placement arranged that afternoon.

While CK was in youth detention, FACS arranged a case management meeting. During this meeting, CK asked FACS to enquire about her attending a program and re-entering school after she was released.<sup>519</sup> The case plan from this time records that FACS sought to arrange rehabilitation and then for CK to attend school.<sup>520</sup>

FACS contacted a program service provider in Darwin but they would not accept CK because she had previously absconded from the program.<sup>521</sup> FACS contacted a school in Darwin but it was at full capacity.<sup>522</sup> FACS also applied for CK to attend a school in another state, which had a residential program for Aboriginal students from remote communities.<sup>523</sup>

After CK was released from youth detention, this plan was implemented and CK went to another state to participate in a one-week trial at a new school. This was the first time she had participated in any educational activity outside youth detention since she was 14 years old.<sup>524</sup> FACS documents record that 'while [CK] enjoyed her week at the school, she expressed concerns to her caseworker that she was the only Indigenous student from her region and all the other girls were from Pitjantjatjara Lands'.<sup>525</sup> FACS encouraged CK to stay at the school but she decided to return to Alice Springs to live with her grandmother.

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Following CK's decision to return to Alice Springs, FACS attempted to identify other education options for CK. However, these were unsuccessful. CK expressed a desire to attend a high school in Alice Springs but her grandmother advised she could not attend that school. FACS documents also record, 'FACS has been unable to explore other school placement options at this point due to resource constraints'.<sup>526</sup>

A few months after CK returned to Alice Springs she re-offended and went back into youth detention.

CX stated that after CK returned to Alice Springs she spoke to her grandmother who told her that she had overwhelming concerns that CK was at risk of re-entering the criminal justice system.<sup>527</sup>

During this period a senior youth worker wrote that FACS is 'in contact with [grandmother] on a regular basis and there are plans in place' for CK.<sup>528</sup> However, there is no evidence of any plan, and no support was provided to CK's grandmother between the time CK returned to Alice Springs and when CK was arrested.<sup>529</sup>

Later that year, CK went to court for sentencing. This time, a FACS caseworker attended court as CK's legal guardian but did not produce a youth justice court report. Progress notes from this date record:

*The matter was stood down until 2:00pm to allow time for FACS to prepare the court report. The worker completed the court report and [REDACTED] submitted it to the court at 2:00pm.*<sup>530</sup>

CX told the Commission that court reports are meant to be child-focused and guide the judge towards the best sentencing options for the child, but because of the fast turnover CK 'had no input into that report'.<sup>531</sup>

CK was again released into the care of her grandmother.<sup>532</sup> After CK was released, she showed interest in engaging in training programs and in gaining employment. FACS notes from when CK was 16 record that CK 'suggested she would start the computer skills course next week and if she does not like it she will start working at green corps'.<sup>533</sup> FACS worked with a community support service to assist with these plans. The computer course did not go ahead but the community support service organised for CK to do one week of training at a fast food store with the prospect of further employment at the end of the week.<sup>534</sup> The community support service also arranged for CK to work in child care.<sup>535</sup>

While CK attempted to engage in training and employment, she continued to abscond from her placement. Days before CK turned 17, FACS notes record 'writer and [REDACTED] drove to [REDACTED] to speak to [CK], no one had seen her'.<sup>536</sup> Further, FACS notes from this time indicate that communication with CK had been limited but FACS was still trying to support CK as much as possible.<sup>537</sup>

When CK was 17 years old she placed herself at a residential rehabilitation program. FACS notes record 'she left [her current placement] due to now feeling unsafe eg people drinking'.<sup>538</sup> 'FACS workers reiterated that FACS will continue to support [CK] and encouraged [CK] to contact FACS anytime'.<sup>539</sup>

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A few weeks later, CK was charged with car theft and unlawful entry. CK was granted bail with very strict conditions that she remain at the rehabilitation program.<sup>540</sup> In early July, CK absconded. Two weeks later, CK was picked up by the police, charged with breaching her bail conditions and remanded in custody.<sup>541</sup> CK was in custody for three months.

When CK was in youth detention she spoke with FACS case workers over the phone to develop a plan for her release. The plan outlined by CK was one that her grandmother suggested. CK wanted to be placed with a relative in the community and seek employment through a program there.<sup>542</sup>

When CK was in youth detention FACS visited this relative and assessed her to be a suitable carer for CK.<sup>543</sup>

When CK was released from Don Dale Youth Detention Centre she was placed into her relative's care. The court ordered that CK accept supervision regarding education, reporting, employment and attendance at a program in the community and not return to Alice Springs except with prior permission from parole officers.<sup>544</sup>

A few weeks later CK was arrested for numerous offences and was remanded in custody.<sup>545</sup> She was given a long sentence and remained in youth detention until she was 18.

During this long period in youth detention, CK attended school regularly and was able to attend a program.<sup>546</sup> CK also accessed 'Prison in Reach Program' for drug and alcohol abuse.<sup>547</sup> When CK was asked about her best placement, CK said 'detention'.<sup>548</sup> She said detention was her best placement while in care because:

*'... there was no other kids doing things like sniffing and that, and there was no drugs or alcohol around us, and because there was a lot of schooling and programs and it's more safe.'*<sup>549</sup>

## AFTER-CARE PLAN FOR CK

When CK turned 18, she was transferred to the adult prison to serve the remainder of her sentence.<sup>550</sup> CK did not feel supported in relation to her post-release plans and told the Commission, 'FACS didn't help me reintegrate after I was released'.<sup>551</sup> Progress notes record that FACS intended to develop an after-care plan and that this would involve CK attending a program in Darwin and eventually living with relatives in another state.<sup>552</sup> There is no evidence that these plans were implemented. CK was not released from prison until after FACS ceased involvement with CK. She was unable to implement her after-care plan on her own.

CK has spent further time in custody. FACS worked with CK and her grandmother to address her risk-taking behaviours, but no intervention proved successful. CK said, 'In my view FACS failed to provide a safe environment or provide appropriate support to [CK]' while she was a young person in the care of the Chief Executive Officer.<sup>553</sup>

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## SYSTEMIC ISSUES

CK's experience in care illustrates the following systemic issues:

*Territory Families failed to adequately support some children in care to avoid them coming into contact with people and pathways likely to lead to the youth justice system.*

Family and Children's Services, now known as Territory Families, often did not know where CK was staying.<sup>554</sup> FACS placed too much reliance on CK's grandmother for CK's care. While it is important to involve family in case management, FACS had a continuing obligation to provide suitable accommodation and care for CK.<sup>555</sup>

FACS documents indicate that there were occasions when FACS did not know where CK was. Other than reporting to the police that CK was missing there is no evidence to suggest FACS made any attempt to actively find CK or engage with her.

CK's absconding was linked to her substance abuse and criminal behaviour. CX, a caseworker who worked with CK at this time, told the Commission that CK's substance abuse led to ongoing criminal behaviour and it was important to note that CK committed most of her crimes while intoxicated and in pursuit of further substances.<sup>556</sup> They expected a 15-year-old in care, with substance abuse problems and transient housing, to attend appointments if she was to receive assistance.<sup>557</sup>

*Some children in Territory Families' care with complex needs and substance abuse did not have adequate access to, and support to access, counselling services and drug and alcohol rehabilitation.*

By the time CK was 15 years old, she already had a history of substance abuse. CK required significant intervention and intensive case management to help her to desist from solvent and drug abuse. While attempts were made to provide CK with the support for substance abuse, it was only when she was in youth detention that CK obtained the intensive intervention she needed to address her substance abuse. When she received appropriate assistance, she did well.<sup>558</sup> The reasons CK was unable to access assistance when she was out of custody included the unavailability of residential rehabilitation for young people under 16.

*Territory Families did not adequately prevent some children self-placing when in care.*

While it is important to involve family in case management, FACS had a continuing obligation to provide suitable accommodation for CK. Other than reporting to the police, there is no evidence to suggest FACS took any steps to find CK or address the reasons why she continued to self-place. On one occasion CK left her placement because she felt unsafe due to alcohol abuse.<sup>559</sup> At the time, rather than assisting CK to find suitable accommodation FACS encouraged CK to contact FACS anytime.<sup>560</sup>

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*Territory Families did not adequately support some children who were under the sole guardianship of the Minister and were also involved in the youth justice system.*

CK had extensive involvement with the youth justice system while in the care of the Chief Executive Officer. CK was often granted bail on the condition that she remained in the care of her grandmother. However, her grandmother was not consulted about bail on occasions.<sup>561</sup>

On two occasions when CK appeared before a court facing charges, no one from FACS attended as her legal guardian.<sup>562</sup> On another occasion, FACS attended court with CK but did not produce a court report, which are meant to be child-focused and guide the judge towards the best sentencing options for the child. The report was subsequently quickly prepared but without any input from CK.<sup>563</sup>







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# CASE STUDY: CM, CL AND DA

The Commission has heard from children and families who experienced the child protection system in the Northern Territory. This included witnesses CM, her daughter CL, and CL's aunt, DA.

The Commission provided CM, CL and DA's witness statements to the Northern Territory Government and invited statements in response relating to certain identified systemic issues discussed below. The Commission requested and reviewed hundreds of CL's child protection records produced by the Northern Territory Government, received numerous notes on the files from the Northern Territory Government and provided the Northern Territory Government with an opportunity to comment on CM, CL and DA's story.

The Commission was unable, in the limited time available, to seek out CL's case workers and the many other people with whom CL came in contact during her interaction with the child protection system. Nor was any statement volunteered by the Northern Territory Government in response.

This is CM, CL and DA's story based on the Commission's investigation, including their witness statements and the extensive documents and notes identified above. Other people involved from time to time may have different recollections. In publishing this story, the Commission does not make any findings in relation to CM, CL and DA, but notes the systemic issues which their story highlights as identified at the end of CM, CL and DA's story below.

## BACKGROUND

CM and her husband have more than seven children, the oldest in their twenties. They are widely regarded as good parents by their community and their extended family. In addition to caring for their own children, they have informally cared for many other children within the extended family and the community when those children needed somewhere to live.<sup>564</sup>

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CM and her husband do not drink alcohol. CM's husband is employed and they spend their money on the children's food, clothing and activities.<sup>565</sup> CM told the Commission:

*'It is important to me that my kids have clean clothes to wear, go to bed at night ready for school, and that they have lots of food at home.'*<sup>566</sup>

CM told the Commission that none of her children have ever had major health issues, and they are all active kids.

CM concedes she is a strict mother. She believes that it is important that her children have chores every day and assist around the house.<sup>567</sup> CM described her community as unsafe and violent. She told the Commission that some young girls in the community gave their bodies away to older men in return for drugs and alcohol. CM said that this was part of the reason why she and her husband were so strict at home.<sup>568</sup> CL is CM's daughter. CL told the Commission:

*'My parents cared a lot about our safety. My mum and dad were strict because the community we grew up in is violent and a lot of children use drugs and alcohol.'*<sup>569</sup>

## CL'S REMOVAL

When CL was about 14, she started to become a 'cheeky' teenager at home. She began hanging out with other girls who were taking drugs and drinking alcohol.<sup>570</sup> This resulted in clashes between CL, who thought her mother was too strict, and CM, who was concerned for CL's welfare.

One day, when CL was 16, there was a brawl on their street. CL wanted to go and watch the fight but CM told her to stay inside. Later that day, CM saw CL outside the house smoking, which CL was forbidden to do. CM became angry with CL and dragged her into her room so she could not run away and go to the fight.<sup>571</sup> According to Territory Families' case notes of the interviews with CM, her husband and CL, CM and CL exchanged physical blows with each other, and CM's husband also hit CL.<sup>572</sup>

CM concedes that she used too much force when she was disciplining CL. She was upset because of the circumstances and held genuine fears for CL but she knew she had gone too far. CM and CL both told the Commission that this was the first time CM had ever used physical force like that against CL.<sup>573</sup> CL said that nothing like that had ever happened in her family before.<sup>574</sup> However, a member of the extended family called the police and a few days later Territory Families came and took CL.<sup>575</sup>

CM told the Commission, 'DCF just came and told me they were taking [CL] because of the fight we had.'<sup>576</sup> CL said that interviews were conducted by Territory Families but that they did not ask her any questions about their background, what their lives were like, their house or their family. The interview notes record that CL and CM hit each other. CM's husband also was alleged to have hit CL. The notes also record that CM's husband told the caseworker that he hit his children to keep them from smoking or taking drugs.<sup>577</sup>

During those interviews, CL was told that she needed to go into provisional protection to ensure her safety, and CL agreed to go.<sup>578</sup> CM and her husband were also told of this, and according to the case notes agreed as well.<sup>579</sup> CM stated that she viewed welfare's involvement as an opportunity to 'get some help',<sup>580</sup> and CL herself said that she viewed care as a fresh start for her and her mother.<sup>581</sup>

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## FAILURE TO CONSIDER ANY RISK TO CL'S SIBLINGS

Territory Families had received two other complaints of physical discipline by CM and her husband in relation to another of their children five years earlier. There is no record of any action being taken in relation to those complaints. There is no record of Territory Families' previous involvement with the family on CL's file.<sup>582</sup>

## FAILURE TO PROVIDE SUPPORT TO CL AND CM

CL's care plan included the reunification of CL with her parents and siblings within 12 months but did not outline a strategy for how this would be achieved.<sup>583</sup> CM said that Territory Families gave her no indication of what she needed to do to get CL back.<sup>584</sup>

CM recognised that she should not have used force against CL and wanted help to better manage CL's behaviour. When CL was taken into Provisional Protection, Territory Families offered CM and her husband counselling together with CL. The case notes record that CM 'viewed this as a chance to get some help'.<sup>585</sup> CM and her husband agreed to, and, indeed, actively sought counselling, making requests for counselling to Territory Families after CL was taken into care.<sup>586</sup>

Territory Families arranged one counselling session for CM and her husband with CL. CM and her husband attended but CL did not. CM said that after that, Territory Families did not arrange any further counselling sessions for the family.<sup>587</sup>

CM told the Commission:

*'DCF didn't give [my husband] and I a chance. We tried to explain how happy we were and the good things we were doing at home. We agreed to go to counselling and were looking for help from DCF about ways to parent and help with CL's behaviour. I asked for counselling when they came to take CL away. But they still took CL away. DCF came back later to see us about CL and I said to them that I had asked them for counselling and they didn't give it. The lady who was there said she remembered us asking for counselling. We still didn't get it.'*<sup>588</sup>

CM said, 'I know a bad thing happened with CL but we weren't bad parents.'<sup>589</sup>

Territory Families referred CL for counselling support a year after she was removed for matters unrelated to the fight with CM.<sup>590</sup> However, the counselling service to which CL was referred operated in her previous community from which she and her family had moved away. There is no record of counselling being arranged for CL or the family at their new location.<sup>591</sup>

## CARE PLANS AND KINSHIP CARE

CL was initially placed in a non-government residential group home while Territory Families attempted to identify and assess kinship carers.<sup>592</sup> CM was involved in identifying kinship carers and provided Territory Families with the names of family members CL could stay with.<sup>593</sup>

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CL's care plan included that Territory Families would 'assist prospective carers and parents with the adequate supervision and provision of opportunities that are age appropriate for [CL] to socialise with friends and other social networks.'<sup>594</sup> The care plan also referred to family reunification within 12 months but did not include a strategy for how this would be achieved.<sup>595</sup>

CM did not remember Territory Families discussing a care plan for CL with her. When shown the care plan in the course of preparing her statement to the Commission, CM stated, 'it is good to read the positive things that DCF wanted to happen for CL. It is sad that none of it happened'.<sup>596</sup>

CL said it felt like she was reading 'barefaced lies' about Territory Families wanting her to maintain relationships with her family.<sup>597</sup>

## CL'S EXPERIENCE IN CARE

CL did not understand when she agreed to go into care that she would be placed in residential care. CL said that there were no activities at the group home and she had to go to her sister's place nearby to get clothes.<sup>598</sup>

CL told the Commission:

*After I was first picked up by welfare I was thinking everything is going to be good and everything is going to change now. It might be a fresh start after the fight with Mum. I wasn't expecting change in a wrong way. I didn't expect to be dumped by welfare. It didn't take me long to think being picked up by welfare was not a good change.<sup>599</sup>*

In the first week she was in care, CL was leaving the group home and hanging out with other children on the streets in the middle of the night. CL stated that when she got to the group home, she knew 'they didn't care about me' and that she ran away because 'no-one was stopping me or caring where I was going or pay attention to me'.<sup>600</sup>

CM told the Commission she was getting calls from family telling her they had seen CL out on the streets late at night.<sup>601</sup> Territory Families case notes record that CM rang Territory Families and told them that she had heard that CL absconded and had been involved in a fight with another girl and her mother. Those notes record that CM 'was concerned that CL is not being supervised ... [the caseworker] agreed with CM's concerns and told her that he was working on assessing [kinship carers] ASAP'.<sup>602</sup>

CM said Territory Families never told her about where CL was or what she was doing.<sup>603</sup> The care plan for CL stated:

*... there have been some minor issues with supervision and whereabouts of CL, these concerns have been raised with [the operators of the group home] and a curfew has been put in place for CL while placed at [the group home].<sup>604</sup>*

Case notes record that a Territory Families caseworker visited CL at her placement, and 'asked that CL stay at [the group home] unless on supervised visits to family'.<sup>605</sup>

After about a week, CL was placed with a relative, DA, on the suggestion of CM, who trusted DA

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with CL.<sup>606</sup> DA said Territory Families did not tell her CL was having issues at the group home, nor give her any information about why CL was in protection. DA told the Commission *'it would have been good to know more the circumstances for CL suddenly being in care.'*<sup>607</sup>

The placement with DA broke down within approximately two weeks because of a lack of suitable accommodation.<sup>608</sup> Territory Families would not allow CL to reside with DA in the house DA was living in, due to concerns about another resident.<sup>609</sup> CL and DA had to move out of the home, and Territory Families placed them in a motel for a week.<sup>610</sup>

CL told the Commission that DA tried to contact Territory Families to organise another place to live. Territory Families did not help them, and DA and CL moved in with other family members. CL said that she took off from that house because it was too crowded.<sup>611</sup> Case notes around this time state that DA had put in an application for private housing, but needed to provide more identification.<sup>612</sup>

CL came back to her community after she left DA's care and stayed with CM for a short time. Case notes record that CL asked to visit her family to attend a funeral.<sup>613</sup> CL told the Commission that in fact she just wanted to go back there because it was her home.<sup>614</sup> When CL arrived home, CM said, *'I was confused because I thought she was supposed to be in care.'*<sup>615</sup> According to the case notes, CM spoke to Territory Families and told them that she had told CL, *'You have to go back to welfare; you can't stay here.'*<sup>616</sup> CM stated that she did call welfare a couple of times because CL *'was still very cheeky and was roaming around and I was worried about her.'*<sup>617</sup> CL then went and stayed with other family members.

The case notes record that Territory Families arranged to go to where CL was staying to ascertain CL's safety and transport her back to where she was supposed to be staying. However, CL absconded.

Again, CM heard CL was on the streets at night with other children and complained to Territory Families. Territory Families called the police and stated that CL was at risk of intoxication, but the police advised they would not respond. Police did pick up CL and other children on one occasion at 2 am.<sup>618</sup> During this time, CL was seen drunk on the streets several times.<sup>619</sup> CM said that she found this out from family and rang Territory Families: *'I rang them and asked where my daughter was and why she was on the streets at 3 am, drunk.'*<sup>620</sup> CM said, *'Welfare never told us that CL had run away ... We found out from family. It was very hurtful for us.'*<sup>621</sup>

After these incidents, Territory Families discussed options for CL with CM, including CL going to other family members in Alice Springs or interstate but not plans for reunification.<sup>622</sup>

The people CM had identified were concerned about CL. Records indicate one extended family member's concerns: *'she can see CL going down the wrong path ... She does not want to see CL end up pregnant and drinking in [the community] ...'*<sup>623</sup> Another family member was reportedly *'very concerned for CL's wellbeing as there have been so many young people in [the community] committing suicide and she does not want CL to be a statistic.'*<sup>624</sup>

Territory Families organised for CL to stay with one of these family members,<sup>625</sup> and a school in Alice Springs accepted CL.<sup>626</sup> The case was closed about five weeks after CL moved to Alice Springs.<sup>627</sup> A Case Closure Summary recorded that, approximately three months after the initial incident, Territory Families withdrew their involvement as they considered that CL *'was safe settled with family and accepted into [the college].'*<sup>628</sup>

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Approximately eight weeks<sup>629</sup> after Territory Families withdrew their involvement, CL absconded from her placement in Alice Springs and returned to her community.

CM told the Commission that when CL returned from Alice Springs she lived with her boyfriend in a violent relationship. CM also stated that she saw CL outside a drug dealer's house, and CM chased her and pleaded for her to come home.<sup>630</sup>

CM says that she was confused when CL returned to their community because she *'didn't know the order had ended. No one told me'*.<sup>631</sup> CM also told the Commission this when she gave evidence.<sup>632</sup> CL said that she never saw any court orders or documents about her and that she didn't know *'about any orders and when they might have started or ended'*.<sup>633</sup> Territory Families did not offer support for CL to be brought home.<sup>634</sup> Eventually, around three years later, CM allowed CL to return home because she knew she could look after her better and *'DCF wasn't there for her'*.<sup>635</sup>

## REUNIFICATION

When CL was 18, she returned to her family. CL has been living with her auntie in the house next door to her parents.<sup>636</sup>

CM told the Commission that she and CL *'want to tell our stories about welfare taking [CL] away because what happened was wrong and we should have got more help to keep the family together'*.<sup>637</sup> She said:

*'It would have been good for CL and me to have family counselling for anger management from people that know our family, culture and community. All we needed was a bit of support and help.'*<sup>638</sup>

CL stated that:

*'DCF should have allowed me to do counselling on my own and with my parents and family before taking me away. It would have been better to support me and keep my family together rather than taking me away.'*<sup>639</sup>

## SYSTEMIC ISSUES

The experience of CM, CL and DA illustrates the following systemic issues:

*Territory Families adopted inconsistent approaches to risk of harm notifications, even within the same family unit in some cases.*

Territory Families placed CL in care after being notified that CM and her husband had hit CL.<sup>640</sup> However, Territory Families did not investigate whether any of the other children in the family were at risk of harm and appeared to have taken no action in relation to the other children.<sup>641</sup>

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*Territory Families did not adequately consider options for addressing the behaviour of adult carers to allow children to remain with their family rather than being placed in care in some cases.*

It is understandable that Territory Families moved quickly in placing CL in provisional protection after receiving the harm notification. However, while CL's care plan included reunification with her parents and siblings within 12 months, there was no strategy for how this would be achieved.<sup>642</sup> It also appears that Territory Families made limited attempts to facilitate counselling to allow CM and her husband to address the behaviours that led to CL being placed in provisional protection.

CM and her husband agreed to and actively sought counselling, making requests for counselling to Territory Families after CL was taken into care.<sup>643</sup> Territory Families arranged one counselling session which CL did not attend, but did not attempt to facilitate any further sessions even after requests were made by CM.<sup>644</sup> CM later told the Commission:

*DCF didn't give [my husband] and I a chance. We tried to explain how happy we were and the good things we were doing at home. We agreed to go to counselling and were looking for help from DCF about ways to parent and help with CL's behaviour. I asked for counselling when they came to take CL away. But they still took CL away. DCF came back later to see us about CL and I said to them that I had asked them for counselling and they didn't give it. The lady who was there said she remembered us asking for counselling. We still didn't get it.<sup>645</sup>*

CM also told the Commission:

*It would have been good for CL and me to have family counselling for anger management from people that know our family, culture and community. All we needed was a bit of support and help.<sup>646</sup>*

Similarly, CL said:

*DCF should have allowed me to do counselling on my own and with my parents and family before taking me away. It would have been better to support me and keep my family together rather than taking me away.<sup>647</sup>*

Some children and families who came into contact with Territory Families (including those with complex needs and substance abuse) did not have adequate access, and support to access, counselling services and drug and alcohol rehabilitation or the case of parents, parenting support training.

As outlined above, CM and her husband did not have adequate access to counselling regarding their behaviours.

It does not appear that CL was provided with any support for her alcohol abuse whilst was in care. Territory Families referred CL personally for counselling support a year after she was removed for matters unrelated to the fight with CM.<sup>648</sup> However, the counselling service to which CL was referred operated in her previous community from which she and her family had moved away. There is no record of counselling being arranged for CL or the family at their new location.<sup>649</sup>



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*Territory Families failed to provide adequate oversight of residential care placements in some cases.*

CL felt that she was neglected when she was placed in residential care. CL stated that when she got to the group home, she knew 'they didn't care about me' and that she ran away because 'no-one was stopping me or caring where I was going or pay attention to me'.<sup>650</sup>

CL regularly absconded from the group home, and was found with other children on the streets in the middle of the night.<sup>651</sup> CM found out about CL's behaviour through family members and not Territory Families, and in fact it was she who reported CL's behaviours to Territory Families on numerous occasions.<sup>652</sup>

*Territory Families' use of residential care in group homes for some children under child protection orders was detrimental to their development and well-being and was not in their best interests.*

Following her removal, CL had gone quickly from a child in a stable home, albeit where there were some problems, but where she was home at night, to a child who absconded multiple times, was drinking and was unsafe on the streets late at night. These behaviours were facilitated because there was inadequate oversight of CL's residential care placements.<sup>653</sup>

*Territory Families did not investigate adequately or at all the reasons that some placements broke down.*

It is unclear how closely Territory Families investigated the reasons for CL absconding from residential care, if at all. The care plan for CL stated:

*... there have been some minor issues with supervision and whereabouts of CL, these concerns have been raised with [the operators of the group home] and a curfew has been put in place for CL while placed at [the group home].<sup>654</sup>*

However, even after that document was created, CL was still absconding and engaging in harmful behaviour.

It is also unclear how closely Territory Families investigated the reason CL's placement with DA broke down. DA told the Commission 'it would have been good to know more the circumstances for CL suddenly being in care'.<sup>655</sup>

The placement with DA broke down within approximately two weeks because of a lack of suitable accommodation.<sup>656</sup> CL and DA had to move out of the home due to concerns about another resident<sup>657</sup> and Territory Families placed them in a motel for a week.<sup>658</sup>

CL told the Commission that DA tried to contact Territory Families to organise another place to live.<sup>659</sup> Territory Families did not help them, and DA and CL moved in with other family members. CL said that she took off from that house because it was too crowded.<sup>660</sup> Case notes around this time state that DA had put in an application for private housing, but needed to provide more identification.<sup>661</sup>

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*Territory Families' consultation with relevant stakeholders (such as the subject child and their family members) about the appropriateness and preference of placements and care planning were deficient in some cases and contributed to high rates of placement breakdown and turnover.*

Contrary to Territory Families' Family Support Services policy at the time, which stated that extensive input from the family is required in developing case plans,<sup>662</sup> CM did not remember Territory Families discussing a care plan for CL with her. When shown the care plan in the course of preparing her statement to the Commission, CM stated, '*it is good to read the positive things that DCF wanted to happen for CL. It is sad that none of it happened*'.<sup>663</sup>

Territory Families did not adequately engage with CM when she tried to complain to them about CL's behaviour when she was absconding from residential care and CL continued to abscond after CM complained.

DA told the Commission that Territory Families did not adequately consult with DA about the circumstances of CL before she was placed into DA's care.<sup>664</sup> Territory Families also did not adequately support DA and CL in terms of providing suitable and safe long-term accommodation.<sup>665</sup>

*Territory Families did not adequately address and implement plans for the reunification of families in some cases.*

While CL's care plan included reunification with her parents and siblings within 12 months, there was no strategy for how this would be achieved.<sup>666</sup> It also appears that Territory Families made limited attempts to arrange family counselling to facilitate reunification between CL and her family.



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# CASE STUDY: DS

The Commission has heard from families of children who experienced the child protection system in the Northern Territory. These included witness DS, who gave evidence to the Commission about her baby granddaughter's removal into care and return to the community.

The Commission provided DS's witness statement to the Northern Territory Government and invited statements in response relating to certain identified systemic issues discussed below. The Commission requested and reviewed hundreds of records relating to DS and her family produced by the Northern Territory Government, received and considered detailed notes responding to DS's statement from the Northern Territory Government and provided the Northern Territory Government an opportunity to comment on DS's story.

The Commission was unable, in the limited time available, to seek out case workers and other people with whom DS came in contact during her interaction with the child protection system. No statement was volunteered by the Northern Territory Government in response.

This is DS's story based on the Commission's investigation, including her witness statement and the documents and notes identified above. Other people involved from time to time may have different recollections. In publishing this story, the Commission does not make any findings in relation to DS, but notes the systemic issues which her story highlights as identified at the end of DS's story below.

## OVERVIEW

DS is an Aboriginal woman from a remote community. She speaks English as a second language. DS has several adult children and grandchildren. DS has in the past, and is currently, caring for children from her extended family. DS gave evidence to the Commission about her baby granddaughter's removal from her parents into care and return to the community.

When DS's granddaughter was a couple of months old, DCF became aware the baby was at risk of harm.<sup>667</sup> Three weeks after she became known to DCF, DCF removed the baby from the family's care

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in the community and placed her with a non-Aboriginal foster carer in Darwin.<sup>668</sup>

Six months after the baby was taken, DS assumed joint parental responsibility for the baby with DCF.<sup>669</sup> It took DCF a further 10 weeks to return her to the community and into DS's care.<sup>670</sup>

## THE REMOVAL OF DS'S GRANDDAUGHTER FROM FAMILY AND COMMUNITY

***'When Welfare ... see that there are parents who need help looking after their children, they should look around to their families'***

In the weeks before DS's granddaughter was removed from the community, both DCF and DS held concerns for the baby's safety in the care of her mother. DS provided additional support and assistance to the mother during this period. Initially DCF considered the baby to be safe with her paternal grandmother, DS.<sup>671</sup> DCF recognised that DS had taken steps to protect the baby by taking her to the health clinic, staying with her at a women's safe-house<sup>672</sup> and calling the police to attend an incident in which the baby was at risk of harm.<sup>673</sup> DCF considered the baby 'safe whilst in [DS]'s care'<sup>674</sup> but remained concerned about the baby's safety while in her mother's care.<sup>675</sup>

DCF visited the community in the week prior to the removal and spoke to various members of the baby's family. DCF spoke to DS, who expressed concern about the baby's safety and said the baby and her mother could stay with her.<sup>676</sup> DCF also spoke to the baby's maternal grandfather, who suggested additional family members capable of taking care of the baby and her mother.<sup>677</sup> A nurse at the clinic told DCF she was 'quite certain that [DS] will see the child is well taken care of and that [DS] will take the child off [the mother] until she calms down'.<sup>678</sup> The nurse suggested DS's daughter 'could be the best source of support' for the baby's mother.<sup>679</sup>

DCF decided to remove the baby from the family and community and place her in foster care in Darwin.<sup>680</sup> DCF records of a meeting of DCF staff on the day before the baby was removed note the 'decision was taken that, as the parents were failing to protect the baby ... and there was no other suitable kinship carer, the baby should be placed in foster care' for a period of 12 months.<sup>681</sup> DCF noted that DCF would seek 'a short-term PO' [protection order] 'with the view to assess[ing] the extended family during the order'.<sup>682</sup>

The next morning, DCF staff arrived in the community, 'located the mother, baby, father and [DS] at the shops and asked them to come to the police station for a meeting'.<sup>683</sup> With no prior notice of the meeting, DS gathered family members to discuss with DCF what was to happen to the baby.<sup>684</sup>

At the police station, DCF staff 'explained the decision to take the baby into care'.<sup>685</sup> DCF stated during the meeting that 'no ... suitable kinship carer had been identified'.<sup>686</sup> However, according to DCF notes, 'the mother and the family members present objected to removal of the child to foster care' and 'were calling other family members in the community to come to the police station to hear about the decision'.<sup>687</sup> The notes also record 'there were about 10 family members present' by the end of the meeting.<sup>688</sup> Despite the extended family's attempts to come together to discuss with DCF what ought to happen to keep the baby safe, at 2pm 'DCF staff flew back to Darwin with the child' and placed her with a non-Aboriginal paid foster carer.<sup>689</sup>

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DCF considered neither grandmother suitable to care for the baby and, in relation to DS, DCF had concerns that *'although [DS] called the police, [DS] could not prevent the mother from taking the child with her during the last incident'*.<sup>690</sup> These concerns were based on views expressed by local police.<sup>691</sup> There is no evidence that these concerns had been communicated to either grandmother or more generally to those at the meeting on the day the baby was removed.

DCF makes no reference in its record of that meeting to asking those family members present whether anyone else could look after the baby in the community. Nor does it show that DCF provided DS or other family members present at the meeting an opportunity to be heard on what arrangements could be made for the baby to remain with family in the community. DCF failed to consider measures that could have been taken to support another family member, such as DS, to care for the baby in the community while a longer-term kinship carer was investigated.<sup>692</sup>

DCF records suggest DCF staff considered identifying a kinship carer to be the family's responsibility. On an undated Out of Home Care Plan, the response to the question *'What has DCF done to identify and assess suitable kinship placements?'* is *'So far family has not identified any kinship carer to be assessed by DCF'*.<sup>693</sup> However, prior to removal, the baby's family had indeed given DCF names of possible carers.<sup>694</sup>

DS decided to apply to care for the baby.<sup>695</sup> The kinship assessment referral for DS was not sent to the Referral Kinship Team until more than 11 weeks after the baby was taken into care by DCF.<sup>696</sup> Three weeks after that, an Aboriginal Kinship Care Worker went to the community to conduct an assessment, but DS was away.<sup>697</sup>

Nearly six months after the baby was removed, DCF had not completed the kinship care assessment process. Notwithstanding that the kinship carer assessment process had not been completed, the caseworker maintained that DS was unsuitable as a carer for her granddaughter.<sup>698</sup>

The kinship assessment was never completed and was overtaken by subsequent care arrangements between DS and DCF.<sup>699</sup>

### ***'Sometimes they get the wrong story'***

DCF held a number of concerns about DS's suitability to care for her granddaughter based on the views of the local police and health clinic. Concerns raised included the histories of some of DS's family members, that the first time the baby was placed in the care of DS she *'kept giving [the baby] back to the mother'*, and that DS was *'kicked out of the current house she is in...'*<sup>700</sup>

The family members whose histories were said to be of concern were not living with DS.<sup>701</sup> DCF records note that the baby's mother took the child from DS's care before one incident between the parents.<sup>702</sup> DS explained that the mother told DS she was going to take her daughter to her other grandmother's place. DS would not have allowed the mother to take the baby had DS known the mother intended to take the baby with her to confront the father.<sup>703</sup> DS had no legal power at that time to prevent the mother from taking the baby. DCF records suggest DS had not continued to give her granddaughter back to the parents as the police officer had said, but rather that DS *'did not want to give the baby back to the mother at present due to recent events'*.<sup>704</sup>

DCF later considered it had *'obtained information from a number of sources'* and *'the same process would have been followed had a kinship carer assessment been conducted'*.<sup>705</sup> This process

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involved the baby's case worker, who 'had only been working for DCF for a few months',<sup>706</sup> seeking information about DS and her family from the local police and health clinic.<sup>707</sup> It appears that the case worker accepted their concerns about DS's capacity to care for the baby without further investigation and despite the positive reports about DS.<sup>708</sup>

The case worker accepted the report of a nurse at the clinic that DS 'was a carer for another child and the situation was not good'.<sup>709</sup> However, DCF's own records from prior to the baby's removal show:

- DS had cared for another child from birth 'by way of a family decision and biological parent consent',<sup>710</sup> and DCF recommended the child be discharged from hospital into DS's care.<sup>711</sup>
- Concerns raised previously about DS's capacity to care for this other child were unsubstantiated.<sup>712</sup>
- Treating doctors considered that DS was 'doing a good job' looking after this child.<sup>713</sup>
- DCF had been previously advised by the Aboriginal Community Worker that DS 'was a good person and a good mother, and she would be a good carer' for this child.<sup>714</sup>

DS also cared for a third child, her cousin.<sup>715</sup> It appears that this child was not known to DCF.<sup>716</sup> In investigating DS's capacity to care for her granddaughter, DCF did not appear to investigate DS's capacity to care for the other two children. DS's lawyer wrote to DCF stating that 'it is difficult to see why' DCF 'on the one hand would not deem those concerns serious enough to take any action with regard to [the older child], but then rely on those same concerns to find that [DS] would not be a suitable carer' for her granddaughter.

DCF subsequently decided not to oppose DS's offer to care for the baby.<sup>717</sup>

DS told the Commission she was not aware of some of the information DCF had been given while investigating her capacity to care for her granddaughter.

*One thing I didn't know was that the clinic was telling Welfare things about [the older child's] health ... I think it would have been better if the clinic had have told me that they were going to let Welfare know what was going on with [his] health because then I would have at least known that Welfare might want to see me about it and I could have known that this was something they thought was something that was wrong with my caring for [him] ...*<sup>718</sup>

*[W]hen I heard about the allegation about me not properly caring for [the older child's] health I felt upset because I was looking after him and I was doing my best. I was trying to get him better, buying him healthy food and lots of vegetables, making sure that I did whatever the nurses and doctors prescribed. I was upset and angry that it seems like Welfare did not look through [his] medical records. They did not seem to see some of those records where the doctors said that they thought I was doing a good job in trying to help him with his medical problems.*<sup>719</sup>

DS felt the problems perceived by DCF could have been resolved. '[I]f they talked to me more about it earlier then I could have explained [these issues] and we could have worked it out between me and Welfare'.<sup>720</sup>

## ***'We did not have time to talk'***

DS told the Commission that if the family had been given prior notice of the meeting with DCF on the day the baby was removed, the family would have discussed in advance 'some way to get my granddaughter to be looked after by other family members', and arranged for the family to attend the meeting.<sup>721</sup> DS gave further evidence to the Commission that before all the family members had arrived at the police station for the meeting, 'Welfare said that they have to go'.<sup>722</sup> DS felt the family 'didn't really get to put forward what we thought'.<sup>723</sup>

Some members of the family who were present during the meeting at the police station, including DS, speak English as a second language. The DCF records do not suggest DCF staff sought to ascertain whether the family members present could understand English.<sup>724</sup>

DS recalled that DCF 'did not tell us why they thought it would be better for [the baby] to be in Darwin with a foster carer rather than another family member'.<sup>725</sup>

*I was worried about [my granddaughter] going into foster care in Darwin. This was because I had read some things about how some children are not properly looked after and also because my nephew ... was in foster care in Darwin. He had told me that some times [sic] he would go out wandering around ... at night and in the mornings because no one was really watching out for what he is doing. He is back living with family in [the community] now.<sup>726</sup>*

DS told the Commission that DCF informed the family the baby would not be returned until she was 18 years old.<sup>727</sup>

According to DCF records, DCF intended to seek a short-term order during which kinship carers would be assessed.<sup>728</sup> The limited consultation with the family and the family's limited understanding of the meeting suggest DCF did not sufficiently communicate to the family the reasons for the decision to remove the baby or adequately explain the processes that would follow.

## ***'That child might forget their language and they might forget their culture'***

An Out of Home Care Plan prepared after the baby's removal states that DCF would arrange for the baby to travel to community for visits with family after she was 'settled down in her new placement'.<sup>729</sup>

The baby was not brought to the community. Instead, family members were able to visit the baby when they came to Darwin of their own accord or when DCF covered the cost of bus tickets and accommodation for the purposes of attending court. On one visit the case worker noted that the 'family members took turns to hold the child', and after asking the case worker's permission, 'took several photos of the baby being held by different family members. Family was speaking in language to the child and to other family members all the time'.<sup>730</sup> The family visited again the following month, and the case worker observed that 'on seeing [the baby], family were excited and were talking in loud voices expressing excitement in aboriginal [sic] language. The loud noises appeared to unsettle [the baby]'.<sup>731</sup>



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DCF considered that the baby developed ‘a strong and positive emotional connection’ with the foster carer,<sup>732</sup> and ‘the carer and her family provided [the baby] with a sense of belonging’.<sup>733</sup> These connections with the foster family may have diminished the baby’s connection to her own family. DS told the Commission that when she visited her granddaughter in Darwin, she observed:

*‘...probably she was a bit scared of me because I was speaking another language. Maybe she only understood the carer ... I knew my granddaughter would have lost her culture and language if she had stop here [in Darwin] with that other [foster] carer.’<sup>734</sup>*

For DS, the baby belonged with her family and community.

*‘It is important for children to know their language and culture so they know where they come from and to know that they belong in a community. It is also important for the children to know about their culture because nowadays some communities are losing their culture and their language.’<sup>735</sup>*

DCF policies acknowledge that ‘attachment relationships developed in early childhood play a critical role in emotional and behavioural stability later in life’.<sup>736</sup> An Out of Home Care Plan for the baby prepared shortly before she was returned to DS states that the baby ‘will have the opportunity to rebuild relationships with close and extended family members whilst being placed [in community] under the care of her paternal grandmother’.<sup>737</sup>

### **‘Me and my family were also sad because it had been a long time’**

After DCF changed their position on DS’s offer to care for the baby, the baby’s case worker planned to return the baby the following week.<sup>738</sup> The case worker informed the baby’s foster carer that ‘the plan is now for me to travel to [the community] tomorrow to make sure that it is safe for [the baby] to return and to work with grandma to ensure that she has all the necessary items’.<sup>739</sup>

The case worker met with the baby’s mother but DS was ‘still being dropped off by the medical transport’ after taking the older child to the doctor.<sup>740</sup> The case worker determined ‘that it was too late for me to come out and visit as I would need to view the house and have a family meeting ... I told her that now [the baby’s] return date would need to be pushed out until later in the month as she was not home today, at the agreed day’.<sup>741</sup>

The case worker visited the community a few weeks later, met with the family, prepared a safety plan for the baby’s return and inspected DS’s home.<sup>742</sup> DCF records do not explain why the baby was not reunified with the family at this time. The baby’s return was further delayed by the case worker going on leave and DS’s visit to Darwin for her nephew’s medical appointments.<sup>743</sup> Following a complaint by DS,<sup>744</sup> DCF internally recognised that the delay was ‘partly attributable to the Department’.<sup>745</sup> DS told the Commission, ‘I was a bit angry and sad because of what they’ve asked me to do, I’ve done it, but then it was [DCF] who didn’t really do’ what they said they would do.<sup>746</sup>

The baby’s return took some 10 weeks from when DS was entitled to take the baby into her care.

### **‘Instead of just coming in and taking them away’**

An alternative option for DCF would have been to address the causes of the family’s problems and

arrange supports to avoid removing the baby from her parents and the community. The baby could have been placed with DS and a plan developed with family, community, police and other services to prevent and respond to any incidents that exposed her to a risk of harm. DCF records stated it was 'unclear' whether DS would be able to monitor the mother's contact with the baby,<sup>747</sup> but there is no record of DCF considering ways of supporting DS to do so.

Under the Out of Home Care Plan prepared after the baby's removal into care, DCF assigned the baby's parents the primary responsibility for taking the actions required to meet their 'priority needs'.<sup>748</sup> DCF's role under the plan was identified as merely 'to discuss' the identified problems with the parents, with the goal of enabling the parents to 'demonstrate an insight' into these problems.<sup>749</sup>

A later plan prepared after the baby was returned to the community stated the parents would be referred to support services and programs.<sup>750</sup> The subsequent care plan does not identify whether or not this occurred.<sup>751</sup> Further support offered to the baby's parents earlier on may have reduced the risk of harm to the baby had she remained in the community.

DCF met with the family in the week before the baby's removal and on the day of the removal, but there is little evidence of any meaningful engagement or planning for what could be done to prevent the removal of the baby. Ultimately, DCF returned the baby to DS some seven months after the baby's removal and sought no subsequent orders or supervision.

### Ways to do things better

*I think that when Welfare come into the communities and see that there are parents who need help looking after their children, they should look around to their families to see if there are someone from the families or the community who can look after that child instead of taking the child and putting them into a foster family ...*

*It would be good if community elders could get together with the families to sit down and talk about things when there are problems with looking after children and to see if they think the child needs to go to a foster carer or if there is another family member who can look after that child. I think that this would help those parents be supported and I think that this could be a way that families could make sure they talk about the things they need to do to look after their children ...*

*I also think that the young people in communities have a lot of problems these days ... Talking with the children, young people and adults ... and helping them avoid these things would be a good thing to do. I think it would be a good thing for Welfare to try and support the Community elders in doing these kinds of things.*

*I think it is important that Welfare talk straight with the parents or family members looking after the children. Sometimes they will talk to other families' members and other people in the community about what is happening and sometimes they get the wrong story from those people ... if Welfare do talk to people in the community, it is important for them to speak to the local remote community family workers like [the local remote community family worker]. People like [her] are in the community and can see when families are doing the right things ... Welfare seem to listen a lot to teachers and the clinic but those workers don't always see what is happening in the family ...<sup>752</sup>*

Vulnerable witness DS

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## SYSTEMIC ISSUES

DS's experience illustrates the following systemic issues:

*Territory Families did not adequately consider options for addressing the behaviour of adult carers to allow children to remain with their family rather than being placed in care in some cases.*

As outlined above, in the weeks before DS's granddaughter was removed from the community, both DCF and DS held serious concerns for the baby's safety. DCF considered that the baby was 'safe whilst in [DS]'s care'<sup>753</sup> but remained concerned about the baby's safety in her mother's care.<sup>754</sup>

DCF could have explored options to try to address the causes of the problems that led to the baby's removal from her parents and put supports in place to avoid her removal from the community. The baby could have been placed with DS and a plan developed with the family, community, police and other services to prevent and respond to any incidents that exposed her to a risk of harm. DCF records stated it was 'unclear' whether DS would be able to monitor the mother's contact with the baby, but there is no record of DCF considering ways of supporting DS to do so. DCF could have pursued intervention with the parents while assessing other possible kinship care options in parallel.

A later plan prepared after the baby was returned to the community stated the parents would be referred to support services and programs.<sup>755</sup> The subsequent care plan does not identify whether or not this occurred.<sup>756</sup> Further support offered to the baby's parents earlier on may have reduced the risk of harm to the baby had she remained in the community.

*Territory Families did not sufficiently investigate and assess the available options for kinship care in some cases.*

The records reviewed by the Commission and DS's evidence suggest the baby could have been placed in a kinship placement with DS from the outset, rather than foster care in Darwin, far from her family and community. Ultimately, the baby was returned to DS some seven months after her removal and no subsequent orders or supervision were sought by DCF. Given the arrangement that was reached and having regard to the documents and the meetings that took place in the week before removal outlined above, it appears that the baby could have remained with her family, or been returned to them sooner, had DCF investigated more fully and promptly those kinship options suggested by family before and at the time of removal.

DCF failed to provide DS or other family members present at the meeting on the day the baby was removed with an opportunity to be heard on what arrangements could be made for the baby to remain with family. DCF failed to consider measures that could have been taken to support another family member, such as DS, to care for the baby in the community while a longer term kinship carer was investigated.

DCF held concerns about DS's suitability to care for her granddaughter based upon views expressed by local police and the health clinic. Many of these concerns were later shown to be unfounded and could have been readily explained through further investigation. DCF did not adequately assess the accuracy and reliability of information provided about DS. The case worker accepted the report of

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a nurse at the clinic that DS *'was a carer for another child and the situation was not good'*.<sup>757</sup> As outlined above, DCF's own records contradicted this assessment.

Nearly six months after the removal of the baby DCF had not completed the kinship care assessment process. That DCF were unable to fully assess DS's suitability within such a lengthy period and before key casework and legal decisions had to be made is concerning. Notwithstanding that the kinship carer assessment process had not been completed, the case worker maintained that DS was unsuitable as a carer for her granddaughter.<sup>758</sup> The kinship assessment was never completed and was overtaken by subsequent care arrangements between DS and DCF.<sup>759</sup>

*Territory Families failed to adequately support meaningful contact between children in out of home care and their family members in some cases.*

An Out of Home Care Plan that appears to have been prepared shortly after the baby's removal states that DCF would arrange for the baby to travel to community for visits with family after she is *'settled down in her new placement'*.<sup>760</sup> Instead, DCF covered the cost of bus tickets and accommodation for DS and her family to travel to Darwin to visit the baby at a DCF office on several occasions. DCF also arranged for DS to visit her granddaughter when DS was in Darwin for other appointments. However, on the evidence before the Commission it appears that DCF did not return the baby to community for visits to ensure the baby maintained familiarity with family and the community. This exposure is particularly important where there is a real prospect of returning a child to community in the future, as was always the case in relation to this baby.

*Territory Families failed to adequately support connections to family and culture for some Aboriginal children in care.*

DS's granddaughter was unnecessarily removed from her family, community and culture while longer term kinship care options were investigated. She was placed with a paid non-Aboriginal foster carer in Darwin. DCF funded family members to visit the baby in Darwin but there is no evidence of DCF returning the baby to community for visits to ensure that the baby had exposure to family in the community.<sup>761</sup>

DCF considered that the baby developed *'a strong and positive emotional connection'* with the foster carer during this time, and that *'the carer and her family provided [the baby] with a sense of belonging'*.<sup>762</sup> This may have diminished the baby's connection to her own family.<sup>763</sup> An Out of Home Care Plan for the baby prepared shortly before she was returned to DS states that the baby *'will have the opportunity to rebuild relationships with close and extended family members whilst being placed [in community] under the care of her paternal grandmother'*.<sup>764</sup> The relationships would not need rebuilding to this extent, or at all, if DCF had not removed the baby from the community or arranged more frequent contact with the family including in the community.

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*Territory Families did not adequately address and implement plans for the reunification of families in some cases.*

After DCF decided not to oppose DS's offer to care for the baby, the baby's case worker planned to return the baby to DS the following week.<sup>765</sup> The case worker met with the baby's mother but DS was 'still being dropped off by the medical transport' and did not arrive in the community until 4pm. The case worker determined 'that it was too late for me to come out and visit as I would need to view the house and have a family meeting ... I told her that now [the baby's] return date would need to be pushed out until later in the month as she was not home today, at the agreed day'.<sup>766</sup> It is unclear why DCF considered these steps were required before the baby could be returned to DS in circumstances where DS shared equal legal rights in relation to her granddaughter's care. DCF did not appear to recognise the desirability of returning the baby to DS's care quickly given the baby's age.<sup>767</sup>

The case worker visited the community a few weeks later, met with the family, prepared a safety plan for the baby's return and inspected DS's home.<sup>768</sup> DCF records do not explain why the baby was not reunified with the family then. The baby's return was further delayed by the case worker going on leave and DS's visit to Darwin for her nephew's medical appointments.<sup>769</sup> Following a complaint by DS, DCF internally recognised that the delay was 'partly attributable to the Department'.<sup>770</sup>

The baby's return took some ten weeks from when DS was entitled to take the baby into her care. Given the impact of this delay on the baby and her family, DCF ought to have reunified the baby with her family at the earliest possible opportunity, and failed to do so.

*Territory Families did not adequately communicate processes and decisions, or the reasons for those decisions, to some families.*

DCF did not give the family prior notice of the meeting held on the day the baby was removed, which meant that not all family members were present at the meeting.<sup>771</sup> The DCF record of the meeting does not indicate that DCF took any steps to ascertain whether the family members present could understand English.<sup>772</sup>

There is no evidence that DCF's concerns about either grandmother's capacity to care for the baby had been communicated to them before the day of the baby's removal.<sup>773</sup> The concerns about DS were later shown to have been unfounded and could have been readily explained through further investigation. DS was not aware of some of the reasons for DCF's decision to remove the child from the care of the family.<sup>774</sup> Further, the family did not understand why DCF thought the baby should be placed with a foster carer in Darwin<sup>775</sup> while long term kinship options were investigated.

According to DCF records, DCF intended to seek a short term order during which kinship carers would be assessed. The limited consultation with the family and the family's understanding of the meeting, particularly DS's evidence that DCF indicated that her granddaughter may not be returned until she turned 18,<sup>776</sup> suggest DCF did not adequately communicate to DS the reasons for the decision to remove the baby, and did not adequately explain the processes that would follow.<sup>777</sup>





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# CASE STUDY: DJ

The Commission has heard from families of children who experienced the child protection system in the Northern Territory. These included witness DJ.

The Commission provided DJ's witness statement to the Northern Territory Government and invited statements in response relating to certain identified systemic issues discussed below. The Commission requested and reviewed hundreds of child protection records relating to this case study produced by the Northern Territory Government, received detailed notes in response to the statement of DJ from the Northern Territory Government and provided the Northern Territory Government an opportunity to comment on DJ's story.

The Commission was unable, in the limited time available, to seek out case workers and the many other people with whom DJ came in contact during the family's interaction with the child protection system. Nor was any statement volunteered by the Northern Territory Government in response.

This is DJ's story based on the Commission's investigation, including her witness statement, and the extensive documents and notes identified above. Other people involved from time to time may have different recollections. In publishing this story, the Commission does not make any findings in relation to DJ, but notes the systemic issues which her story highlights as identified at the end of DJ's story below.

## BACKGROUND

DJ is a woman in her twenties from a remote community in the Top End. English is not her first language but she understands English. She was raised in the community by her mother and members of her extended family and has lived there all her life.<sup>778</sup>

DJ has a daughter and a number of younger siblings who live with DJ and her mother. DJ's mother speaks a number of Aboriginal languages. She requires an interpreter for important conversations in English.<sup>779</sup> DJ's younger siblings know some English, but it is not their first language, and some of them have a better understanding of English than others.<sup>780</sup>



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This case study examines Territory Families involvement with DJ, her daughter, her mother and her siblings.

## TERRITORY FAMILIES' INVOLVEMENT WITH THE FAMILY

Territory Families first became involved with DJ and her family when one of her siblings was the victim of a serious incident committed by an extended family member.<sup>781</sup> After the incident, DJ, her mother and the children moved house<sup>782</sup> and engaged with services offered by Territory Families and others. Territory Families assessed any further risk to the children as low because DJ and her mother were considered to be willing and competent carers. The child protection case was closed and a family support case was opened for the child to continue to receive support.<sup>783</sup>

A few years later, another of DJ's siblings was harmed by a child in the community. After this incident, the child who was the subject of harm was referred to counselling and DJ's mother was referred to a support service for Aboriginal parents.<sup>784</sup>

A complaint was made to the Children's Commissioner about the adequacy of the support provided to DJ's sibling. Territory Families then became more involved with the family, including moving the family into a new house.<sup>785</sup>

## POOR COMMUNICATION

Territory Families' Practice Guidelines regarding the use of interpreters provide that:

*[A]n interpreter may be required to help to alleviate the language barriers faced by many Aboriginal people throughout the Northern Territory. Employing an interpreter ensures your message is delivered accurately, in a culturally appropriate manner and is clearly understood.*<sup>786</sup>

In the period leading up to the removal of the children, interpreters were not always engaged by Territory Families when speaking to DJ's mother or DJ's younger siblings. Accordingly, the family did not always understand Territory Families' involvement with the children and what Territory Families expected of them.

On some occasions Territory Families engaged interpreters to ensure that DJ's mother understood the steps Territory Families was taking to support her. When DJ's mother was referred for income management, for example, a local interpreter was used to explain the referral to DJ's mother.<sup>787</sup> On other important occasions, interpreters were not used. For example, a year prior to the removal of her children, Territory Families arranged for DJ's mother to undergo a cognitive and parenting capacity assessment. This assessment was conducted without an interpreter.<sup>788</sup> The psychologist engaged by Territory Families to conduct the assessment said that an interpreter was not required because the assessment incorporated a Test of Non-Verbal Intelligence.<sup>789</sup> However, DJ later told the Commission that her mother did not understand what the assessment was, why she was required to do the assessment or how it would be used.<sup>790</sup> DJ said:

*'I don't think my mum understood why that whole assessment was happening. The reason I think that is because me and mum talked about it afterwards and she said she didn't understand and felt like she was a little kid in a classroom.'*<sup>791</sup>

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The psychologist concluded that DJ's mother lacked parenting capacity and was unable to care for the children.<sup>792</sup> This assessment was relied on with other material in the later decision to remove the children from DJ and her mother's care.<sup>793</sup>

Having decided that DJ's mother lacked parenting capacity, Territory Families put together a care plan which emphasised the need for constant supervision.<sup>794</sup> The care plan created eight months before removal identified family members to support DJ's mother to take care of the children.<sup>795</sup>

Territory Families documents indicate that case workers were aware that DJ's mother did not understand Territory Families' involvement with her family prior to removal. Notes from a house visit with DJ's mother states '*told [DJ's mother] that there was a final report that needed to be submitted to the Children's Commissioner and I had to ask her some questions and discuss some issues with her. I am unsure of how much of this she understood.*'<sup>796</sup>

## MULTIPLE CASE MANAGERS AND CHANGING NATURE OF ENGAGEMENT WITH TERRITORY FAMILIES

In the 18 months prior to removal, three different case managers worked with DJ's family.<sup>797</sup> DJ has said that the family felt unable to form a relationship with the case managers as they changed so often.<sup>798</sup> DJ also said that she did not feel respected by some of the case managers who worked with her family.<sup>799</sup> This may have contributed to DJ and her mother's limited understanding of Territory Families' involvement with their family.

Six months after the second incident, the child protection case was closed and a family support case was opened.<sup>800</sup> The General Case Closure Summary stated:

*Whilst the initial concerns were significant the family have worked with service providers to address these concerns. The children's school attendance has increased and has been constant since the start of the year. Service providers have noted that [REDACTED] is always home with the children... Family support will be offered to ensure that the family's new habits are maintained. Family Risk Re-Assessment is low.*

Five months later, the family support case was closed and the child protection case was reopened due to a perceived increased risk to the children. One of the identified risks was limited supervision of the children by DJ and her mother.<sup>801</sup>

These changes were not understood by the family. The Case Closure Summary from this period records that '*mother does not understand the case transferring from CP [Child Protection] to FS [Family Support] so unable to comprehend it changing back to a CP despite several attempts by CCSWT [Community Child Safety Wellbeing Team] to explain this.*'<sup>802</sup>

The following year, Territory Families began the process of closing the child protection case for the children. At this time the children's school attendance was the primary concern and because school attendance is not a child protection issue, Territory Families could no longer provide intensive family support. The family's case manager acknowledged the family would benefit from continued support, but did not feel it was helpful for Territory Families to continue to be involved. The caseworker wrote:

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*'While I agree with you that the family would benefit from intensive family support this is not something that DCF can continue to provide when there are no concerns for the safety and wellbeing of the children. We also don't have capacity to offer intensive family support when we visit the community twice a month at most. I do not feel it is helpful to continue to have a statutory agency working with the family for such a long period of time.'*<sup>803</sup>

## EVENTS LEADING UP TO THE REMOVAL OF THE CHILDREN

One month later, the case manager interviewed DJ's daughter and DJ's siblings prior to closing the case.

Territory Families documents indicate that the children were interviewed in a car and that during the interviews, other children were banging on the windows of the car.<sup>804</sup> The records also indicate that no support person or interpreter was present at the interviews. In these interviews some of the children told the case manager they were left unsupervised including with the family member responsible for the serious incident with DJ's sibling some years earlier. Three days later, Territory Families' reported their concerns for the children to Central Intake.<sup>805</sup>

The day before the children were removed, the case manager and the team leader again interviewed the children. On that day, the interviews were conducted at the children's school. Records indicate that no interpreter was present during these interviews and there is no record of a support person being present or being offered to the children.

The content of the interviews was distressing for the children. One of the interviews was stopped because the child became *'visibly upset and was in tears.'*<sup>806</sup> Progress notes from the interviews indicate that some of the children did not understand what the case manager and team leader were asking. The progress notes from an interview with one of the children state: *'his responses were inconsistent and suggested a lack of comprehension of English.'*<sup>807</sup>

DJ told the Commission that in her view these interviews should occur more formally and in private.<sup>808</sup>

In addition to interviewing the children, Territory Families consulted with an Aboriginal Community Worker (ACW) who had extensive involvement with the family. Progress notes state *'ACW believes that concerns around the children being unsupervised does not take into consideration community norms and cultural factors.'*<sup>809</sup>

Progress notes from the day before the children were removed record that when the Case Manager and Team Leader spoke to DJ's mother, they could not confirm she understood Territory Families' concerns about the children.<sup>810</sup>

## REMOVAL

The day after the interviews at the children's school, DJ's siblings and daughter were removed from DJ and her mother's care subject to provisional protection. The children were removed *'due to the lack of supervision concerns the day before and the ongoing risks posed to the children.'*<sup>811</sup> The primary risks identified by Territory Families were neglect and concerns about DJ's mother's limited ability to supervise and manage the children, as identified in the parenting capacity report.

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The day the children were taken away was very emotional. DJ told the Commission *'[My daughter] was gripping me. She was holding me, like holding me really tight.'*<sup>812</sup> DJ said that her little sister was holding onto a fence and wouldn't let go.<sup>813</sup>

Many people from the community were present when the children were removed. DJ told the Commission *'so many people came out of their houses to watch. Everyone saw.'*<sup>814</sup> The Team Leader asked police to assist with the removal due to DJ's mother's *'verbal aggression'* the day before.<sup>815</sup> Progress notes indicate DJ's mother had started *'yelling and swearing'* at staff the day before when a Territory Families' staff member told her that she had to come to *'look after'* the children.<sup>816</sup>

There was no interpreter for DJ's mother when Territory Families came to remove her children. Progress notes record that an Aboriginal police officer who was present interpreted the Team Leader's explanation of the removal for DJ's mother.<sup>817</sup>

It appears that DJ and her mother did not fully understand Territory Families' concerns for the children's safety, the reasons for their decision to remove the children, the process of removal nor what the family could do to have the children returned. Notes made shortly after the children were removed record that DJ told Territory Families that she and her mother *'did not understand much of what DCF were saying over the last 18 months.'*<sup>818</sup> DJ told the Commission:

*'[W]elfare need to go to family members and communicate and really consult with them ... When they see something they are worried about, they shouldn't go away and just report what they saw. This is just being against the family. Instead they should work with the family and fix that problem.'*<sup>819</sup>

## DJ'S DAUGHTER

DJ was shocked that her daughter was taken into care with her younger siblings. DJ said *'the first time I knew that Welfare was looking at [my daughter] was the day she was taken.'*<sup>820</sup> When DJ questioned why her daughter was also removed, Territory Families informed her that she frequently went to Darwin and left her daughter in her mother's care.<sup>821</sup>

Another concern identified in relation to DJ's daughter was exposure to domestic violence. DJ told the Commission that it was not until her daughter was removed that she understood Territory Families' concern for her daughter arose from the violence in the relationship between DJ and her ex-partner.<sup>822</sup> DJ recalled case workers asking about her ex-partner but at the time she did not understand why.<sup>823</sup>

DJ started seeing her ex-partner 18 months before the children were removed.<sup>824</sup> Progress notes indicate that a family member told Territory Families that DJ's partner *'growls'* at DJ and that Territory Families talked to DJ about her relationship with her ex-partner and their concerns that this was affecting her daughter.<sup>825</sup> There is no record of DJ's daughter being exposed to domestic violence and there is no record of Territory Families advising DJ that there was an active child protection investigation in relation to her daughter. Notes from the day before DJ's daughter was removed record *'DJ did not appear to recognise that DCF's concerns also involved her daughter.'*<sup>826</sup>

DJ, her mother and other family members met with Territory Families on the day the children were removed. Territory Families' notes state *'family were given the option that day in community of*

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*stepping forward and taking ownership and care of the children however the family did not nominate themselves to do this.*<sup>827</sup> DJ disputes this and given the family's limited understanding of the decision to remove the children it is possible that the family did not understand this request.

It was not until after the children were removed that DJ and her mother understood Territory Families' concerns about the safety of DJ's daughter and DJ's siblings. The day after the children were removed, DJ and her mother approached a member of the Community Child Safety Wellbeing Team<sup>828</sup> and asked her to explain why the children were taken and how they could get the children back. During this meeting the Community Child Safety Wellbeing Team member outlined Territory Families' concerns about the children on a whiteboard.<sup>829</sup>

## CARE PLACEMENTS FOR CHILDREN

Territory Families sought successive Temporary Protection Orders giving daily care and control of the children to the Chief Executive Officer of Territory Families for 14 days. At that time, Territory Families' plan was to arrange a meeting with the family to identify a safe family care arrangement in the community if possible.<sup>830</sup>

Territory Families subsequently decided to apply for a short term protection order over DJ's siblings for two years. They considered that two years would enable them to work with the family to assess the suitability of reunification.

## IN CARE

It appears that kinship carers were available at the time the children were removed but that Territory Families did not adequately consider a possible kinship placement prior to removal. After the children were removed they were placed in purchased home-based care with a carer in Darwin for seven weeks. They were then placed in a kinship care placement in their community.<sup>831</sup> Their kinship carers were extended family members. Initially the arrangement was that the children live in their family home with DJ, her mother and the kinship carers but the kinship carers were responsible for looking after the children. The plan was for the children to later move to an outstation to live with their kinship carers.<sup>832</sup>

Almost three months after the children were removed, Territory Families arranged an assessment of DJ's parenting capacity. The assessment supported DJ regaining responsibility for the care of her daughter.<sup>833</sup> A few weeks after this assessment DJ resumed care of her daughter subject to a number of supervision directions.

## DJ'S SIBLINGS' EXPERIENCE IN CARE

During this time DJ's siblings remained under the kinship care arrangement. However, the arrangement failed. The carers were not able to supervise the children and they were not able to care for the children long-term.<sup>834</sup>

Territory Families conducted family meetings to explore alternative kinship options.<sup>835</sup> Four alternatives were explored but these were unsuitable due to concerns that the children would follow their mother, overcrowding and/or safety concerns raised by police checks.<sup>836</sup> Territory Families did

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not consider that the children were safe in the community and decided reunification was no longer appropriate. Territory Families decided to instead apply for a long term protection order until DJ's siblings were 18.

Four months after their first removal, DJ's siblings were again taken from the community. They were placed in purchased home-based care in Darwin with new carers.<sup>837</sup> It appears from the records that no assessment was undertaken to determine whether the placement was suitable for the children's needs. The only information provided to the carers about the children prior to the placement was a three page 'Out of Home Care Placement Request Form' which included limited information about each child's background and history.<sup>838</sup>

Four months later, the children's counsellors raised concerns about how the carers referred to the children and their lack of insight into the children's behaviours. In an email to the Case Manager, the children's counsellor stated:

*'[The carer] spoke about [REDACTED] punishing [REDACTED] and [REDACTED] by stating that they had "bloody Mary in their hair". [REDACTED] understood this as meaning that there was a bad spirit in the girls' hair. As a result, [REDACTED] and [REDACTED] became frightened and started to cry. My concern is that for these children, their spirit and physical worlds sit side by side so to use any aspect of spirituality as a form of punishment is very concerning.'*<sup>839</sup>

This placement was extended for a further two months after concerns were raised about the suitability of the carers.<sup>840</sup>

There is evidence that the children's carers had difficulty communicating with the children. DJ told the Commission that six months after being placed with these carers the Case Manager informed her that her younger sister said that a family member was 'humbugging her'. The carer and Case Manager were concerned that DJ's sister had been abused. DJ told the Commission that when she spoke to her younger sister on the phone in language her sister told her that she was talking about a family member who had passed away. DJ said:

*'I don't know if balanda would understand but in our traditional culture way when our family pass away, the family members follow us... the [family member] that [my sister] was talking about always used to play jokes on us when he was alive. [My sister] is a really spiritual kid. The [family member]'s spirit was happy to know that [REDACTED] was going home. I think that's why he was playing jokes on [my sister] and humbugging her - to let her know that he was happy.'*<sup>841</sup>

DJ told the Commission that Territory Families should have used an interpreter to speak to her sister instead of just assuming that she had been assaulted.<sup>842</sup>

## REUNIFICATION

Nearly a year after the children were removed, DJ, her mother and their family met with Elders in their community. During this meeting, the Elders discussed how DJ and her mother could keep the children safe if they returned to the community. The Elders wrote a letter to the Presiding Magistrate to support DJ and her mother. In the end the letter was not relied on in the proceedings but it did

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form part of negotiations with Territory Families which ultimately resolved the matter.<sup>843</sup> In the letter the Elders explained that they had made a rule to ensure the safety of the children from the relative who had perpetrated the incident against DJ's sibling some years before. They stated *'the best way to describe the rule is like a cultural law DVO, or like a strong poison cousin relationship. No direct or indirect contact at all.'*<sup>844</sup>

Around this time DJ's lawyer requested that Territory Families conduct a second psychological assessment of DJ's mother using an interpreter. The second report found that DJ's mother had limited problem solving skills and that this impacted on how she managed the daily care needs of her children. However, DJ's mother was able to demonstrate that she understood the children's needs and that if her children were returned to her she would *'stay home with them, give them food, wash their clothes.'*<sup>845</sup>

The results of this assessment differed from the results of the initial assessment of DJ's mother. This second assessment found that the best care arrangement for the children would be if DJ's mother assisted other family members to care for the children.<sup>846</sup>

Following the report, DJ and her mother attended a meeting with their lawyer and Territory Families. At this meeting it was agreed that parental responsibility for the children would be granted to DJ for one year.<sup>847</sup> In agreeing to the plan Territory Families considered the results of DJ's parenting capacity assessment and support from Elders from their community.<sup>848</sup>

Fourteen months after her siblings were removed, DJ assumed shared parental responsibility for her siblings with the CEO for one year. A month later DJ's siblings returned to the community into the care of DJ. Two weeks later a Family Support case was opened to support the family.

## THE PRESENT AND FUTURE

DJ is now caring for all the children. She told the Commission she still does not feel supported by Territory Families.<sup>849</sup> She is planning to move to Darwin because there are more jobs there, it is easier to get a bigger house and it would be good to get the family away from the problems in the community.<sup>850</sup> DJ gave evidence that she felt Territory Families was monitoring her rather than supporting her. She said Territory Families still contact her and ask personal questions about her life, such as *'Do you have a boyfriend?' or 'Do you go to the clubs on Mitchell Street?'* She told the Commission *'I'm allowed to have a boyfriend and I'm allowed to go to clubs on Mitchell Street, as long as the kids are safe. They should just ask me questions about keeping the kids safe.'*<sup>851</sup>

DJ told the Commission that Territory Families is arranging for DJ's daughter and one of her siblings to attend boarding school and has suggested that DJ take her daughter to counselling.<sup>852</sup> While DJ agrees this is a good idea, she said she also needs other support, such as respite from her responsibilities. DJ, who is still in her twenties, told the Commission, *'sometimes I do need a break or rest from the kids. There's [many] of them and it's a really big job to try and look after them all.'*<sup>853</sup> DJ relies on family members to look after the children when she needs respite.

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When asked what she would like to change DJ said:

*'It's better for Welfare to learn about all the support in the community so when there is a problem in a family they can work with the family and community to fix that problem ... They have to use interpreters and they have to talk to kids in the right way like with support'.<sup>854</sup>*

## SYSTEMIC ISSUES

DJ's experience illustrates the following systemic issues:

*Territory Families did not engage interpreters consistently when speaking to some children and families who did not speak English as their first language.*

Territory Families was aware that English was not DJ's first language and that DJ's mother and younger siblings also had limited understanding of English.<sup>855</sup> However Territory Families did not consistently engage interpreters when speaking to DJ's mother or DJ's younger siblings. This affected the family's understanding of Territory Families' involvement with the children and their understanding of what Territory Families expected of them.

The first cognitive and parenting capacity assessment that DJ's mother underwent was done without the assistance of an interpreter.<sup>856</sup> DJ's mother did not understand what the assessment was, why she was required to do the assessment and how it would be used.<sup>857</sup> The psychologist concluded that DJ's mother lacked parenting capacity and was unable to care for the children.<sup>858</sup> This assessment was relied on with other material in the later decision to remove the children from DJ and her mother's care.<sup>859</sup>

Nearly a year after the children were removed, DJ's mother undertook a further assessment, this time with the assistance of an interpreter. This second assessment found that the best care arrangement for the children would be for DJ's mother to assist other family members to care for the children.<sup>860</sup> Following this report, DJ assumed shared parental responsibility of her siblings with the CEO, and shortly thereafter, DJ's siblings were returned to the community into the care of DJ.

The interviews of DJ's daughter and young siblings immediately prior to their removal were also conducted without interpreters. Notes taken by the interviewers indicate that some of the children did not understand what they were being asked.<sup>861</sup>

There was also no interpreter present for DJ's mother when the children were removed. Territory Families did not adequately communicate to DJ and her mother their concerns for the children's safety, the reasons for their decision to remove the children, the process of removal nor what the family could do to have the children returned. DJ and her mother did not understand why the children were removed until after they were removed.<sup>862</sup>



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*Territory Families placed children in care placements without adequate consideration of whether the carers were best suited to care for the child in some cases.*

When DJ's siblings were placed in purchased home-based care in Darwin, it appears that no assessment was undertaken to determine whether the placement was suitable for the children's needs. The only information provided to the carers about the children prior to the placement was a three page 'Out of Home Care Placement Request Form' which included limited information about each child's background and history.<sup>863</sup>

The children's counsellors raised concerns about how the carers referred to the children and their lack of insight into the children's behaviours.<sup>864</sup> Despite concerns being raised, this placement was extended for a further two months.<sup>865</sup>

The children's carers also had difficulty communicating with the children. On one occasion, the carer expressed concern that her younger sister may have been abused because she told them a family member was 'humberging her'. DJ told the Commissioner that DJ's sister had been referring to a family member who had passed away and was playing jokes or 'humberging' her, not that she was being abused.<sup>866</sup>

*Territory Families case workers and case managers assigned to children and families changed frequently in some cases. This impacted on the consistency and quality of relationships, the frequency and quality of case work and the overall support provided for some children and families.*

In the 18 months prior to removal, three different case managers worked with DJ's family.<sup>867</sup> The family felt unable to form a relationship with the case managers as they changed so often.<sup>868</sup> DJ also said that she did not feel respected by some of the case workers who worked with her family.<sup>869</sup> The fact that Territory Families' involvement alternated between a child protection case and family support case over a short period of time contributed to the family's lack of understanding of Territory Families involvement with the family.

*The support provided by Territory Families to address the needs of some parents and other carers, such as parenting support, education, health needs and respite was inadequate and did not allow children to remain with their family rather than being placed in care.*

Following the first psychological assessment which concluded that DJ's mother lacked parenting capacity, Territory Families created a care plan that identified family members to support DJ's mother to take care of the children.<sup>870</sup> It does not appear that the plan was followed, with the result that DJ's daughter and siblings were removed and placed into care eight months later.

DJ has told the Commission that she needs parenting support, such as respite from her responsibilities. DJ has said '*sometimes I do need a break or rest from the kids. There's [many] of them and it's a really big job to try and look after them all.*'<sup>871</sup>





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# CASE STUDY: DK AND DL

The Commission has heard from children and families who experienced the child protection system in the Northern Territory. These included witness DK and her grandson DL.

The Commission provided DK's witness statement to the Northern Territory Government and invited statements in response relating to certain identified systemic issues discussed below. The Commission requested and reviewed hundreds of DL's child protection records produced by the Northern Territory Government, received detailed notes in response to the statement of DK from the Northern Territory Government and provided the Northern Territory Government an opportunity to comment on DK and DL's story.

The Commission was unable, in the limited time available, to seek out DL's case workers and the many other people with whom DK and DL came in contact during their interaction with the child protection system. Nor was any statement volunteered by the Northern Territory Government in response.

This is DK and DL's story based on the Commission's investigation, including DK's witness statement and the extensive documents and notes identified above. Other people involved from time to time may have different recollections. In publishing this story, the Commission does not make any findings in relation to DK and DL, but notes the systemic issues which their story highlights as identified at the end of DK and DL's story below.

## DL'S INTERACTION WITH TERRITORY FAMILIES

DK is a grandmother with qualifications in caring for children and community health.<sup>872</sup>

DK looked after her grandson DL for most of his life. DL's mother had health and drug problems and was in a relationship in which she was subject to domestic violence.<sup>873</sup> While DL was in DK's care, he was healthy and well-cared for and his school attendance was good.<sup>874</sup> A parenting assessment prepared by Territory Families when DL was five stated that DK *'appears to have the necessary skills*

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*and experience to be able to meet [DL]’s emotional, social and developmental needs ...[DK and DL] have presented as clean and tidy as well as the accommodation they have resided in’.*<sup>875</sup>

DK described DL as a ‘good kid, a sport person who loved football and rugby.’<sup>876</sup> DK wanted DL to train to be a footballer. However, from the age of about 11, DL started mixing with older boys and getting into trouble breaking into vehicles.<sup>877</sup> Around this time, DK sought assistance from DCF. The Department of Education records state that ‘she is worried that he is hanging around with boys that are already involved with Police and suspects he could be taking drugs as well. DK has tried going to DCF but she said they told her they could not help her’.<sup>878</sup>

DK tried to get DL into a boarding school in Darwin to remove him from the influence of the older boys he was getting into trouble with and to help him focus on his schoolwork and football.<sup>879</sup> However, DL’s enrolment was delayed due to issues with DL’s funding application and as a result he missed out on a place at the school.<sup>880</sup>

When DL was 13 he was arrested for stealing a car with a group of other boys.<sup>881</sup> DK became worried about whether she could properly look after DL. DK told the Commission that she had previously asked Territory Families for help and had not received it,<sup>882</sup> so she thought the only way she could get help was if DL was in the care of Territory Families. DK said that she did not mean that she did not want to look after DL at all.<sup>883</sup>

## DL’S EXPERIENCE IN CARE IN HIS HOME TOWN

After DL was arrested, he was placed into Provisional Protection on the basis that there was no caregiver willing or able to provide protection for him.<sup>884</sup>

DK had a number of meetings with Territory Families once DL went into protection. DK said she told Territory Families that she had tried to get DL into boarding school in Darwin, and that she hoped he would have routine and safety there.<sup>885</sup> A DCF Essential Information Record from this time stated that DL was scheduled to start boarding school in Darwin and had a starting date a short time later.<sup>886</sup>

Territory Families told DK that they would place DL in a residential care house in his home town temporarily. DK said she felt comfortable with DL being placed in the residential care house, because she knew someone who was working there and that person treated DL like a grandson.<sup>887</sup>

Two days after entering residential care, DL absconded.<sup>888</sup> DL was picked up by police while sniffing petrol in a park. He was taken to hospital<sup>889</sup> and the police referred DL for a Volatile Substance Abuse assessment.<sup>890</sup>

## DL’S EXPERIENCE IN CARE IN DARWIN

Approximately six days later,<sup>891</sup> Territory Families sent DL to Darwin. He was due to commence boarding school there in about six days. Whilst he was in Darwin, DL was still being case managed from his home town DCF office.<sup>892</sup> Interactions between DL, his carers and his case manager were routinely by phone.<sup>893</sup>

## DL'S ABSCONDING AND BEHAVIOURS IN DARWIN

DL did not start boarding school after arriving in Darwin. As had occurred when his grandmother enrolled him in boarding school there was a problem with funding. DL was moved to Darwin with the funding issue unresolved and remained there though he was not transitioning to boarding school.<sup>894</sup>

In Darwin, DL was initially placed with a carer from a non-government agency, but he absconded a few days after he arrived. DK attended her local Territory Families' offices to tell them that DL had turned up at a family member's place in Darwin with another boy. DK was considering travelling to Darwin to look for DL, but Territory Families advised DK that police were trying to locate him.<sup>895</sup> Territory Families were also notified by DL's carer that he had not returned to the placement.<sup>896</sup>

The next day, DK again contacted Territory Families and advised that she had received a phone call from DL, who said that he was staying with a relative in Darwin. DK told Territory Families that DL *'wasn't happy with his carer - he told [DK] that there was no TV and had no clothing at the placement'*.<sup>897</sup> Territory Families advised DK that there was a current police case to locate DL and return him to his placement, and that Territory Families would update police.<sup>898</sup>

Approximately one week after DK informed DCF that DL was missing, police notified Territory Families that they had located DL with the relative. The police advised Territory Families that they were not aware of any concerns about the household or caregivers with whom DL had self-placed, but mentioned that DL had no clothes and would benefit from assistance to obtain more clothing. The notes stated that the police chose not to return DL to his placement *'because DL stated he would just run away which will again use resources'*.<sup>899</sup>

DK continued to be concerned for DL while he was staying with the relative. DK told Territory Families: *'[S]he has been receiving multiple phone calls from her grandson [DL] complaining he is not being fed enough food and has no clothes. DK said he had clothes when 'he left [her place] so does not know what's happening and wants to ensure he is okay'*.<sup>900</sup>

Approximately 16 days after he self-placed with family, DL was placed in a private group home.<sup>901</sup> DK said *'DL rang me up and told me he was in Darwin in a group home. This is how I found out that he wasn't [with my relative]. He had no clothing or TV. This made me worried for him'*.<sup>902</sup> It is unclear why DL was moved to a group home at this time.

DL absconded from this placement three days after he arrived. He was arrested by the police in the company of another young person for property offences, and was released on bail.<sup>903</sup> DL's bail conditions contained orders that he was not to leave his placement without a carer,<sup>904</sup> and that he was not to associate with certain other boys. Despite the bail conditions, Territory Families placed the boys in the same group home. Instead of separating the boys who had been committing offences together, Territory Families requested the assistance of police to amend the order to allow the boys to reside together due to limited placement options.<sup>905</sup>

Complaints were made around this time from residents who lived next door to the group home. The neighbours observed that despite the fact that there were three to four carers at the group home at any given time, they still could not control the children's behaviour.<sup>906</sup> Intake notes around this time also record that the children at the placement were using tobacco and/or cannabis.<sup>907</sup>

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Around a month after DL was arrested for stealing, DK travelled to Darwin. Whilst she was in Darwin, she received a call from a relative asking her to go to Court for DL because he breached his bail.<sup>908</sup> DK told the Commission that when she saw DL at the Courthouse:

*'He was dirty, he stunk, he had ripped clothes. I said to him "Where the hell did they pick you up from?" I shook my head in shame. I remember [the DCF case worker] did not turn up. I don't think anyone from DCF was there for him at court that day. I contacted a family member and came up with \$100 to give DL for clothes. I was upset he was in rags.<sup>909</sup> ... I just wanted to break down and cry'.<sup>910</sup>*

DL was bailed to his placement but absconded and breached his bail twice in one week. Territory Families notes from this time record that '[DL] indicated he didn't want Bail as "he hated" his placement and would rather be in Don Dale.'<sup>911</sup> The notes state that 'he was bored in his placement and would like to go to Don Dale Youth Detention Centre. [DL] believed that at Don Dale, he would be able to play "X box"'. Those notes also stated that DL was in a placement with two other children who were known to have ongoing youth justice matters.<sup>912</sup>

DL continued to breach his bail and a month later he was detained in the Don Dale Youth Detention Centre.<sup>913</sup> During his initial health assessment at Don Dale,<sup>914</sup> the registered nurse discovered that DL had suffered a burn to his back which was approximately 30 to 40cm in length.<sup>915</sup> DL said he got the burn at the group home days before coming into Don Dale, and the registered nurse's notes state that it looked approximately a week old.<sup>916</sup> As he was preparing to go to bed, another boy 'used an aerosol spray can and lighter and "accidentally burnt him" when playing around with these items'.<sup>917</sup> The burn was treated in Don Dale and Territory Families arranged for DL to see a doctor. DL had received no treatment for the burn prior to coming into custody.

DK told the Commission that she only found out later that DL had been burnt by another one of the boys in the group home in Darwin. Territory Families did not tell her. She found out from one of the workers when she called the home, as she did often.<sup>918</sup>

During this time, another child in the group home made a complaint about a particular carer at DL's group home who allegedly physically and verbally abused children. The case notes also stated that the children were sleeping in the same room as each other or absconding from their placement in an attempt to protect themselves.<sup>919</sup> The investigation summary did not deal with the fresh allegation. Rather, the investigation summary noted that there had been concerns raised about the carer being overly strict in a previous placement. It stated that the previous conduct did not indicate that the carer had engaged in inappropriate verbal harm to other young people in the current placement.<sup>920</sup>

As a result of the burning incident, on his release from custody DL was moved to a different group home, this one run by Territory Families.<sup>921</sup> Territory Families subsequently arranged a placement for DL at a different private group home. DL absconded from this placement after approximately two days.<sup>922</sup> Other than to notify Police, Territory Families and the group home did nothing to locate DL.<sup>923</sup>

During this time, Territory Families attempted to have DL assessed to attend a youth diversion program with YWCA,<sup>924</sup> however, there were issues with organising the assessment due to DL's frequent absconding.<sup>925</sup> When DL subsequently appeared before court for breaching his bail, the magistrate who heard the matter was so concerned about DL's circumstances she wrote the following e-mail to the CEO of Territory Families:

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*I have just done a bail review of DL who is 13 years old and in custody for breaching his bail by being out without a carer.*

*He was with a carer from [a non-government organisation]. I asked him to tell me a bit about DL's background and circumstances of being in care. He seemed to have no idea what I was talking about and when I asked him to tell me what the protection issues were for DL he didn't even know what protection issues meant. On further questioning he seemed to be saying that they do not get told about the reasons why the young person is under care. He seemed to know more about his criminal charges than his protection history. Basically he didn't seem to understand how this child came to be in his care or that he might have some role to play in addressing his behavioural issues.*

*I don't know whether this is accurate i.e. that the carers are not briefed as the [sic] matters that have affected the young people they are to care for or whether this is just a particular carer or organisation that is not being properly trained and given the information about a child necessary to understand their behaviour and manage them....  
...He told me he is not enrolled at school and he goes out because he is bored as there is nothing to do in the home and he is just sitting around- Last time we were in court on the protection matter his grandmother raised concern that he had not been given decent clothes and appeared in the Youth Justice Court in a ripped shirt, the DCF caseworker was going to look into this as she said the contracted service was provided funds to clothe the young people in their care.*

***All in all I am very concerned about this young lad's care. He was not getting into trouble in [DK's care] (although he was very troubled) and now having been placed under the care of DCF is starting to commit offences.***

*If my memory is right this was discussed in the care proceedings last time too as the concern of his grandmother and the caseworker was that he was in a placement with another lad who was a frequent offender.<sup>926</sup>*

The CEO did not respond to all of the magistrate's concerns. The CEO's response did not address the issue of the lack of knowledge of carers attending court in support of young people or DL's need for clothing.<sup>927</sup>

On the issues the CEO did respond to, the CEO's responses were inconsistent with Territory Families records.

As an example, in relation to DK's education the CEO told the magistrate that:

*[DK] was scheduled to attend... a boarding school ... however [the school] has advised that due to [DL's] poor school attendance, the College will not reconsider his education placement until he has demonstrated a proven ability to remain in stable education for at least two months. Case Management will seek to enrol [DL] at the closest school to his new placement, as a matter of priority. It is envisaged that once a placement becomes available in [redacted], [DL] will attend school at [redacted] High School.<sup>928</sup>*



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This explanation is inconsistent with other records. Intake notes stated that DL was not at boarding school due to a problem with his funding. Those notes say that after the funding problem, *'from there it just drifted'*.<sup>929</sup>

Intake notes further state that, according to the group home staff, DL attended a particular middle school in Darwin with another young person in the placement,<sup>930</sup> but this was not considered beneficial for him given DL and the other young person had had multiple verbal altercations and DL had previously expressed a strong dislike of this other young person.<sup>931</sup> Group home staff enquired about DL attending an alternative school. However, Student Enrolment History records do not record DL ever being enrolled in that school.<sup>932</sup>

The case notes state that DL expressed an interest in attending a particular boarding school and the group home staff member *'believes that this has been discussed with ... DL's Case Manager, however DCF is not in support of DL attending [the proposed boarding school] as he may struggle academically. [emphasis added]'*<sup>933</sup> The group home staff member *'recommended identifying where DL's learning gaps are so that DL can attend [the boarding school]'*<sup>934</sup> though no mention is made as to who, if anyone, would be responsible for undertaking that task and it appears DL's learning gaps were not identified or addressed. Throughout the time that DL was in the department's care, there have been conflicting accounts as to why DL was not supported in attending the boarding school of his and his grandmother's choice.

DK told the Commission that the worker from the safe house was trying to get DL into school, but that the DCF case worker *'kept refusing because of his behaviour...[the case worker] said "Oh but he won't last long."' DK said 'I called up [the caseworker] many times about this. This made me really upset, because all I had wanted to do was see DL get into school and do well at school...'*<sup>935</sup>

Territory Families did attempt to find schooling for DL whilst he was in Darwin, and DL's mother provided consent for DL to be enrolled in the local school.<sup>936</sup> DK also suggested a particular boarding school in South Australia,<sup>937</sup> however, DCF stated that it would only consider boarding school once DL could demonstrate attendance at school for a full term.

While DL attended school while in Territory Families' care prior to moving to Darwin, nearly every teacher observed that DL's attendance was so poor they could not comment on his progress.<sup>938</sup> There is little documentation regarding DL's education in Darwin. An out of home care plan noted DL was not enrolled in school at all for a period. It seems DL did attend one school for a very short period with another young person in the placement,<sup>939</sup> but this was not considered beneficial for him given DL and the other young person had had multiple verbal altercations and DL had previously expressed a strong dislike of this other young person.<sup>940</sup> Group home staff enquired about DL attending another school. However, Student Enrolment History records do not record DL ever being enrolled in that school.<sup>941</sup>

## DL'S PLACEMENT IN HIS HOME TOWN

Approximately three months after DL was placed in Darwin, Territory Families returned DL to his home town, placed him in a residential group home, and enrolled him in the local high school.<sup>942</sup> DK still wanted DL to go to boarding school, but she told the Commission that DCF refused to help.<sup>943</sup>

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Approximately three days after he returned to his home town, DL absconded from his placement to visit DK.<sup>944</sup> Territory Families arranged a meeting with DK and DL to discuss future care arrangements.<sup>945</sup> The result of the meeting was that Territory Families consented to DL being with DK, as long as he returned to his placement at an agreed time. Intake notes stated *'he can spend some nights at her place.'*<sup>946</sup>

DL used cannabis and engaged in volatile substance use while in the Department's care. Territory Families stated that they would explore residential rehabilitation to address concerns that DL was regularly smoking cannabis and engaging in volatile substance use, being aerosol and petrol sniffing.<sup>947</sup> However, other than the referral to residential rehabilitation, Territory Families took no active steps to address DL's substance abuse issues. The only referral to specifically address DL's substance abuse was made by the police.<sup>948</sup>

DL's bail conditions during this time required him to attend school.<sup>949</sup> A monthly care report from Territory Families stated: *'it was discussed and established the current school DL is enrolled in will not work for him for a number of reasons. Primarily DL has not been made welcome from day one and this has continued to the point DL will no longer even attempt to attend school.'*<sup>950</sup> Around this time, case notes recorded that police had attended the group home after DL refused to go school *'because he was tired'*. DL was denied bail and sent to the current Don Dale Youth Detention Centre.<sup>951</sup> He was there for approximately a week and half.

While DL was in youth detention, DK told Territory Families she was concerned that DL was mixing with another boy in detention who was a *'bad influence on him'*, and said that residential rehabilitation would be beneficial for DL. She was advised that there was a current referral which was accepted for October.<sup>952</sup>

DL was accepted into a residential rehabilitation facility after he was released from custody. However, a place was not immediately available and while DL was waiting for an opening he was placed in a private out of home care facility. DL repeatedly absconded, mostly to visit family.<sup>953</sup>

DL did well in residential rehabilitation initially. However, approximately two months after he arrived at the rehabilitation facility, DL absconded with other boys and stole a car.<sup>954</sup> He was accepted back into rehabilitation as a result of a police recommendation because he was doing well there.<sup>955</sup> DL was in residential rehabilitation for almost five months and told DK that he really liked it there.<sup>956</sup>

When DL finished rehabilitation he returned to his home town where he was placed in a group home. Once again he frequently absconded.<sup>957</sup> There is no evidence to suggest that Territory Families explored any option other than residential care despite the fact that group home placements had not worked for DL in the past. Territory Families put DL back into a group home with another boy with whom DL had been in trouble with before. Indeed, DL had been granted bail subject to the condition that he not be in the company of, or associate with that particular boy.<sup>958</sup>

Territory Families held a case meeting with the police, the local high school and representatives from the group home. In that meeting, concerns were raised by Territory Families about a number of young people, including DL, being:

*...absent from their placement on a regular basis, frequenting the [redacted] High School grounds and causing disruption to the High School and surrounding areas*

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*when they are meant to be at the school or the YMCA. There are also concerns about the possibility of them engaging in break and enters or other criminal behaviour, or possibly sleeping rough behind [redacted] High School.<sup>959</sup>*

DL and the boy his bail conditions required him not to associate with were involved soon after in an incident at the residential rehabilitation home at which they both resided. One of the carers noticed that a number of cigarettes had been stolen from her handbag and upon confronting the boys, DL threatened to steal her car. Both boys absconded from the placement immediately thereafter.

Territory Families' intake notes state that DK told Territory Families:

*'No one listens to me, I told you this would happen, not even a week back in [his home town] I knew as soon as you put him in the same house with [redacted], this would happen [that DL would get into trouble]'.<sup>960</sup>*

Later that month, DL committed further offences including trespass and criminal damage, by destroying property at the local primary school.<sup>961</sup>

DK told the Commission:

*'The main thing I wanted was for DL to go to a boarding school, but that all changed [after he got arrested]. No-one from DCF ever helped me to try and make that happen. And I think his life would have been different if they'd helped me send him to school...I feel like he lost of a lot of opportunities...'<sup>962</sup>*

## SYSTEMIC ISSUES

DL's experience in care illustrates the following systemic issues:

*Territory Families provided inadequate oversight of some residential care placements for children placed with non-government agencies.*

DL frequently absconded from residential care.<sup>963</sup> There is no evidence that Territory Families' staff and residential care facility staff members did anything to address DL's absconding. In fact, DL attended her local Territory Families' offices to tell them that DL had absconded.<sup>964</sup>

A magistrate observed that a carer from DL's residential home 'didn't even know what protection issues meant. On further questioning he seemed to be saying that they do not get told about the reasons why the young person is under care.'<sup>965</sup>

Whilst in residential care, DL suffered injuries inflicted by another child in the same group home.<sup>966</sup> The injury was not treated or apparently noticed by anyone until days later when DL underwent a medical examination upon being detained at Don Dale.<sup>967</sup>

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*Territory Families' use of residential care in group homes for some children under child protection orders was detrimental to their development and well being and not in their best interests.*

DL was placed in a number of group homes which he frequently absconded from. He was placed in residential care with other children whom he was specifically ordered by the Court not to associate with. As noted above, DL was seriously injured by another child whilst in residential care.

While in residential care, it was observed that DL's personal hygiene was poor and he was not provided with appropriate clothing.<sup>968</sup>

A magistrate observed that '*All in all I am very concerned about this young lad's care. He was not getting into trouble in [DK's care] (although he was very troubled) and now having been placed under the care of DCF is starting to commit offences.*'<sup>969</sup>

Intake notes in relation to one of the group homes DL was residing at record that the children at the placement were using tobacco and/or cannabis.<sup>970</sup>

When DL was placed in a rehabilitation facility, he did well.<sup>971</sup> However, after five months in rehabilitation, Territory Families again placed DL into a group home. He absconded and soon after again started committing offences.<sup>972</sup>

DL was placed in residential care with other children whom he was specifically ordered by the Court not to associate with. Instead of separating the boys who had been committing offences together, Territory Families requested the assistance of police to amend the order to allow the boys to reside together due to limited placement options.

*Territory Families did not investigate adequately or at all the reasons placements break down, nor adequately address issues such as absconding in some cases.*

It is unclear how closely Territory Families investigated the reasons for DL absconding from residential care. Despite:

- DL's repeated absconding behaviours (often absconding back to family)<sup>973</sup>
- DL's behavioural problems escalating, including because of the children that DL was placed with<sup>974</sup> and
- evidence that DL had improved in other forms of care (a residential rehabilitation facility),<sup>975</sup>

Territory Families nonetheless continued to place DL in residential care where he continued to have issues.<sup>976</sup>

*Territory Families case workers' sightings of and physical visits to some children in Out of Home Care and in detention were irregular and infrequent.*

When DL moved to Darwin, his case continued to be managed from his home town Territory Families office and interactions between DL, his carers and his case manager were routinely by phone. There

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was no personal oversight of DL by his case manager when he moved to Darwin.<sup>977</sup>

*Territory Families failed to support some children in care adequately to avoid them coming into contact with people and pathways likely to lead to the youth justice system.*

On one occasion while DL was in Darwin, he was charged with certain offences and released on bail. One of DL's bail conditions was that he not associate with certain other boys.<sup>978</sup> Despite that bail condition, Territory Families placed DL and those boys in the same group home and requested that police seek to amend the bail order to allow the boys to reside together due to limited placement options.<sup>979</sup>

Similarly, while DL was in care in his home town, he was placed in a group home with a particular boy even though one of DL's bail conditions was that he not associate with that boy. DK also told Territory Families that that boy was 'a bad influence on' DL. Soon after, DL committed an offence with the same boy.<sup>980</sup>

*Territory Families did not adequately support some children who were in care, including providing for basic needs such as enrolling them in education and taking steps to ensure their attendance.*

DL originally went into care because his grandmother was seeking help to curb DL's offending, to get him away from the influence of other boys and to get him into boarding school.<sup>981</sup> The fact that DL responded well to the structure of residential rehabilitation suggests boarding school may well have addressed DL's emerging behaviour. However, Territory Families did not place DL in boarding school, but rather resisted that option.<sup>982</sup>

In his first three months in care, DL was moved from place to place, absconding regularly. He was unkempt and without clothing, was hurt by another boy in a group home, and was not attending school. His offending escalated rather than decreased<sup>983</sup> and he developed a substance abuse problem.<sup>984</sup> Territory Families failed to ensure that DL's most simple and basic needs were met.

*Territory Families failed to provide sufficient diversionary options, programs or intensive support for some children under child protection orders at risk of recidivism and detention.*

Whilst in care, DL regularly smoked cannabis and abused substances such as aerosols and petrol. Territory Families stated that they would explore residential rehabilitation to address concerns that DL was regularly smoking cannabis and engaging in volatile substance use, being aerosol and petrol sniffing.<sup>985</sup> However, other than the referral to residential rehabilitation, Territory Families took no active steps to address DL's substance abuse issues. The only referral to specifically address DL's substance abuse was made by the police.<sup>986</sup>

DL was accepted into a residential rehabilitation facility, was there for almost five months and did well in that facility.<sup>987</sup> However, when DL finished rehabilitation he returned to his home town where he was placed in a group home. Once again he frequently absconded and his behaviours deteriorated.<sup>988</sup>





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# CASE STUDY: DI

The Commission has heard from parents and children who experienced the child protection system in the Northern Territory. These included witness DI.

The Commission provided DI's witness statement to the Northern Territory Government and invited statements in response relating to certain identified systemic issues discussed below. The Commission requested and reviewed hundreds of DI's child protection records produced by the Northern Territory Government, received detailed notes in response to the statement of DI from the Northern Territory Government and provided the Northern Territory Government with an opportunity to comment on DI's story.

The Commission heard evidence from a Remote Family Support Team Leader who was involved in DI's case. The Commission was unable, in the limited time available, to seek out other case workers and the many people with whom DI came in contact during her interaction with the child protection system.

This is DI's story based on the Commission's investigation, including DI's witness statement and the extensive documents and notes identified above. Other people involved from time to time may have different recollections. In publishing this story, the Commission does not make any findings in relation to DI, but notes the systemic issues which her story highlights as identified at the end of DI's story below.

## BACKGROUND

DI's grandson was placed in her care when he was only a few weeks old. He had had health issues from birth, including hearing loss and failing to put on weight<sup>989</sup> and he was hospitalised with bronchitis soon after he was born.<sup>990</sup> At the time DI's grandson was hospitalised, he was being cared for by his mother and maternal grandmother.



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Territory Families had opened a case file soon after the grandson's birth when the hospital raised concerns that his mother (who was in her teens) was failing to engage with him. The hospital also felt he was not supported by his maternal grandmother and he was underweight.<sup>991</sup> When the child was well enough to return to his community, the child's maternal grandmother approached DI and asked if she would care for him because the child's parents could not.<sup>992</sup>

DI wanted to look after her grandson, but as his paternal grandmother there were cultural considerations to be addressed. DI asked for permission to care for her grandson from the child's mother, grandmother and great grandmother as well as Elders from his mother's community.<sup>993</sup> Everybody agreed DI was the right carer for the child.<sup>994</sup> DI told the Commission *'the family know I am a good parent. They were comfortable and not worried. They knew he was in my hands.'*<sup>995</sup>

Two weeks after her grandson came into her care, DI was approached by Territory Families and asked to attend a meeting. The child's mother and his other grandmother were also at the meeting. At this meeting, DI was told by Territory Families that she had to give the child back to his mother. Territory Families notes indicate that the child's maternal great aunt was to be the primary carer of the child and DI would care for him during the day on the weekend to give the aunt respite and allow the child to have contact with his father.<sup>996</sup> The child's mother was to visit the child at crèche to ensure there was some contact.<sup>997</sup> DI was told that she needed to give her grandson time with his mother and she was to *'watch him from a long way away'*.<sup>998</sup> DI was worried the child would get sick again if he went to live with his mother's family.<sup>999</sup>

Within a week of her grandson going to live with his maternal great aunt, Territory Families approached DI again and asked her if she would take her grandson back into her care. DI told the Commission that Territory Families informed her that they had spoken with the child's mother who was overwhelmed with caring for the child as she had no help from her family and she wanted to go to school.<sup>1000</sup> The child and his teenage mother had been left at home with no food as the other grandmother had gone away and the child was being passed around family members.<sup>1001</sup>

## DI'S CARE OF HER GRANDSON PRIOR TO REMOVAL

When Territory Families brought DI's grandson to her he was skinny and covered in sores.<sup>1002</sup> DI told the Commission:

*'When [my grandson] came to me he was already a skinny one. He was skinny and he had sores and scabies. I was trying to fix him, feeding him and using scabies cream on him. Even though he was still sick I was feeling really proud to have that baby in my care and I loved him.'*<sup>1003</sup>

Anytime the child was not well, DI and her husband telephoned or took him into the clinic for help.<sup>1004</sup>

DI and her husband have not had a house since their own children were infants. They have been on a waiting list for over 25 years due to the lack of housing in the area.<sup>1005</sup> DI, her husband and grandson moved into an air conditioned room in a relative's home.<sup>1006</sup>

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## ISSUES WITH FEEDING

DI had raised a number of children of her own but all of them were breastfed. She had no experience of feeding a child formula.<sup>1007</sup> DI was actively seeking assistance to care for her grandson and to help him put on weight.

When DI sought advice from the nurse at the local clinic she was told how many scoops of formula to give the child but not how much water to use, how often to feed him or shown how to make the formula.<sup>1008</sup> On another occasion when DI asked for help from the clinic she told the Commission she had the following experience with the doctor on call:

*'I used to give [my grandson] 100 ml of water for 1 scoop of formula. Once I took [my grandson] for weighing and I talked to a doctor... [The doctor] said I should change it to three scoops of formula for 150mls of water...[The doctor] only talked to me for a short time. It was the first time I met him. When he talked to me he was sitting on his computer doing something else. He was typing. He told me that [my grandson]'s weight was down. I didn't want to ask him questions because I didn't really know him and it's a bit hard to talk to a man like that.'*<sup>1009</sup>

Progress notes from the clinic confirm that a number of midwives and a doctor attending the clinic provided DI with instructions and education about how to feed her grandson.<sup>1010</sup> While DI does not require an interpreter, English is not her first language and DI told the Commission that no one explained to her how to feed her grandson using formula in a way she could understand.<sup>1011</sup>

DI's grandson did not put on weight. DI did not know she was not giving the child enough formula to make him put on weight nor that he was getting sick because he was underweight.<sup>1012</sup>

DI told the Commission she received no feedback from Territory Families about the care she was providing to her grandson at this time.<sup>1013</sup> Territory Families documents indicate concerns about the child being passed between family members, which could be exacerbating some of his health issues such as scabies<sup>1014</sup> as well as concerns regarding formula.<sup>1015</sup> The notes do not record any attempts by Territory Families to assist her in a practical way to learn how to feed her grandson using formula.

DI was also experiencing financial difficulties at this time. DI was not provided with financial support from Centrelink to care for her grandson for three months.<sup>1016</sup> As a result, DI sometimes needed assistance from Territory Families to buy formula. DI's requests for financial assistance to buy formula were one of the concerns that led to Territory Families seeking to remove the child from DI's care. DI felt that rather than assisting her to understand how to feed her grandson, Territory Families just set 'rules' about when and how to get the formula. DI told the Commission that her issue was not about knowing when to buy more formula but about how to use the formula to properly nourish her grandson.<sup>1017</sup>

## REMOVAL OF GRANDSON

On the last occasion DI asked for formula, she was told by the clinic that her grandson needed to go to Darwin for treatment. He was admitted to hospital in Darwin with malnutrition and scabies.<sup>1018</sup> DI accompanied him to Darwin.

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DI's grandson was in hospital for over a month. During this time DI received support from an Aboriginal support worker at the hospital who showed her how to make up the formula and watched her make up the formula to ensure DI was doing it correctly. The worker told her how often to feed her grandson and why his weight was such an important health issue. According to DI, this was the first time she had been given practical help with feeding her grandson.<sup>1019</sup>

DI stayed with her grandson during his hospital stay and cared for him there. DI's commitment to caring for her grandson and the quality of her care was recognised by the paediatrics team at Royal Darwin Hospital.<sup>1020</sup>

However, at this point, DI's grandson was taken into the care of Territory Families. He was approximately four months old.

Territory Families gave DI no warning that they were taking her grandson into care and she was shocked at the decision.<sup>1021</sup> When provided with the Court documents stating that the child was in care, DI did not understand what these documents meant as the nature and content of the documents were not explained to her.<sup>1022</sup> She was not told that she should seek legal representation. It was only when DI approached the Aboriginal support worker at the hospital to explain the papers to her that she found out what had happened and the support worker told her to get a lawyer.<sup>1023</sup>

DI was provided with the documents the day before the court hearing. DI wanted to oppose the application for Provisional Protection and rang NAAJA.<sup>1024</sup> However given the short notice, DI did not have enough time to see a lawyer before the first mention to prepare. Territory Families were given daily care and control of the child while the matter was resolved.<sup>1025</sup>

DI told the Commission she was shocked when she read the reasons Territory Families had listed for taking her grandson into care. Territory Families raised concerns about the home DI was living in and that her grandson's food was being taken by other family members. They were concerned conditions in the house could exacerbate the child's health conditions. Territory Families did not raise this issue with DI prior to seeking an order and DI had previously requested assistance to improve her housing situation.<sup>1026</sup> Territory Families states that its concerns about the child's health, DI's uncertain living conditions and the absence of a consistent primary care giver were communicated to DI. There is no contemporaneous record of that communication in documents provided to the Commission.<sup>1027</sup>

Though DI sought to have the child return with her to her community, DI had to leave the child at the hospital and stay with family in Darwin.<sup>1028</sup>

## VISITING THE CHILD AND CONTACT WITH CARER

DI's grandson was placed in foster care in Darwin. Territory Families did not consult with DI nor make any attempt to find a suitable carer for the baby in the baby's community or a kinship carer in Darwin. DI was not provided with any information about her grandson's carer.<sup>1029</sup> Later Territory Families did organise a meeting between DI and the foster carer and they have maintained an ongoing and positive relationship even after the child was returned to DI's care.<sup>1030</sup> DI said that the child's foster carer:

*'loved [the child]. I know that she and her partner and their daughter were really helping him.... We still keep in touch with her. We really like her. Being able to meet her made a*

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*big difference.*<sup>1031</sup>

DI and her husband travelled between their community and Darwin to visit their grandson in foster care. Territory Families paid for DI's flights, however, they did not provide accommodation or money for food.<sup>1032</sup> DI and her husband would travel to Darwin to visit the child for three days once a fortnight.<sup>1033</sup> The child was around five months old at this time.

DI could only see her grandson at the Territory Families offices in Darwin during business hours. They were only permitted to walk with him to the nearby Kmart and there were no activities for babies at the Territory Families office.<sup>1034</sup> Territory Families have submitted that access visits were held at their offices to ensure the child's health and safety, and to observe DI's interactions with the child (including her ability to manage his feeding regime and scabies treatment) in order to assess whether the child could be safely returned to her care.<sup>1035</sup> They stated this was in accordance with its policies at the time.<sup>1036</sup> The child was only brought to the community for a visit once.<sup>1037</sup>

## RETURN OF DI'S GRANDSON TO HER CARE

DI provided letters in support of her application to have her grandson returned to her care. The letter of support from the Elders in her community highlighted the great efforts DI went to in the community to get approval to look after her grandson. She had to convince the Elders to change her skin role so that she would be considered the right person to look after the child.<sup>1038</sup> The Elders also discussed the importance of the child being in community in the first two years of his life to learn about his cultural skin system, his language and to start going bush.<sup>1039</sup> The Elders described DI as a *'traditional woman who has strong respect for cultural law ... She is good and strong and cares for her family. She really cares for her grandkids'*. The Elders stated that DI had their full support.<sup>1040</sup>

The letters of support from the Aboriginal support worker at the hospital and her grandson's doctor highlighted DI's diligence in tracking her grandson's weight gain and her attentiveness in following the treatments prescribed for his scabies and the respiratory problems that contributed to him contracting bronchitis. The Aboriginal support worker also documented her work with DI, teaching DI about the child's formula and commented on how attentive and engaged DI was. She also highlighted DI's interaction with her grandson and how affectionate she was with the child.<sup>1041</sup>

Territory Families eventually consented to the child being returned to DI some three and a half months after he was taken into care.<sup>1042</sup>

## DI'S EXPERIENCE WITH TERRITORY FAMILIES SINCE HER GRANDSON WAS RETURNED TO HER

DI's grandson continues to live with her in the community. She told the Commission:

*'Welfare are still watching me. I can look after myself and look after the baby. They told me they are going to watch me to make sure I'm feeding [my grandson] good and to see whether [my grandson] has sores. They are not supporting, they are just watching. [Territory Families] doesn't come to my house and [they do not] ring me ... Sometimes I have to go to [other communities] for funerals or ceremony. I have to take [my grandson] with me because there is no family I can leave him with in [community]*

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*... I can't stay in [my community] for every day for one year. I feel humbug when Welfare call me about that. I feel like they are spying on me. They are only calling if they think we are doing the wrong thing, they are never saying anything about us doing a good job.*<sup>1043</sup>

DI's grandson is thriving in his grandmother's care. Territory families only began to assist DI and her husband to find permanent housing after the child was returned to DI's care,<sup>1044</sup> but a house has not been located for the family.<sup>1045</sup> DI is cared for and loved. However the pain caused by the experience is still present for DI and her husband: *'Our family will never forget the way it felt when he was taken from us. It will always be a hurt in our family.'*<sup>1046</sup>

## SYSTEMIC ISSUES

DI's experience illustrates the following systemic issues:

*Territory Families did not adequately communicate their concerns for children with adult carers, or what they required of adult carers to address those concerns, in order to allow children to remain with their family rather than being placed in care in some cases.*

DI told the Commission she received no feedback from Territory Families about the care she was providing to her grandson at this time.<sup>1047</sup> Whilst Territory Families documents indicate concerns about the child being passed between family members, which could be exacerbating some of his health issues such as scabies<sup>1048</sup> as well as concerns regarding formula,<sup>1049</sup> the notes do not record any attempts by Territory Families to assist her in a practical way to learn how to feed her grandson using formula.

The child in this case had issues feeding and suffered weight loss. Territory Families documents indicate concerns about the use of formula. However, DI did not know she was not giving the child enough formula to make him put on weight nor that he was getting sick because he was underweight.<sup>1050</sup> Whilst the notes record that attempts were made by staff at the local clinic to educate DI about how to feed her grandson, English is not DI's first language and she told the Commission that no one explained to her how to feed her grandson using formula in a way she could understand.<sup>1051</sup>

Territory Families raised concerns about the home DI was living in, that the child's food was being taken by other family members and that conditions in the house could exacerbate the child's health conditions.<sup>1052</sup> Territory Families did not raise housing issues with DI prior to seeking that the child be removed from care and DI had previously requested assistance to improve her housing situation.<sup>1053</sup>

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*Territory Families did not adequately provide support for adult carers or the community to address concerns identified by the Department, such as by providing or facilitating parenting courses, or advocacy for housing needs in some cases.*

DI and her husband did not have permanent housing<sup>1054</sup> and housing advocacy was not provided until months after the child was returned to DI's care.<sup>1055</sup> The Northern Territory Government submitted that an undersupply of housing in the community does not translate to a failure on behalf of Territory Families to advocate for housing needs. This submission should not be accepted. As identified in relation to the systemic finding above, Territory Families raised concerns about the house DI was living in and how those conditions impacted on food security and the child's health conditions, but did nothing to remedy the housing situation. Territory Families in this case failed to address the housing situation as an obvious causal factor, despite referring to it later as a reason to remove the child.

DI's requests for financial assistance to buy formula were one of the concerns that led to Territory Families seeking to remove the child from DI's care. However, DI told the Commission that her issue was not about knowing when to buy more formula but how to use the formula to properly nourish her grandson.<sup>1056</sup> English is not her first language and DI told the Commission that no one explained to her how to feed her grandson using formula in a way she could understand.<sup>1057</sup>

*The Department of Health did not adequately communicate concerns for some children's welfare, the likely outcomes for children if those concerns were not addressed, and how adult carers could address those concerns.*

DI did not know she was not giving the child enough formula to make him put on weight nor that he was getting sick because he was underweight.<sup>1058</sup> Whilst the notes record that attempts were made by staff at the local clinic to educate DI about how to feed her grandson,<sup>1059</sup> English is not DI's first language and she told the Commission that no one explained to her how to feed her grandson using formula in a way she could understand.<sup>1060</sup>

*Territory Families did not adequately attempt to find foster carers or kinship carers within the community in some cases.*

Territory Families did not consult with DI nor make any attempts to find a suitable carer for the baby in the child's community nor to find a kinship carer in Darwin.



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# CASE STUDY: AI

The Commission has heard from children who experienced the child protection system in the Northern Territory. These included witness AI.

The Commission provided AI's witness statement to the Northern Territory Government and invited statements in response relating to certain identified systemic issues discussed below. The Commission requested and reviewed AI's child protection records produced by the Northern Territory Government, received detailed notes responding to AI's statement from the Northern Territory Government and provided the Northern Territory Government with an opportunity to comment on AI's story.

The Commission heard evidence from AI's foster carer, EE. The Commission was unable, in the limited time available, to seek out case workers and the many other people with whom AI came in contact during her interaction with the child protection system. Nor was any statement volunteered by the Northern Territory Government in response.

This is AI's story based on the Commission's investigation, including her witness statement, the witness statement of her foster carer EE and the extensive documents and notes identified above. Other people involved from time to time may have different recollections. In publishing this story, the Commission does not make any findings in relation to AI, but notes the systemic issues which her story highlights as identified at the end of AI's story below.

## ***'There was always domestic violence at home'***

AI's childhood was characterised first by violence then by dislocation as her mother moved the family from place to place to try to escape her ex-partner.<sup>1061</sup> AI's family eventually ended up in Darwin. As one of the older children, AI would often be left at home to look after the younger children. It got to a point where she was overwhelmed and one day she had a panic attack.<sup>1062</sup>



## ***'Mum hit a crisis point'***

When AI was 13, her mother requested that DCF take her children into care.<sup>1063</sup> DCF records state that AI's mother was *'unable to manage the behaviour [of the children] and associated stress'*<sup>1064</sup> of parenting. AI told the Commission that by the time she and her siblings were taken into care, *'we were starved, riddled with bruises and covered in lice.'*<sup>1065</sup>

AI's initial placement was with EE through purchased home-based care. She was placed with EE along with a number of her siblings. AI's placement with EE was intended to be for two weeks. The plan was to engage AI's mother with services with a view to reunification.<sup>1066</sup>

AI did not fully understand what was happening to her: *'A lot of the communication ... is done directly to the carer, not the child in care.'*<sup>1067</sup> AI was told why she was in foster care but *'the language was not age appropriate and I found it all very hard to comprehend.'*<sup>1068</sup>

EE did not receive much information about AI and her siblings before they arrived apart from their names and ages. That made it difficult for her to work out how she could appropriately support the children in her care.<sup>1069</sup>

## ***'It was all so alien to me'***

Initially AI was disconcerted by EE's home. AI told the Commission she had never seen a house like it before:<sup>1070</sup>

*'It was something that is so everyday for everyone else, like to have a hand soap, to have a towel, all these things that are just so basic necessities, they were so alien to me. They frightened me.'*<sup>1071</sup>

At first, all AI wanted to do was run away because she was scared.<sup>1072</sup> She did not understand why she was in care and EE's home was a foreign environment to her.<sup>1073</sup> She wanted to test EE's boundaries by being rebellious and getting into trouble with the police.<sup>1074</sup>

There was an incident at school where AI was involved in a fight and did some graffiti.<sup>1075</sup> When EE came to pick AI up, EE did not get angry at her but instead gave AI a big hug.<sup>1076</sup> EE told the Commission that *'When the police picked [AI] up in the paddy wagon, which happened twice, she got home and I would say "What do you need? A shower? A hot chocolate?'*<sup>1077</sup> AI said:

*'I was so touched when [EE] took me back after that. Knowing that she didn't give up on me was really moving. After I realised she wasn't going to dump me, I really built a connection with her.'*<sup>1078</sup>

About six months to a year after they were placed with EE, AI's siblings returned to the care of their mother. AI remained with EE.<sup>1079</sup> One case plan noted that AI *'has shown a desire to remain in care whilst the other siblings have willingly returned home.'*<sup>1080</sup>

## ***'I really built a connection with her'***

After 'a lot of testing', AI and EE built a strong relationship of love and trust.<sup>1081</sup> AI felt time and effort was the key to building a relationship with EE. She told the Commission that because of:

*'[My] background in trauma, pretty much it was very hard for me to build relationships with people, build trust with people, so my relationship with [EE] is just based on the amount of time that we spent together and her continuous effort to not give up, her conscious effort to not give up on me.'*<sup>1082</sup>

EE said when AI first came into her care, she had a vision of her husband walking AI down the aisle on her wedding day: *'It was a sign that this girl was going to be part of our lives and so I knew we had a lot of work to do.'*<sup>1083</sup>

EE took every opportunity to learn how to support AI and other children in her care, including attending parenting programs where she developed her knowledge of AI's needs from an attachment-based perspective.<sup>1084</sup> EE did a lot of additional reading about the developmental stages of a child and attended various conferences and training.<sup>1085</sup>

In EE's care AI regularly attended school and did well. She started music lessons and volunteered with a community organisation.<sup>1086</sup> She had no further trouble with Police.<sup>1087</sup> EE said in her statement to the Commission:

*'I provide as many good experiences as I can. I provide belonging. I provide a relationship such that when she has to make a decision it is based on good experiences. That's my work.'*<sup>1088</sup>

## ***'I decided to cut all contact with my family'***

AI had access visits with her mother and siblings when she was first in care.<sup>1089</sup> On one visit, her mother told her about her plans for a new job, a house and new car.<sup>1090</sup> AI was hopeful that things were going to change for her siblings and her mother.<sup>1091</sup> When she next visited her mother:

*'Everything was in complete disarray. It was disheartening for me to see that she had not changed. There were piles of rubbish on the floor, food scraps and the children living in the house all had lice.'*<sup>1092</sup>

When she returned from that visit, AI spoke to her carer and her case manager about staying in care until she was 18.<sup>1093</sup> AI felt *'there would be no future for me there because my mum wasn't making any effort for a future for herself.'*<sup>1094</sup> She talked to her carer and DCF about going into care until she was 18.<sup>1095</sup> AI was referred for legal advice, and her rights were explained to her.<sup>1096</sup> AI was placed under the care of the CEO until she turned 18. AI decided to cut contact with her family at that time, but she has since tried to support her siblings and advocate to DCF on their behalf.<sup>1097</sup>

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## ***'I had a lot of mental health and emotional issues and my trauma was complicated'***

Soon after AI came into care, EE recognised that AI needed support for her mental health. AI's case plan stated that she had recently started engaging with psychology services.<sup>1098</sup> However, AI did not want to engage with counselling.<sup>1099</sup> AI's first experience of counselling took place in relation to child protection proceedings but AI found the sessions impersonal, like they were *'fishing for things for the Court process.'*<sup>1100</sup> AI recalled that the sessions ended abruptly. *'This turned me off counselling. I didn't want to tell my whole story again after how hard it was.'*<sup>1101</sup> When AI was later referred to therapeutic services she refused to attend.<sup>1102</sup>

AI started to experience significant mental health problems in her mid-teens. She was diagnosed as suffering from depression, anxiety and severe sleep disturbance.<sup>1103</sup> She told the Commission:

*'[EE] tried to arrange counselling but I didn't want to go. She would make appointments and I would stay in the car crying. I was disheartened by the court case and my mother had always said counselling was useless.'*<sup>1104</sup>

AI eventually agreed to see a psychologist<sup>1105</sup> but she continued to experience mental health issues after she turned 18, including a period of hospitalisation.<sup>1106</sup>

## ***'Her conscious effort to not give up on me'***

When AI was in late high school she was suffering depression and anxiety. She started smoking cannabis when she felt upset and would go out of the house at night without locking the door.<sup>1107</sup> This upset EE who felt it jeopardised the safety of the household. There was also tension between AI and EE's other children.<sup>1108</sup>

One evening, AI knocked on the door of DCF after hours and asked to be placed somewhere else.<sup>1109</sup> EE felt that *'this was self-sacrificing behaviour'* as AI was worried about the effect of her problems on EE's family.<sup>1110</sup> AI went for respite with another carer but felt that carer did not support her as well as EE did.<sup>1111</sup>

AI and EE repaired their relationship over the course of the respite period and AI returned to EE a few months later.<sup>1112</sup> EE had a significant impact on AI's life. AI explained:

*'[EE] doesn't give up on children, not while they ask for help. She went the extra mile and tried to understand me. She treated me as her own and I thank God for her every day.'*<sup>1113</sup>

Reflecting on their relationship, EE said *'[AI] and I took the journey together. It was a journey of belonging and becoming.'*<sup>1114</sup>

## ***'You feel like you're forgotten'***

AI told the Commission she had about five case managers during her time in care in the Northern Territory, *'which is quite lucky.'*<sup>1115</sup> She said she would get attached to case managers and *'it really*

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*did hurt me* when they left.<sup>1116</sup> This impacted her ability to engage with DCF and her relationship with later DCF case managers.<sup>1117</sup> There were times when AI had limited contact with her case managers. At one stage AI was not seen by her case manager for three months.<sup>1118</sup>

EE recalled that AI had regular visits from her case managers.<sup>1119</sup> EE thought *'the Case Managers would bend over backwards to help [AI] because she was a child in care in whom they could see a lot of potential and could see that she would continue to thrive.'*<sup>1120</sup> AI had a different perception:

*'You feel like you're forgotten. You feel like you don't – your case or your situation does not matter enough for them to remember and keep track of you. And that might not necessarily be the case, it might just be that they're so busy that they cannot keep track but that's the feeling. That's what you feel.'*<sup>1121</sup>

AI understood that *'it can be hard for [case managers] too. They have huge case loads they are trying to juggle'* which *'impairs the quality of care to towards the children and families they're working with.'*<sup>1122</sup>

### ***'I would be the one chasing DCF, and continuing to seek support ... not them reaching out'***

AI found the process of leaving care isolating.<sup>1123</sup> She felt that rather than DCF actively providing support, she had *'to reach out to get support services from DCF.'*<sup>1124</sup> AI told the Commission that more recently *'if I need help I just go to the DCF office and ask to speak to someone'*, but initially

*'I wasn't involved much [in leaving care planning] because I didn't have the language to express what I felt. If you want help from DCF, you need to know exactly what you need help with and for me that was complicated.'*<sup>1125</sup>

AI recalls that her *'leaving care plan was extremely rushed.'*<sup>1126</sup> Shortly before she was due to leave care, AI talked to a community service support worker who noted AI told her she was *'concerned that she does not have any accommodation to go to when she leaves care in 4 days time.'*<sup>1127</sup> DCF then arranged transitional housing for AI, but she decided to move in with a friend instead.<sup>1128</sup>

DCF records indicate that when AI was around 15 her case manager provided information about a leaving care program run by a community organisation.<sup>1129</sup> DCF notes made when AI was around 16 state that *'[AI] needs a leaving care plan, this should involve [AI].'*<sup>1130</sup> A few months later a DCF case support worker told AI that DCF would put her on the waiting list for public housing so she would have that option once she left care.<sup>1131</sup> A week before AI left care, however, DCF noted that *'despite many conversations with her to advise that DCF don't have the capacity to actually source housing ...it seems she has not fully understood her situation'* and had *'assumed DCF would do that for her.'*<sup>1132</sup>

Other aspects of planning for when AI left care did not start until she was around 17.<sup>1133</sup> Notes from a DCF *'high risk cases'* meeting state that *'CM [case manager] has tried to engage [AI] to do Leaving Care Plan however [AI] will not engage.'*<sup>1134</sup> There is no note of any discussion about why AI might have been reluctant to engage with DCF or strategies to address this. Later DCF notes show that AI did indicate interest in her leaving care planning and asked her case manager about her leaving care plan but *'C/M explained the plan was progressing and C/M would inform [AI] when the plan was completed.'*<sup>1135</sup>

AI and EE attended three leaving care meetings with DCF.<sup>1136</sup> EE said that she pushed to have everything in writing and for the leaving care plan to include mental health support for AI and assistance with her studies until AI turned 25.<sup>1137</sup> AI told the Commission that there is nothing in place for her mental health in the leaving care plan apart from notes that it was discussed.<sup>1138</sup> An Out of Home Care Plan prepared when AI was 'leaving care in a few weeks' states 'carer to support [AI's] attendance at [mental health] appointments until [AI] leaves care' but does not indicate what ongoing mental health support DCF would provide after AI left care.<sup>1139</sup>

### **'Advocating for my brothers'**

AI told the Commission she 'worries that some of her siblings' case managers have changed too often and that her siblings have difficulties communicating with people and establishing new relationships'.<sup>1140</sup> She observed that one of her siblings is on the 'unassigned case manager' list, which means that there is no 'consistent person for him to talk to and be familiar with'.<sup>1141</sup> AI told the Commission that her experience of 'advocating for my brothers' to DCF has been negative as 'I'm constantly chasing DCF' to arrange access visits and seek support for them.<sup>1142</sup>

### **'I want to work for Child Protection'**

EE feels that AI 'is moving along and building a stronger self'.<sup>1143</sup> AI now has plans to go to university and study social work.<sup>1144</sup> She would like to work in child protection as she feels there are not many people at DCF who come from a background of trauma themselves:

*'I believe that a lot of child protection workers do not speak from the heart or experience, and it's so difficult to connect with someone if their life experience is so far removed from your own, especially in that circumstance where you feel misunderstood already'.<sup>1145</sup>*



## My hope is that children will not fall through the system

*I hope that children will ... someday have the confidence and be aware that they can seek help. Because in my childhood if I had ever just spoken up, if I ever had just put my hand up and said. "I need help" ... Just so many things could have been avoided, I believe.<sup>1146</sup> ...*

*As a child your capacity is limited to what you experience. So if you're not aware of support services, if you're not aware of the police. if you're not aware of all these things, how are you going to seek help? It's a responsibility that lies on your parents, and if your parents aren't making the best decisions – this is what I mean by people falling through the system.<sup>1147</sup> ...*

*And I also think preventative measures should be put in place. So my understanding of how DCF works is that there's a report and then an investigation, and I just hope that perhaps this process of investigation is not so invasive and intimidating for the parents. I hope that the parents feel like they can engage and seek help from DCF, not feel like their privacy is being invaded, or they're doing the wrong thing, and just to have access to more support services, especially in regards to mental health.<sup>1148</sup>*

Vulnerable witness AI

## SYSTEMIC ISSUES

AI's experience in care illustrates the following systemic issues:

*Territory Families did not adequately communicate processes and decisions, or the reasons for those decisions, to some families.*

AI did not fully understand what was happening to her when she was taken into care. 'A lot of the communication ... is done directly to the carer, not the child in care.'<sup>1149</sup> AI was told why she was in foster care but 'the language was not age appropriate and I found it all very hard to comprehend.'<sup>1150</sup> DCF did not adequately explain to AI the reasons why she was placed with EE.

As outlined above, DCF considered that AI had not 'fully understood her situation' in relation to housing after leaving care.<sup>1151</sup> This suggests that DCF did not adequately explain to AI what DCF would and would not do to assist her before and after she left care.

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*Territory Families leaving care plans were inadequate and statutory and policy requirements for their implementation and modification were not complied with in some cases.*

Aspects of leaving care planning for AI did not commence in a timely manner. As outlined above in relation to housing, it was not made clear to AI what supports DCF would and would not provide to her after leaving care.

An Out of Home Care Plan prepared when AI was 'leaving care in a few weeks' states 'carer to support [AI's] attendance at [mental health] appointments until [AI] leaves care' but does not indicate what ongoing mental health support DCF would provide after AI left care.<sup>1152</sup> This suggests DCF did not adequately provide for mental health supports in leaving care planning.<sup>1153</sup> It appears that leaving care planning for AI did not adequately consider and provide for her mental health needs post leaving care.<sup>1154</sup>

*Territory Families case workers and case managers assigned to children and families changed frequently in some cases. This impacted on the consistency and quality of relationships, the frequency and quality of casework and the overall support provided for some children and families.*

AI had five case managers over the approximately five years she was in care. EE considered that case managers saw AI regularly. However, AI felt like she had been forgotten and that her situation did not matter to her case managers.<sup>1155</sup> Her experience suggests that DCF did not do enough to ensure that AI felt supported by her case managers.

AI told the Commission she would get attached to case managers and 'it really did hurt me' when they left.<sup>1156</sup> This impacted her ability to engage with DCF and her relationship with later DCF case managers.<sup>1157</sup> AI observed that changing case managers has similarly affected her siblings' ability to establish new relationships.<sup>1158</sup> Developing trust over time enabled AI and her foster carer EE to build a strong relationship. AI did not develop a similar relationship with a case manager and it is likely that this negatively affected the quality of the support she received from case managers.

*Some children with complex needs in the care of Territory Families did not have adequate access to, and support to access, counselling services.*

As outlined above, AI did not receive the mental health support she needed, in large part due to her reluctance to engage with psychological services. DCF did not adequately recognise or address the reasons for AI's unwillingness to engage with the mental health support she needed.







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# CASE STUDY: DE AND DF

The Commission has heard from children and families who experienced the child protection system in the Northern Territory. These included witnesses DE and DF.

The Commission provided DE and DF's witness statements to the Northern Territory Government and invited statements in response relating to certain identified systemic issues discussed below. The Commission requested and reviewed hundreds of child protection records produced by the Northern Territory Government relating to DE, DF and some of his siblings, received detailed notes in response to the statements of DE and DF from the Northern Territory Government and provided the Northern Territory Government with an opportunity to comment on DE and DF's story.

The Commission was unable, in the limited time available, to seek out case workers and the many other people with whom DE and DF came into contact over during their interaction with the child protection system. Nor was any statement volunteered by the Northern Territory Government in response.

This is DE and DF's story based on the Commission's investigation, including the witness statements and the extensive documents and notes identified above. Other people involved from time to time may have different recollections. In publishing this story, the Commission does not make any findings in relation to DE and DF, but notes the systemic issues which their story highlights as identified at the end of DE and DF's story below.

## BACKGROUND AND EARLY INVOLVEMENT WITH DCF

***'I believe it is important to understand the things that we, as a family have experienced'***

DE is the mother of many children, five of whom have been in care in the Northern Territory. DE had a traumatic childhood and was herself in care. DE did not finish school nor learn to read or write.<sup>1159</sup>

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DE already had a number of children when she met DF's father.<sup>1160</sup> DE had several more children with DF's father during their relationship of around 7 years.<sup>1161</sup> DF's father was a violent man. Some of DE's children were victims of his violence.<sup>1162</sup> DE tried to leave DF's father many times but often the women's shelters were full.<sup>1163</sup> DE eventually fled the state with her children. They travelled across the country, moving when her ex-partner found out where they were living.<sup>1164</sup> Eventually DE and her children arrived in Darwin.

### ***'Everywhere we go there is some reason why this family cannot be helped'***

DE arrived in Darwin without housing and without the capacity to pay for private rental accommodation. At one stage, she bought a tent and camped out in a caravan park with her children.<sup>1165</sup> Finding stable accommodation was a challenge. The family failed to meet the criteria for any of the social housing providers for reasons including that they hadn't been in the Territory for three months, DE had a male child over 12 and as she had left had not the family was considered no longer at risk.<sup>1166</sup> A community outreach worker found that *'everywhere we go there is some reason why this family can't be helped'*.<sup>1167</sup> Territory Housing advised that there was *'an indefinite waiting period'* for a four bedroom house and a 12 month waitlist for other priority housing.<sup>1168</sup>

DCF became involved when the family was referred by a community outreach organisation and the Department opened a family support case.<sup>1169</sup> DCF provided some assistance to DE with housing. They contacted the YWCA, looked into options for the family interstate and funded short-term accommodation in a caravan park cabin and later an unpowered tent site.<sup>1170</sup> There was, though, little stability for DE and her children in that first year in the Northern Territory.<sup>1171</sup>

DCF referred DE to its Home Strengths Program some months after they arrived in Darwin.<sup>1172</sup> DE withdrew from the referral when she started work as she felt she wouldn't have much time to participate.<sup>1173</sup> She was also offered Family Support Services but attempts by them to contact DE about the support they could offer were unsuccessful.<sup>1174</sup>

DE had experience of child protection agencies in other states and did not trust those agencies. At least two of DE's children had been placed in care in another state, and one of the children was abused in care.<sup>1175</sup> DE told her DCF case worker that she did not want to work with any agency associated with DCF.<sup>1176</sup>

A memo to the Director of Child Protection services about accommodation for the family noted around this time that DE *'has the capacity to parent her children, and no child protection issues were identified'* but *'without support to address their homelessness there is a high risk that child protection issues will develop due to the risk factors inherent in the dynamics of homelessness'*.<sup>1177</sup>

## **CHILDREN'S ENTRY INTO CARE**

### ***'It was hard to parent them at the time'***

DE's children had a traumatic and chaotic childhood suffering domestic violence and dislocation. The children had high needs. A number of the children had ADHD and/or autism spectrum disorders.<sup>1178</sup> DE told the Commission her children were:

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*'[J]ust running amok, they were taking off, jumping the back fence ... fighting with each other. ... I found it hard because I knew there was something wrong with my [children]... and it was hard to parent them at the time'.<sup>1179</sup>*

The children were placed in care for short periods under a temporary placement arrangement in the two years after the family arrived in Darwin. DE then moved out of Darwin to another location in the Northern Territory.

The following year DE was still struggling to manage the behaviour of three of her children. With help from a support worker from a local NGO, DE approached DCF with a plan. DE proposed that DF and two of her other children would enter respite care for a period of three months.<sup>1180</sup> This would allow DE time to regain her strength.<sup>1181</sup> In response a DCF case worker told DE that *'three months is a long time and there are no guarantees that this is logistically possible.'* However, the case worker said they would approach the team leader and see what they could do.<sup>1182</sup>

Instead of providing DE with respite and support, DCF decided to seek custody of the three children for a period of two years. DCF notes record that:

*the mother's inability to manage the behaviours of the children is representative of her parenting capacity ... and [it is] considered in their best interests to remain in care for a period of two years to enable DCF to intervene in an attempt to address and alleviate their behaviours.<sup>1183</sup>*

### ***'I didn't get respite, instead the [children] were removed in traumatic circumstances'***

At 10.30am on the day of removal, DCF arrived at the crisis centre where DE was living and told her that the three children would be taken into care on a non-voluntary basis for two years. The DCF notes record that a worker from the crisis centre was there and voiced *'her displeasure that we had used [an order] when [DE] had come to us asking for help and respite'.<sup>1184</sup>* The case worker explained that DCF had *'come to the conclusion that it would be best for a PO [Protection Order] to be made as the history and severity of [the children's] behaviour and [DE's] inability to discipline the children places the children at risk of harm'.<sup>1185</sup>* She told DE that they *'would return later that afternoon to collect the children as we did not have a placement for them at this stage'.<sup>1186</sup>*

At 4pm, when DCF workers returned to collect the children, it took them an hour to get the children into the car.<sup>1187</sup> DE gave evidence that:

*'The [children] refused to leave my side. [One of my children] tried to get away from the police who came to take them. He climbed the fence, it was about 6 feet high. He was screaming saying he didn't want to go. [One of my other children] ran away. The police ran after him. They caught him, threw him down on the street. He lay on the street saying he'd rather be run over'.<sup>1188</sup>*

DCF notes record that they eventually got two of the children into the car with the incentive of McDonalds, and dropped them off at the carer's home.<sup>1189</sup> The notes state that the carer *'was not expecting children with challenging behaviours and had not been told about this'.<sup>1190</sup>* The carer requested written instructions about the children's *'medication, allergies etc'.<sup>1191</sup>* DCF then returned for

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DF who had only agreed to go to if he could bring his dog.

Despite DCF's express concerns about DE's parenting capacity, concerns serious enough to cause DCF to seek an order to place three of DE's children in care for two years, DCF left another child with DE. It is unclear why the other child was not removed.

The day after the removal, the children were taken to the DCF office to see their mother. DE recalls that when she saw her children the next day, they had been given too much medication and one child was 'lying in the beanbag' and looked 'lifeless'.<sup>1192</sup> DCF notes record that the medication provided was not clearly marked or labelled with the recommended doses.<sup>1193</sup> Two of the children ran away from the DCF office during the meeting, resulting in a traumatic second removal before being driven to their placement in Darwin.<sup>1194</sup>

The case plan, as at about a week after the removal, noted that it was expected that the children would remain in care for one year.<sup>1195</sup> However, five months after being removed from DE, the children were informed they would be in the care of DCF for at least two years. The children were given this news by a new case manager when she met them for the first time.<sup>1196</sup>

## FAMILY ACCESS DURING THE CHILDREN'S PLACEMENT IN CARE

***'It would be in the younger [childrens'] best interest for access to only occur during the school holidays'***

The expectation when the children were placed in care was that they would be reunited with DE within a year. However, the children were placed in Darwin as there was no available placement near where DE lived.<sup>1197</sup> This made it more difficult for DE to see her children. During the first year her children were in care, DE had some access visits with the children.<sup>1198</sup> However, it was hard for DE to travel to Darwin at the time because she was pregnant and was still caring for her other child.<sup>1199</sup> As the pregnancy progressed DE was not well enough to travel and her contact with her sons diminished after this.<sup>1200</sup>

When DE raised the practical difficulties of travelling to Darwin, DCF advised it was '*not possible to arrange access [where DE lived] as it is disruptive to the children and dangerous for staff and the children.*' DCF also advised that the children's '*behaviours deteriorate and intensify after access.*'<sup>1201</sup>

DF told the Commission that he asked for contact visits with his mother and other siblings.

*'I was always told that something would be organised, but they never did anything. I would ask for phone calls and they would say that the phone was broken but then they'd make calls off it.'*<sup>1202</sup>

DCF notes state that the carer informed DCF that '*the boys are allowed telephone access with their mother*' and the carer '*offers this to them regularly (every few weeks)*' but DF and DE had not spoken in a few months.<sup>1203</sup>

The Northern Territory Government submitted that DE cancelled or did not attend access visits

on a number of occasions and was difficult to contact.<sup>1204</sup> DE gave evidence that she called DCF 'every day for about 4 or 5 months' seeking access.<sup>1205</sup> DCF have records of contact from DE on six occasions during this period.<sup>1206</sup> In DE's view, DCF:

*'[W]rite down whatever they want to write at the end of the day, and whether I'm telling the truth or not, it doesn't matter. They still write down what they think has happened or what they choose to write down, so I don't have a lot of trust in the department'.<sup>1207</sup>*

DCF notes recording one access visit state that DE was happy to see the boys 'as she hadn't seen them for two years'.<sup>1208</sup> When DE called DCF to inquire about access about a month later she was advised that 'it would be in the younger [children's] best interest for access to only occur during the school holidays' due to the disruption caused following the last access visit.<sup>1209</sup> According to the DCF notes,

*'[DE] stated the [children] were upset because they were told that she did not love them. Case manager advised this is why it is important for [the case manager] and mother to work on a story for the children about why they are in care ... [DE] became angry and terminated the phone call'.<sup>1210</sup>*

On another occasion, when DE attempted to arrange a visit, DCF told her that they would not cover the cost of petrol, but only purchase bus tickets for DE.<sup>1211</sup> This upset DE and DCF later cancelled the access visit 'due to being unable to confirm if mother would be attending'.<sup>1212</sup>

DE still finds it difficult to obtain information about and to get access to her children in care. DE tried to see two of her children while she was in Darwin to give evidence to the Commission. She was told by DCF that the children were 'too unsettled'.<sup>1213</sup> DE gave evidence that 'For about the last 4 months I have been trying to get in touch with TF [Territory Families] to find out what is happening with [two of her children]'.<sup>1214</sup> DE stated that she does not receive photos, information about what school her children go to or services they access and that she can't call them. DE feels she's been cut out of her children's lives: 'I know nothing about them'.<sup>1215</sup>

## DF'S EXPERIENCE OF CARE AND ENTRY INTO THE YOUTH JUSTICE SYSTEM

### 'I was angry'

DF was placed in foster care in Darwin with his siblings immediately after his removal at age 11. DF's expectation was that he would be in care for three months. He gave evidence to the Commission that he found out that he would be staying in care long-term when he saw the carer's files.

*'I found out for myself ... I saw the files from one of my carers and it had the ... plans for what they were going to do. No one told me about this. I never had a lawyer or anyone explain anything about that. They did it all behind my back'.<sup>1216</sup>*

DF recalls that sometime later he and his siblings were sat down and told by a caseworker that they were going to be in care until turning 18. He gave evidence to the Commission:

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*'My [siblings] started crying. I was angry. I asked them "Why?" but the caseworker didn't say anything else. They just said, "Be good and you might go back to Mum". So for a while we were really good, but nothing happened. Then we all started running amok. Arguing, breaking things. We thought they would get sick of us and we could get back home. It didn't work though, they just ignored us.'*<sup>1217</sup>

That year, while DF was still 11, he wrote notes while he was at school that he wanted to kill himself.<sup>1218</sup> DF received no counselling or therapeutic support. DF's caseworker went to Therapeutic Services to discuss a referral for him.<sup>1219</sup> She was informed that DF would not be put on the waiting list for Therapeutic Services until a long term protection order was in place.<sup>1220</sup> The caseworker was concerned about the delay, noting that this may mean DF would be in care for five months without receiving any therapeutic intervention.<sup>1221</sup> DF saw a psychologist at school who noted in a phone call with DCF that she was happy to keep seeing DF but her role was not designed for long term intervention and DCF would need to make alternative arrangements.<sup>1222</sup> DF's first appointment with Therapeutic Services was scheduled the following year and did not start counselling sessions for a further four months.<sup>1223</sup> He then saw a therapist weekly for the next year.<sup>1224</sup>

### ***'After a while I got into trouble'***

When DF was 12 and in care he started hanging out at the shopping centre with a group of boys and smoking cannabis. From that point, he rarely went back to his placement. DF told the Commission:

*'I did not want to go back to [my placement]. I did not see any reason for me to be in welfare. I should have been with my Mum and I didn't think that they would help me get back to her. I was sent to a new carer ... but I left there. I did not have anywhere to live. I wanted to find Mum and live with her again.'*<sup>1225</sup>

DF went missing for periods of up to three weeks during that year.<sup>1226</sup> He told the Commission he and a few friends would go to a particular house and use drugs. DF would stay there about four nights a week. Other times *'I would just wander the streets all night if I didn't have anywhere to go. I was scared.'*<sup>1227</sup> DF recalls stealing to get money for drugs.<sup>1228</sup> He told the Commission that he would steal cars to drive to his mother. Many times he would *'get into police chases and have to ditch the cars and run.'*<sup>1229</sup>

DCF received a number of reports of DF absconding but it appears that usually the only action DCF and/or DF's carers would take to try to find him would be to notify police.<sup>1230</sup> DF told the Commission that:

*'No one from DCF made any contact with me during that time. They could have done better to try and find me. They could have tried to get the police to find me. My friends knew where I was. They could have asked them. I felt unwanted.'*<sup>1231</sup>

After returning to his placement briefly, DF was seen by a Volatile Substance Abuse nurse and admitted he had been sniffing. The nurse notes that *'brief intervention and education was delivered'* to DF and his carer.<sup>1232</sup>

Later that year, DF was picked up by DCF at the police watch house and refused to return to

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his placement. He threatened to stab himself and burn down his foster carer's home if forced to return.<sup>1233</sup> He was taken to hospital and had a mental health assessment before being taken to a new placement where he quickly absconded again.<sup>1234</sup> On the way to the hospital he disclosed that he had previously attempted suicide at his placement and was not taken to see a doctor after that incident.<sup>1235</sup>

A case planning meeting at DCF a month later noted that DF had been absconding from his placement for significant periods (up to four weeks) and sustained injuries while he was away from his placement, including lacerations on his arms. The notes record that that a referral had been made to mental health services *'but it is very difficult to get him to an appointment when he cannot be located.'*<sup>1236</sup> DCF staff were concerned for DF's safety and on closer inspection of his file noted that they could not find any record of incident forms being submitted or any record of face-to-face contact between DF's case manager and DF for the previous year.<sup>1237</sup>

Around this time DE heard that DF had been absconding and was living on the streets. She did some research and made a phone call, and found out where DF was and that he was doing drugs and was in a bad way.<sup>1238</sup> *'I made the decision that if [Territory Families] can't look after him then he has to be with me to look after him.'*<sup>1239</sup> DE drove to Darwin and brought DF back home with her. DF was underweight, he had infected cockroach bites all over his body, there were indications he had taken drugs and he told his mother that while he was on the streets he had been assaulted.<sup>1240</sup> DE sought a psychiatric assessment for DF and a review of his ADHD. DF had not received medication for his ADHD for the past 12 months.<sup>1241</sup>

### ***'Mum didn't get much help'***

DF said of living with his mother and siblings *'I was happy that I was going to live with Mum again, it was way better than welfare. I was around people who actually cared about me, family.'*<sup>1242</sup> Despite being in DCF care, DCF agreed that DF could stay with his mother.<sup>1243</sup> One document noted that his DCF case worker confirmed that he was self-placing with his mother but they were monitoring the situation and taking it week by week.<sup>1244</sup>

DE recalls that *'[i]t wasn't long before [DF's] behaviour had a bad effect on the household.'*<sup>1245</sup> DF was violent. He stabbed the walls with knives, stabbed his younger brother's baby bag and DE was worried for the safety of her younger children.<sup>1246</sup> DF told the Commission *'I was coming down from some heavy drugs at that time. I was making threats and always angry.'*<sup>1247</sup> DCF received notifications about DF's behaviour, including from the police.<sup>1248</sup> Progress notes record that DE acted appropriately by placing boundaries on DF and calling the police. One DCF employee noted *'I thought when talking to Mum that she had a good way towards dealing with [DF].'*<sup>1249</sup>

The notes of a case planning meeting to discuss DF's escalating behavioural issues at home stated that the placement with his mother was not approved by DCF but that they were monitoring the situation because *'at least they now know where he is.'*<sup>1250</sup> The notes also record that DE was cooperating with DCF and *'had some good insights into [DF's] situation and behaviours – the case manager has been surprised by her skills.'*<sup>1251</sup> DCF recognised that DE needed a lot of support and noted she was receiving support from a local NGO.<sup>1252</sup> An appointment was made for DF to see a psychiatrist, his clothes were delivered from his former carer and it was agreed DF would be enrolled in the local high school.<sup>1253</sup> DF's recollection is that he *'saw one counsellor and that was it.'*<sup>1254</sup>



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Initially DF had a good caseworker. DE spoke to DF's case worker about her difficulties managing DF's challenging behaviour and the case worker came to help in some instances where DF's behaviour escalated.<sup>1255</sup> DE found that DF's case worker understood the family's circumstances. *'He got the whole thing and he got my past and he was not judgmental.'*<sup>1256</sup> DE said that the worker cared about DF and *'he doesn't usually get that at all from his case workers'*, but the caseworker left DCF a short time later.<sup>1257</sup> While talking to the case worker helped DE, she felt she did not receive the support she needed from DCF during this time.<sup>1258</sup>

Two months later, after an incident where DF was being abusive, DE told a DCF caseworker that she could not manage DF anymore while also caring for her other children.<sup>1259</sup> The placement request form notes that it was preferable that DF be placed in the same town as his family as DF had stated that if he was placed in Darwin, he would run away, take drugs and steal cars. The form also stated that DF needed a carer who is exceptionally patient and supportive and has a good understanding of how trauma affects children and their brain development.<sup>1260</sup> DCF could not find a suitable placement close to home and DE was transferred to a new placement in Darwin.<sup>1261</sup>

After an initial period of stability, DF started to abscond again.<sup>1262</sup> That year, when DF was 13, DCF decided to seek to retain responsibility for DF until he was 18.<sup>1263</sup> He was missing from his placement at the time the arrangement came into effect.<sup>1264</sup>

## DF'S TIME IN RESICARE

### *'The kids that lived there were bad influences on me'*

DF's next placement was in residential care with a non-government organisation.<sup>1265</sup> He told the Commission that *'the kids that lived there were bad influences on me.'*<sup>1266</sup> He was still regularly absconding from his placement,<sup>1267</sup> and he was arrested for stealing and an assault on his carers.<sup>1268</sup> At this placement DF engaged in sniffing aerosols with other children at the house. DF told the Commission:

*'The carers must have known we were doing it. There were empty cans lying around everywhere. They never tried to do anything about it. I think DCF would have known too. DCF asked me if I was doing it and I told them "no".'*<sup>1269</sup>

DCF were aware DF was sniffing and DF was taken to hospital multiple times.<sup>1270</sup> DCF were also aware that staff at DF's residential care placement had no training in volatile substance abuse.<sup>1271</sup>

DCF referred DF to a number of volatile substance abuse support services.<sup>1272</sup> DF told his case manager that he was *'using because he wanted to get out of his placement and he was not coping.'*<sup>1273</sup> She encouraged him to attend counselling and to *'seek assistance in developing long term coping strategies.'*<sup>1274</sup> DF refused to attend a residential treatment program and on several occasions was unwilling to engage with other substance abuse programs and counselling services.<sup>1275</sup> Given his vulnerability more should have been done to understand why DF did not wish to engage with these services and to develop strategies to overcome these barriers and ensure DF received the support he needed. More recently DF has agreed to engage with a psychologist.<sup>1276</sup>

## ***'All I want to do is go back and live with Mum'***

DF was moved to another residential care home where he remains. DF is not happy in this placement.

DF told the Commission that *'the house doesn't have many rules. I'm supposed to be home by 10pm but if I'm not they don't do anything. Sometimes I will stay out all night.'*<sup>1277</sup> The carers notify Central Intake if DF does not return by 10pm and lodge a missing person's report with police if DF is not back within 24 hours. DF's perception that there are not many rules may relate to a lack of consequences for breaking the rules that do exist.<sup>1278</sup>

DF does not go to school now because he does not want to go to an alternative education institution and DF understands this to be his only option.<sup>1279</sup> He says this is not a good option for him because *'it was full of all the kids I used to do crime with.'*<sup>1280</sup> DCF documents show that some attempts have been made to engage DF in education and training. These attempts have been hampered by DF absconding and being remanded in custody.<sup>1281</sup> DF is outside the catchment area and not a candidate for some of the mainstream schools.<sup>1282</sup> In relation to one potential enrolment, DCF notes state *'much will be dependent on how [DF] presents himself ... Encourage him to explain why he wants to enrol.'*<sup>1283</sup>

DF reported abuse by carers in residential care on a number of occasions.<sup>1284</sup> DCF investigated the complaints but did not substantiate the allegations.<sup>1285</sup> Police investigated at least one incident and determined the evidence was insufficient for criminal prosecution and that the matter was a case management issue.<sup>1286</sup> One DCF record states that *'it appears allegations are behavioural in an attempt to move placements'*, and acknowledged that *'care staff do not always react in the most appropriate way to his behaviour'* but did not consider why DF wanted to leave the placement nor the underlying reasons for any challenging behaviour he displayed.<sup>1287</sup>

DCF records recognise that DF's current placement *'is not going well'* and that the organisation DF is placed with has requested *'consistent and comfortable family contact'* and *'wrap around support'* for DF.<sup>1288</sup> He told the Commission *'the biggest thing I want changed is that I want to go back to Mum.'*<sup>1289</sup>

## **DE'S DAUGHTER'S PLACEMENT IN CARE**

### ***'She was in care for about 6 months, she had a number of placements and carers'***

DF's placement with his family had a negative effect on DE's other children. DE's daughter, who was 10, started behaving aggressively, refusing to go to school and being verbally abusive to her mother.<sup>1290</sup> DE's daughter was conveyed to hospital to deal with possible mental health issues at that time.<sup>1291</sup> DCF notes that DE was being supported by NGOs with intense parenting support to help manage her daughter's behaviours.<sup>1292</sup>

A placement was sought for DE's daughter. DCF documents record that this was due to a *'breakdown in her relationship with her mother'* and *'an incident at the home address whereby [DE's daughter] exhibited some risky behaviours and threatened to harm her sibling.'*<sup>1293</sup> DE entered into a Temporary Placement Arrangement to admit her daughter to the temporary daily care and control of the CEO for two months. That arrangement provided that the parent may terminate the arrangement

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at any point in time and request the CEO returns the child to their care.<sup>1294</sup>

A short time later DCF made the decision to seek a long term protection order giving responsibility to the CEO until DE's daughter attained the age of 18.<sup>1295</sup> DE made it clear that she did not consent to her daughter being in care long-term and that she wanted her daughter back living with her.<sup>1296</sup>

DE's daughter was initially placed close to home and the first care plan provided for ongoing access visits with her mother but noted that DCF would seek an order until she is 18 years old.<sup>1297</sup> The box for reunification was ticked 'No.'<sup>1298</sup>

### ***'It was a high priority of mine to keep him away for the kids, and now he was back in contact'***

DE's ex-partner was very violent and it was a 'high priority' of DE's to keep him away from her children.<sup>1299</sup> The Essential Information Record for DE's daughter explicitly provided that she should not have any contact on social media or in any other way with her father.<sup>1300</sup> Despite this, while in care DE's daughter opened a Facebook account at one of her placements, and her father was able to use it to get in contact with her.<sup>1301</sup>

DE contacted DCF when she became aware of the account.<sup>1302</sup> DE's daughter's foster carer reported to DCF that she had not received a care plan and 'was not made aware of the risks' that the child's father posed.<sup>1303</sup> The Facebook account exposed DE and her children to the risk that DE's father could ascertain their whereabouts.<sup>1304</sup>

### ***DE's daughter 'requires a strong and stable placement'***

DCF identified that DE's daughter 'requires a strong and stable placement, with a carer that understands and is able to manage her negative behaviours positively and consistently.'<sup>1305</sup> However, such a placement proved difficult to find. DE's daughter was moved to three different placements in five months.<sup>1306</sup> A referral to in-care support states that her first two placements

*were characterised by a honeymoon period where [she] was compliant and engaging with the carers followed by periods of emotional dysregulation during which she became verbally aggressive and caused damage to property.*<sup>1307</sup>

DE's daughter was then placed in an emergency placement in Darwin due to a placement breakdown.<sup>1308</sup> In an email arranging the placement, a DCF employee noted that placing her in Darwin 'is probably not ideal' as the mother lives in another town.<sup>1309</sup> Her case manager immediately raised serious concerns about the suitability of this third placement, including whether her needs were beyond the capacity of the carer and whether she would lack adequate supervision.<sup>1310</sup> The out of home care division of DCF said that this was an emergency placement and all they had available at the time.<sup>1311</sup> One week later, an intake note records the worker's view that DE's daughter required consistent care and strong supervision, yet the placement she was in was frequented by 'delinquent and challenging youths either coming out or going into residential care.'<sup>1312</sup> The note raised 'serious concerns' about the placement for DE's daughter, including because she may be exposed to 'drug use/criminal behaviour' that would be detrimental to her mental health.<sup>1313</sup> A DCF file note records that the carer stated she had not been given a care plan for the child and that the case manager did not go into the house when she visited to drop in paperwork.<sup>1314</sup>

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DE's daughter was returned to DE around seven months after entering care. After her daughter was returned, DE moved interstate. DE said she *'didn't tell anyone where we were because I didn't want [Territory Families] to try to take my kids from me again'*.<sup>1315</sup> DE believes that moving around and moving schools while in care had a big impact on her daughter and she is now terrified of leaving the house and not having DE come and get her at the end of the day.<sup>1316</sup> DE feels her daughter *'is still worried that [Territory Families] will come and take her away from my care'*.<sup>1317</sup>

### **'They have each been damaged'**

DE accepts that some of her children *'have difficult behaviour'* but *'I don't feel like [Territory Families] realise the trauma we have been through and the efforts made by me'*.<sup>1318</sup>

*'I believe they have each been damaged while in the care of [Territory Families]. They don't even know me anymore. I live with that every day and it breaks my heart'*.<sup>1319</sup>

DE feels the damage may be irreparable: *'I don't think, in some ways, we will be able to recover'*.<sup>1320</sup> DE reflected that had she received *'meaningful support'* from Territory Families *'I believe things would have turned out differently for all of us'*.<sup>1321</sup>

## **SYSTEMIC ISSUES**

DE and DF's experiences illustrate the following systemic issues:

*Territory Families failed to support the basic needs of some families, including by failing to facilitate appropriate housing.*

When DE arrived in Darwin the criteria for social housing required DE live in the Northern Territory for three months prior to being eligible for social housing, there was *'an indefinite waiting period'* for a four bedroom house, and there was a 12 month waitlist for other priority housing.<sup>1322</sup>

Accommodation was provided at a caravan park cabin and at unpowered sites.<sup>1323</sup> There was little stability for DE and her children in their first year in the Northern Territory.<sup>1324</sup> DCF noted that while DE had the capacity to parent her children, without her housing being addressed there was a high risk of child protection issues developing.<sup>1325</sup>

*Territory Families did not adequately consider options for addressing the needs of some parents, such as parenting support, education and health needs, to allow children to remain with their family rather than being placed in care.*

DE sought respite for a period of three months with the help of an NGO. Rather than provide respite, DCF took several of her children into care. Later, DE agreed to a two month placement of her daughter again for the purposes of respite but subsequently Territory Families decided to seek a long term protection order over DE's daughter until the age of 18.

DE was offered inadequate support to manage the behaviour of the children to learn parenting techniques to assist to manage the children's behaviour.

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*Territory Families did not adequately communicate processes and decisions, nor the reasons for those decisions, to some families.*

A case plan prepared within a week of the children's removal referred to an expectation that the children would be reunited with their mother within a year. DF's expectation was that he would be in care for three months. He gave evidence to the Commission that he found out plans when he saw the carer's files. 'No one had told me about this. I never had a lawyer or anyone explain anything about that. They did it all behind my back.'<sup>1326</sup>

The children were told that they would be removed for at least two years by a new case manager when she met them for the first time.<sup>1327</sup> A case worker later told the children that they would remain in care until the age of 18.<sup>1328</sup>

The children did not understand why they were in care.

*Territory Families' care plans were inadequate in some cases.*

The case plan, as at about a week after the removal, noted that it was expected that the children would remain in care for one year. Within five months that had changed to removal for at least two years.<sup>1329</sup> The care plan was inadequate at the outset.

The care plans did not create a strategy that effectively addressed DF's absconding, offending, reunification, medical and/or psychiatric treatment, drug use or engagement in education.

*The caseloads of some Territory Families caseworkers and case managers were too high, with consequent effects upon quality and frequency of casework, responsiveness, interaction and support for some children and families.*

CCIS events do not record any face-to-face contact between DF's case manager and DF for a period of about one year.

Territory Families does not keep DE informed about her children who are in care and she feels as though she has been cut out of her children's lives.

Territory Families has not ensured that DF does not abscond from his placements and, when he has absconded, does little to locate him.

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*Some children in the care of Territory Families with complex needs and substance abuse problems did not have adequate access to, and support to access, counselling services and drug and alcohol rehabilitation, or, in the case of some parents, parenting support.*

When DF was 11 his caseworker went to Therapeutic Services to discuss a referral for him.<sup>1330</sup> DF was not eligible to be placed on the waiting list for Therapeutic Services until a long term protection order was in place.<sup>1331</sup>

DF saw a psychologist at school but the psychologist's role was not designed for long term intervention and DCF needed to make alternative arrangements.<sup>1332</sup>

DF's first appointment with Therapeutic Services was scheduled the following year and he did not start counselling sessions for a further four months.<sup>1333</sup>

DCF referred DF to a number of substance abuse support services. More should have been done sooner to ensure that DF received support for substance abuse and to understand and address the reasons that DF was reluctant to engage with substance abuse support services.

*Territory Families did not adequately address and implement plans for the reunification of families in some cases.*

A case plan prepared within a week of the removal of the children referred to an expectation that the children would be reunited with their mother within a year.

A case worker later told the children that they would remain in care until the age of 18.<sup>1334</sup> A care plan for DE's daughter was ticked 'no' for reunification.

Territory Families placed DF and DE's daughter away from where DE lived.

The evidence before the Commission suggests more should have been done to facilitate ongoing contact between DF and his mother and siblings as a step towards future reunification.



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# CASE STUDY: DB

The Commission has heard from children who experienced the child protection system in the Northern Territory. These included witness DB.

The Commission provided DB's witness statement to the Northern Territory Government and invited statements in response to certain identified systemic issues which are discussed below. The Commission requested and reviewed extensive child protection files relating to DB, received detailed notes in response to DB's statement from the Northern Territory Government and provided the Northern Territory Government an opportunity to comment on DB's story.

The Commission was unable in the limited time available to seek out case workers and the many other people with whom DB came in contact during her interaction with the child protection system. Nor was any statement volunteered by the Northern Territory Government in response.

This is DB's story based on the Commission's investigation, including her witness statement, and the extensive documents and notes identified above. Other people involved from time to time may have different recollections. In publishing this story, the Commission does not make any findings in relation to DB, but notes the systemic issues which her story highlights as identified at the end of DB's story below.

## EARLY INVOLVEMENT WITH TERRITORY FAMILIES

DB was born in Central Australia, but has lived in Darwin for much of her life. DB told the Commission that her family would go fishing, build tree houses in the bush and cook '*lots of bush tucker, like kangaroo, outside at home.*'<sup>1335</sup> She said there were '*heaps of people around us that were family or like family*' when she was young and she felt safe and happy in the neighbourhood where she grew up.<sup>1336</sup>

Territory Families records indicate that DB's family was well known to the Department because of multiple notifications as a result of her parents' alcohol abuse and her father's domestic violence.



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Early attempts were made to engage her family in a support program. When DB was aged six, the department conducted a child protection investigation in relation to DB and her siblings that found that DB and her siblings were emotionally abused due to exposure to parental domestic violence and neglect. As a result, DB's parents agreed to participate in a 12-week Intensive Family Preservation program, which they successfully completed.<sup>1337</sup>

When DB was aged eight, the department again attempted to engage her parents in a similar program, but without success. The department informed DB's parents that if they failed to participate, and the department received further notifications, that could result in a more serious intervention.<sup>1338</sup> A short time later, police went to DB's home and found the children asleep with no adults present.<sup>1339</sup> Around this time Territory Families noted that DB's family ties were strong with good attachments between DB's mother and her children, however, both parents had limited skills in managing the children.<sup>1340</sup> As a result of this incident, the department investigated and decided to apply for a 12-month protection order for DB.<sup>1341</sup> DB was subsequently taken into care, along with some of her siblings.

## REMOVAL

DB has a strong memory of the day Territory Families took her into care. She told the Commission that the police and Territory Families arrived while her mother was out shopping. The younger children were picked up and put in a car. When police tried to take DB, she attempted to run away but was eventually also placed in the car. She remembered her mother screaming, and that she was scared and crying. DB said, *'It was a terrible day and the worst experience of my life.'*<sup>1342</sup>

At the time, DB did not understand why she was removed from the care of her family and said she felt confused and upset.<sup>1343</sup> She told the Commission she now understands from Territory Families that she was removed because *'there was domestic violence [and] drug abuse, and that we were neglected and living in a dirty house.'*<sup>1344</sup>

DB recalled her parents arguing but said arguments took place outside the house when the kids had gone to bed and neither of them ever hit her. She did not think of the house as dirty and she felt safe there.<sup>1345</sup>

## PLACEMENT IN CARE

DB and some of her siblings were initially placed in foster care with a non-Aboriginal couple. DB told the Commission that she *'remembered crying and feeling really sad and angry a lot of the time in the first year [she] was there.'*<sup>1346</sup> DB and her siblings remained with the foster carers for about three years.

DB told the Commission that her foster carers were nice people, and that she was well fed and went to school. She said she did get *'used to it a little bit.'*<sup>1347</sup> However, she told the Commission, *'I still always felt homesick and unhappy. It was also so different to what I was used to and I never felt like I really belonged there.'*<sup>1348</sup>

DB told the Commission she remembered seeing someone from Territory Families the day after she arrived in foster care, but after that she only saw someone from Territory Families when they took her

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to visit her parents.<sup>1349</sup> DB said that initially she saw her parents often but eventually her Dad stopped attending visits.<sup>1350</sup> Each visit was supervised by Territory Families, according to an agreement between Territory Families, the children and DB's mother.<sup>1351</sup> Over the next 12 months, case worker visits to DB at her foster home declined. Around this time, two substitute care plans recorded only two home visits and all other sightings of DB were made either during access visits or transport to appointments. One case plan required that the case manager increase visits to DB's foster home.<sup>1352</sup>

About three months after DB was taken into care, Territory Families attempted to involve her in a therapeutic program, which she engaged in on and off for the next three years. The first record of DB attending therapeutic support is some five months after being taken into care.<sup>1353</sup> After this time, DB was referred to various services, but she disengaged from them.<sup>1354</sup>

About two years into the placement, the carer advised Territory Families that DB had ongoing behavioural issues, refusing to comply with reasonable directions and running away for brief periods. The carer said she needed help to develop strategies to manage these behaviours.<sup>1355</sup>

After about three years the placement ended because the foster carer had to care for a family member. DB and her siblings were placed with a new foster carer. DB told the Commission that this placement was very different from her first placement and that her carer often 'seemed stressed and angry'.<sup>1356</sup> After about two months, DB began absconding from this placement, running away to her mother's house. Following one occasion when DB absconded, the foster carer decided she was no longer able to care for DB but could continue caring for her siblings.<sup>1357</sup> DB said this 'really hurt me because I felt that I was responsible for those little ones and I was really close to them'.<sup>1358</sup>

DB's anger towards Territory Families and its staff intensified from this point. She said,

*'I already hated DCF for taking me away from my home and Mum and Dad. But after they separated me from my little brother and sisters, I got even more angry with them and wanted to fight back against them and the whole system. I didn't listen to anything that DCF or anyone else wanted me to do after that.'*<sup>1359</sup>

A new care plan was prepared about two weeks after DB left this placement. It recorded that DB had been located at the home of an extended family member. It was agreed DB would remain there on a trial basis, pending a kinship assessment. However, Territory Families' progress notes indicate that before finalising the care plan, the Department became aware that the family member had indicated they could not continue looking after DB. Shortly after, DB absconded back to her mother's house. DB's care plan was not updated to reflect that change in circumstance. It was not reviewed for another 12 months, in breach of Territory Families policy.<sup>1360</sup>

As DB had self-placed with her mother and in light of her frequent absconding, Territory Families decided to trial DB living with her mother. Territory Families entered into an agreement with DB's mother about the measures DB's mother needed to take and the support the Department would provide. It noted that failing to meet the conditions of the agreement could result in the removal of DB from her mother's care.<sup>1361</sup> About two months later, the Department decided to remove DB as her mother continued to drink excessively and leave DB unattended.<sup>1362</sup> DB had also stopped attending school. She was approximately 11 years of age at the time.

DB continued to evade Territory Families and the police. They were unable to take her to the new

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placement for months. A Placement Request Form, completed about five months after DB self-placed with her mother, sought a one-on-one placement for DB and recorded that the Department decided to apply for a protection order for DB until she turned 18.<sup>1363</sup>

A few months later, a meeting was arranged to identify a plan to manage DB's behaviours to ensure her safety given her frequent absconding. DB acknowledged to Territory Families that when she thought the police and the Department were looking for her, she would leave her mother's address and seek the company of her peers, placing her at risk of harm. At the time of this meeting, DB was refusing to engage with her case manager, other professionals, her placement and any form of education.<sup>1364</sup>

DB told the Commission that over the next few years she had a number of different placements but always ran away to her mother. DB said *'it was great when she was back with her'* mother, who was not drinking as much at this time.<sup>1365</sup> She said she told the Department:

*'[T]hat I wouldn't stay in any family homes. I hated it there, even if the family was nice. Because they weren't the family I grew up with, I always felt like the odd one out in the house and I didn't like that feeling. They were not related to me. They treated me differently and I didn't belong there.'*<sup>1366</sup>

Many of DB's placements in these years were in residential group homes. DB said that while she found these homes boring, they were better than family homes because she *'felt less trapped and suffocated'*, and *'didn't have to worry about being the odd one out'*.<sup>1367</sup>

DB told the Commission:

*'Some of the workers at the residential homes were good and some were bad. The bad ones would get cheeky with me by teasing me or being sarcastic. If I got upset the bad ones would laugh at me and that made me more upset. There were not many of them who I felt I could really talk to about things or who I felt understood me. I would get angry if I felt that they were not listening to how I felt about things and this was most of the time. The workers there were always changing too.'*<sup>1368</sup>

DB also said to the Commission:

*'A lot of the workers were quick to call the police on me. If I got upset and threw or pushed stuff around they would say, "If you don't calm down we're calling police". Sometimes they just called the police straight away without any warning. Sometimes I'd run away to avoid getting arrested by the police.'*<sup>1369</sup>

DB recalled that she did have a *'couple of good caseworkers over the years'*.<sup>1370</sup> She remembered three caseworkers with whom she had a good relationship, but that those relationships were short lived. DB said her best case worker was an Aboriginal woman who understood and listened to her, but she was not with her for long and DB was really angry when she was assigned a new case worker. DB said *'the problem was that the good ones wouldn't last'*, and each time she got a new case worker, she would have to start all over again.<sup>1371</sup>

DB told the Commission she had been in more than 10 different placements since she entered

care.<sup>1372</sup> A Territory Families' note recorded that DB had struggled to obtain and sustain a stable placement since her initial placement ended and that she had moved placements on 39 occasions, including 13 placements at residential facilities and nine in foster care or purchased home-based care placements.<sup>1373</sup>

## ENTRY INTO THE YOUTH JUSTICE SYSTEM

DB first got in trouble with the police when she was aged about 12. At the time, she was in care and had befriended some older children. These children were stealing and breaking into people's homes, and DB initially took the role of 'the lookout'.<sup>1374</sup> DB said that when she was with these children, she stopped feeling unhappy, 'trapped and suffocated' all the time.<sup>1375</sup> It was around this time that she lost interest in school and found it harder to keep up with the work.<sup>1376</sup>

DB entered the former Don Dale Youth Detention Centre for the first time during her early teens. Over the next three years, DB was frequently 'in and out' of detention.<sup>1377</sup> She said she was frequently charged with breaching bail conditions when she was in residential care homes. She thought this was wrong because the breaches were for small matters and she 'hadn't committed any new offences'.<sup>1378</sup> On some occasions, she was also charged with assault after carers called the police. DB said:

*'All of these things were small things in my mind and I never wanted to hurt anyone. I was just feeling really angry and upset at the time. None of the workers ever spent much time or effort trying to calm me down...'*<sup>1379</sup>

*When I got upset I don't remember any workers ever asking me if I wanted to talk to some family or to a counsellor...'*<sup>1380</sup>

*I knew that the workers would call the police on me for any little thing and it got to a point where I just didn't care. It didn't make me want to behave any better. It made me worse. I'd only have to walk out the door sometimes and they would be on the phone to the police.'*<sup>1381</sup>

DB told the Commission that while detention 'wasn't a great place', 'a lot of the time it actually felt better than being in DCF care outside'.<sup>1382</sup> DB said she got used to going to Don Dale Youth Detention Centre.<sup>1383</sup> She had disengaged from the education system and only attended school when she was in detention.<sup>1384</sup>

On one occasion following her release, DB was put in a kinship placement with a family member. She said that while it was a good placement, she missed her friends and family in Darwin and absconded to go back there.<sup>1385</sup> On another occasion, DB said that when she was released from detention, she was placed in a residential care home with only boys as there were no other placements available. She said that she initially refused to be there but she got used to it. However, she was moved when they all started 'being naughty'.<sup>1386</sup>

DB said:

*'Each time I came out of Don Dale, I felt angrier. This was mainly because of the way some of the [youth justice officers] treated and talked [to] us. Just like the police, some of them would be sarcastic, bullying, cheeky and disrespectful. It made me feel no good.'*<sup>1387</sup>

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DB realised she was pregnant when she was in detention. She told the Commission that she felt scared and confused, and did not want anyone to know.<sup>1388</sup> Early in her pregnancy, she said she felt *'a little bit of pressure'* to have a termination.<sup>1389</sup> While no one said this directly, according to DB, Territory Families' staff *'weren't saying anything positive about having a baby and how I could be supported'*.<sup>1390</sup> DB felt pressured to make a decision as *'time was running out'*.<sup>1391</sup> DB decided to keep the baby.<sup>1392</sup>

When DB was released from detention while pregnant, she was placed in a specialist residential home, which she described as her best placement.<sup>1393</sup> DB said it was a nice place that felt like it was her home, which was something she had rarely felt.<sup>1394</sup> DB also praised the staff, saying they listened to her and she trusted them.<sup>1395</sup> Since then, DB's child is no longer in her care and is now living with a family member. A Territory Families document recorded that *'since the birth of her [child], [DB] has made significant positive changes in her lifestyle'*.<sup>1396</sup>

A Territory Families Essential Information Record prepared when DB was aged 16 noted that no arrangements were in place for DB to have contact with her family.<sup>1397</sup> It also noted that DB herself facilitated contact with family members.<sup>1398</sup> Around this time, the record noted that DB also said *'she would like to have more contact with her younger siblings who are also in Territory Families care'*.<sup>1399</sup>

The Department's records indicate that a genogram was not prepared in relation to DB in the nine years since she entered care. Numerous care plans listed the preparation of a genogram as a priority and noted that DB has a large extended family network. DB's first care plan, which was prepared 10 weeks after she first entered care, recorded that a copy of a genogram would be provided and explained to the carer. Subsequent care plans identified that her file did not include a genogram. Each of DB's three most recent care plans recorded that a genogram and family tree would be developed, with the two most recent plans recording that this was to occur within one month and the other recording that this was to occur within a three-month period.<sup>1400</sup>

At the time of providing her statement to the Commission, DB was attending school and said that she was committed to finishing Year 12.<sup>1401</sup> DB said that Territory Families still tries to stop her from staying with her mother. While she acknowledged that her mother has problems, DB said, *'she is still my mum and I like being there and feel safe there'*.<sup>1402</sup>

Looking to the future, DB told the Commission that she *'can't bear the thought'* of her child being in the care of Territory Families:

*'I don't want [my child] to feel the way I did when I was growing up; always feeling like the odd one out and not having a real family that loves you. Even in the nice family homes you are still treated differently than the rest of the family and I always noticed and felt that. [My child] is well looked after and loved by me and the rest of his family.'*<sup>1403</sup>

## I want there to be a better system

*I made this statement to the Royal Commission because I want there to be a better system so that other kids don't have to deal with the pain that I felt and still feel. I don't think kids should ever be taken away from family. I can understand that there might be times when the home is not safe, but there is usually other family that can step in.<sup>1404</sup>*

*I am still very angry and upset at DCF. I cannot stop that feeling. I understand that they have supported me in some ways. But I also feel that they have let me down a lot. They have never helped me [with] how I have been feeling since I was taken from my family.<sup>1405</sup>*

*People don't understand what it does to you when you're a kid and all you wanna do is be with your family and not a bunch of strangers. I know how I felt growing up without my parents and I don't want my [child] to feel like that. I want [my child] to always feel loved and wanted. No carer ever made me feel like that.<sup>1406</sup>*

Vulnerable witness DB

## SYSTEMIC ISSUES

DB's experience in care illustrates the following systemic issues:

*Territory Families failed to provide adequate oversight of residential care placements for some children placed with non-government agencies.*

Shortly after DB absconded back to her mother's house after her second foster care placement, DB's care plan was not updated to reflect that change in circumstances or reviewed for another 12 months.<sup>1407</sup> This may have compromised the oversight of DB's case as this key document became inaccurate.

*Territory Families' use of residential care in group homes for some children under child protection orders was detrimental to their development and well-being and was not in their best interests.*

DB was unsuccessfully placed in numerous group homes. DB gave evidence that she preferred being in residential care to foster care, however, this was because she didn't feel like the 'odd one out' in residential care.<sup>1408</sup> DB frequently absconded from residential care.

DB does not remember any staff at the residential houses asking her if she wanted to talk when she was upset. She said that 'none of the workers ever spent much time or effort trying to calm me down'.<sup>1409</sup> Often when her behaviour escalated they would simply call the police, which made her feel worse and less willing to change her behaviour.<sup>1410</sup>

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Her placement instability contributed to DB disengaging from any form of education for long periods since the age of 11. At times, the only schooling she received was when she was in detention.

DB had her first, and then escalating, involvement with the criminal justice system while placed in residential care. While in care, when she was about 12 years old, DB befriended some older children with whom she started engaging in criminal activity. That started her engagement with the criminal justice system and led to her being 'in and out' of the Don Dale Youth Detention Centre. That suggests that the Department failed to adequately support DB in care to avoid her coming into contact with people and pathways likely to lead to the youth justice system.

These experiences suggest that DB's placement in residential care was detrimental to her development and wellbeing and was not in her best interests.

*Territory Families did not adequately address the issues that resulted in some children self-placing when in care.*

DB frequently absconded from residential care and in particular to her mother. DB's continued absconding and self-placing suggests that any efforts that were made by DCF and residential care facility staff members did not adequately address the underlying reasons for DB's absconding, particularly her desire to be with her mother and siblings.<sup>1411</sup>

*Territory Families' response to some children unwilling to engage with services and education, in particular to consider and address the underlying reasons for any lack of engagement, was inadequate in some cases.*

DB consistently refused to engage with services and education, suggesting that Territory Families failed to consider and address the underlying reasons for any lack of engagement, particularly her need to be with her family.

*Territory Families' case workers and case managers assigned to children and families changed frequently in some cases. This impacted on the consistency and quality of relationships, the frequency and quality of casework and the overall support provided for some children and families.*

DB's case workers changed frequently and her evidence is that impacted on the consistency and quality of relationship with her case workers. This suggests that the quality of support provided to DB was less than optimal.<sup>1412</sup>





## ENDNOTES

- <sup>1</sup> Exh.546.008, DG Case Study Tender Bundle, Tab 8, tendered 22 June 2017, p. 2.
- <sup>2</sup> Exh.546.134, DG Case Study Tender Bundle, Tab 134, tendered 22 June 2017, p. 13.
- <sup>3</sup> Exh.546.134, DG Case Study Tender Bundle, Tab 134, tendered 22 June 2017, p. 13.
- <sup>4</sup> Closed court transcript, DG, 22 June 2017, p. 3: line 43 – p. 4: line 24.
- <sup>5</sup> Exh.546.101, DG Case Study Tender Bundle, Tab 101, tendered 22 June 2017, p. 3.
- <sup>6</sup> Exh.546.101, DG Case Study Tender Bundle, Tab 101, tendered 22 June 2017, p. 3.
- <sup>7</sup> Exh.546.101, DG Case Study Tender Bundle, Tab 101, tendered 22 June 2017, pp. 3-4.
- <sup>8</sup> Exh.546.101, DG Case Study Tender Bundle, Tab 101, tendered 22 June 2017, p. 4.
- <sup>9</sup> Exh.546.153, DG Case Study Tender Bundle, Tab 153, tendered 22 June 2017, p. 9.
- <sup>10</sup> Exh.546.008, DG Case Study Tender Bundle, Tab 8, tendered 22 June 2017, p. 2; Exh.546.082, DG Case Study Tender Bundle, Tab 82, tendered 22 June 2017, p. 4.
- <sup>11</sup> Exh.951.013, DG Case Study Supplementary Tender Bundle, Tab 13, tendered 27 October 2017, p. 1.
- <sup>12</sup> Exh.546.038, DG Case Study Tender Bundle, Tab 38, tendered 22 June 2017, p. 2; Exh.546.153, DG Case Study Tender Bundle, Tab 153, tendered 22 June 2017, pp. 6-7.
- <sup>13</sup> Exh.546.035, DG Case Study Tender Bundle, Tab 35, tendered 22 June 2017, p. 2; Exh.546.181, DG Case Study Tender Bundle, Tab 181, tendered 22 June 2017, p.19.
- <sup>14</sup> Exh.546.126, DG Case Study Tender Bundle, Tab 126, tendered 22 June 2017, p. 2.
- <sup>15</sup> Exh.546.138, DG Case Study Tender Bundle, Tab 138, p. 6.
- <sup>16</sup> Exh.546.038, DG Case Study Tender Bundle, Tab 38, tendered 22 June 2017, p. 2.
- <sup>17</sup> Closed court transcript, DH, 22 June 2017, p. 11: lines 15-20.
- <sup>18</sup> Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 12.
- <sup>19</sup> Exh.546.008, DG Case Study Tender Bundle, Tab 8, tendered 22 June 2017, p. 1.
- <sup>20</sup> Exh.546.037, DG Case Study Tender Bundle, Tab 37, tendered 22 June 2017, p. 9. See also Exh.546.038, DG Case Study Tender Bundle, Tab 38, tendered 22 June 2017, p. 10.
- <sup>21</sup> Exh.546.037, DG Case Study Tender Bundle, Tab 37, tendered 22 June 2017, p. 8. See also Exh.546.038, DG Case Study Tender Bundle, Tab 38, tendered 22 June 2017, p. 9.
- <sup>22</sup> Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 12.
- <sup>23</sup> Exh.546.030, DG Case Study Tender Bundle, Tab 30, tendered 22 June 2017, p. 2; 10.
- <sup>24</sup> Exh.546.040, DG Case Study Tender Bundle, Tab 40, tendered 22 June 2017, p. 1.
- <sup>25</sup> Exh.546.040, DG Case Study Tender Bundle, Tab 40, tendered 22 June 2017, pp. 1-2.
- <sup>26</sup> Exh.546.137, DG Case Study Tender Bundle, Tab 137, tendered 22 June 2017, p. 4.
- <sup>27</sup> Submission, Northern Territory Government, 2 August 2017, p. 41.
- <sup>28</sup> Exh.951.029, DG Case Study Supplementary Tender Bundle, Tab 29, tendered 27 October 2017, p. 8.
- <sup>29</sup> Exh.951.024, DG Case Study Supplementary Tender Bundle, Tab 24, tendered 27 October 2017, p. 4.
- <sup>30</sup> Exh.951.027, DG Case Study Supplementary Tender Bundle, Tab 27, tendered 27 October 2017, p. 244.
- <sup>31</sup> Closed court transcript, DG, 22 June 2017, p. 4: lines 8-9.
- <sup>32</sup> Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, para. 40.
- <sup>33</sup> Exh.546.024, DG Case Study Tender Bundle, Tab 24, tendered 22 June 2017; Exh.951.006, DG Case Study Supplementary Tender Bundle, Tab 6, tendered 27 October 2017, p. 3.
- <sup>34</sup> Exh.546.135, DG Case Study Tender Bundle, Tab 135, tendered 22 June 2017, para. 12.
- <sup>35</sup> Exh.546.135, DG Case Study Tender Bundle, Tab 135, tendered 22 June 2017, para. 38.
- <sup>36</sup> Exh.546.135, DG Case Study Tender Bundle, Tab 135, tendered 22 June 2017, paras 22; 26; 32.
- <sup>37</sup> Exh.546.130, DG Case Study Tender Bundle, Tab 130, tendered 22 June 2017, p. 3.
- <sup>38</sup> Exh.546.017, DG Case Study Tender Bundle, Tab 17, tendered 22 June 2017, p. 6.
- <sup>39</sup> Submission, Northern Territory Government, 2 August 2017, pp. 2; 4-5.
- <sup>40</sup> Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 84.
- <sup>41</sup> Exh.546.003, DG Case Study Tender Bundle, Tab 3, tendered 22 June 2017, p. 2.
- <sup>42</sup> Exh.546.116, DG Case Study Tender Bundle, Tab 116, tendered 22 June 2017, p. 1.
- <sup>43</sup> Exh.546.023, DG Case Study Tender Bundle, Tab 23, tendered 22 June 2017, p. 7.
- <sup>44</sup> Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, paras 13; 15.
- <sup>45</sup> Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, paras 13-14.
- <sup>46</sup> Exh.546.116, DG Case Study Tender Bundle, Tab 116, tendered 22 June 2017, p. 5; Exh.546.134, DG Case Study Tender Bundle, Tab 134, pp. 12-16.
- <sup>47</sup> Exh.546.112, DG Case Study Tender Bundle, Tab 112, tendered 22 June 2017, p. 2.
- <sup>48</sup> Exh.546.167, DG Case Study Tender Bundle, Tab 167, tendered 22 June 2017, p. 2.
- <sup>49</sup> Exh.546.100, DG Case Study Tender Bundle, Tab 100, tendered 22 June 2017, p. 1.
- <sup>50</sup> Exh.546.137, DG Case Study Tender Bundle, Tab 137, tendered 22 June 2017, p. 3.
- <sup>51</sup> Exh.546.134, DG Case Study Tender Bundle, Tab 134, tendered 22 June 2017, p. 13; Exh.546.116, DG Case Study Tender Bundle, Tab 116, tendered 22 June 2017, p. 3.
- <sup>52</sup> Exh.546.134, DG Case Study Tender Bundle, Tab 134, tendered 22 June 2017, p. 14.
- <sup>53</sup> Exh.546.134, DG Case Study Tender Bundle, Tab 134, tendered 22 June 2017, p. 15.

54 Exh.546.137, DG Case Study Tender Bundle, Tab 137, tendered 22 June 2017, p. 7.  
55 Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, para. 89.  
56 Exh.546.133, DG Case Study Tender Bundle, Tab 133, tendered 22 June 2017, p. 2.  
57 Exh.546.134, DG Case Study Tender Bundle, Tab 134, tendered 22 June 2017, p. 13.  
58 Exh.546.123, DG Case Study Tender Bundle, Tab 123, tendered 22 June 2017, p. 1.  
59 See for example, Exh.546.135, DG Case Study Tender Bundle, Tab 135, tendered 22 June 2017, paras 22; 26; 32; Exh.546.146, DG Case Study Tender Bundle, Tab 146, tendered 22 June 2017, p. 1.  
60 Exh.546.131, DG Case Study Tender Bundle, Tab 131, tendered 22 June 2017, p. 14.  
61 Exh.546.120, DG Case Study Tender Bundle, Tab 120, tendered 22 June 2017, p. 1.  
62 Exh.546.022, DG Case Study Tender Bundle, Tab 22, tendered 22 June 2017, p. 1.  
63 Exh.546.083, DG Case Study Tender Bundle, Tab 83, tendered 22 June 2017, p. 2.  
64 Exh.546.134, DG Case Study Tender Bundle, Tab 134, tendered 22 June 2017, p.16.  
65 Exh.546.134, DG Case Study Tender Bundle, Tab 134, tendered 22 June 2017, p. 15.  
66 Exh.546.134, DG Case Study Tender Bundle, Tab 134, tendered 22 June 2017, p. 15.  
67 Exh.546.134, DG Case Study Tender Bundle, Tab 134, tendered 22 June 2017, p.16.  
68 Exh.546.008, DG Case Study Tender Bundle, Tab 8, tendered 22 June 2017, p. 2.  
69 Exh.546.138, DG Case Study Tender Bundle, Tab 138, tendered 22 June 2017, p. 2.  
70 Exh.546.167, DG Case Study Tender Bundle, Tab 167, tendered 22 June 2017, p. 2.  
71 Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, paras 98; 103.  
72 Exh.546.139, DG Case Study Tender Bundle, Tab 139, tendered 22 June 2017, p. 1.  
73 Exh.546.139, DG Case Study Tender Bundle, Tab 139, tendered 22 June 2017, p. 2.  
74 Exh.546.179, DG Case Study Tender Bundle, Tab 179, tendered 22 June 2017, p. 17.  
75 Exh.546.033, DG Case Study Tender Bundle, Tab 33, tendered 22 June 2017, p. 4.  
76 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 40.  
77 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 38.  
78 Exh.546.046, DG Case Study Tender Bundle, Tab 46, tendered 22 June 2017, p. 4.  
79 Exh.951.002, DG Case Study Supplementary Tender Bundle, Tab 2, tendered 27 October 2017, p. 1.  
80 Exh.951.020, DG Case Study Supplementary Tender Bundle, Tab 20, tendered 27 October 2017, p. 5.  
81 Exh.951.018, DG Case Study Supplementary Tender Bundle, Tab 18, tendered 27 October 2017, p. 1116.  
82 Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, para. 258.  
83 Closed court transcript, DG, 22 June 2017, p. 4: line 27.  
84 Exh.546.047, DG Case Study Tender Bundle, Tab 47, tendered 22 June 2017, p. 2.  
85 Exh.546.047, DG Case Study Tender Bundle, Tab 47, tendered 22 June 2017, p. 2.  
86 Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, paras 57; 123.  
87 Exh.546.233, DG Case Study Tender Bundle, Tab 233, tendered 22 June 2017, p. 21.  
88 Closed court transcript, DG, 22 June 2017, p. 4: lines 41-43.  
89 Exh.951.028, DG Case Study Supplementary Tender Bundle, Tab 28, tendered 27 October 2017, pp. 1-2.  
90 Exh.951.022, DG Case Study Supplementary Tender Bundle, Tab 22, tendered 27 October 2017, p. 4.  
91 Exh.951.023, DG Case Study Supplementary Tender Bundle, Tab 23, tendered 27 October 2017.  
92 See for example, Exh.546.044, DG Case Study Tender Bundle, Tab 44, tendered 22 June 2017; Exh.546.046, DG Case Study Tender Bundle, Tab 46, tendered 22 June 2017; Exh.546.051, DG Case Study Tender Bundle, Tab 51, tendered 22 June 2017; Exh.546.068, DG Case Study Tender Bundle, Tab 68, tendered 22 June 2017. Some Reportable Incident Forms refer to an immediate step such as calling an ambulance but no longer term strategy to address the problem. See for example, Exh.546.067, DG Case Study Tender Bundle, Tab 67, tendered 22 June 2017 p. 2.  
93 Exh.546.045, DG Case Study Tender Bundle, Tab 45, tendered 22 June 2017, p. 2.  
94 Exh.546.093, DG Case Study Tender Bundle, Tab 93, tendered 22 June 2017.  
95 Exh.546.184, DG Case Study Tender Bundle, Tab 184, tendered 22 June 2017, p. 1.  
96 Exh.546.089, DG Case Study Tender Bundle, Tab 89, tendered 22 June 2017, p. 2.  
97 Exh.546.167, DG Case Study Tender Bundle, Tab 167, tendered 22 June 2017, p. 4.  
98 Exh.546.167, DG Case Study Tender Bundle, Tab 167, tendered 22 June 2017, p. 5.  
99 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 63.  
100 Exh.546.171, DG Case Study Tender Bundle, Tab 171, tendered 22 June 2017, p. 1.  
101 Exh.546.266, DG Case Study Tender Bundle, Tab 226, tendered 22 June 2017, p. 5.  
102 Exh.546.053, DG Case Study Tender Bundle, Tab 53, tendered 22 June 2017, p. 2.  
103 Exh.546.053, DG Case Study Tender Bundle, Tab 53, tendered 22 June 2017, p. 2.  
104 Exh.546.053, DG Case Study Tender Bundle, Tab 53, tendered 22 June 2017, p. 2.  
105 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, paras 63; 69.  
106 Exh.546.212, DG Case Study Tender Bundle, Tab 212, tendered 22 June 2017, p. 1.  
107 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 69.  
108 Exh.951.015, DG Case Study Supplementary Tender Bundle, Tab 15, tendered 27 October 2017, p. 205.  
109 Exh.546.187, DG Case Study Tender Bundle, Tab 187, tendered 22 June 2017, p. 1.

- 110 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 65.  
111 Closed court transcript, DH, 22 June 2017, p. 13: line 29.
- 112 Exh.951.007, DG Case Study Supplementary Tender Bundle, Tab 7, tendered 27 October 2017, p. 4.  
113 Exh.951.026, DG Case Study Supplementary Tender Bundle, Tab 26, tendered 27 October 2017, p. 49.  
114 Exh.951.025, DG Case Study Supplementary Tender Bundle, Tab 25, tendered 27 October 2017, p. 176.  
115 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 67.  
116 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 68.  
117 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 66.  
118 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, paras 66; 68.  
119 Closed court transcript, DH, 22 June 2017, p. 13: line 44.
- 120 Exh.546.238, DG Case Study Tender Bundle, Tab 238, tendered 22 June 2017, p. 9; Exh.546.050, DG Case Study Tender Bundle, Tab 50, tendered 22 June 2017, p. 4.  
121 Closed court transcript, DG, 22 June 2017, p. 4: line 27; lines 8-9; p. 9: lines 8-9.  
122 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 87.  
123 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 13.  
124 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 13.  
125 Closed court transcript, DH, 22 June 2017, p. 13: lines 18-26.  
126 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, pp. 24-25.  
127 Exh.546.009, DG Case Study Tender Bundle, Tab 9, tendered 22 June 2017, p. 4.  
128 Closed court transcript, DG, 22 June 2017, p. 4: lines 26-27.  
129 Closed court transcript, DG, 22 June 2017, p. 4: line 34.
- 130 Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, para. 86.  
131 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 41.  
132 Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, para. 87.  
133 Submission, Northern Territory Government, 2 August 2017, p. 17.  
134 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 52; para. 59.  
135 Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, paras 213-256.
- 136 Exh.951.003, DG Case Study Supplementary Tender Bundle, Tab 3, tendered 27 October 2017, p. 4.  
137 Exh.546.167, DG Case Study Tender Bundle, Tab 167, tendered 22 June 2017, p. 3.  
138 Exh.546.167, DG Case Study Tender Bundle, Tab 167, tendered 22 June 2017, p. 5  
139 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 52.  
140 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 53.  
141 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 49.
- 142 Exh.951.017, DG Case Study Supplementary Tender Bundle, Tab 17, tendered 27 October 2017, p. 1033.  
143 Exh.951.017, DG Case Study Supplementary Tender Bundle, Tab 17, tendered 27 October 2017, p. 1033.  
144 Exh.546.198, DG Case Study Tender Bundle, Tab 198, tendered 22 June 2017, p. 2.  
145 Exh.546.189, DG Case Study Tender Bundle, Tab 189, tendered 22 June 2017, p. 223.  
146 Exh.546.148, DG Case Study Tender Bundle, Tab 148, tendered 22 June 2017, p. 1.  
147 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 111.  
148 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 111.  
149 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 20.  
150 Closed court transcript, DG, 22 June 2017, p. 6: lines 26-27.  
151 Closed court transcript, DG, 22 June 2017, p. 6: lines 33-34.
- 152 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 21.  
153 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 21.  
154 Closed court transcript, DH, 22 June 2017, p. 14: lines 35-36.  
155 Closed court transcript, DH, 22 June 2017, p. 14: lines 36-38.  
156 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 88.  
157 Closed court transcript, DH, 22 June 2017, p. 15: lines 1-3.  
158 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 88.  
159 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 87.  
160 Closed court transcript, DH, 22 June 2017, p. 15: lines 6-7.  
161 Closed court transcript, DG, 22 June 2017, p. 5: lines 3-9.  
162 Closed court transcript, DG, 22 June 2017, p. 8: lines 30-33.
- 163 Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, paras 204-210.  
164 Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, para. 96.  
165 Exh.546.084, DG Case Study Tender Bundle, Tab 84, tendered 22 June 2017, p. 6.  
166 Exh.546.163, DG Case Study Tender Bundle, Tab 163, tendered 22 June 2017, p. 2.  
167 Exh.546.164, DG Case Study Tender Bundle, Tab 164, tendered 22 June 2017, p. 1.  
168 Exh.546.163, DG Case Study Tender Bundle, Tab 163, tendered 22 June 2017, p. 1.  
169 Exh.546.186, DG Case Study Tender Bundle, Tab 186, tendered 22 June 2017, p. 208.  
170 Exh.546.186, DG Case Study Tender Bundle, Tab 186, tendered 22 June 2017, p. 211.  
171 Exh.546.036, DG Case Study Tender Bundle, Tab 36, tendered 22 June 2017, p. 3.  
172 Exh.546.170, DG Case Study Tender Bundle, Tab 170, tendered 22 June 2017, p. 3.

- 173 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 35.  
174 Exh.546.198, DG Case Study Tender Bundle, Tab 198, tendered 22 June 2017, p. 2.  
175 Exh.546.202, DG Case Study Tender Bundle, Tab 202, tendered 22 June 2017, p. 55.  
176 Exh.546.202, DG Case Study Tender Bundle, Tab 202, tendered 22 June 2017, p. 53.  
177 Exh.546.203, DG Case Study Tender Bundle, Tab 203, tendered 22 June 2017, p. 62.  
178 Submission, Northern Territory Government, 2 August 2017, p. 56.  
179 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 8.  
180 Exh.546.101, DG Case Study Tender Bundle, Tab 101, tendered 22 June 2017, p. 1.  
181 Exh.546.101, DG Case Study Tender Bundle, Tab 101, tendered 22 June 2017, p. 2.  
182 Exh.546.101, DG Case Study Tender Bundle, Tab 101, tendered 22 June 2017, p. 2.  
183 Exh.546.101, DG Case Study Tender Bundle, Tab 101, tendered 22 June 2017, p. 2.  
184 Exh.546.101, DG Case Study Tender Bundle, Tab 101, tendered 22 June 2017, p. 2.  
185 Exh.546.101, DG Case Study Tender Bundle, Tab 101, tendered 22 June 2017, p. 3.  
186 Exh.546.101, DG Case Study Tender Bundle, Tab 101, tendered 22 June 2017, p. 2.  
187 Exh.546.101, DG Case Study Tender Bundle, Tab 101, tendered 22 June 2017, p. 2.  
188 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017.  
189 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 9.  
190 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 10.  
191 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 10.  
192 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 6.  
193 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 6.  
194 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 6.  
195 Exh.546.113, DG Case Study Tender Bundle, Tab 113, tendered 22 June 2017, p. 1,  
196 Exh.546.132, DG Case Study Tender Bundle, Tab 132, tendered 22 June 2017, p. 1.  
197 Exh.546.132, DG Case Study Tender Bundle, Tab 132, tendered 22 June 2017, p. 10.  
198 Exh.951.111, DG Case Study Supplementary Tender Bundle, Tab 11, tendered 27 October 2017, pp. 152-153.  
199 Closed court transcript, DH, 22 June 2017, p. 12: lines 19-20.  
200 Exh.546.225, DG Case Study Tender Bundle, Tab 225, tendered 22 June 2017, p. 6.  
201 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 11.  
202 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 75.  
203 Exh.951.016, DG Case Study Supplementary Tender Bundle, Tab 16, tendered 27 October 2017, p. 0378.  
204 Exh.951.005, DG Case Study Supplementary Tender Bundle, Tab 5, tendered 27 October 2017, p. 2.  
205 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 72.  
206 Exh.546.222, DG Case Study Tender Bundle, Tab 222, tendered 22 June 2017, p. 3; Exh.546.013 DG Case Study Tender Bundle,  
Tab 13, tendered 22 June 2017, p. 2; Exh.546.048, DG Case Study Tender Bundle, Tab 48, tendered 22 June 2017, p. 2.  
207 Exh.546.048, DG Case Study Tender Bundle, Tab 48, tendered 22 June 2017, p. 4.  
208 Exh.546.048, DG Case Study Tender Bundle, Tab 48, tendered 22 June 2017, p. 2.  
209 Exh.546.048, DG Case Study Tender Bundle, Tab 48, tendered 22 June 2017, p. 3.  
210 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 71.  
211 Exh.546.084, DG Case Study Tender Bundle, Tab 84, tendered 22 June 2017, p. 4.  
212 Exh.546.166, DG Case Study Tender Bundle, Tab 166, tendered 22 June 2017, p. 1.  
213 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 77.  
214 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 4.  
215 Exh.546.029, DG Case Study Tender Bundle, Tab 29, tendered 22 June 2017, p. 8.  
216 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 96.  
217 Exh.546.070, DG Case Study Tender Bundle, Tab 70, tendered 22 June 2017, p. 4.  
218 Exh.546.224, DG Case Study Tender Bundle, Tab 224, tendered 22 June 2017, p. 11.  
219 Exh.546.214, DG Case Study Tender Bundle, Tab 214, tendered 22 June 2017, p. 2.  
220 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 5.  
221 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 8.  
222 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 8.  
223 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, pp. 5; 8.  
224 Exh.546.086, DG Case Study Tender Bundle, Tab 86, tendered 22 June 2017, p. 86.  
225 Exh.546.086, DG Case Study Tender Bundle, Tab 86, tendered 22 June 2017, p. 81.  
226 Exh.546.086, DG Case Study Tender Bundle, Tab 86, tendered 22 June 2017, p. 84.  
227 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, pp. 5; 8.  
228 Closed court transcript, DG, 22 June 2017, p. 7: lines 24-25.  
229 Exh.951.004, DG Case Study Supplementary Tender Bundle, Tab 4, tendered 27 October 2017, p. 1  
230 Exh.546.096, DG Case Study Tender Bundle, Tab 96, tendered 22 June 2017, p. 3.  
231 Exh.546.207, DG Case Study Tender Bundle, Tab 207, tendered 22 June 2017, p. 1.  
232 Exh.951.021, DG Case Study Supplementary Tender Bundle, Tab 21, tendered 27 October 2017, p. 1.  
233 Closed court transcript, DG, 22 June 2017, p. 7: lines 26-27.  
234 Closed court transcript, DG, 22 June 2017, p. 7: lines 26-40.  
235 Closed court transcript, DG, 22 June 2017, p.7: lines 26-27.

- 236 Closed court transcript, DG, 22 June 2017, p. 9: lines 32-33.
- 237 Closed court transcript, DG, 22 June 2017, p. 7: lines 35-36; p. 9: lines 37-39.
- 238 Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, para. 118.
- 239 Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, paras 263, 264, 267, 269.
- 240 A reference to Territory Families in this chapter includes any previous agency, howsoever named.
- 241 Exh.546.017, DG Case Study Tender Bundle, Tab 17, tendered 22 June 2017, p. 6.
- 242 See for example, Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, pp. 24-25.
- 243 Exh.546.134, DG Case Study Tender Bundle, Tab 134, tendered 22 June 2017, p. 13.
- 244 Exh.546.120, DG Case Study Tender Bundle, Tab 120, tendered 22 June 2017, p. 1.
- 245 Exh.546.083, DG Case Study Tender Bundle, Tab 83, tendered 22 June 2017, p. 2.
- 246 Exh.546.132, DG Case Study Tender Bundle, Tab 132, tendered 22 June 2017, p. 1.
- 247 Exh.546.134, DG Case Study Tender Bundle, Tab 134, tendered 22 June 2017, pp. 15-16.
- 248 Exh.546.017, DG Case Study Tender Bundle, Tab 17, tendered 22 June 2017, p. 6.
- 249 Exh.546.033, DG Case Study Tender Bundle, Tab 33, tendered 22 June 2017, p. 4.
- 250 Exh.546.134, DG Case Study Tender Bundle, Tab 134, tendered 22 June 2017, p. 15; Exh.546.167, DG Case Study Tender Bundle, Tab 167, tendered 22 June 2017, p. 4.
- 251 Exh.546.101, DG Case Study Tender Bundle, Tab 101, tendered 22 June 2017, p. 2.
- 252 Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, paras 98; 103.
- 253 Closed court transcript, DG, 22 June 2017, p. 4: line 27; lines 8-9; p. 9: lines 8-9.
- 254 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, pp. 5; 8.
- 255 Closed court transcript, DG, 22 June 2017, p. 4: lines 8-9.
- 256 Closed court transcript, DG, 22 June 2017, p. 4: line 27; lines 8-9; p. 9: lines 8-9; 23-40.
- 257 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, pp. 5; 8.
- 258 Exh.546.086, DG Case Study Tender Bundle, Tab 86, tendered 22 June 2017, p. 84.
- 259 Exh.546.225, DG Case Study Tender Bundle, Tab 225, tendered 22 June 2017, p. 6.
- 260 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 11.
- 261 Exh.951.005, DG Case Study Supplementary Tender Bundle, Tab 5, tendered 27 October 2017, p. 2.
- 262 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 8.
- 263 Exh.546.101, DG Case Study Tender Bundle, Tab 101, tendered 22 June 2017, p. 2.
- 264 See for example, Exh.546.037, DG Case Study Tender Bundle, Tab 37, tendered 22 June 2017, p. 9. See also Exh.546.038, DG Case Study Tender Bundle, Tab 38, tendered 22 June 2017, p. 10.
- 265 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 12.
- 266 Exh.546.038, DG Case Study Tender Bundle, Tab 38, tendered 22 June 2017, p. 2; Exh.546.153, DG Case Study Tender Bundle, Tab 153, tendered 22 June 2017, pp. 6-7.
- 267 Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 13.
- 268 As noted above, DCF was aware that the school principal considered that DG did not fit in at the school. Exh.546.040, DG Case Study Tender Bundle, Tab 40, tendered 22 June 2017, pp. 1-2.
- 269 Exh.951.029, DG Case Study Supplementary Tender Bundle, Tab 29, tendered 27 October 2017, p. 8.
- 270 Exh.951.027, DG Case Study Supplementary Tender Bundle, Tab 27, tendered 27 October 2017, p. 244.
- 271 Closed court transcript, DG, 22 June 2017, p. 4: lines 8-9; p. 9: lines 32-33.
- 272 Exh.546.017, DG Case Study Tender Bundle, Tab 17, tendered 22 June 2017, p. 6.
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- 519 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 42.
- 520 Exh.479.012, Joint Case Management Meeting Minutes & Case Plan Pro Forma, tendered 1 June 2017, p. 2.
- 521 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 45.

522 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 45.  
523 Exh.479.016, Support Letter to attend Residential Program, tendered 1 June 2017, p. 1.  
524 Exh.479.016, Support Letter to attend Residential Program, tendered 1 June 2017, p. 1.  
525 Exh.479.020, Youth Justice Court Report, tendered 1 June 2017, p. 3.  
526 Exh.479.021, Progress Notes, tendered 1 June 2017, p. 4.  
527 Exh.480.000, Statement of CX dated 30 May 2017, tendered 1 June 2017, para. 48.  
528 Exh.949.001, tendered 28 October 2017.  
529 Exh.479.001, Progress Notes, tendered 1 June 2017, pp. 46-47.  
530 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 47.  
531 Closed Court Transcript, CX, 1 June 2017, p. 20: line 4.  
532 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 47.  
533 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 54.  
534 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 57.  
535 Exh.479.001, Progress Notes, tendered 1 June 2017, pp. 57-58.  
536 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 60.  
537 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 60.  
538 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 61.  
539 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 61.  
540 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 62.  
541 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 65.  
542 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 65.  
543 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 67.  
544 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 68.  
545 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 70.  
546 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 79.  
547 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 94.  
548 Closed Court Transcript, CK, 1 June 2017, p. 5: line 2.  
549 Closed Court Transcript, CK, 1 June 2017, p. 5: lines 8-10.  
550 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 94.  
551 Exh.478.000, Statement of CK, 29 May 2017, tendered 1 June 2017, para. 23.  
552 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 90.  
553 Exh.480.000, Statement of CX, 30 May 2017, tendered 1 June 2017, para. 67.  
554 Exh.479.001, Progress Notes, tendered 1 June 2017, pp. 1-2.  
555 Exh.479.007, Carer Assessment, tendered 1 June 2017, pp. 1-2. Exh.480.000, Statement of CX, 30 May 2017, tendered 1 June 2017, para. 34; Exh.479.001, Progress Notes, tendered 1 June 2017, pp. 20, 38.  
556 Exh.480.000, Statement of CX, 30 May 2017, tendered 1 June 2017, para. 28.  
557 Exh.479.006, Missing Persons Report, tendered 1 June 2017; Exh.479.001, Progress Notes, tendered 1 June 2017, pp. 3, 4, 6, 7, 21; Closed Court Transcript, CK, 1 June 2017, p. 1: line 19.  
558 Exh.479.001, Progress Notes, tendered 1 June 2017, pp. 79 and 94; Closed Court Transcript, CK, 1 June 2017, p. 5: lines 8-10.  
559 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 61.  
560 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 61.  
561 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 29. FACS records indicate that CK did not breach her bail conditions on this occasion.  
562 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 37-39; Closed Court Transcript, CK, 1 June 2017, p. 6: lines 29-30.  
563 Exh.479.001, Progress Notes, tendered 1 June 2017, p. 47; Closed Court Transcript, CX, 1 June 2017, p. 20: line 4.  
564 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 15; Closed court transcript, CM, 2 June 2017, p. 5: lines 13-46.  
565 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, paras 23 and 26.  
566 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 27; Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, para. 11.  
567 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, paras 5-11 and 40.  
568 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 40.  
569 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, para. 12. This is consistent with Territory Families Progress Notes: see Exh.488.001, Tab 1 to CL and CM Case Study Tender Bundle, tendered 2 June 2017, 6517.  
570 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, paras 38-39.  
571 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 44.  
572 Exh.488.001, Tab 1 to CL and CM Case Study Tender Bundle, tendered 2 June 2017, pp. 6516-6519.  
573 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 52.  
574 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, para. 26.  
575 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, paras 48 – 49; Closed Court Transcript, CM, 2 June 2017, p. 8.  
576 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 50.  
577 Exh.488.001, Tab 1 to CL and CM Case Study Tender Bundle, tendered 2 June 2017, pp. 6516-6519.  
578 Exh.488.001, Tab 1 to CL and CM Case Study Tender Bundle, tendered 2 June 2017, p. 6518.

579 Exh.488.001, Tab 1 to CL and CM Case Study Tender Bundle, tendered 2 June 2017, p. 6519.  
580 Exh.488.001, Tab 1 to CL and CM Case Study Tender Bundle, tendered 2 June 2017, p. 6520.  
581 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, p. 32.  
582 Exh.488.002, Tab 2 to CL and CM Case Study Tender Bundle, tendered 2 June 2017, p. 7672.  
583 Exh.488.010, Tab 10 to CL and CM Case Study Tender Bundle, tendered 2 June 2017.  
584 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 68  
585 Exh.488.001, Tab 1 to CL and CM Case Study Tender Bundle, tendered 2 June 2017, p. 6520.  
586 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, paras 55, 59.  
587 Closed court transcript, CM, 2 June 2017, p. 9: line 21 – p. 10: line 15.  
588 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 59.  
589 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 60.  
590 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6539.  
591 Submission, Northern Territory Government, Explanatory Notes – CM, CL and DA, 13 July 2017; Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, pp. 6538-6539.  
592 Exh.488.010, CL and CM Case Study Tender Bundle, Tab 10, tendered 2 June 2017.  
593 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6520.  
594 Exh.488.010, CL and CM Case Study Tender Bundle, Tab 10, tendered 2 June 2017, p. 1992.  
595 Exh.488.010, CL and CM Case Study Tender Bundle, Tab 10, tendered 2 June 2017.  
596 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 69.  
597 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, para. 68.  
598 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, para. 35.  
599 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, para. 32.  
600 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, paras 39-40.  
601 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 73.  
602 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6522.  
603 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 90.  
604 Exh.488.010, CL and CM Case Study Tender Bundle, Tab 10, tendered 2 June 2017, p. 1990.  
605 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6522.  
606 Exh.487.000, Statement of DA, 31 May 2017, tendered 2 June 2017, para. 12.  
607 Exh.487.000, Statement of DA, 31 May 2017, tendered 2 June 2017, para. 13.  
608 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6523; see also Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, paras 74-75.  
609 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 74.  
610 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6524.  
611 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, paras 43-46.  
612 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6530.  
613 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6524.  
614 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, para. 47.  
615 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 77.  
616 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6524.  
617 Exh.485.00, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 81.  
618 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, pp. 6525-6526.  
619 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 73.  
620 Closed court transcript, CM, 2 June 2017, p. 15: lines 5-6.  
621 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 90.  
622 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6530.  
623 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6531.  
624 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6533.  
625 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6535.  
626 Exh.488.022, CL and CM Case Study Tender Bundle, Tab 22, tendered 2 June 2017, p. 3.  
627 Exh.488.022, CL and CM Case Study Tender Bundle, Tab 22, tendered 2 June 2017.  
628 Exh.488.022, CL and CM Case Study Tender Bundle, Tab 22, tendered 2 June 2017, p. 3.  
629 Exh.488.022, CL and CM Case Study Tender Bundle, Tab 22, tendered 2 June 2017; Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6536.  
630 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, paras 82-85.  
631 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 77.  
632 Closed Court Transcript, CM, 2 June 2017, p. 17: lines 13-18.  
633 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, para. 65.  
634 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 58.  
635 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 93.  
636 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, para. 72.  
637 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 103.  
638 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 111.  
639 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, para. 78.

- 640 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, pp. 6516-6519.
- 641 Exh.488.002, CL and CM Case Study Tender Bundle, Tab 2, tendered 2 June 2017, p. 7672.
- 642 Exh.488.010, CL and CM Case Study Tender Bundle, Tab 10, tendered 2 June 2017.
- 643 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, paras 55, 59.
- 644 Closed Court Transcript, CM, 2 June 2017, p. 9: line 21 – p. 10: line 15.
- 645 Exh.486.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 59.
- 646 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 111.
- 647 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, para. 78.
- 648 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6539.
- 649 Submission, Northern Territory Government, Explanatory Notes – CM, CL and DA, 13 July 2017; Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, pp. 6538-6539.
- 650 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, paras 39-40.
- 651 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 73.
- 652 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6522; Closed court transcript, CM, 2 June 2017, p. 15: lines 5-6; Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, pp. 6525-6526.
- 653 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, paras 39-40; Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6522.
- 654 Exh.488.010, CL and CM Case Study Tender Bundle, Tab 10, tendered 2 June 2017, p. 1990.
- 655 Exh.487.000, Statement of DA, 31 May 2017, tendered 2 June 2017, para. 13.
- 656 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, pp. 6523-6524; see also Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, paras 74 – 75.
- 657 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 74.
- 658 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6524.
- 659 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, para. 43.
- 660 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, paras 43-44.
- 661 Exh.488.001, CL and CM Case Study Tender Bundle, Tab 1, tendered 2 June 2017, p. 6530.
- 662 Exh.469.141, NTFCT Rev Chapter 9 Dec 2012, 6 December 2012, tendered 2 June 2017, p. 2029.
- 663 Exh.485.000, Statement of CM, 26 May 2017, tendered 2 June 2017, para. 69.
- 664 Exh.487.000, Statement of DA, 31 May 2017, tendered 2 June 2017, para. 13.
- 665 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, paras 42-43.
- 666 Exh.488.010, CL and CM Case Study Tender Bundle, Tab 10, tendered 2 June 2017.
- 667 Exh.605.026, DS Case Study, Tab 26, tendered 27 June 2017.
- 668 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 21.
- 669 Exh.604.001, Annexure B to Statement of DS, tendered 27 June 2017, p. 2.
- 670 Exh.603.000, Statement of DS, 17 June 2017, tendered 27 June 2017, para. 18.
- 671 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 16; Exh.605.028, DS Case Study, Tab 28, tendered 27 June 2017, p. 2.
- 672 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, pp. 14-15.
- 673 Closed court transcript, DS, 27 June 2017, p. 4: lines 28-29; Statement of DS, 17 June 2017, tendered 27 June 2017, para. 12.
- 674 Exh.605.028, DS Case Study, Tab 28, tendered 27 June 2017, p. 2.
- 675 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 20.
- 676 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 18.
- 677 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 18.
- 678 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 19.
- 679 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 19.
- 680 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 17.
- 681 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 20.
- 682 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 17.
- 683 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 21.
- 684 Closed court transcript, DS, 27 June 2017, p. 5: lines 9-11.
- 685 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 21.
- 686 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 21.
- 687 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 21.
- 688 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 21.
- 689 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 21.
- 690 Exh.605.024, DS Case Study, Tab 24, tendered 27 June 2017, p. 21.
- 691 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, pp. 17, 19.
- 692 Closed court transcript, DS, 27 June 2017, p. 5: lines 37-38.
- 693 Exh.605.031, DS Case Study, Tab 31, tendered 27 June 2017, p. 6.
- 694 Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, pp. 17, 20.
- 695 Exh.603.000, Statement of DS, 17 June 2017, tendered 27 June 2017, para. 14.
- 696 Exh.605.004, DS Case Study, Tab 4, tendered 27 June 2017, p. 55.
- 697 Exh.605.005, DS Case Study, Tab 5, tendered 27 June 2017, p. 75.
- 698 Exh.604.000, Annexure B to Statement of DS, tendered 27 June 2017, p. 3.

- <sup>699</sup> Exh.605.006, DS Case Study, Tab 6, tendered 27 June 2017, p. 155.
- <sup>700</sup> Exh.605.004, DS Case Study, Tab 4, tendered 27 June 2017, p. 51.
- <sup>701</sup> Exh.605.004, DS Case Study, Tab 4, tendered 27 June 2017, p. 56.
- <sup>702</sup> Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 13.
- <sup>703</sup> Closed court transcript, DS, 27 June 2017, p. 4: lines 32-40.
- <sup>704</sup> Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 12.
- <sup>705</sup> Exh.605.034, DS Case Study, Tab 34, tendered 27 June 2017, p. 4; Exh.605.036, DS Case Study, Tab 36, tendered 27 June 2017, p. 12.
- <sup>706</sup> Exh.605.036, DS Case Study, Tab 36, tendered 27 June 2017, p. 13.
- <sup>707</sup> Exh.605.004, DS Case Study, Tab 4, tendered 27 June 2017, p. 51.
- <sup>708</sup> Exh.605.002, DS Case Study Tender Bundle, Tab 2, tendered 27 June 2017, p. 19; Exh.605.005, DS Case Study, Tab 5, tendered 27 June 2017, p. 74.
- <sup>709</sup> Exh.605.004, DS Case Study, Tab 4, tendered 27 June 2017, p. 52.
- <sup>710</sup> Exh.605.019, DS Case Study, Tab 19; Exh.603.000, Statement of DS, 17 June 2017, tendered 27 June 2017, para. 9.
- <sup>711</sup> Exh.605.012, DS Case Study, Tab 12, tendered 27 June 2017, p. 3.
- <sup>712</sup> Exh.605.013, DS Case Study, Tab 13, tendered 27 June 2017, p. 4; Exh.605.016, DS Case Study, Tab 16, tendered 27 June 2017, p. 3.
- <sup>713</sup> Exh.605.013, DS Case Study, Tab 13, tendered 27 June 2017, p. 4; Exh.605.016, DS Case Study, Tab 16, tendered 27 June 2017, p. 2.
- <sup>714</sup> Exh.942.001, Progress Note, tendered 27 October 2017, p. 6.
- <sup>715</sup> Exh.603.000, Statement of DS, 17 June 2017, tendered 27 June 2017, para. 8.
- <sup>716</sup> The child's DCF Client Summary and progress notes search results are blank apart from her name suggesting that she does not appear to have been known to DCF. Exh.605.008, DS Case Study, Tab 8, tendered 27 June 2017; Exh.605.009, DS Case Study, Tab 9, tendered 27 June 2017.
- <sup>717</sup> Exh.604.001, Annexure B to Statement of DS, tendered 27 June 2017, p. 3.
- <sup>718</sup> Exh.603.000, Statement of DS, 17 June 2017, tendered 27 June 2017, para. 45.
- <sup>719</sup> Exh.603.000, Statement of DS, 17 June 2017, tendered 27 June 2017, para. 26.
- <sup>720</sup> Exh.603.000, Statement of DS, 17 June 2017, tendered 27 June 2017, para. 27.
- <sup>721</sup> Closed court transcript, DS, 27 June 2017, p. 5: lines 13-16, 29-31.
- <sup>722</sup> Exh.603.000, Statement of DS, 17 June 2017, tendered 27 June 2017, para. 11.
- <sup>723</sup> Exh.603.000, Statement of DS, 17 June 2017, tendered 27 June 2017, para. 11.
- <sup>724</sup> Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 21. There are later DCF records of the RAFCW speaking to family members 'in language'. The involvement of the remote Aboriginal family community worker in the meeting on the day DS's granddaughter was removed may have facilitated better communication between DCF staff and the family. Exh.605.005, DS Case Study, Tab 5, tendered 27 June 2017, p. 74.
- <sup>725</sup> Exh.603.000, Statement of DS, 17 June 2017, tendered 27 June 2017, para. 11.
- <sup>726</sup> Exh.603.000, Statement of DS, 17 June 2017, tendered 27 June 2017, para. 13.
- <sup>727</sup> Closed court transcript, DS, 27 June 2017, p. 6: lines 12-13.
- <sup>728</sup> Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 17.
- <sup>729</sup> Exh.605.031, DS Case Study, Tab 31, tendered 27 June 2017, p. 3.
- <sup>730</sup> Exh.605.003, DS Case Study, Tab 3, tendered 27 June 2017, p. 32.
- <sup>731</sup> Exh.605.003, DS Case Study, Tab 3, tendered 27 June 2017, p. 39.
- <sup>732</sup> Exh.605.029, DS Case Study, Tab 29, tendered 27 June 2017, p. 8.
- <sup>733</sup> Exh.605.030, DS Case Study, Tab 30, tendered 27 June 2017, p. 8.
- <sup>734</sup> Closed court transcript, DS, 27 June 2017, p. 7: lines 5-9.
- <sup>735</sup> Exh.603.000, Statement of DS, 17 June 2017, tendered 27 June 2017, para. 47.
- <sup>736</sup> Exh.553.070, Annexure BT-70 to Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, p. 1.
- <sup>737</sup> Exh.605.029, DS Case Study, Tab 29, tendered 27 June 2017, p. 4.
- <sup>738</sup> Exh.604.001, Annexure B to Statement of DS, tendered 27 June 2017, p. 2; Exh.605.036, DS Case Study, Tab 36, tendered 27 June 2017, p. 9.
- <sup>739</sup> Exh.605.006, DS Case Study, Tab 6, tendered 27 June 2017, pp. 120-121.
- <sup>740</sup> Exh.605.006, DS Case Study, Tab 6, tendered 27 June 2017, pp. 125.
- <sup>741</sup> Exh.605.006, DS Case Study, Tab 6, tendered 27 June 2017, pp. 125-126.
- <sup>742</sup> Exh.605.006, DS Case Study, Tab 6, tendered 27 June 2017, p. 127.
- <sup>743</sup> Exh.605.034, DS Case Study, Tab 34, tendered 27 June 2017, p. 2.
- <sup>744</sup> Exh.604.001, Annexure B to Statement of DS, tendered 27 June 2017.
- <sup>745</sup> Exh.605.034, DS Case Study, Tab 34, tendered 27 June 2017, p. 2.
- <sup>746</sup> Closed court transcript, DS, 27 June 2017, p. 8: lines 1-3.
- <sup>747</sup> Exh.605.002, DS Case Study, Tab 2, tendered 27 June 2017, p. 15.
- <sup>748</sup> Exh.605.031, DS Case Study, Tab 31, tendered 27 June 2017, p. 13.
- <sup>749</sup> Exh.605.031, DS Case Study, Tab 31, tendered 27 June 2017, pp. 13-14.
- <sup>750</sup> Exh.605.030, DS Case Study, Tab 30, tendered 27 June 2017, p. 11.
- <sup>751</sup> Exh.605.029, DS Case Study, Tab 29, tendered 27 June 2017, p. 13.
- <sup>752</sup> Exh.603.000, Statement of DS, 17 June 2017, tendered 27 June 2017, paras 45-52.

- 753 Exh.605.028, DS Case Study Tender Bundle, Tab 28, tendered 27 June 2017, p. 2.  
754 Exh.605.002, DS Case Study Tender Bundle, Tab 2, tendered 27 June 2017, p. 20.  
755 Exh.605.030, DS Case Study Tender Bundle, Tab 30, tendered 27 June 2017, p. 11-12.  
756 Exh.605.029, DS Case Study Tender Bundle, Tab 29, tendered 27 June 2017, p. 13.  
757 Exh.605.004, DS Case Study Tender Bundle, Tab 4, tendered 27 June 2017, p. 52.  
758 Exh.604.000, Annexure B to Statement of DS, tendered 27 June 2017, p. 3.  
759 Exh.605.006, DS Case Study, Tab 6, tendered 27 June 2017, p. 155.  
760 Exh.605.031, DS Case Study, Tab 31, tendered 27 June 2017, p. 3.  
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- <sup>1012</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 18.
- <sup>1013</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 21.
- <sup>1014</sup> Exh.957.001, Progress Notes, 19 May 2015, tendered 28 October 2017, p. 57.
- <sup>1015</sup> Exh.957.001, Progress Notes, 19 May 2015, tendered 28 October 2017, p. 63.
- <sup>1016</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 19; Exh.957.001, Progress Notes, tendered 28 October 2017, pp. 57, 59.
- <sup>1017</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 24.
- <sup>1018</sup> Exh.652.035, Discharge Summary, tendered 30 June 2017; Exh.652.015, Health Centre Referral, tendered 30 June 2017.
- <sup>1019</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, paras 26-29; Closed court transcript, DI, 30 June 2017, p. 6: lines 39-46; Closed court transcript, DI, 30 June 2017, p. 8: lines 7-14; Closed court transcript, DI, 30 June 2017, p. 12: lines 7-29.
- <sup>1020</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 30.
- <sup>1021</sup> Territory Families state that DI was not served with the original documents as she is not the child's birth parent and therefore not a party to the proceedings: Submission, Northern Territory Government, Explanatory Note – DI, 9 August 2017, p. 15.
- <sup>1022</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 31.
- <sup>1023</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, paras 31-32.
- <sup>1024</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 37.
- <sup>1025</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, paras 37-38.
- <sup>1026</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, paras 34-37.
- <sup>1027</sup> Exh.871.001, Statement of Rosalee Webb, 15 August 2017, tendered 24 October 2017, para. 7.3.
- <sup>1028</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, paras 40-42.
- <sup>1029</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, paras 52-53.
- <sup>1030</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, paras 54-56.
- <sup>1031</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, paras 55-56.
- <sup>1032</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, paras 48, 50.
- <sup>1033</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 50.
- <sup>1034</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 49; Closed Court Transcript, DI, 30 June 2017, p. 13: lines 8-28.
- <sup>1035</sup> Submission, Northern Territory Government, Explanatory Note – DI, 9 August 2017, p. 29.
- <sup>1036</sup> Submission, Northern Territory Government, Explanatory Note – DI, 9 August 2017, p. 29; Exh.959.001, Family Contact Arrangements, tendered 28 October 2017.
- <sup>1037</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 51.
- <sup>1038</sup> Exh.0651.001, Annexure F to Statement of DI, 15 June 2017, tendered 30 June 2017, p. 62.
- <sup>1039</sup> Exh.0651.001, Annexure F to Statement of DI, 15 June 2017, tendered 30 June 2017, pp. 62-63.

- <sup>1040</sup> Exh.0651.001, Annexure F to Statement of DI, 15 June 2017, tendered 30 June 2017, p. 64.
- <sup>1041</sup> Exh.0651.001, Annexure C to Statement of DI, 15 June 2017, tendered 30 June 2017, pp. 33-34.
- <sup>1042</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, paras 46-47.
- <sup>1043</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 47; Closed Court Transcript, DI, 30 June 2017, p. 11: lines 5-6.
- <sup>1044</sup> Exh.958.001, Support Letter - Housing, tendered 28 October 2017.
- <sup>1045</sup> Territory Families have provided multiple letters of support of DI's application for priority housing in 2017: Exh.960.001, [Redacted]-CCIS [Redacted]- HPRM, tendered 28 October 2017, p. 424; Exh.961.001, Progress Notes, tendered 28 October 2017, p. 8.
- <sup>1046</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 78.
- <sup>1047</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 21.
- <sup>1048</sup> Exh.957.001, Progress Notes, 19 May 2015, tendered 28 October 2017, p.57.
- <sup>1049</sup> Exh.957.001, Progress Notes, 19 May 2015, tendered 28 October 2017, p.63.
- <sup>1050</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 18.
- <sup>1051</sup> Submission, North Australian Aboriginal Justice Agency, September 2016, p. 137.
- <sup>1052</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, paras 33-34.
- <sup>1053</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, paras 34-37.
- <sup>1054</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 6.
- <sup>1055</sup> Exh.958.001, Support Letter - Housing, tendered 28 October 2017.
- <sup>1056</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 24.
- <sup>1057</sup> Submission, North Australian Aboriginal Justice Agency, September 2016, p. 137.
- <sup>1058</sup> Exh.651.001, Statement of DI, 15 June 2017, tendered 30 June 2017, para. 18.
- <sup>1059</sup> Exh.652.004, Progress Notes, tendered 30 June 2017, pp. 1487, 1492.
- <sup>1060</sup> Submission, North Australian Aboriginal Justice Agency, p. 137.
- <sup>1061</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, paras 7-11.
- <sup>1062</sup> Closed court transcript, AI, 21 June 2017, p. 13: lines 35-45.
- <sup>1063</sup> Exh.969.004, AI Case Study Tender Bundle, Tab 4, tendered 27 October 2017, p. 3.
- <sup>1064</sup> Exh.969.004, AI Case Study Tender Bundle, Tab 4, tendered 27 October 2017, p. 3.
- <sup>1065</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 14.
- <sup>1066</sup> Exh.969.006, AI Case Study Tender Bundle, Tab 6, tendered 27 October 2017, p. 3.
- <sup>1067</sup> Closed court transcript, AI, 21 June 2017, p. 15: lines 16-17.
- <sup>1068</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 20.
- <sup>1069</sup> Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 28.
- <sup>1070</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 18.
- <sup>1071</sup> Closed court transcript, AI, 21 June 2017, p. 14: line 45 – p. 15: line 5.
- <sup>1072</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 17.
- <sup>1073</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, paras 17-18.
- <sup>1074</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, paras 24, 25.
- <sup>1075</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 25.
- <sup>1076</sup> Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 42.
- <sup>1077</sup> Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 43.
- <sup>1078</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 26.
- <sup>1079</sup> Exh.969.006, AI Case Study Tender Bundle, Tab 6, tendered 27 October 2017, p. 6.
- <sup>1080</sup> Exh.969.006, AI Case Study Tender Bundle, Tab 6, tendered 27 October 2017, p. 6.
- <sup>1081</sup> Closed court transcript, AI, 21 June 2017, p. 15: line 36; Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 38.
- <sup>1082</sup> Closed court transcript, AI, 21 June 2017, p. 15: lines 35-40.
- <sup>1083</sup> Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 39.
- <sup>1084</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 27; Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, paras 19-23, 32; Exh.969.015, AI Case Study Tender Bundle, Tab 15, tendered 27 October 2017, p. 4.
- <sup>1085</sup> Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, paras 19-21, 32.
- <sup>1086</sup> Exh.969.006, AI Case Study Tender Bundle, Tab 6, tendered 27 October 2017, p. 5.
- <sup>1087</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 26.
- <sup>1088</sup> Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 70.
- <sup>1089</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 29.
- <sup>1090</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 30.
- <sup>1091</sup> Closed court transcript, AI, 21 June 2017, p. 16: lines 40-42.
- <sup>1092</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 31.
- <sup>1093</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, paras 30, 31, 32.
- <sup>1094</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 32.
- <sup>1095</sup> Closed court transcript, AI, 21 June 2017, p. 16: lines 34-35; Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 32.
- <sup>1096</sup> Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 33; Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 32.
- <sup>1097</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, paras 32, 46.

- <sup>1098</sup> Exh.969.010, AI Case Study Tender Bundle, Tab 10, tendered 27 October 2017, p. 5; Exh.969.011, AI Case Study Tender Bundle, Tab 11, tendered 27 October 2017.
- <sup>1099</sup> Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 35.
- <sup>1100</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 33; Closed court transcript, AI, 21 June 2017, p. 17: lines 25-30.
- <sup>1101</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 33.
- <sup>1102</sup> Exh.969.015, AI Case Study Tender Bundle, Tab 15, tendered 27 October 2017, p. 4.
- <sup>1103</sup> Exh.969.017, AI Case Study Tender Bundle, Tab 17, tendered 27 October 2017, p. 2.
- <sup>1104</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 35.
- <sup>1105</sup> Exh.969.030, AI Case Study Tender Bundle, Tab 30, tendered 27 October 2017, p. 220.
- <sup>1106</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 58.
- <sup>1107</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 40.
- <sup>1108</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, paras 39- 40; Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 49.
- <sup>1109</sup> Exh.969.020, AI Case Study Tender Bundle, Tab 20, tendered 27 October 2017, p. 4; Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 50.
- <sup>1110</sup> Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 51.
- <sup>1111</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 42.
- <sup>1112</sup> Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 52.
- <sup>1113</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 27.
- <sup>1114</sup> Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 45.
- <sup>1115</sup> Closed court transcript, AI, 21 June 2017, p. 19: lines 40-45.
- <sup>1116</sup> Closed court transcript, AI, 21 June 2017, p. 20: line 7.
- <sup>1117</sup> Closed court transcript, AI, 21 June 2017, p. 20: lines 5-40.
- <sup>1118</sup> Exh.969.010, AI Case Study Tender Bundle, Tab 10, tendered 27 October 2017, p. 1.
- <sup>1119</sup> Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 34.
- <sup>1120</sup> Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 37.
- <sup>1121</sup> Closed court transcript, AI, 21 June 2017, p. 20: lines 15-20.
- <sup>1122</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 44.
- <sup>1123</sup> Closed court transcript, AI, 21 June 2017, p. 15: lines 43-44.
- <sup>1124</sup> Closed court transcript, AI, 21 June 2017, p. 15: lines 44-45.
- <sup>1125</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 45.
- <sup>1126</sup> Closed court transcript, AI, 21 June 2017, p. 19: line 15.
- <sup>1127</sup> Exh.969.030, AI Case Study Tender Bundle, Tab 30, tendered 27 October 2017, p. 262.
- <sup>1128</sup> Exh.969.030, AI Case Study Tender Bundle, Tab 30, tendered 27 October 2017, p. 263.
- <sup>1129</sup> Exh.969.030, AI Case Study Tender Bundle, Tab 30, tendered 27 October 2017, p. 137.
- <sup>1130</sup> Exh.969.030, AI Case Study Tender Bundle, Tab 30, tendered 27 October 2017, p. 202.
- <sup>1131</sup> Exh.969.030, AI Case Study Tender Bundle, Tab 30, tendered 27 October 2017, p. 207.
- <sup>1132</sup> Exh.969.030, AI Case Study Tender Bundle, Tab 30, tendered 27 October 2017, p. 261.
- <sup>1133</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 45; Exh.969.017, AI Case Study Tender Bundle, Tab 17, tendered 27 October 2017, p. 5.
- <sup>1134</sup> Exh.969.030, AI Case Study Tender Bundle, Tab 30, tendered 27 October 2017, p. 235.
- <sup>1135</sup> Exh.969.030, AI Case Study Tender Bundle, Tab 30, tendered 27 October 2017, p. 250.
- <sup>1136</sup> Exh.969.027, AI Case Study Tender Bundle, Tab 27, tendered 27 October 2017, p. 7.
- <sup>1137</sup> Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 58.
- <sup>1138</sup> Closed court transcript, AI, 21 June 2017, p. 19: lines 28-30.
- <sup>1139</sup> Exh.969.029, AI Case Study Tender Bundle, Tab 29, tendered 27 October 2017, p. 3.
- <sup>1140</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 56.
- <sup>1141</sup> Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 49.
- <sup>1142</sup> Closed court transcript, AI, 21 June 2017, p. 20: lines 25-27.
- <sup>1143</sup> Exh.970.001, Statement of EE, 23 July 2017, tendered 27 October 2017, para. 71.
- <sup>1144</sup> Closed court transcript, AI, 21 June 2017, p. 21: lines 20-28.
- <sup>1145</sup> Closed court transcript, AI, 21 June 2017, p. 21: lines 29-32.
- <sup>1146</sup> Closed court transcript, AI, 21 June 2017, p. 22: lines 37-41.
- <sup>1147</sup> Closed court transcript, AI, 21 June 2017, p. 22: lines 44-47 – p. 23: line 1.
- <sup>1148</sup> Closed court transcript, AI, 21 June 2017, p. 23: lines 2-8.
- <sup>1149</sup> Closed court transcript, AI, 21 June 2017, p. 15: lines 16-17.
- <sup>1150</sup> Exh.969.006, AI Case Study Tender Bundle, Tab 6, tendered 27 October 2017, p. 4; Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 20.
- <sup>1151</sup> Exh.969.030, AI Case Study Tender Bundle, Tab 30, tendered 27 October 2017, p. 261.
- <sup>1152</sup> Exh.969.029, AI Case Study Tender Bundle, Tab 29, tendered 27 October 2017, p. 3.
- <sup>1153</sup> Exh.969.029, AI Case Study Tender Bundle, Tab 29, tendered 27 October 2017, p. 3.
- <sup>1154</sup> Exh.969.027, AI Case Study Tender Bundle, Tab 27, tendered 27 October 2017, p. 7; Exh.970.001, Statement of EE, 22 July 2017, tendered 27 October 2017, para. 58; Closed court transcript, AI, 21 June 2017, p. 19: lines 28-30; Exh.969.029, AI Case Study

- Tender Bundle, Tab 29, tendered 27 October 2017, p. 3.
- 1155 Closed court transcript, AI, 21 June 2017, p. 20: lines 15-20.
- 1156 Closed court transcript, AI, 21 June 2017, p. 20: line 7.
- 1157 Closed court transcript, AI, 21 June 2017, p. 20: lines 5-40.
- 1158 Exh.537.000, Statement of AI, 16 June 2017, tendered 21 June 2017, para. 56.
- 1159 Closed court transcript, DE, 20 June 2017, p. 3: lines 32-33; p. 4: lines 9-20.
- 1160 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 8.
- 1161 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 8.
- 1162 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 8.
- 1163 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 9.
- 1164 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 9.
- 1165 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, pp. 6-7.
- 1166 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 6.
- 1167 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 4.
- 1168 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p.13.
- 1169 Exh.1109.039, DE and DF Tender Bundle, Tab 39, tendered 1 November 2017, p. 8.
- 1170 Exh.1109.039, DE and DF Tender Bundle, Tab 39, tendered 1 November 2017, pp. 15-19.
- 1171 Exh.1109.039, DE and DF Tender Bundle, Tab 39, tendered 1 November 2017, p. 1; pp. 9-11.
- 1172 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 26.
- 1173 Exh.1109.039, DE and DF Tender Bundle, Tab 39, tendered 1 November 2017, p. 29.
- 1174 Exh.1112.001, Letter from Department of Health and Families, tendered 1 November 2017; Exh.1113.001, Investigation Summary Report, tendered 1 November 2017, pp. 3, 5.
- 1175 Exh.1109.039, DE and DF Tender Bundle, Tab 39, tendered 1 November 2017, p. 14.
- 1176 Exh.1113.001, Investigation Summary Report, tendered 1 November 2017, p. 4.
- 1177 Exh.1109.002, DE and DF Tender Bundle, Tab 2, tendered 1 November 2017, p. 2.
- 1178 Closed court transcript, DE, 20 June 2017, p. 5: lines 2-5.
- 1179 Closed court transcript, DE, 20 June 2017, p. 5: lines 13-16.
- 1180 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, pp. 81-83.
- 1181 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 82.
- 1182 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, pp. 83, 89. Notes made some weeks later by another DCF staff member state that a respite period of 3-12 months had been requested.
- 1183 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 89.
- 1184 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 96.
- 1185 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 96.
- 1186 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 96.
- 1187 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 96.
- 1188 Exh.524.000, Statement of DE, 28 April 2017, tendered 20 June 2017, paras 14-15.
- 1189 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 96.
- 1190 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 96.
- 1191 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 96.
- 1192 Closed court transcript, DE, 20 June 2017, p. 19: line 26.
- 1193 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 104. The placement request form for DF states 'Medication for ADHD. Type and dose to be confirmed'; Exh.1109.003, DE and DF Tender Bundle, Tab 3, tendered 1 November 2017, p. 3.
- 1194 Exh.1109.039, DE and DF Tender Bundle, Tab 39, tendered 1 November 2017, pp. 97-98.
- 1195 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 99.
- 1196 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 166.
- 1197 Exh.1109.004, DE and DF Tender Bundle, Tab 4, tendered 1 November 2017, p. 3.
- 1198 Exh.1109.039, DE and DF Tender Bundle, Tab 39, tendered 1 November 2017, pp. 125-126, 169, 181-182, 198.
- 1199 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 108.
- 1200 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 130.
- 1201 Exh.1109.039, DE and DF Tender Bundle, Tab 39, tendered 1 November 2017, pp. 113-114, 115-116.
- 1202 Exh.653.000, Statement of DF, 21 June 2017, tendered 30 June 2017, para. 20.
- 1203 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 163.
- 1204 Submission, Northern Territory Government, Explanatory Notes – DE, 31 July 2017, pp. 7-8.
- 1205 Exh.524.000, Statement of DE, 28 April 2017, tendered 20 June 2017, para. 27.
- 1206 Submission, Northern Territory Government, Explanatory Notes – DE, 31 July 2017, p. 11.
- 1207 Closed court transcript, DE, 20 June 2017, p. 7: lines 26-30.
- 1208 Exh.1114.001, Progress Notes, tendered 1 November 2017, p. 220.
- 1209 Exh.1114.001, Progress Notes, tendered 1 November 2017, pp. 222-223.
- 1210 Exh.1114.001, Progress Notes, tendered 1 November 2017, p. p. 223.
- 1211 Exh.1114.001, Progress Notes, tendered 1 November 2017, p. 244.
- 1212 Exh.1114.001, Progress Notes, tendered 1 November 2017, p. 244.
- 1213 Closed court transcript, DE, 20 June 2017, p. 18: lines 1-14; Exh.1111.001, DF responsive Tender Bundle, Tab 1, tendered 1 November

- 2017, p. 93.
- 1214 Exh.524.000, Statement of DE, 28 April 2017, tendered 20 June 2017, para. 66.
- 1215 Exh.524.000, Statement of DE, 28 April 2017, tendered 20 June 2017, paras 66-74.
- 1216 Exh.653.000, Statement of DF, 21 June 2017, tendered 30 June 2017, para. 14.
- 1217 Exh.653.000, Statement of DF, 21 June 2017, tendered 30 June 2017, paras 16-17.
- 1218 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, pp. 137-145.
- 1219 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 109.
- 1220 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, pp. 109; 115.
- 1221 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 114.
- 1222 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, p. 134.
- 1223 Exh.1109.040, DE and DF Tender Bundle, Tab 40, tendered 1 November 2017, pp. 164, 171.
- 1224 Exh.1109.041, DE and DF Tender Bundle, Tab 41, tendered 1 November 2017, p. 254.
- 1225 Exh.653.000, Statement of DF, 21 June 2017, tendered 30 June 2017, paras 24-25.
- 1226 Exh.1109.041, DE and DF Tender Bundle, Tab 41, tendered 1 November 2017, pp. 254, 256.
- 1227 Exh.653.000, Statement of DF, 21 June 2017, tendered 30 June 2017, paras 26-27.
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- 1229 Exh.653.000, Statement of DF, 21 June 2017, tendered 30 June 2017, para. 32.
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THE CHILD PROTECTION  
LANDSCAPE



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# THE CHILD PROTECTION LANDSCAPE

## INTRODUCTION

Child protection systems across Australia and internationally are struggling to manage the tasks of protecting children from harm and delivering effective child protection services. As the numbers of children reported to be at risk of harm and in care increase, child protection systems find themselves having to increase the efforts and resources committed to the investigation and removal process. At the same time, they appear to be falling further and further behind in efforts to address the underlying causes of the problem and stem the rising numbers of children being taken into care. The Northern Territory is no exception; indeed, it faces greater challenges than many because of its overall low population, characterised by disadvantaged Aboriginal families, some of whom are dispersed across small, remote and underserved communities.

*'The situation in child protection in the Northern Territory at present is dire. There is an urgent need for reform to stop another generation being damaged.'*

Dr John Rudge, clinical psychologist.<sup>1</sup>

This is not the first inquiry into the effectiveness of the child protection system in the Northern Territory. In the 2010, *Growing them strong, together – Promoting the Safety and Wellbeing of the Northern Territory's Children – Report of the Board of Inquiry into the Child Protection System in the Northern Territory* (the BOI report) presented a picture not dissimilar to that found by this Commission – children and families in need, and a system in need of reform. The BOI report's recommendations presented a coherent and forward-looking framework for significant change in the Northern Territory.

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Unfortunately, while some of its recommendations were taken up, the proposed reforms were never embraced in full and a shift, which was critically necessary to overcome many of the systemic issues identified in the report, did not occur.

Importantly, the failure of the Northern Territory Government at that time to make and sustain investment in early support and prevention represents a missed opportunity for a whole generation of vulnerable children.

The Commission has heard evidence from individuals and organisations – inside and outside government – that points to the fundamental failure of a child protection system incapable of protecting vulnerable children and families in the Northern Territory. Importantly, the Commission has listened to the stories and views of children, their families and their communities. These voices tell of a system that harmed when it should have protected, which ignored when it should have supported, and, which ultimately, needs fundamental change. The Commission also heard from many dedicated foster carers, caseworkers and service providers who found the child protection system to be flawed notwithstanding the good intentions of many who worked within it.

*'I want there to be a better system so that other kids don't have to deal with the pain that I felt and still feel.'*

Vulnerable Witness, DB<sup>2</sup>

Child protection is complex and difficult to deliver. It also resists the efforts of individual organisations attempting to address it.<sup>3</sup> Child protection is also truly a 'system', comprising many different stages, processes and parts. From a systems perspective, it is difficult to unravel and neatly allocate the interaction of individual components to discrete chapters without unduly underemphasising the importance of that interaction.

The Commission's Terms of Reference are broadly expressed to investigate the 'failings of the child protection system'. The Commission has attempted to limit the potential breadth of its inquiry wherever possible, in recognition of the limited time available and, more importantly, the fact that the Commission is following closely in the footsteps of recent significant reviews of child protection, notably the BOI report in 2010 and the *Child Protection Systems Royal Commission Report: The Life They Deserve* (Nyland review) in 2016. With more time the Commission could have carried out a far more extensive inquiry, but with issues as pressing as child protection and youth detention, governments need answers so they can make decisions and implement change quickly.

This chapter briefly sets out the context in which child protection operates in the Northern Territory. It encompasses the stark picture presented in key statistics about the system and its impact; the confronting fact of the overrepresentation of Aboriginal people in that system; and the history of review, reporting, inquiry and government intervention in the lives of vulnerable people.

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## Themes to emerge

The Commission has found a reactive child protection system that has been, and is increasingly, unable to respond to growth in demand over the last 10 years. This is due to a combination of inadequate resources, poor coordination and governments perpetuating an approach that is inappropriate for all children in the Northern Territory, but particularly for Aboriginal children.<sup>4</sup> This is exacerbated by a lack of understanding of the cultural and safety needs of the children and families in the system.

The Northern Territory child protection system is lagging behind recent thinking about the most effective ways to protect children over the longer term.<sup>5</sup> In essence, when it abandoned the framework provided by the BOI report, the Northern Territory lost five years during which it could have been modernising and redirecting its child protection system. Instead of delivering reforms that may have had an impact, little has changed, the system is receiving more notifications than ever and more children are being removed. The recent announcement of reform, and the work done by Territory Families in the past year to set a new strategic direction are very welcome, but they ultimately do not overcome either the absence of real reform over the 10 year period the Commission has been asked to review, or the lack of real engagement with the very communities the system is intended to serve.

Changing the trajectory of the system and improving outcomes for those in the system – or who are at risk of entering the system – will require a commitment to lasting reform. Relationships between governments and communities, particularly Aboriginal communities, need to be repaired or, in some cases, begun and developed. Trust needs to be restored, built on a commitment to partnership, engagement and shared decision-making.

Immediate changes are necessary to prevent harm and achieve better outcomes for children, particularly those already in the system. But the recommendations of this Commission also look to laying the longer-term foundation for a more effective and appropriate system. The Commission heard that:

*'In public health terms, the fact that half of all Northern Territory Aboriginal children have at least one notification by age 10, and a quarter have a substantiated concern, reflects a problem of "epidemic proportions" that would be seen as a "public health – if not humanitarian – crisis"<sup>6</sup> ... The current system is clearly not sustainable and very radical changes need to be made if [the Northern Territory Government is to] meet its legislative responsibilities.<sup>7</sup>*

Child protection is, at its heart, a human rights issue. It is the right to self-determination, the right of individuals to participate in the decisions that affect them, and the right of all people to be different and be respected as such, without being considered as anything other than equal. This is particularly significant for Aboriginal people in the Northern Territory, where historically the operation of the child protection system has been an extension of other decision-making systems, and has marginalised and disempowered Aboriginal communities.



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The following chapters present the evidence heard by the Commission regarding the child protection system, across its components. These extend from the legal and legislative framework for child protection, through to the operation of that statutory response, the out of home care system to which it is inextricably linked, and oversight of the system.

There are four main themes to be addressed:

- the pathway of children from the protection system into the youth justice system, and how involvement in the child protection system establishes a pathway into detention for many, particularly Aboriginal, children
- the oft-repeated need to adopt a public health approach in protecting vulnerable children and families. This not only requires new and innovative thinking about how and when most effectively to intervene to prevent involvement in the system, but must be informed by a proper understanding of the issues faced by families and communities across the Northern Territory
- the significance of the fact that Aboriginal children make up the vast majority of children in both the youth justice and child protection systems. This has naturally led to a strong focus on addressing which aspects of the current system and structures have the greatest impact on Aboriginal families and communities, and
- the need for more child and family support to be provided on the ground, place by place, so families can connect with services that address their needs.

The Northern Territory and Commonwealth governments need to acknowledge that the current child protection system in the Northern Territory is not effectively protecting children. Governments must accept that fundamental changes must be made. They must invest in a public health approach to supporting and protecting all children, families and their communities. This requires sustained support over a lengthy period, with a focus on child-centred solutions.

In this report, the Commission proposes a vision for generational reform. It will take sustained investment and the determination to do things differently. The benefits will be profound and long-lasting. For the sake of the Northern Territory's most vulnerable children, this reform needs to happen quickly and comprehensively. Implemented and sustained, the vision for reform could see rapid transformation that not only prevents harm to future generations of children and their families and communities, but also encourages the positive growth of well-nurtured children in flourishing communities.

## THE PURPOSE OF THE CHILD PROTECTION SYSTEM

Every child is entitled to be born into a world in which they will survive, thrive, learn and grow, make their voices heard and reach their full potential. Those who care for and about them, and they themselves, must be able to hold leaders and decision-makers accountable for policies and their implementation that affect them. This is especially so when their parents, their natural carers, are unable to do so. Since the earliest beginnings of our societal principles the tribe, community or state has assumed an obligation to care for each of those who could not care for themselves. In realising this parental role the state and its agencies must be accountable for the manner in which it does so. Australia's contemporary child protection services were designed in the 1960s in response to child abuse that was thought to be easily detectable and to affect only a small number of children.<sup>8</sup> However, as the evidence has grown about the impact of violence and neglect on the wellbeing of children, so too has the scope of child protection services.

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Previously, the threshold for intervention by statutory child protection services was severe physical harm. This has evolved so that the threshold now includes outcomes such as psychological harm.<sup>9</sup> In the Northern Territory, a universal mandate requires reporting of concerns that a child has been or is likely to be a victim of a sexual offence, or has suffered or is likely to suffer harm or exploitation, which includes physical abuse, sexual abuse, emotional abuse, neglect and exposure to physical violence.<sup>10</sup>

While statutory child protection agencies play a key role in protecting children, it is ultimately everyone's responsibility – including families' and communities' – to afford children the right to grow up in safe environments. Family support services need to be involved in building the capacity of families and communities to care for their children, while expanding their understanding of where and how governments exercise statutory and support functions in relation to vulnerable families.

Further discussion of early family support and prevention services can be found in Chapter 38 (Early support). The child protection system is discussed further in Chapter 32 (Entering the child protection system).

## THE INTERNATIONAL AND NATIONAL CHILD PROTECTION CONTEXT

State and territory governments are responsible for statutory child protection, but Australia's commitment to international human rights instruments obliges Australia to ensure that all children enjoy certain human rights. In recent years, there has been an increasing national focus on protecting Australia's children.

### *International human rights instruments*

As outlined in Chapter 5 (Human rights), Australia is a party to the *United Nations Convention on the Rights of the Child* (CRC), and its ratification of the CRC in December 1990 has meant that Australia has a duty to ensure that all children in Australia enjoy the rights outlined in that convention.<sup>11</sup> A number of CRC principles have an impact on the operation of child protection systems in Australia, including:

- respect for the best interests of the child as a primary consideration in all decisions relating to children
- the right of all children to express their views freely on all matters affecting them, and
- the right of all children to enjoy all the rights of the CRC without discrimination of any kind.<sup>12</sup>

Relevant international instruments also include the *United Nations Universal Declaration of Human Rights* and the *United Nations Declaration on the Rights of Indigenous Peoples*.

# National Framework for Protecting Australia’s Children 2009–2020

In 2009, the Council of Australian Governments (COAG) endorsed the National Framework for Protecting Australia’s Children 2009–2020. The National Framework is a long-term approach to ensuring the safety and wellbeing of Australia’s children, which aims to reduce levels of child abuse and neglect over time.<sup>13</sup> All Australian governments have endorsed the National Framework, which articulates that protecting children is a shared responsibility across governments, non-government organisations, communities, parents and businesses.<sup>14</sup>

The National Framework outlines six supporting outcomes and details how each will be achieved.<sup>15</sup> Under these outcomes:

- children live in safe and supportive families and communities
- children and families access adequate support to promote safety and intervene early
- risk factors for child abuse and neglect are addressed
- children who have been abused or neglected receive the support and care they need for their safety and wellbeing
- Indigenous children are supported and safe in their families and communities, and
- child sexual abuse and exploitation is prevented and survivors receive adequate support.

## Action plans

The National Framework comprises a series of three-year action plans.

**Table 30.1: National Framework Action Plans**

| Action plan                   | Overview   |
|-------------------------------|--|
| First action plan (2009–2012) | <ul style="list-style-type: none"> <li>• Outlined how all governments, the non-government sector and the broader community would progress actions during the first three years of implementing the National Framework.<sup>16</sup></li> </ul>   |
| Second action plan (2012–15)  | <ul style="list-style-type: none"> <li>• Focused on building stronger partnerships with other sectors to address matters such as domestic and family violence, disability and mental health, and ensure continued work to improve outcomes for Indigenous children.<sup>17</sup></li> <li>• Emphasised the need for local partnerships to deliver local solutions.<sup>18</sup></li> <li>• Prioritised developing and implementing national standards for out of home care (National Standards). The National Standards were designed to drive improvements and deliver consistency in the quality of care provided to children in out of home care.<sup>19</sup></li> </ul> |
| Third action plan (2015–18)   | <ul style="list-style-type: none"> <li>• Includes three strategies for:               <ul style="list-style-type: none"> <li>- addressing early intervention, with a focus on the first 1000 days for a child</li> <li>- helping children people in out of home care thrive in adulthood, and</li> <li>- ensuring organisations respond better to children’s needs, to keep them safe.<sup>20</sup></li> </ul> </li> </ul>   |

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## ***National Children's Commissioner***

One of the key achievements arising from the first action plan was the establishment of the first National Children's Commissioner, whose role is to promote the rights, wellbeing and development of children in Australia.<sup>21</sup>

Under section 46MB of the *Australian Human Rights Commission Act 1986* (Cth), the functions of the National Children's Commissioner are:

- to submit a report each year to the Minister relating to the enjoyment and exercise of human rights by children in Australia
- to promote discussion and awareness of matters relating to the enjoyment and exercise of human rights by children in Australia
- to undertake research, or education or other programs to promote respect for, enjoyment and exercise of the human rights of children in Australia, and
- to examine the existing and proposed Commonwealth enactments for the purpose of ascertaining whether they recognise and protect the human rights of children.

## ***Measuring progress***

The National Framework and National Standards have a set of indicators relating to the safety and wellbeing of Australia's children, including the number of child protection substantiations, placement stability, kinship placement and family contact. Annual progress against agreed measures is reported to COAG.<sup>22</sup>

As at June 2017, the indicators show that nationally over the last few years:<sup>23</sup>

- the rate of children who were the subject of child protection substantiations increased
- the rate of children in out of home care increased, and
- the proportion of Aboriginal children in out of home care placed with extended family or other Aboriginal caregivers decreased.<sup>24</sup>

## ***Effectiveness of the National Framework and National Standards***

While the National Framework and National Standards for out of home care have helped to bring a national focus to the protection and wellbeing of children, concerns have been raised about how well the National Framework is meeting its stated goals.

The 2015 Senate Committee inquiry into out of home care heard, in the context of providing out of home care services, that the National Framework and National Standards are not legislated in any state or territory, nor is there any external oversight to ensure government and non-government agencies are complying with the agreed standards and principles.<sup>25</sup> The Committee heard that the key challenge for addressing accountability in relation to the National Framework and National Standards is a lack of related funding.<sup>26</sup> The Committee heard evidence that National Partnership agreements in place between the Commonwealth and state and territory governments do not

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provide funding related to the National Framework. Further evidence presented to the Committee suggested that state and territory funding models are not structured to support the National Framework and that funding for out of home care is crisis-driven.<sup>27</sup> Notably, the Senate Committee found that at the halfway point of implementing the National Framework, 'there appears to be little progress in improving outcomes for children in out of home care and their families'.<sup>28</sup>

The commitment of Commonwealth, state and territory governments to work collaboratively through the National Framework and promote the wellbeing of children in Australia is an important national initiative. However, the Commission believes the National Framework could be more effective in encouraging necessary change in the way the Northern Territory manages child protection issues. Further discussion of the National Framework and its effectiveness in contributing to national and jurisdictional systemic change can be found in Chapter 38 (Early support). Further discussion of the National Standards can be found in Chapter 33 (Children in out of home care).

## Royal Commission into Institutional Responses to Child Sexual Abuse

The Royal Commission into Institutional Responses to Child Sexual Abuse (Child Sexual Abuse Royal Commission) is investigating how institutions, including out of home care, have responded to allegations and instances of child sexual abuse.<sup>29</sup>

The Child Sexual Abuse Royal Commission's research areas include prevention, reporting and responding to allegations of child sexual abuse, as well as providing support and redressing these issues. Its policy work is focused on making recommendations to improve the future safety of children in institutions.<sup>30</sup>

As part of its investigations, the Child Sexual Abuse Royal Commission released two consultation papers in March 2016 on responding to complaints of child sexual abuse and child sexual abuse in out of home care. In these papers, it consulted on issues including:

- independent oversight mechanisms<sup>31</sup> improving institutions' access to advice and support when responding to complaints of child sexual abuse<sup>32</sup>
- establishing a nationally consistent therapeutic framework for delivering out of home care<sup>33</sup>
- expanding trauma-informed therapeutic treatment, and advocacy and support services<sup>34</sup>
- enhancing placement stability<sup>35</sup>
- providing better workforce planning and development for residential care staff,<sup>36</sup> and
- increasing support for those leaving care.<sup>37</sup>

In advance of its final report – which will include a volume dedicated to making institutions child-safe – in July 2016 the Child Sexual Abuse Royal Commission released *Creating Child Safe Institutions*. This report identifies a preliminary list of elements considered fundamental to the creation of child-safe institutions. In these institutions:<sup>38</sup>

- children participate in decisions affecting them and are taken seriously
- families and communities are informed and involved
- processes for responding to complaints of child sexual abuse are child-focused, and
- staff are equipped with the knowledge, skills and awareness to keep children safe, through continual education and training.

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The Child Sexual Abuse Royal Commission is due to present its final report to the Governor-General on 15 December 2017. It will contain recommendations that aim to prevent and respond to child sexual abuse in institutional contexts.<sup>39</sup>

## Senate Inquiry into out of home care

On 17 July 2014, the Senate referred matters relating to out of home care to the Community Affairs References Committee for inquiry and report.<sup>40</sup> The *Out of Home Care – The Senate Community Affairs References Committee* report was released in August 2015.<sup>41</sup>

Evidence before the Committee suggested that children in out of home care:

- did not have safe or stable placements<sup>42</sup>
- experienced poorer outcomes than their peers across a range of indicators, including health, education and homelessness,<sup>43</sup> and
- are more likely to experience chronic health and mental health conditions – and less likely to receive necessary treatment – than children in the general population.<sup>44</sup>

Evidence before the Committee also suggested that:

- children with disabilities are over-represented in the out of home care system and experience poorer outcomes<sup>45</sup>
- the longer children remain in care, the more placements and instability they experience<sup>46</sup>
- families and carers need greater support and assistance to provide safe and stable homes for children, particularly those from disadvantaged communities,<sup>47</sup> and
- addressing systemic issues in the out of home care system in the United States and United Kingdom by introducing a range of child-centred reforms has resulted in positive steps towards decreasing the number of children in out of home care.<sup>48</sup>

The Committee made recommendations about collecting data, and supporting children, families and carers. These recommendations include that:

- the Australian Institute of Health and Welfare (AIHW) work with states and territories to address data gaps in the Child Protection National Minimum Data Set and other datasets relating to children in out of home care<sup>49</sup>
- AIHW work with states and territories to develop a dataset regarding outcomes for young people transitioning from care, up to 21 years of age<sup>50</sup>
- states and territories raise the age at which young people continue to receive ongoing post-care support to 21 years of age<sup>51</sup>
- COAG consider a nationally consistent approach to funding advocacy and support groups for parents with children in or at risk of entering out of home care<sup>52</sup>
- COAG include in the Third National Framework Action Plan (2015–18) a project for developing and implementing a nationally consistent approach to building the capacity of Aboriginal Child Care Agencies to become integrated into all aspects of the child protection system for Aboriginal children<sup>53</sup>
- COAG implement a nationally consistent best-practice model for professional foster care,<sup>54</sup> and

- COAG include in the Third National Framework Action Plan (2015–18) a project for developing and implementing a nationally consistent approach to mandatory training for all residential care workers, and training qualifications and allowances for carers.<sup>55</sup>

The Commission’s own findings and recommendations about children in the out of home care system in the Northern Territory are discussed in Chapter 33 (Children in out of home care).

## INQUIRIES AND REFORMS IN OTHER JURISDICTIONS

### State and territory child protection inquiries

Over the past decade, some states and territories have inquired into their child protection systems to improve the safety and wellbeing of children in Australia. The following table outlines key inquiries and reports examining child protection systems.

**Table 30.2: List of recent inquiries and reports by jurisdiction**

| Jurisdiction      | Year       | Inquiry   | Report/s  |
|-------------------|------------|---|---|
| New South Wales   | 2016       | New South Wales Parliament, Legislative Council, General Purpose Standing Committee No. 2 | General Purpose Standing Committee No. 2. Report (No. 46)   |
|                   | 2008       | Special Commission of Inquiry into Child Protection Services in New South Wales           | Report of the Special Commission of Inquiry into Child Protection Services in NSW                         |
| Victoria          | 2012       | Protecting Victoria’s Vulnerable Children Inquiry   | Report of the Protecting Victoria’s Vulnerable Children Inquiry   |
| Queensland        | 2013       | Queensland Child Protection Commission of Inquiry   | Taking Responsibility: A Roadmap for Queensland Child Protection  |
| Western Australia | 2007       | Review of the Department for Community Development  | Review of the Department for Community Development: Review Report   |
| South Australia   | 2017, 2015 | Select Committee on Statutory Child Protection and Care in South Australia                | Second Interim Report<br>Interim Report   |
|                   | 2016       | Child Protection Systems Royal Commission   | The Life They Deserve   |
|                   | 2008       | Children in State Care Commission of Inquiry  | Children in State Care Commission of Inquiry: Allegations of sexual abuse and death from criminal conduct |

| Jurisdiction                 | Year | Inquiry  | Report/s  |
|------------------------------|------|--|---|
| Tasmania                     | 2011 | Select Committee of Enquiry into Child Protection                            | Select Committee on Child Protection. Final Report (No. 44)   |
| Australian Capital Territory | 2013 | Auditor-General's Performance Audit Report of the Care and Protection System | Performance Audit Report: Care and Protection – Report No. 01/2013                                    |
| Northern Territory           | 2010 | Board of Inquiry into the Child Protection System in the Northern Territory  | Growing them strong, together Promoting the Safety and Wellbeing of the Northern Territory's Children |

## State and Territory reforms

The Commission is aware that all states and territories are reforming their child protection and/or out of home care systems. The sections below present an overview of key reforms.

### New South Wales

Transferring out of home care to the non-government sector has been a key reform priority in New South Wales. In March 2012, the Department of Family and Community Services began this transition in response to a recommendation from the *Report of the Special Commission of Inquiry into Child Protection Services in NSW*.<sup>56</sup> By the end of 2015–16, 53.5% of children in statutory out of home care were managed by non-government services.<sup>57</sup>

In 2014, the NSW Government also introduced the *Safe Home for Life* reforms,<sup>58</sup> aiming to strengthen the child protection system through legislative change, new policy and new practices, and by redesigning how technology is used in child protection.<sup>59</sup> As part of these reforms:

- new placement principles promote permanency as an objective, and guide decision-making about what is a safe and stable home for children,<sup>60</sup> and
- the NSW Government is in the process of replacing and upgrading front-line technology within the Department of Family and Community Services, including investing more than \$49 million in a new system called ChildStory.<sup>61</sup>

In November 2016, the NSW Government announced *Their Futures Matter: A new approach*, which proposes a long-term, holistic reform of the state's child protection and out of home care system, based on the findings of an independent review of out of home care in NSW. This review concluded that the child protection system responds to immediate crisis, but is not doing enough to address the complex needs of vulnerable children and families in a way that will break the intergenerational cycle of abuse and neglect.<sup>62</sup>



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## Victoria

In May 2013, the Victorian Government released the *Vulnerable Children: Our Shared Responsibility Strategy 2013–2022*, which aims to prevent abuse and neglect and improve outcomes for children in statutory care.<sup>63</sup> In March 2014, the Government launched *Out of home care: a five year plan*, which outlines key actions to achieve improved outcomes, reduced demand and sustainable delivery in the out of home care sector.<sup>64</sup>

In 2014, the Victorian Government established Taskforce 1000, a collaborative project between the Department of Health and Human Services (DHHS) and the Commission for Children and Young People. The project aimed to improve outcomes for Aboriginal children and inform future planning by reviewing the circumstances of the approximately 1,000 Aboriginal children in out of home care.<sup>65</sup> The project concluded in early 2016 and each of the 17 DHHS local areas committed to ongoing practice improvement through locally based action plans that arose out of the project.<sup>66</sup> The *Always was, always will be Koori children* report was informed by the Taskforce 1000 inquiries and found the Victorian child protection system ‘fails to preserve, promote and develop cultural safety and connection for Aboriginal children in out-of-home care’ and that a key recommendation was system redesign.<sup>67</sup>

In April 2016, the Victorian Government released its *Roadmap for Reform: strong families, safe children* document (the Roadmap). The Roadmap includes initiatives that place a greater focus on prevention and earlier intervention, seeking to address risk factors that result in the need for highly interventionist services such as child protection and out of home care.<sup>68</sup>

Other initiatives in Victoria aimed at reforming the child protection system include:

- introducing targeted care packages, which aim to transition eligible children from residential care to more appropriate care arrangements – such as placements with parents, family members, friends and foster carers<sup>69</sup>
- establishing quarterly Aboriginal children’s forums to assess policies, strategies and practices that will decrease the over representation of Aboriginal children in out of home care,<sup>70</sup> and
- introducing legislation to address recommendations from the *Report of the Protecting Victoria’s Vulnerable Children Inquiry* regarding the simplification of Children’s Court orders and identifying and removing barriers to achieving permanent placements for children.<sup>71</sup>

## Queensland

On 20 April 2016, the Queensland Government released *Supporting Families Changing Futures: Advancing Queensland’s child protection and family support reforms* to affirm the Government’s ongoing commitment to implementing the recommendations of *Taking Responsibility: A Roadmap for Queensland Child Protection* (Carmody report).<sup>72</sup>

So far, the Queensland Government has:<sup>73</sup>

- established the Queensland Family and Child Commission, and appointed a Principal Commissioner to oversee Queensland’s child protection system and partner with

- agencies to ensure they are delivering best-practice services
- launched the Talking Families campaign, encouraging parents and families to talk about the pressures of parenting and seek help
- incorporated a single case model into 13 new intensive family support services, as a case management approach for high-needs families who receive a range of services
- established nine Regional Child and Family Committees to drive the reform agenda from the ground up, and
- established a new Office of the Public Guardian in 2014, and remodelled its child visiting program into a child advocacy program.<sup>74</sup>

On 30 May 2017, the Queensland Government, in partnership with Family Matters Queensland, released *Our Way*, a 20-year strategy to end over representation of Aboriginal children in out of home care. Further discussion of the *Our Way* strategy can be found in Chapter 31 (Engagement in child protection).

On 10 October 2017, the Queensland Government released *Supporting Families Changing Futures: 2017 Update*, a 12-month progress report of child protection and family support reforms.<sup>75</sup> The Queensland Government's progress includes:

- universal access to the Triple P – Positive Parenting Program and Talking Families initiatives
- statewide rollout of Family and Child Connect and Intensive Family Support services to support families to care for their children safely at home
- investment to create 421 new child safety positions over three years to improve services and reduce caseloads, and
- completion of 58 of the 121 recommendations from the Carmody report.<sup>76</sup>

## Western Australia

In 2017, the Western Australian Department of Communities was formed, comprising services that were previously provided by a number of agencies, including the former Department for Child Protection and Family Support. The Department of Communities has a focus on the integration of supports and services that better meet the needs of individuals and families.<sup>77</sup>

The Department of Communities' current reforms to the child protection and out of home care system in Western Australia include:

- the implementation of the *Building Safe and Strong Families: Earlier Intervention and Family Support Strategy* for aligning the current service system to meet the needs of those families most vulnerable to their children entering out-of-home care<sup>78</sup>
- progressing its five-year out of home care plan, *Building a Better Future: Out-of-Home Care Reform in Western Australia*, which commits to a suite of initiatives aimed at achieving safe and high-quality out of home care for vulnerable children<sup>79</sup>
- a review of the *Children and Community Services Act 2004*, which includes legislation related to out of home care,<sup>80</sup> and
- a review of the At Risk Youth Strategy, informing the re-alignment of funding for at-risk youth services, giving priority to those who have repeated contact with the child protection and youth justice systems, young people leaving care and Aboriginal young people.

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## South Australia

In August 2014, the Child Protection Systems Royal Commission was established to investigate the adequacy of the child protection system in South Australia. *The Child Protection System Royal Commission Report: The Life They Deserve* (Nyland report), made 260 recommendations for improving the child protection system. The report was delivered to the Governor on 5 August 2016.<sup>81</sup> It:

- emphasised the need to hear and understand the experiences of children, to keep children safe<sup>82</sup>
- concluded that a new independent department should be established, with child protection as its primary focus<sup>83</sup>
- highlighted that early intervention and prevention services need to grow substantially to respond to families, before circumstances become untenable. Services should be delivered by government and non-government organisations but not by the statutory agency responsible for child protection, which should focus on meeting its statutory mandate<sup>84</sup>
- recommended the creation of a family scoping unit for Aboriginal children, helping locate safe and appropriate carers in a timely way, which would encourage compliance with the Aboriginal Child Placement Principle,<sup>85</sup> and
- recommended appointing a Children’s Commissioner.<sup>86</sup>

In response to the Nyland report, in November 2016, the South Australian Government released *A Fresh Start: Government of South Australia’s Response to the Child Protection Systems Royal Commission Report: The Life They Deserve*, accepting 196 recommendations from the Nyland report and agreeing with a further 60.<sup>87</sup>

On 11 April 2017, the South Australian Government announced it would invest \$12 million to create an Early Intervention Research Directorate (the Directorate), to develop new strategies that better support vulnerable families and ensure programs are effective. Establishing the Directorate responds to a number of recommendations in the Nyland report.<sup>88</sup>

In June 2017, the South Australian Government released its first progress report, *A Fresh Start*.<sup>89</sup> The progress report noted 36 recommendations had been completed, 63 recommendations were being implemented and 85 recommendations were being planned.<sup>90</sup>

## Tasmania

In August 2015, the Tasmanian Government announced it would redesign child protection services. This resulted in the *Strong Families – Safe Kids Implementation Plan*, released in May 2016. The Plan aims to reposition child protection services as part of the broader child and family services system and aims to better support child protection workers.<sup>91</sup> As part of the Plan, \$2.5 million has been allocated to identifying and purchasing additional intensive family support services for children and families on the brink of engaging with the statutory service system.<sup>92</sup>

Tasmania’s Children and Youth Services is also progressing a number of initiatives related to the out of home care system that aim to increase the capacity and effectiveness of the system, strengthen responses and contribute to better outcomes for vulnerable children and young people.<sup>93</sup> In January 2017, the Tasmanian Commissioner for Children and Young People released his report

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*Children and Young People in Out of Home Care in Tasmania.* The Tasmanian Government accepted the intention and direction of all seven of the recommendations in the report and incorporated them in its *Strategic Plan for Out of Home Care in Tasmania 2017–2019*.<sup>94</sup> The Strategic Plan articulates five key strategies that form the basis of improvements to the out of home care system to focus the Tasmanian Government’s efforts over the next three years (2017–2019).<sup>95</sup>

## **Australian Capital Territory**

In January 2015, the ACT Government announced a reform agenda in *A Step Up for Our Kids – One Step Can make a Lifetime of Difference*, a five-year out of home care strategy.<sup>96</sup> *A Step Up for Our Kids* aims to respond to the challenges facing out of home care services in the ACT, including the rising demand for out of home care places and difficulties attracting and retaining foster carers.<sup>97</sup>

On 1 July 2015, Youth Justice and Care and Protection Services integrated to become Child and Youth Protection Services (CYPS).<sup>98</sup> CYPS works with community partners to provide a service response that focuses on a number of areas, including diverting young people from custody and providing culturally sensitive trauma-informed support.<sup>99</sup>

The 2015–16 ACT Budget will provide \$38.9 million over four years to fund the out of home care system, including \$16 million for new services and reforms through the implementation of *A Step Up for Our Kids*.<sup>100</sup> Part of the reforms included the establishment of a new Advocacy and Support Service for foster and kinship carers in July 2016.<sup>101</sup>

In response to the *Report of the Inquiry: Review into the system level responses to family violence in the ACT*, the ACT Government will provide \$2.47 million over four years in the 2016–17 Budget to a Child and Youth Protection Quality Assurance and Improvement Committee.<sup>102</sup> This Committee aims to provide arms-length quality assurance<sup>103</sup> and was established to strengthen the quality of child protection practice in the ACT and support ongoing improvement to the child protection system.<sup>104</sup>

## **Implications for the Northern Territory**

Inquiries and reforms from other jurisdictions have highlighted key issues in child protection that also affect the Northern Territory. They include the importance of:

- shifting the approach to child protection so it is informed by a proper understanding of the actual scale and nature of the problem
- providing early intervention services to help families care for their children
- improving outcomes in the out of home care sector and provide sustainable delivery of out of home care services
- attracting and retaining carers and giving them adequate support , and
- locating safe and appropriate carers for Aboriginal children to support better, culturally appropriate placements.

Notably, the BOI report had already considered many of the issues identified in other jurisdictions’ inquiries and reform plans. The different policies and philosophies recommended and applied in each jurisdiction suggests there is no definitive solution to the challenges facing child protection

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systems across Australia, let alone any formulaic approach to the complex issues at play in the Northern Territory.

However, there have been clear calls about investing in early support and prevention. Professor Frank Oberklaid stated:

*'... it just ... makes so much more sense economically to prevent and intervene early. And increasingly we're seeing interest by economists, World Bank, WHO, all around the world arguing for prevention ...'*<sup>105</sup>

Professor Oberklaid also spoke of work being done by Nobel Prize winning economist James Heckman, arguing for the importance of increased investment in early intervention and prevention in the early years of childhood.<sup>106</sup>

The Northern Territory Government must be careful not to replicate models and strategies from other jurisdictions and entrench existing and emerging problems from those models into the Northern Territory child protection system. The task ahead for the Northern Territory Government is to ensure it understands the complex factors affecting child protection in the Northern Territory. That alone will consume time and resources. Only once it has a comprehensive understanding of what causes the need for protection can it fully consider what reforms are required to ensure the safety of these children. From there, the Government can then consider fundamental changes to its child protection system.

These changes will take time to develop and implement. A plan for the future must look to the needs of the next generation of children and families; it must be a generational plan. It will require long-term commitment that exceeds the political cycle of any government and significant investment in child protection beyond the front-line system. Greater investment in early support should reduce much of the need for statutory intervention. There should be fewer concerns requiring investigation and fewer children who need to be removed from families and taken into the care of the Minister. As a result, there should be less pressure on and demand for a front-line child protection workforce. Ultimately, this will mean that not only will children and families flourish, but also that economically, the Northern Territory will be much better off.

## CHILD PROTECTION IN THE NORTHERN TERRITORY

### Systemic neglect

The Commission is aware there are many children in the Northern Territory whose life opportunities are compromised by a complex layering of pervasive disadvantage, poverty, overcrowding, poor parenting, mental health issues, substance misuse, and family or community violence.<sup>107</sup> For Aboriginal children, this adversity is compounded by intergenerational trauma, an erosion of culture,<sup>108</sup> and a lack of access to early support that children and their families in other parts of Australia may take for granted.

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In the Northern Territory, the most common reason for removing children from their families is neglect.<sup>109</sup> Despite the chronic nature of neglect, the child protection system has not prioritised finding a way to actually address and prevent neglect. As noted previously, the child protection model adopted in Australia has been and remains premised on rescuing children from intentional harm – called ‘non-accidental injuries’ – inflicted by caregivers rather than dealing more broadly with the insidious and largely unintentional harm caused by neglect.

Professor Bromfield gave the following evidence to the Commission:

*‘... The very nature of neglect is not that a child has not had their lunch once, it’s that a child is persistently hungry; that their ear infections are persistently untreated, causing hearing loss. It’s that they have persistently not had an adult interact with them and so they have poor speech development, they have poor attachment ... But none of those things are likely to trigger a system to say we must get out there within four hours, because there’s an imminent risk. But it doesn’t change the fact that that child, if they are experiencing chronic neglect, is at great risk of harm ... And we have a system that is not designed to respond early to prevent child neglect and those cumulative impacts’<sup>110</sup>*

Neglect is the most common notification category and accounts for 43% of all substantiated reports.<sup>111</sup> This is a significantly higher proportion when compared to the national data (25.9%).<sup>112</sup> The statistics indicate that Aboriginal children in the Northern Territory are largely placed in out of home care due to substantiated reports of neglect.

Witnesses attributed different reasons for the high numbers of substantiated reports of neglect. Some drew attention to the apparent cultural bias of non-Aboriginal workers assessing child protection risks.<sup>113</sup> Professor Larissa Berendt of the Jumbunna Institute for Indigenous Education & Research spoke about the Eurocentric value judgement placed on Aboriginal parenting:

*‘We were concerned about the trend in the way in which Aboriginal children were being deemed to be neglected and a failure to understand how Aboriginal cultural protocols or customs around parenting might play out. So for example, assumptions that when children spend the night at Mum’s place then Grandma’s place and then Uncle’s indicates a neglected child rather than a child being brought up by community, or where a custom in Aboriginal communities in families to have many relatives come by, have a large transient population through the family home, was deemed to be evidence of neglect because of overcrowding.’<sup>114</sup>*

Others expressed their anger and frustration that poverty continues to be mislabelled as neglect, providing the basis for children and young people to be removed from their family and kin. The Commission heard unambiguously that ‘If you don’t tackle poverty, you’re always going to be taking [Aboriginal] kids away’.<sup>115</sup> This means untangling the network of disadvantages underpinning poverty, each one exacerbating the other. These disadvantages affect generations of families and communities who lack access to quality education, health care, adequate housing, proper sanitation and good nutrition. A senior Aboriginal social worker, Christine Fejo-King, gave evidence that Aboriginal families sometimes do not receive the assistance they need because case workers do not understand that an Aboriginal family may not be aware of the basic services or goods available to them.<sup>116</sup>

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There is no doubt that the Northern Territory child protection system is working with many families experiencing high levels of dysfunction, and lacking the resources and capacity to adequately care for their children. During community visits, the Commission heard about families who are struggling to provide their children with a nurturing, safe environment in which they can grow up and thrive, due to their own problems with alcohol and substance misuse, poor mental health, gambling addiction, domestic violence and food security. These problems often co-occur. As child protection is fundamentally about adequate parenting and care, an effective child protection system must take steps to help parents deal with such issues and provide care for their children.

The evidence before the Commission highlighted the limitations within the current service system that make it difficult to adequately identify and address the needs of vulnerable children, young people and their families. The particular absence of early support services available to families inevitably leads to problems escalating to the point of crisis. Many witnesses expressed concern that it is only at this crisis point that a response to need is triggered. Concerns were also raised that the entrenched fear and distrust of 'welfare' deters many families from seeking early support, thus marginalising the most disadvantaged.

*'I will never trust welfare again. They broke up our family. Our family got punished rather than just being provided with services we needed to look after our kids and family.'*

Vulnerable Witness CM, Mother<sup>117</sup>

While cultural bias, structural disadvantage and systemic neglect may explain why Aboriginal children and young people are overrepresented in the child protection data and out of home care system, the extent and causes of child abuse and neglect in communities across the Northern Territory needs to be further examined and systematically analysed. More information about the underlying causes, where to target support, and characteristics of high-risk cohorts of children and families is required to inform a reorientation of the system.

## Stark facts and trends

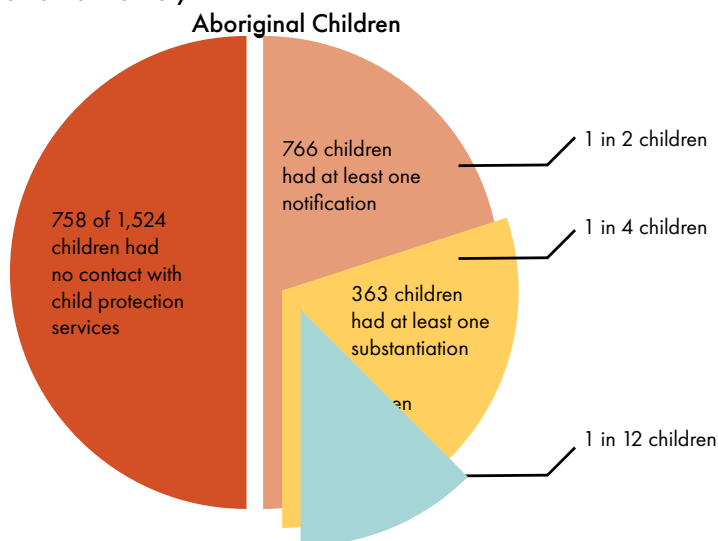
In all Australian jurisdictions, child protection systems are facing unprecedented demands and challenges, and are generally seen to be in crisis. This is usually examined from a systems perspective, noting the number of reports made to child protection services each year. Taking this perspective, the Commission was concerned to hear the number of notifications made to Territory Families has increased from around 3,000 per year in 2006–07 to more than 20,000 per year in 2015–16.<sup>118</sup> Notably, the overall population in the Northern Territory has only grown from 192,899 in 2006<sup>119</sup> to 228,833 in 2016.<sup>120</sup>

New research from the Menzies School of Health Research (Menzies) highlights that studying the systems by focusing on the number of children affected reveals an even greater need for significant reform. Menzies' research in the Northern Territory looked at average lifetime contact with the child protection system for a 10-year-old child between 2010 and 2014.<sup>121</sup> Menzies found that:

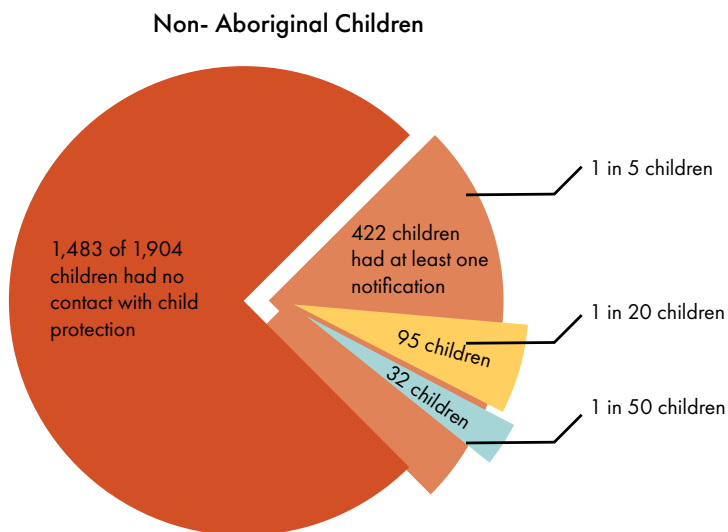
- 50.3% of Aboriginal children have been the subject of a notification or report to child protection by the age of 10,<sup>122</sup> making them 2.3 times more likely than non-Aboriginal children to have had a notification by that age
- 23.8% of Aboriginal children have had a substantiated report (a substantiation) made in relation to them by the age of 10, making them 4.8 times more likely than non-Aboriginal children to have had a substantiation by that age, and
- 7.5% of Aboriginal children have had at least one out of home care placement by the age of 10,<sup>123</sup> making them 4.5 times more likely than non-Aboriginal children to have had an out of home care placement by that age.<sup>124</sup>

Figure 30.1 and Figure 30.2 depict these statistics.

**Figure 30.1: Menzies 2010–14 cohort analysis of an Aboriginal child’s level of contact with the child protection system in the Northern Territory<sup>125</sup>**



**Figure 30.2: Menzies 2010–14 cohort analysis of a non-Aboriginal child’s level of contact with the child protection system in the Northern Territory<sup>126</sup>**



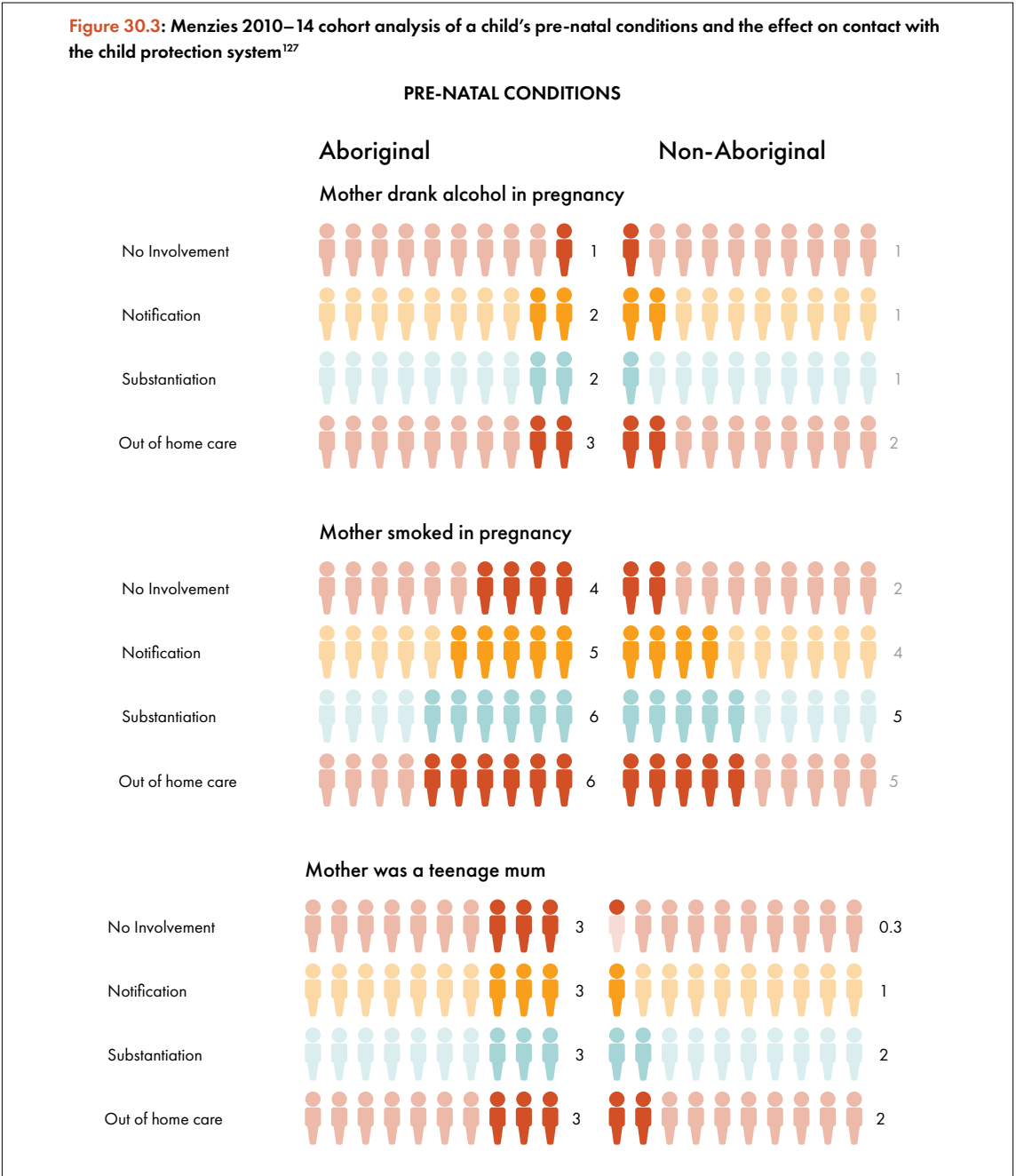


# Background characteristics and effect on contact with the child protection system

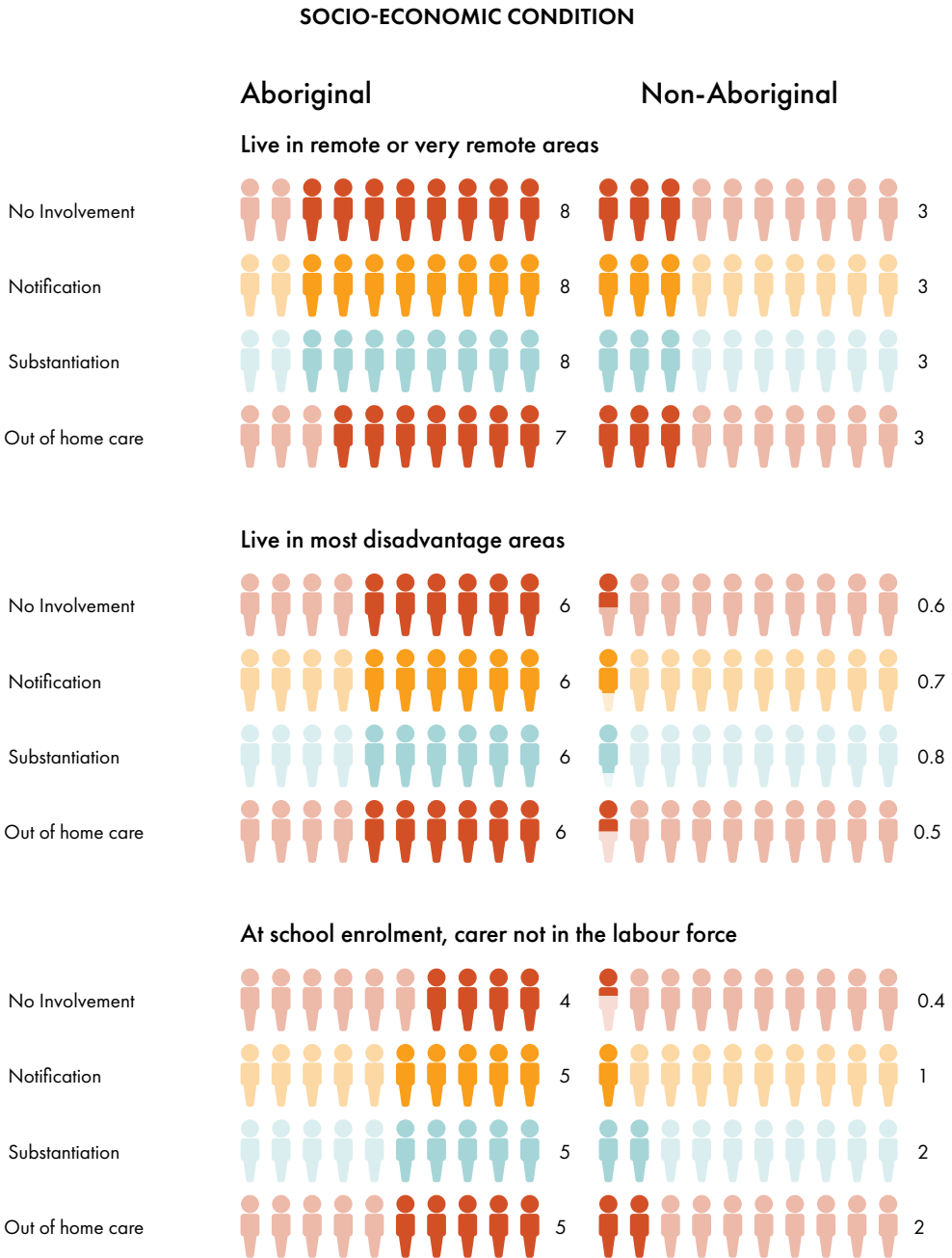
Research from Menzies also looked at the background characteristics of children in contact with child protection.

From 2010 to 2014, 10-year-old children had the following background characteristics at each level of contact with the child protection system:

**Figure 30.3: Menzies 2010–14 cohort analysis of a child’s pre-natal conditions and the effect on contact with the child protection system<sup>127</sup>**



**Figure 30.4: Menzies 2010–14 cohort analysis of a child’s socio-economic background and the effect on contact with the child protection system<sup>128</sup>**



From 2010 to 2014, 10-year-old children had the following service-related characteristics at each level of contact with the child protection system.<sup>129</sup>

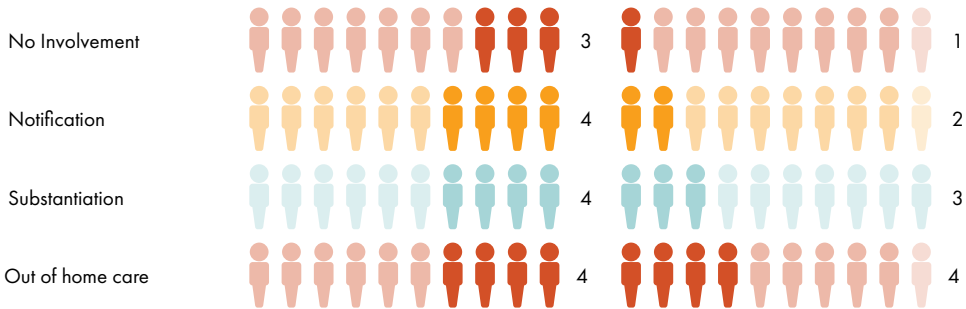
**Figure 30.5: Menzies 2010–14 cohort analysis of a child’s access to health services and the effect on contact with the child protection system<sup>130</sup>**

**ACCESS TO HEALTH SERVICES**

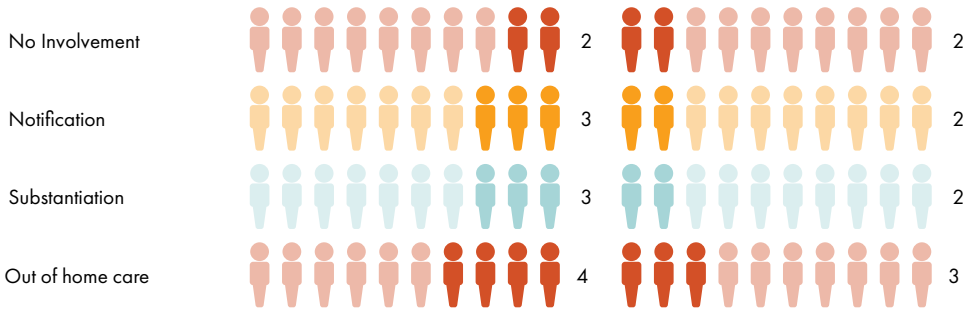
**Aboriginal**

**Non-Aboriginal**

**Fewer than seven antenatal visits**



**Admitted to special-care nursery at birth**



**At school enrolment, carer not in the labour force**



**Figure 30.6: Menzies 2010–14 cohort analysis of a child’s education and effect on contact with the child protection system<sup>131</sup>**



Note: \*NMS, national minimum standard which is regarded as the minimum level of reading required for a child to be able to progress in school

As noted above, the number of notifications made to Territory Families each year increased almost sevenfold from 2006-07 to 2015-16.<sup>132</sup> This inordinate increase has placed enormous pressure on an already over-burdened child protection system. Territory Families is facing difficulties in adequately assessing and investigating such a large numbers of reports.<sup>133</sup>

The data set out in Table 30.3 indicates the magnitude of the problem. It shows the annual growth in total notifications over 10 years, and that Aboriginal children are significantly overrepresented in the child protection system. Although they comprise less than half of all children in the Northern Territory, Aboriginal children constitute 78% of notifications.<sup>134</sup> Between 2006–07 and 2015–16, the proportion of children who were the subject of a notification and who were Aboriginal increased from 65% to 76%.<sup>135</sup>

**Table 30.3: Total number of notifications, children notified, and proportion of Aboriginal and non-Aboriginal children, and cases where this was unknown<sup>136</sup>**

|                            | 2006–2007 | 2007–2008 | 2008–2009 | 2009–2010 | 2010–2011 | 2011–2012 | 2012–2013 | 2013–2014 | 2014–2015 | 2015–2016 |
|----------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| <b>Total notifications</b> | 2,988     | 3,668     | 6,192     | 6,589     | 6,534     | 7,968     | 9,972     | 12,932    | 17,032    | 20,465    |
| <b>Aboriginal</b>          | 65%       | 67%       | 70%       | 73%       | 74%       | 75%       | 77%       | 77%       | 77%       | 78%       |
| <b>Non-Aboriginal</b>      | 32%       | 30%       | 29%       | 26%       | 25%       | 24%       | 23%       | 23%       | 23%       | 22%       |
| <b>Unknown</b>             | 3%        | 2%        | 1%        | 1%        | 1%        | 1%        | 0%        | 0%        | 0%        | 0%        |
| <b>Total Children</b>      | 2,493     | 2,996     | 4,305     | 4,719     | 4,829     | 5,740     | 6,615     | 7,917     | 9,892     | 10,851    |
| <b>Aboriginal</b>          | 65%       | 68%       | 69%       | 73%       | 74%       | 74%       | 75%       | 74%       | 75%       | 76%       |
| <b>Non-Aboriginal</b>      | 32%       | 29%       | 29%       | 26%       | 25%       | 25%       | 25%       | 26%       | 25%       | 24%       |
| <b>Unknown</b>             | 3%        | 2%        | 2%        | 1%        | 1%        | 1%        | 0%        | 0%        | 0%        | 0%        |

The influx of notifications, particularly over the last three years, has placed unsustainable pressure on the Central Intake Team as they attempt to gather, assess and refer the information in a quick and efficient manner. This has compromised the capacity of Territory Families to identify and respond in a timely way to high-priority concerns about the safety of children and young people.

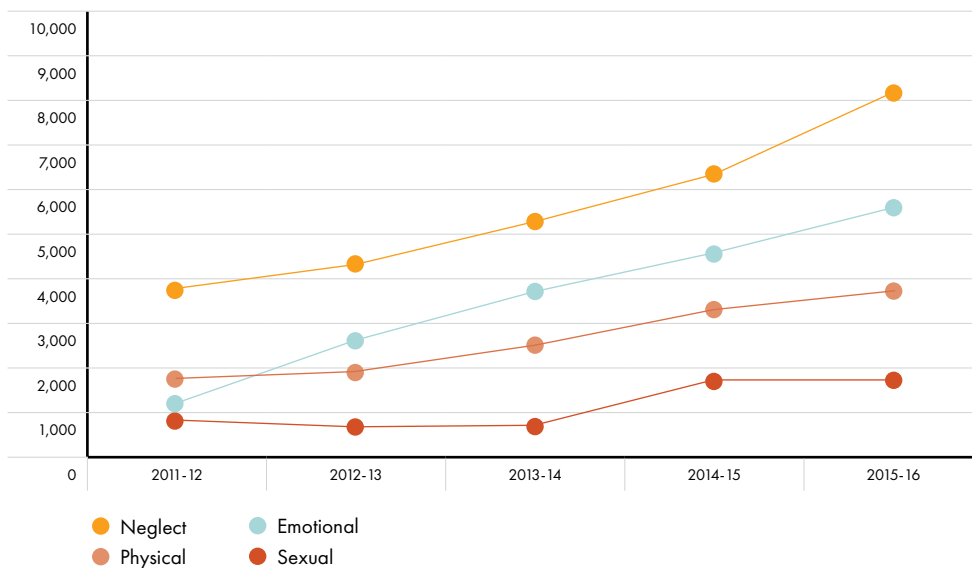
The table also shows a significant increase over the past 10 years in the proportion of children and young people who may be subject to repeat notifications within a year. In 2006–07, the number of notifications and the number of children that the notifications related to were roughly equal. In 2015–16, the number of notifications was more than twice the number of children notified, indicating that many children were the subject of multiple notifications.



## Trends

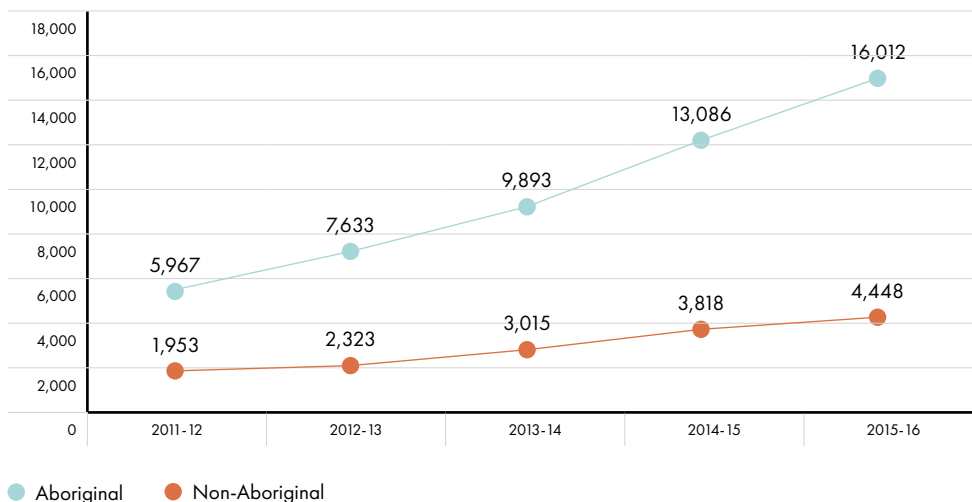
- There is an increasing number of notifications, and consistently proportions of them relate to neglect.<sup>137</sup>

**Figure 30.7: Number of notifications by abuse or neglect type, 2011 – 12 to 2015 – 16<sup>138</sup>**



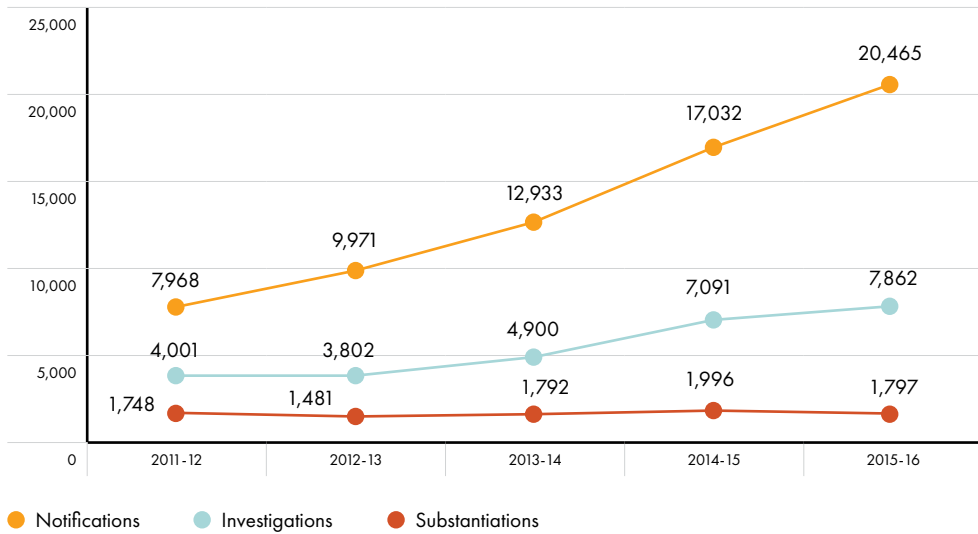
- Notifications have increasingly concerned Aboriginal children.<sup>139</sup>

**Figure 30.8: Number of notifications received by Territory Families by Aboriginality, from 2011 – 12 to 2015 – 16<sup>140</sup>**



- The increase in the number of notifications is increasingly outstripping the number of substantiations.<sup>141</sup>

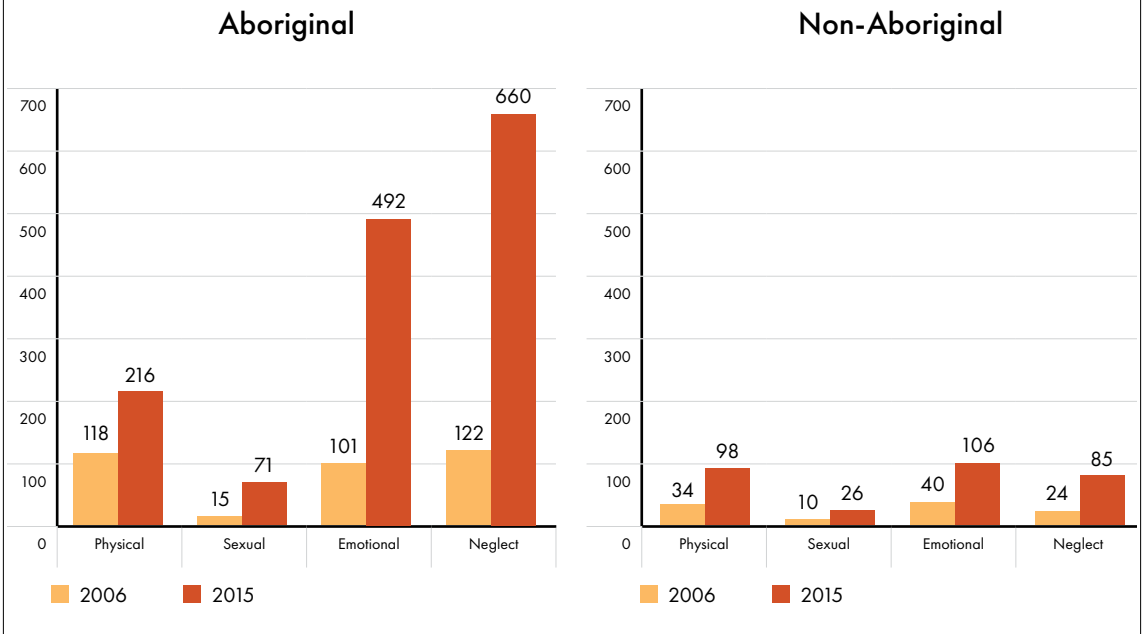
**Figure 30.9: Number of notifications, investigations and substantiations of abuse and neglect, 2011–12 to 2015–16<sup>142</sup>**



- While there is an increasing number of substantiations across all types of abuse and neglect, for Aboriginal children substantiations are overwhelmingly linked to neglect.<sup>143</sup>
- Overall, there were 1,797 substantiations in 2015-16, 1,625 of which related to 1,382 Aboriginal children.<sup>144</sup>



**Figure 30.10: Substantiations across all types of abuse and neglect<sup>145</sup>**

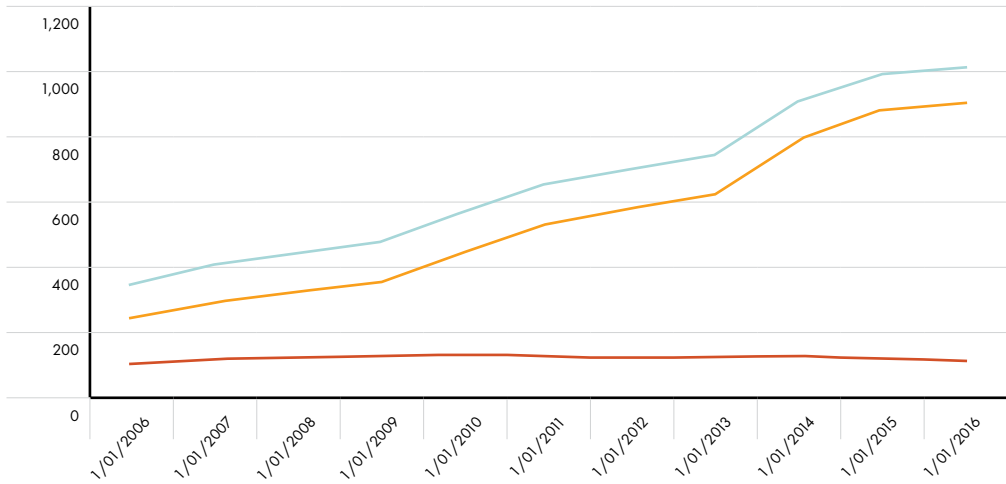


- The number of children in out of home care overall are increasing. The increase is primarily among Aboriginal children; numbers of non-Aboriginal children in care remained steady between 2006–07 and 2015–16.<sup>146</sup>





**Figure 30.11: Number of children in out of home care, 2006–16.<sup>147</sup>**



|                | 30/06/2006 | 30/06/2007 | 30/06/2008 | 30/06/2009 | 30/06/2010 | 30/06/2011 | 30/06/2012 | 30/06/2013 | 30/06/2014 | 30/06/2015 | 30/06/2016 |
|----------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| Indigenous     | 245        | 291        | 326        | 355        | 444        | 533        | 582        | 629        | 793        | 884        | 908        |
| Non-Indigenous | 100        | 115        | 117        | 122        | 129        | 123        | 120        | 119        | 124        | 113        | 112        |
| Total          | 345        | 406        | 443        | 477        | 573        | 656        | 702        | 748        | 917        | 997        | 1,020      |

This data is confronting. It points to the high levels of child vulnerability in the Northern Territory, particularly among Aboriginal children and young people. It also speaks to a system in serious need of repair and restructure. The Commission has found a reactive child protection system that is increasingly unable to respond to the growth in demand over the last 10 years.

## Overrepresentation of Aboriginal children

The Commission heard that the number of Aboriginal children in the child protection system should be an issue of national concern.<sup>148</sup> In public health terms, the rates of notifications and substantiated concerns in relation to Aboriginal children reflects, as one witness said, a problem of ‘epidemic proportions’ that would be seen as a ‘public health – if not humanitarian – crisis.’<sup>149</sup>

The statistics described by Menzies’ Professor Sven Silburn in relation to Aboriginal children are alarming. The data indicates that for the population of children who reached the age of 10 during the period 2010 to 2014:<sup>150</sup>

- one in two Aboriginal children had at least one notification of suspected abuse or neglect, and
- one in four Aboriginal children had at least one substantiation of abuse or neglect.

Compared to non-Aboriginal children, Aboriginal children in the Northern Territory are vastly overrepresented in the child protection system.<sup>151</sup>

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Disproportionate representation of Aboriginal children continues to increase at each point in the child protection system. Aboriginal children are 5.6 times more likely than non-Aboriginal children to be the subject of a finalised child protection investigation, and 7.3 times more likely to be the subject of substantiated reports of child abuse and neglect.<sup>152</sup>

The Northern Territory Government highlighted to the Commission that the Northern Territory has the second-lowest rate of Aboriginal children in care, with 34.4 Aboriginal children in out of home care per 1,000 Aboriginal children in the population. This compares with 58.9 Aboriginal children in out of home care per 1,000 Aboriginal children in Western Australia and 87.4 Aboriginal children per 1,000 Aboriginal children in Victoria.<sup>153</sup> Looking at comparative data for Aboriginal and non-Aboriginal children, only 3.1 per 1,000 non-Aboriginal children in the population are in out of home care, compared with 34.4 per 1,000 Aboriginal children. As at 30 June 2016, 89% of children in out of home care in the Northern Territory were Aboriginal.

While the national numbers of non-Aboriginal children in out of home care have remained relatively stable over the last 10 years, the numbers of Aboriginal children in out of home care have continued to increase at a troubling rate. This trend is evident in the Northern Territory, where the number of Aboriginal children placed in out of home care has tripled since 30 June 2007.<sup>154</sup>

The reasons are complex. The 2016 *Family Matters Report: Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal*<sup>155</sup> describes factors contributing to this continuing overrepresentation, including:

- child protection processes that result in Aboriginal children being more likely to experience child protection notifications, investigations and substantiations
- the gross overrepresentation of Aboriginal peoples on measures of social and economic disadvantage that contribute to child protection risks, such as high levels of family violence, poor housing and poverty
- similar levels of underrepresentation for participation in services that could help prevent children entering out of home care, and
- an absence of support for Aboriginal people and communities that would encourage them to participate in decisions about the care of their children.<sup>156</sup>

## Inquiries and reforms

More than 21 inquiries into child protection services have been conducted in Australia since 2006.<sup>157</sup> Many have been triggered by major scandals including the death of a child, accusations of system failures, allegations of misconduct or crises in service delivery. All have recommended urgent systemic changes to various elements of the services system including legislation, organisational structure, workforce training, and recruitment and policies and procedures.

More recent inquiries, such as the BOI report, have taken bolder steps and urged a significant rethinking of the foundational paradigm that informs services for vulnerable children and families. In particular, inquiries have recommended adopting a public health approach to the care and protection of children to replace the current approach based on reporting and investigation that has historically provided the foundation for Australian child protection services. Governments have

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not acted upon many of these proposals; it has proven easier to maintain the status quo and ‘tinker with’ existing systems. The result has been an exponential increase of reporting of children at risk; unmanageable numbers of investigations; an overburdened workforce; a failure to address the needs of children who, along with their families, are often re-traumatised by the system; and families, communities and a system in constant crisis.

Described in detail in the following section are some of the important lessons from past inquiries that affect the Northern Territory, including the need for reform that is designed and delivered by and for Aboriginal families and communities, and which aims to provide supports far earlier in the context of a public health approach.

### ***Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (1997)***

Two decades ago, *Bring them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Bringing Them Home report)* brought to public attention the devastating effects of forced child removals on past generations. This report highlighted that forced removal and institutionalisation had a number of effects including a lack of good relationship and parenting models, and a sense of unresolved trauma.<sup>158</sup>

To remedy the adverse and intergenerational impacts of past removals on current caregiving, the inquiry urged governments to support rebuilding parenting skills and confidence within Aboriginal communities. Specifically, Recommendation 36 stated ‘That the Council of Australian Governments ensure the provision of adequate funding to relevant Indigenous organisations in each region to establish parenting and family well-being programs.’<sup>159</sup> It warned that that this should not be seen simply as a package of goods and services. A holistic approach was essential, to be achieved by co-locating parenting and family wellbeing centres within existing Aboriginal-controlled medical and health services and/or Aboriginal Child Care Agencies.<sup>160</sup>

### ***Ampe Akelyernemane Meke Mekarle – the Little Children are Sacred inquiry (2007)***

*‘Are there simple fixes? Of course not! Our conservative estimate is that it will take at least 15 years (equivalent to an Aboriginal generation) to make some inroads into the crisis and then hopefully move on from there.’*

Little Children are Sacred report<sup>161</sup>

Ten years after *Bringing Them Home* report, the *Little Children Are Sacred: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (Little Children are Sacred report)* embraced the view that ‘*prevention is better than cure*’. It called attention to the high levels of underlying community dysfunction related to the high level of child sexual abuse and other violence in Aboriginal communities. While it emphasised ‘*that the safety of children is everyone’s business*’, it highlighted how critically important it is for both the Commonwealth and

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Northern Territory Governments to 'commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities'.<sup>162</sup>

Recommendations included the development of a long-term strategy, defining a set of core health and family services that could be delivered to communities of all sizes in the Northern Territory.<sup>163</sup> This strategy would include universal home visitation and early years services, where health played a greater role in preventing child abuse and neglect. This approach reflected the findings of the *Bringing them Home* report which advocated for a health promotion and prevention model to heal the pervasive trauma and grief experienced by Aboriginal communities.<sup>164</sup>

The *Little Children Are Sacred* report was concerned about the clear lack of family support programs, especially in remote communities. At the time, it was reported that the statutory child protection agency was planning to develop a 'differential response' to child protection reports. The effectiveness of such a model relies on having a range of family support services families can be referred to. The report recommended that the Northern Territory and Commonwealth Governments make significant long-term investments in non-government organisations and Aboriginal-controlled family support programs and services. Of note is the recommendation to establish multi-purpose family centres or 'hubs' in remote communities and regional centres, to provide an integrated, holistic approach to working with families.<sup>165</sup>

The *Little Children Are Sacred* report pushed for 'a radical change in the way government and non-government organisations consult, engage with and support Aboriginal people'.<sup>166</sup> Instead, it became a catalyst for the Northern Territory National Emergency Response Intervention, the Commonwealth Government's controversial emergency response to protect Aboriginal children from sexual abuse and family violence in the Northern Territory.

Announced in haste and quickly formalised into a package of Commonwealth legislation, the emergency response disregarded community-driven, long-term prevention strategies, as described in the *Little Children are Sacred* report.<sup>167</sup> Aboriginal leaders and organisations expressed significant concerns about the lack of connection between the Government's announced response and the recommendations of the *Little Children Are Sacred* report that had initiated it.<sup>168</sup> The Northern Territory intervention created or exacerbated division and mistrust between the Commonwealth Government, the Northern Territory Government, Aboriginal communities and numerous community organisations.<sup>169</sup>

## **Changes in the Northern Territory landscape**

Achieving large-scale, sustainable reform in child protection is very difficult in any place, and the Northern Territory is no exception. Since the landmark *Little Children are Sacred* report was released in June 2007, the child protection system in the Northern Territory has been almost constantly subjected to reforms, inquiries, reports and changing strategies.

Table 30.4 provides an overview of key reports and inquiries, government announcements and actions, and significant legislative amendments affecting the Northern Territory child protection system between 2006 and 2016.

**Table 30.4: Overview of events in the Northern Territory child protection landscape**

| Date          | Event  |
|---------------|--|
| 8 August 2006 | <p><b>Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse is established</b></p> <p>The Board of Inquiry was co-chaired by Patricia Anderson and Rex Wild QC. Its aim was to find better ways to protect Aboriginal children from sexual abuse, and examine the extent, nature and factors contributing to sexual abuse of Aboriginal children in the Northern Territory. There was a particular focus on unreported incidents of abuse.<sup>170</sup></p>   |
| 15 June 2007  | <p><b>Board of Inquiry releases the <i>Little Children Are Sacred</i> report</b></p> <p>The report contained 97 recommendations for improving the safety of Aboriginal children and highlighted two key factors in preventing abuse: education and decreased alcohol consumption.<sup>171</sup></p>  |
| 19 June 2007  | <p><b>Closing the Gap of Indigenous Disadvantage: A Generational Plan of Action is tabled</b></p> <p>The Northern Territory Government tabled its broad action plan for addressing Indigenous disadvantage, which included its initial response to the <i>Little Children Are Sacred</i> report.<sup>172</sup></p>   |
| 21 June 2007  | <p><b>Northern Territory National Emergency Response (NTER) is announced</b></p> <p>In response to the <i>Little Children Are Sacred</i> report, the Commonwealth Government announced a 'national emergency' intervention to protect Aboriginal children in the Northern Territory from sexual abuse and family violence.<sup>173</sup></p>   |
| 7 August 2007 | <p><b>Northern Territory National Emergency Response legislation is introduced</b></p> <p>The following Bills were introduced to and passed by the Commonwealth House of Representatives:</p> <ul style="list-style-type: none"> <li>• Northern Territory National Emergency Response Bill 2007 (Cth)</li> <li>• Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 (Cth)</li> <li>• Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007 (Cth)</li> <li>• Appropriation (Northern Territory National Emergency Response) Bill (No 1) 2007–2008 (Cth)</li> <li>• Appropriation (Northern Territory National Emergency Response) Bill (No 2) 2007–2007 (Cth)</li> </ul> <p>On 17 August 2007, all five Bills passed the Senate and received assent. Together, the five Acts are referred to as the NTER.<sup>174</sup></p> |
| November 2007 | <p><b>Northern Territory Community Services High Risk Audit report is finalised</b></p> <p>Dr Howard Bath was appointed to conduct an independent audit of children at high risk within the Community Services portfolio, which included the child protection system. This audit was in response to two high-profile incidents involving children in care: the death of a 12-year-old girl in kinship care, and the case of a 17-year-old boy who had allegedly killed his carer who was also his uncle.<sup>175</sup> The scope of that audit was confined to 'high-risk clients'; it did not review the portfolio as a whole.<sup>176</sup></p>  |

| Date             | Event   |
|------------------|---|
| 7 May 2008       | <p><b>Care and Protection of Children Act (NT) commences</b></p> <p>The object of the Act is to promote the wellbeing of children.<sup>177</sup> It replaced the <i>Community Welfare Act</i> (NT).</p>   |
| 1 June 2008      | <p><b>Office of the Children’s Commissioner commences operations</b></p> <p>The Northern Territory Government introduced the statutory position of the Children’s Commissioner in the <i>Care and Protection of Children Act</i>.<sup>178</sup></p>   |
| 1 July 2008      | <p><b>Division of Family and Children Services becomes Northern Territory Families and Children</b></p> <p>The Department of Health and Community Services was restructured and changed its name to the Department of Health and Families. As part of this restructure, the Division Family and Children Services – responsible for child protection services – was renamed Northern Territory Families and Children.<sup>179</sup></p>   |
| October 2008     | <p><b>NTER Review Board releases its report</b></p> <p>The Review Board independently reviewed the first 12 months of the NTER to assess its progress in improving the safety and wellbeing of children. The Review Board noted there was a deep belief that the measures introduced by the Commonwealth Government were a collective imposition based on race, and that support for the positive potential of NTER measures was dampened by the manner in which these measures were imposed.<sup>180</sup></p>   |
| 1 September 2009 | <p><b>Mandatory reporting requirements change</b></p> <p>From this date, it became a requirement for an individual to submit a report if he or she reasonably believed a child had been harmed or exploited, or that a child is likely to be harmed or exploited.<sup>181</sup></p>   |
| October 2009     | <p><b>Children’s Commissioner’s first report is released</b></p> <p>The Office of the Children’s Commissioner published its first substantive annual report, covering the period July 2008 to June 2009. The report identified concerns including:</p> <ul style="list-style-type: none"> <li>• a 69% increase in notifications in the reporting period<sup>182</sup></li> <li>• Northern Territory Families and Children failing to meet its response targets for commencing investigations after receiving a notification<sup>183</sup></li> <li>• these response problems being at least partly due to a shortage of experienced and trained personnel, especially in Northern Territory Families and Children regional offices,<sup>184</sup> and</li> <li>• complaints concerning a lack of clear formal guardianship arrangements for a child; failure to meet medical, educational or therapeutic needs; and failure to adequately assess kinship arrangements.<sup>185</sup></li> </ul> |

| Date             | Event  |
|------------------|--|
| 3 November 2009  | <p><b>Children’s Commissioner releases report on the death of BM</b></p> <p>The Children’s Commissioner released a report on the circumstances of the death of a newborn infant known as BM, who had died after Northern Territory Families and Children had been notified of potential violence in BM’s home.<sup>186</sup> Recommendations from this report were set out in the Children’s Commissioner’s report on intake processes (discussed below).<sup>187</sup> The death of BM was one of the events that led the Northern Territory Government to appoint a Board of Inquiry into the functioning of the Northern Territory child protection system.<sup>188</sup></p>   |
| November 2009    | <p><b>Minister for Child Protection asks Children’s Commissioner to investigate intake processes</b></p> <p>The Northern Territory Minister for Child Protection made a statutory request for the Children’s Commissioner to investigate Northern Territory Families and Children intake processes. The Minister received the report of this investigation a few weeks later.<sup>189</sup> The Children’s Commissioner made six recommendations, including a review of training for Central Intake Team staff members; increased staffing for the Central Intake Team; and immediate action by Northern Territory Families and Children to address backlogs involving initial assessments and case allocations.<sup>190</sup></p> |
| 11 November 2009 | <p><b>Board of Inquiry into the Child Protection System in the Northern Territory is announced</b></p> <p>The Board of Inquiry was called after concerns were raised about deaths of, and harm to, children in care.<sup>191</sup> It was tasked with investigating how the child protection system functioned, and specific approaches to addressing the needs of children in the Northern Territory, including in regional and remote areas.</p>   |
| October 2010     | <p><b>Board of Inquiry releases its report</b></p> <p>The Board of Inquiry published its report, <i>Growing them strong, together: Promoting the Safety and Wellbeing of the Northern Territory’s children</i> (BOI report)<sup>192</sup> in which it made 147 recommendations.</p>  |
| 12 October 2010  | <p><b>External Monitoring Committee is announced</b></p> <p>The Northern Territory Government appointed an External Monitoring Committee to monitor and report on the progress of implementing the recommendations of the BOI report.<sup>193</sup></p>  |
| 18 October 2010  | <p><b>Northern Territory Cabinet endorses policy directions of Board of Inquiry recommendations</b></p> <p>Cabinet resolved to endorse the key policy directions of the BOI report recommendations.<sup>194</sup></p>  |
| 1 January 2011   | <p><b>Department of Children and Families is created</b></p> <p>The Northern Territory Families and Children Division of the Department of Health and Families became a department of its own: the Department of Children and Families, known generally as “DCF”.<sup>195</sup></p>  |

| Date          | Event  |
|---------------|--|
| February 2011 | <p><b>Safe Children, Bright Futures: Strategic Framework 2011 to 2015 is released</b></p> <p>The Northern Territory Government published this framework for implementing the BOI report recommendations.<sup>196</sup></p>   |
| April 2011    | <p><b>Northern Territory Government releases its first <i>Child Protection Reform: Progress Report</i></b></p> <p>The Northern Territory Government published the <i>Child Protection Reform: Progress Report Volume 1</i>, noting that:</p> <ul style="list-style-type: none"> <li>• it had entered a service agreement with the Aboriginal Medical Services Alliance Northern Territory (AMSANT) to establish an Aboriginal owned and controlled peak organisation</li> <li>• it had agreed with the Commonwealth Government on sites for new children and family centres in Gunbalanya, Maningrida, Ngukurr, Palmerston and Yuendumu, under the National Partnership Agreement on Indigenous Early Childhood Development, and</li> <li>• the backlog of investigations had reduced from 870 to 17 as at 14 April 2011.<sup>197</sup></li> </ul> |
| June 2011     | <p><b>A <i>Life Long Shadow</i> report is released</b></p> <p>The Northern Territory Ombudsman released <i>A Life Long Shadow: Report of a Partial Investigation of the Child Protection Authority</i>. The Ombudsman conducted this own-motion investigation after health workers raised concerns about the Northern Territory child protection agency's operation and response to notifications, as well as the disclosures surrounding the death of a child in the care of the Minister.<sup>198</sup> During the Ombudsman's investigation, the Northern Territory Government removed the Ombudsman's power to investigate complaints about vulnerable children, in response to a recommendation in the BOI report. A report for the partial investigation included 28 recommendations.<sup>199</sup></p>                                      |
| 1 July 2011   | <p><b>Children's Commissioner's powers and functions are broadened</b></p> <p>Following recommendation 136 of the BOI report, legislation was passed to increase the powers and functions of the Children's Commissioner.<sup>200</sup></p>  |
| July 2011     | <p><b>External Monitoring Committee provides first report</b></p> <p>The External Monitoring Committee provided its first report to the Minister for Child Protection.<sup>201</sup> The report noted that as at July 2011, the Department of Children and Families had moved on all 34 urgent recommendations.</p>  |
| April 2012    | <p><b>External Monitoring Committee provides second report</b></p> <p>The Committee provided its second report to the Minister for Child Protection, noting significant progress in implementing some of the BOI report recommendations but delays in implementing others.<sup>202</sup></p>   |



| Date             | Event   |
|------------------|---|
| 25 August 2012   | <p><b>Northern Territory Government changes</b></p> <p>A change of government brought a change in approach to the child protection portfolio with a shift away from early intervention and prevention programs.</p>   |
| 5 September 2012 | <p><b>Chief Minister announces independent review of Northern Territory finances<sup>203</sup></b></p> <p>The review found that funding issues relating to the Department of Children and Families could have a significant impact on the overall fiscal position of the Northern Territory.<sup>204</sup></p>  |
| 3 October 2012   | <p><b>Ministerial Briefing identifies ways to ‘rescope’ child protection services</b></p> <p>A Ministerial Briefing identified ways to adjust the Department of Children and Families’ budget by focusing its spending on front-line services.<sup>205</sup> It also proposed discontinuing the External Monitoring Committee’s implementation of the BOI report recommendations.</p> |
| 11 October 2012  | <p><b>Minister for Child Protection endorses redirection proposals</b></p> <p>The Minister for Child Protection endorsed these budget redirection proposals in the Ministerial Briefing of 3 October 2012.<sup>206</sup></p>  |
| 19 October 2012  | <p><b>Department of Children and Families becomes the Office of Children and Families</b></p> <p>The Northern Territory Government restructured the Department of Children and Families, making it an Office of Children and Families within the Department of Education and Children’s Services.<sup>207</sup></p>   |
| 23 October 2012  | <p><b>External Monitoring Committee issues third report</b></p> <p>The Minister of Children and Families’ office received a Ministerial Brief including the External Monitoring Committee’s third and last report. It was not subsequently tabled in the Legislative Assembly.<sup>208</sup></p>  |

| Date            | Event  |
|-----------------|--|
| 4 December 2012 | <p><b>Mini-budget cuts funding to non-front-line services</b></p> <p>The Northern Territory Government announced its mini-budget, which cut funding for non-front-line services or redirected it to front-line services.<sup>209</sup></p>   |
| September 2013  | <p><b>Office of Children and Families becomes Department of Children and Families</b></p> <p>The Office of Children and Families became a separate department again: the Department of Children and Families.</p>  |
| 1 January 2014  | <p><b>Children’s Commissioner Act (NT) commences</b></p> <p>The Act further expanded the powers and responsibilities of the Office of the Children’s Commissioner.<sup>210</sup></p>   |
| January 2014    | <p><b>2014 Strategic Plan is finalised</b></p> <p>The 2014 Strategic Plan focused on the Department of Children and Families developing its capacity to deliver the core front-line functions required under the <i>Care and Protection of Children Act</i>. The Department’s first role as outlined in the Strategic Plan was to ‘<i>intervene to protect children from harm</i>’, which was followed by ‘<i>support and improve the wellbeing of children in our care</i>’. It is clear from those roles that the focus was very much on those children already within the system.<sup>211</sup></p> |
| April 2014      | <p><b>Standards of Professional Practice are finalised</b></p> <p>The Department of Children and Families finalised its practice framework and standards of professional practice. These documents aimed to ensure that front-line staff members had a clear understanding of the standards expected, which would help ensure consistent practice despite the high level of staff turnover and a significant number of junior staff members.<sup>212</sup></p>   |
| November 2014   | <p><b>Chief Executive Officer of the Department of Children and Families requests a review into the Department’s operational efficiency</b></p> <p>The Chief Executive Officer requested the Department’s Professional Practice Division complete this review. The resulting report, delivered in early 2015, identified areas of unnecessary, redundant or duplicated tasks, and areas where new practices and procedures could improve the Department’s performance in delivering its core statutory responsibilities.<sup>213</sup></p>   |

| Date              | Event  |
|-------------------|--|
| November 2014     | <p><b>Chief Executive Officer approves Family Intervention Framework</b></p> <p>The Family Intervention Framework set the foundation for supporting vulnerable families. It focused entirely on statutory family support services within the child protection services. It did not propose an early intervention framework that would prevent children from entering the statutory child protection system.<sup>214</sup></p>              |
| February 2015     | <p><b>Permanent Care Orders are introduced</b></p> <p>A Permanent Care Order is a Court Order that grants the Chief Executive Officer of the department or another person full parental responsibility for a child until the child reaches the age of 18. A Permanent Care Order must be the best means to ensure the wellbeing of the child which includes the child's physical, psychological and emotional wellbeing.<sup>215</sup></p> |
| 12 September 2016 | <p><b>Territory Families is established</b></p> <p>The Northern Territory Government established Territory Families to replace the Department of Children and Families, as part of its commitment to improving services and programs for families, and brought youth justice and detention within the same Ministry.<sup>216</sup></p>   |
| 25 November 2016  | <p><b>Northern Territory Government approves a reform direction</b></p> <p>In doing so, it identified Territory Families as the lead agency for implementing this reform.<sup>217</sup> As part of the reform direction, Territory Families is planning to outsource out of home care services to the non-government sector.<sup>218</sup></p>   |

## The Board of Inquiry

### *The child protection system in 2009*

In 2009, the child protection system in the Northern Territory was in a state of crisis.<sup>219</sup> There were allegations that in two cases infants had died due to Northern Territory Families and Children's inaction.<sup>220</sup> The Office of the Children's Commissioner had just released its first annual report, which drew attention to an increasing number of notifications and failures by Northern Territory Families and Children to meet response targets for commencing investigations.

On 11 November 2009, in light of escalating public concern, the Northern Territory Government announced a Board of Inquiry to investigate the functioning of the child protection system and specific approaches to address the needs of children in the Northern Territory, including in regional

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and remote areas.<sup>221</sup> The Board of Inquiry was co-Chaired by Professor Muriel Bamblett, Dr Howard Bath and Dr Rob Roseby.

## ***Department of Health and Families submission to the Board of Inquiry***

The Department of Health and Families, the department responsible for child protection at the time, was well aware of the serious issues facing the child protection system. In its submission to the Board of Inquiry it noted that it did not have the capacity to sustain an adequate response to child protection given the growing demand in intake, investigations and out of home care.<sup>222</sup>

The submission highlighted that notifications had increased by 69% from 2007-08 to 2008-09; the number of children in out of home care had doubled over the previous five years; staff workloads had increased; and cases were becoming more complex, requiring a multidisciplinary approach.<sup>223</sup> The submission noted that the service system focused predominantly on the statutory system, and it was critical the Northern Territory move towards a system that heavily invested in universal and secondary services. This was so that children and their families could access the range of assistance they needed.<sup>224</sup> It argued that building a sustainable, responsive and comprehensive child protection system would require a whole-of-government commitment to reform; a long-term investment in establishing early intervention and prevention services; and a significant transformation in the non-government sector and communities.<sup>225</sup>

## ***The Board of Inquiry report***

In October 2010, the Board of Inquiry published its report, providing a roadmap for reform with 147 recommendations, including:<sup>226</sup>

- *Recommendation 3:* Aboriginal childcare agencies be developed in stages and have a major role in child safety and wellbeing.
- *Recommendation 5:* An Aboriginal peak body on child and family safety and wellbeing be funded.
- *Recommendation 9:* The Northern Territory Government explore with the Commonwealth Government a trial development or expansion of existing infrastructure in remote areas, in particular, remote therapeutic services.
- *Recommendation 10:* The Northern Territory Government makes significant and sustained investment in the development and expansion of a suite of secondary prevention, tertiary prevention, therapeutic and reunification services for vulnerable and at risk families and communities to the non-government organisation sector.
- *Recommendation 117:* The Northern Territory Government immediately move to implement major reforms around the delivery of child safety and wellbeing services and interagency collaboration, including dual pathways, community child safety and wellbeing teams for the 20 growth towns and elsewhere.

The BOI report noted that one of the most significant reforms required was a substantial new investment in a range of family supports and therapeutic and reunification services, to be implemented over a five-year period. The Board of Inquiry found that in the absence of a strong family support sector, the statutory child protection system had been expected to deliver services

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beyond its core responsibilities and capacity.<sup>227</sup> The BOI report warned that *'unless there is a robust concomitant commitment to developing culturally appropriate, early intervention and preventative services, the statutory service will never keep up with demand'*.<sup>228</sup>

The new services contemplated included the development of Aboriginal child safety and wellbeing services – also known as Aboriginal Child Care Agencies – in Darwin and Alice Springs.<sup>229</sup> The BOI report also recommended creating a peak organisation to support the development of these agencies.<sup>230</sup>

The BOI report proposed a dual-pathway system for responding to concerns about the safety and wellbeing of children. Under this model, individuals with concerns would have two reporting options:

- a referral gateway operated by a non-government organisation that would provide an assessment and referral service for families and link them to appropriate support and intervention services, and
- a centralised intake process, as is currently the case.<sup>231</sup>

The BOI report also considered capacity issues to be a priority within the child protection and the out of home care programs. It identified the need to redeploy staff members, increase recruitment, deliver training and offer incentives. Those recommendations were directed at addressing the urgent need for more workers and the high rates of staff turnover.<sup>232</sup>

Like previous inquiries, the BOI report set out a framework for improving the participation of Aboriginal people in all aspects of the child protection system, in line with the principles of self-determination outlined in the United Nations Declaration on the Rights of Indigenous Peoples.<sup>233</sup>

The BOI report's vision included enhancing the participation of Aboriginal people, so that instead of being passive recipients and consultants they would be active decision-making participants across child protection service and program delivery.<sup>234</sup> In achieving this aim, the BOI report outlined the need for significant capacity building through partnerships with governments and the non-government sector, as well as appropriate funding and legislative frameworks.<sup>235</sup>

In articulating the need for a new approach to child protection matters, the BOI report emphasised the need for systems that promote child safety and wellbeing and include *'the full participation'* of Aboriginal people. It further outlined factors that needed to be addressed to achieve this, namely.<sup>236</sup>

- strong governance by and empowerment of Aboriginal communities
- Aboriginal community involvement in decision making, including the need for community leadership and local community focus
- the need for development of and close working partnerships with Aboriginal community controlled child and family service organisations
- the need to build trust between Aboriginal communities and government agencies
- an emphasis on community education and community development strategies which build on the strengths of Aboriginal culture to develop community capacity and leadership to assist Aboriginal communities, to ensure the safety of their children and families and to address problems in ways that are culturally meaningful and appropriate, and
- recruitment, retention, training and support of the workforce including development of Aboriginal

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professional workforces as well as pathways to encourage more Aboriginal specialists and doctors, training of interpreters, more Aboriginal liaison workers, and better pay and conditions.

## ***An External Monitoring Committee***

The BOI report considered it necessary for a person or body to monitor the implementation of its recommendations, and recommended amendment to the powers of the Children's Commissioner to enable it to monitor implementation.<sup>237</sup> Instead, on 12 October 2010, the Northern Territory Government established an External Monitoring Committee.

The then Minister for Children and Families, Konstantine Vatskalis, explained to the Commission the reasons for appointing a committee rather than conferring that power on to the Children's Commissioner. They included that sometimes an external opinion was required; that Ministers could be political, reacting to the community; and that an external committee reporting to Parliament would have no fear or favour, and would not be influenced by others.<sup>238</sup>

The Committee's terms of reference included providing expert advice to the Northern Territory Government on implementation of the reforms; reporting directly to the Minister for Child Protection; and conducting high-level consultations to achieve a whole-of-government approach and public engagement with the reforms.<sup>239</sup> The External Monitoring Committee membership included national and local child protection and health experts.<sup>240</sup>

## ***Response to the Board of Inquiry report***

On 18 October 2010, the day the BOI report was tabled in the Northern Territory Parliament, Cabinet resolved to endorse the key policy directions of the recommendations; approve additional funding for priority items and related matters; and commence negotiations with the Commonwealth Government regarding joint planning and funding to implement key recommendations of the BOI report.<sup>241</sup>

Cabinet also endorsed establishing a separate agency responsible for child protection. Consequently, the Northern Territory Families and Children division of the Department of Health and Families became the Department of Children and Families.<sup>242</sup>

During the early stages of implementing the report's recommendations, there was strong bipartisan support.<sup>243</sup> It was recognised that change was necessary to stop the 'tsunami of need' evident in the significant increase in notifications and placements in out of home care. It was widely acknowledged that the BOI report needed to be taken very seriously.<sup>244</sup>

In February 2011, the Northern Territory Government published a framework for implementing the BOI report recommendations – *Safe Children, Bright Futures: Strategic Framework 2011 to 2015*.<sup>245</sup> As the message from the Minister for Child Protection and Minister for Children and Families in that framework made clear, the BOI report had 'delivered a clear message – the Northern Territory needs child protection and family support systems that put the safety and wellbeing of children first'.<sup>246</sup> As part of *Safe Children, Bright Futures: Strategic Framework 2011 to 2015*, the system received \$130 million in extra funding, including \$500,000 to establish a peak body that would create Aboriginal Child Care Agencies.<sup>247</sup>

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The *Child Protection Reform Progress Report – Volume 1* highlighted that within the first six months of implementing the reforms, the Northern Territory Government had made notable progress, which including clearing a backlog of 870 investigations, progressing the use of common assessment tools across the Northern Territory and introducing caseload ratios.<sup>248</sup>

In July 2011, the External Monitoring Committee provided its first report to the Minister for Child Protection.<sup>249</sup> The report noted that as at July 2011, the Department of Children and Families had moved on all 34 of the BOI report's urgent recommendations. Key issues identified at that time included the need for cultural change within the Department of Children and Families, staff recruitment problems, pressures on front-line staff, and the need to reform the out of home care system.<sup>250</sup> It also identified the need for a healing process between the Department of Children and Families and Aboriginal people.<sup>251</sup>

On April 2012, the External Monitoring Committee delivered its second report to the Minister for Child Protection. It noted significant progress in implementing some of the BOI report's recommendations, but identified delays in implementing some other recommendations.<sup>252</sup>

### **A new peak body**

*In response to the BOI report recommendations regarding the establishment of a peak body on child and family safety and wellbeing, and the development of Aboriginal Child Care Agencies, the Northern Territory Government provided funding to Strong Aboriginal Families, Together (SAF,T), a peak body that would represent Aboriginal people on child protection issues.<sup>253</sup> SAF,T was also funded to develop and deliver Aboriginal childcare agencies in Darwin and Alice Springs.<sup>254</sup>*

*SAF,T developed a strategic plan for Aboriginal Child Care Agencies, based on the Circles of Care model, which seeks to address children's care needs within the context of their culture. It was intended that centres in Alice Springs and Darwin would be pilot programs, based on which further centres would be developed and expanded.<sup>255</sup>*

*On 22 August 2012, SAF,T signed a service agreement with the Northern Territory Government for the Aboriginal Child Care Agencies to:*

- provide case management and family support to vulnerable families referred from the Office of Children and Families*
- work in multi-agency collaboration teams*
- provide cultural advice and expertise for kinship care meetings, and*
- support case planning and placement of children.<sup>256</sup>*

## A change in government and in direction

After an election on 25 August 2012, there was a change of government. Shortly thereafter, the then Chief Minister announced an independent review of the Northern Territory Government's finances.<sup>257</sup> This review found that funding issues relating to the Department of Children and Families was one of the more significant areas affecting the Northern Territory's overall fiscal position.<sup>258</sup>

In a Ministerial Briefing to the Minister for Families and Children on 3 October 2012, the Department of Children and Families identified priorities to refocus the budget. They included getting out of home care costs under control; staffing the front line and keeping caseloads manageable; developing a strong commitment to front-line supervision, learning and development; and committing to more focused spending. In essence, there would be less support for organisations that did not directly support statutory services and more funding for front-line services.<sup>259</sup>

The Ministerial Briefing referred to the 'rescoping' of child protection services, with the stated aim of redirecting funding from *'initiatives that have not achieved anticipated results to core services that will make a real difference for children and families'*. This included:

- discontinuing the External Monitoring Committee
- terminating the service agreement with SAFT and the agreement for the Alice Springs Aboriginal Child Care Agency
- putting on hold ongoing funding for non-government organisations under the Tennant Creek Family Support Initiative, pending a decision on how an election commitment to establish a Tennant Creek Family Support Centre would be progressed
- ceasing to fund hospital-based multi-agency assessment and coordination teams
- reducing funding for the Northern Territory Council of Social Services (NTCOSS) and the National Association for the Prevention of Child Abuse and Neglect (NAPCAN), and
- capping the recruitment of remote community child safety and wellbeing team practitioners at nine instead of 20 until its effectiveness was demonstrated.<sup>260</sup>

The Ministerial Briefing provided redirection proposals for each initiative that had been funded by the previous government under its Board of Inquiry budget, which would impact a number of the BOI report's key recommendations. These impacts are summarised in Table 30.5.





**Table 30.5: Redirection proposals for each initiative funded by the previous Northern Territory Government<sup>261</sup>**

| Board of Inquiry recommendation   | Previous initiative  | Redirection proposal  | Impact of redirection proposal   |
|---|--|---|--|
| <p><b>Recommendation 3:</b><br/>Fund Aboriginal Child Care Agencies</p>   | <p>Develop a service plan to establish Aboriginal Child Care Agencies</p>  | <p>End funding for Alice Springs Aboriginal Child Care Agency</p>   | <p>Reduce access to cultural advice and expertise informing kinship placements and case planning, and reduce referral options for vulnerable Aboriginal children and their families. Department of Children and Families staff members, in particular Aboriginal staff members, may be discouraged by this decision.</p> |
| <p><b>Recommendation 5:</b><br/>Fund an Aboriginal peak body</p>  | <p>Provide funding to establish a new peak body for children, young people and families</p>                                  | <p>Cease funding of peak body</p>   | <p>Impact on the Department of Children and Families staff members, in particular Aboriginal staff members, who may be discouraged by this decision. It would also affect remote services, in particular causing diminished advocacy for remote Aboriginal services, vulnerable children, youth and their families.</p>  |
| <p><b>Recommendation 9:</b><br/>Trial development or expansion of existing infrastructure in remote areas</p>                         | <p>Begin exploring, with the Commonwealth, the trial development or expansion of existing infrastructure in remote areas</p> | <p>Cease work, as funding had not been provided and the cost of implementing was beyond the budget capacity</p> | <p>High impact on remote services, which would have provided new services to remote communities.</p>   |
| <p><b>Recommendation 10:</b><br/>Invest in secondary and tertiary prevention services, and therapeutic and reunification services</p> | <p>Provide funding for Tennant Creek family support services</p>   | <p>Hold off on ongoing funding of Tenant Creek family support services</p>                                      | <p>Absence of investment in early intervention and preventative services, would result in ongoing reliance on child protection services, and reduce referral options available.</p>  |
| <p><b>Recommendation 31:</b><br/>Develop a Family Group Conferencing model</p>  | <p>Fund Family Group Conferencing as a three-year pilot</p>  | <p>Discontinue Family Group Conferencing</p>  | <p>Impact on staff workloads. It would also potentially have a negative impact on the ability to locate kinship carers.</p>  |
| <p><b>Recommendation 61:</b><br/>Prioritise the provision of intensive family support</p>   | <p>Conduct an audit of Category 3 child protection cases to inform the need for family support services</p>                  | <p>Continue this work in-house</p>  | <p>Moderate impact on front-line services, affecting staff workloads in the short term.</p>  |

| Board of Inquiry recommendation  | Previous initiative                        | Redirection proposal  | Impact of redirection proposal  |
|--|--|---|---|
| <b>Recommendation 117:</b><br>Implement major reforms around the delivery of child safety and wellbeing services | Develop a dual-pathway response            | Cease funding for this initiative   | Moderate impact on front-line services, reducing referral options. It would also have a moderate impact on remote services, as the funding was intended to support a pilot of the model in three regional and two remote communities. |
|  | Establish child safety and wellbeing teams | Cut community child safety and wellbeing teams, pending evaluation of program | Moderate impact on front-line services, as it would result in loss of support for staff in remote areas. Would have a high impact on remote services, as it was intended that 20 communities would benefit from this initiative.      |

On 11 October 2012, the Minister for Child Protection endorsed the redirection proposals in the Ministerial Briefing.<sup>262</sup>

On 23 October 2012, the Minister’s office received the third report of the External Monitoring Committee, which noted:<sup>263</sup>

- that senior staff members had provided strong leadership, which was reflected in positive changes and a growing sense of enthusiasm at a ‘grass roots’ level
- an increase of 29% in the number of Aboriginal staff members, and more generally improved recruitment and retention rates
- a reduction in the average caseload from 36 to 18 cases per worker, and
- the commencement of Multi-Agency Assessment Coordination teams in April 2012, and the positive impact that Community Child Safety and Wellbeing Team practitioners were having.

The third report considered the future benefits of early intervention, including its considerable long-term cost savings and its ability to prevent the effects of a dysfunctional environment escalating, or disrupting children’s emotional and social development.

The third report, two years after the BOI report, was the Committee’s last and it was not tabled in the Legislative Assembly.<sup>264</sup> The Northern Territory Government cut funding for the External Monitoring Committee as part of the ‘rescoping’ of child protection services.<sup>265</sup>

## The impact on SAF,T

After the change of government in August 2012, SAF,T's core funding was cut dramatically from \$850,000 to \$250,000.<sup>266</sup> Funding of \$1 million was to be provided for direct service delivery in Darwin, subject to renegotiation of a service agreement with the Government.<sup>267</sup>

What followed was a series of requests about the types of services SAF,T would provide.

On 4 December 2012, the Northern Territory advised SAF,T it would need to rescope services in light of the funding cuts and focus on recruitment, training and support for kinship carers. SAF,T then commenced work on a new out of home care model of partnership between SAF,T and the Office of Children and Families.<sup>268</sup>

On 19 December 2012, SAF,T was instructed to consider another service model, where it would maintain its Circles of Care intervention and prevention model but would also recruit, train, assess and support kinship carers for out of home care.<sup>269</sup>

On 13 February 2013, SAF,T was advised to stop negotiations with the Office of Children and Families regarding delivery of the Circles of Care Intensive Family Support Service, and was instructed to develop an Emergency and Respite Care Service.<sup>270</sup>

In early 2013, SAF,T entered into a new service agreement with the Northern Territory Government for the provision of emergency respite services.<sup>271</sup> In her evidence to the Commission, a former Chief Executive Officer of SAF,T noted that unlike the service agreement signed on 22 August 2012, in the new agreement there was 'no longer any provision for SAF,T' to address in any significant way the care needs of Aboriginal children in a culturally appropriate context. The Chief Executive Officer noted 'SAF,T was diametrically opposed to working with the Office of Children and Families' Emergency and Respite Care Service'.<sup>272</sup>

By the end of 2013, all funding for SAF,T had ceased.<sup>273</sup>

On 13 November 2013, then Acting Deputy Chief Executive provided a Ministerial Briefing to Mr Elferink, former Minister for Children and Families. It identified that in 20 months, SAF,T had been unable to demonstrate appropriate governance or retain or manage its senior staff, and that it had access to limited business acumen.<sup>274</sup> The briefing paper went on to note that the Northern Territory Government and Department for Children and Families had on numerous occasions changed positions as to what services SAF,T was to deliver under its service agreement:<sup>275</sup>

*'... four times in the last two years, to the effect that public money is essentially being used to cease and recommence new models and organisational staffing. This has undermined SAF,T as an organisation and compromised its service delivery.'*

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## Legislative framework

The *Care and Protection of Children Act* (establishes the legislative framework governing child protection in the Northern Territory. The overriding object of the Act is to promote the wellbeing of children.<sup>276</sup>

The underlying principles of the Act are set out in sections 7 to 12. Any person or body involved in implementing the Act must uphold the underlying principles as far as is practicable. The best interests of the child is the paramount principle underpinning decisions about a child.<sup>277</sup> Any person or court taking any action under the Act in relation to a child must regard this principle as the most important.<sup>278</sup>

The Act also sets out a number of underlying principles that should be taken into account when making decisions about all children and some additional principles for an Aboriginal child. These principles include the participation of kinship groups, communities and representative organisations in decision-making, and the understanding that an Aboriginal child should be placed according to an order that prioritises placement with a member of the child's family.<sup>279</sup> These principles seek to reflect the Aboriginal Child Placement Principle.<sup>280</sup>

Other underlying principles include recognising that the Northern Territory Government has a responsibility for safeguarding the wellbeing of children and supporting families; that the family has a central role in having primary responsibility for the care of the child; and that children should be given the opportunity to participate in decisions involving them.<sup>281</sup>

## Responsible departments and office holders

While departmental responsibility for child protection lies with Territory Families, many changes have been made to the organisational structure and leadership.

The following list sets out the various departments responsible for child protection over recent years and key changes in that responsibility.

- The Department of Health and Community Services was restructured on 1 July 2008 and became the Department of Health and Families. As part of this restructure, the Division of Family and Children Services was renamed Northern Territory Families and Children.<sup>282</sup>
- On 1 January 2011, the Northern Territory Families and Children division of the Department of Health and Families became a department of its own: the Department of Children and Families.<sup>283</sup>
- On 19 October 2012, the Northern Territory Government made changes that caused the Department of Children and Families to become the Office of Children and Families within the Department of Education and Children's Services.<sup>284</sup>
- In September 2013, the Office of Children and Families returned to being a separate department, as the Department of Children and Families.<sup>285</sup>
- On 12 September 2016, the Northern Territory Government established Territory Families.<sup>286</sup>

Table 30.6 presents a list of Ministers responsible for children and child protection during the relevant period.

**Table 30.6: Ministers with responsibility for children and child protection during the relevant periods**

| Portfolio  | Minister                           | Period   |
|--|------------------------------------|--|
| 10th Assembly: 24 June 2005 – 17 August 2008 <sup>287</sup>  |                                    |  |
| Minister for Family and Community Services   | The Hon. Marion Scrymgour MLA      | 24 June 2005 – 10 July 2005;<br>7 August 2007 – 30 June 2008 |
| Minister for Family and Community Services   | The Hon. Delia Lawrie MLA          | 11 July 2005 – 6 August 2007                                 |
| Minister for Children and Families (portfolio name change)   | The Hon. Marion Scrymgour MLA      | 1 July 2008 – 17 August 2008                                 |
| 11th Assembly: 18 August 2008 – 28 August 2012 <sup>288</sup>  |                                    |  |
| Minister for Children and Families;<br>Minister for Child Protection   | The Hon. Malarndirri McCarthy MLA  | 18 August 2008 – 3 December 2009                             |
| Minister for Children and Families;<br>Minister for Child Protection   | The Hon. Konstantine Vatskalis MLA | 4 December 2009 – 28 August 2012                             |
| 12th Assembly: 29 August 2012 – 30 August 2016 <sup>289</sup>  |                                    |  |
| Chief Minister the Hon. Terry Mills MLA assumed responsibility for all ministries until the Administrator for the Northern Territory issued an Administrative Arrangements Order on 4 September 2012, appointing ministers to their respective roles. <sup>290</sup> |                                    |  |
| Minister for Families and Children   | The Hon. Robyn Lambley MLA         | 4 September 2012 – 1 October 2012                            |
| Minister for Children and Families (title change)  | The Hon. Robyn Lambley MLA         | 2 October 2012 – 6 March 2013                                |
| Minister for Children and Families   | The Hon. Alison Anderson MLA       | 7 March 2013 – 9 September 2013                              |
| Minister for Children and Families   | The Hon. John Elferink MLA         | 10 September 2013 – 30 August 2016                           |
| 13th Assembly: 31 August 2016 – current <sup>291</sup>   |                                    |  |
| Chief Minister the Hon. Michael Gunner MLA assumed responsibility for all ministries until the Administrator for the Northern Territory issued an Administrative Arrangements Order on 12 September 2016, appointing ministers to their respective roles.            |                                    |  |
| Minister for Children  | The Hon Nicole Manison MLA         | 12 September 2016 – current                                  |
| Minister for Territory Families (including Youth Justice and Youth Detention)  | The Hon Dale Wakefield MLA         | 12 September 2016 – current                                  |

## Territory Families

The Northern Territory Government established Territory Families to replace the Department of Children and Families as part of its commitment to improving services and programs for families.<sup>292</sup> Notably, the establishment of Territory Families brought child protection and youth justice into one department.

### *Departmental responsibilities*

Territory Families is responsible for a broad range of policy areas, including child guardianship; child protection; out of home care; children and families policy; children's services; family and parent support services; family responsibility agreements and orders; family violence services; men's and women's policy; multicultural affairs; NT pensioner and carer concessions; Seniors Card matters; Senior Territorians policy; youth affairs and the youth services directorate; and youth detention and youth justice.<sup>293</sup>

Territory Families works within a statutory framework and is responsible for administering the:<sup>294</sup>

- *Adoption of Children Act* (NT)
- *Care and Protection of Children Act* (NT)
- *Guardianship of Infants Act* (NT)
- *Youth Justice Act* (NT)

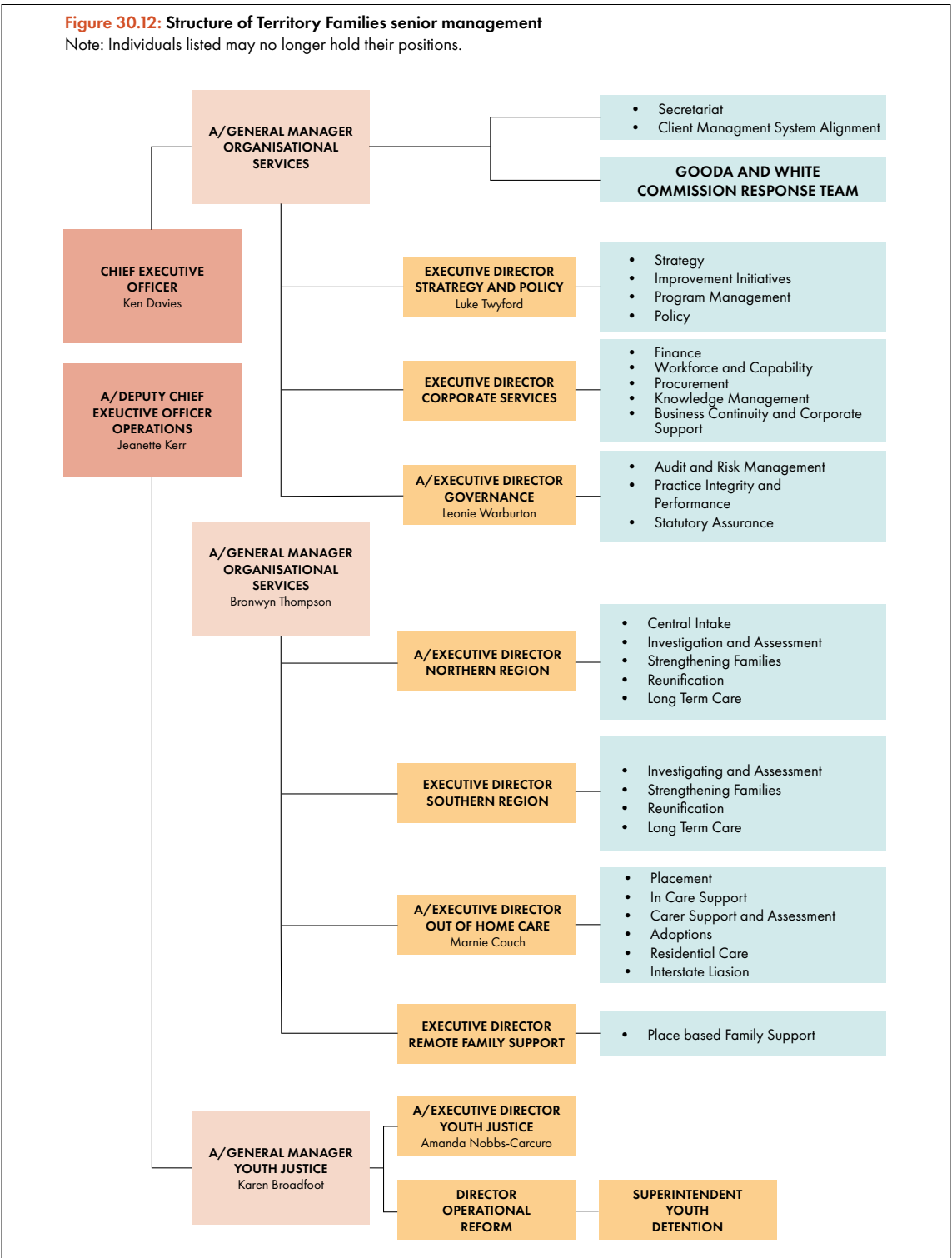
In 2015-16, Territory Families (then the Department of Children and Families) had child protection offices in Casuarina, Palmerston, Katherine, Tennant Creek, Alice Springs and Nhulunbuy.

In 2015-16, Territory Families also had staff located in remote communities, including Ntaria, Yuendumu, Ti Tree, Papunya, Ali Curung, Elliott, Ngukurr, Borroloola, Yarralin, Kalkarindji, Lajamanu, Wugularr, Angurugu, Peppimenarti, Wadey, Daly River, Ramingining, Maningrida, Galiwinku, Wurrumiyanga, Gunbalanya and Yirrkala.<sup>295</sup>



# Structure

Figure 30.12 shows the structure of Territory Families senior management as at March 2017.



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A number of individuals from Territory Families appeared before the Commission to give evidence in relation to child protection, including:

- Ken Davies – Chief Executive Officer
- Jeanette Kerr – Deputy Chief Executive Officer
- Bronwyn Thompson – Acting General Manager, Operations
- Karen Broadfoot – Acting General Manager, Youth Justice
- Leonie Warburton – Acting Executive Director, Governance Division
- Marnie Couch – Acting Executive Director, Out-of-Home Care
- Jonathan Lingood – Team Leader, Central Intake
- Kirstin Schinkel – Acting Team Leader, Reunification; Senior Child Protection Officer
- Joy Simpson – Manager, Investigation and Assessment
- Sarah Huddleston – Child Protection Practitioner, Child Abuse Taskforce
- Rosalee Webb – Team Leader, Remote Family Support Service, Maningrida, and
- Peter Fletcher – Team Leader, Youth Outreach and Re-engagement

Senior and other staff from Territory Families also gave evidence in the form of statements.

## ***Policy framework and reviews***

Territory Families has a set of policies and procedures that govern its operations, guide its decision-making and provide guidance to staff members on how to comply with the principles and requirements of the *Care of Protection and Children Act*. Staff are required to follow these policies and procedures, which set requirements and sometimes targets within an operational framework. The *Care and Protection Policy and Procedure Manual* (the Manual) is an essential practice resource for staff governing the delivery of services.

The Manual includes policies and procedures on areas such as intake and allocation, prospective carers, placements, family contact arrangements, leaving and after-care support, and reunification.

On 16 March 2015, the then Department of Children and Families released a major new version of the Manual. The rewrite of the policies and procedures in the Manual took into consideration contemporary child protection policy and procedures and past recommendations. It also moved the policies and procedures into a web-based format.<sup>296</sup>

The Commission understands that policies and procedures that make up the Manual are updated by sections. As such, some policies and procedures have been updated more recently than others.

There have been issues in trying to make the Territory Families policies publicly available. The benefits of doing so are clear - policies and procedures that are readily available to the public assist with transparency in decision-making. The BOI report recommended policies and procedures relating to out of home care be made available online.<sup>297</sup> On 22 June 2017, the Northern Territory Government advised the Commission that this recommendation had not been implemented.<sup>298</sup>

Since then, the Northern Territory Government has published a range of policies relating to child protection and out of home care on the Territory Families website.<sup>299</sup> The Commission welcomes this



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increased transparency and community education about child protection processes. The Commission notes that to maximise effectiveness, policies and procedures must be:

- **Comprehensive:** having comprehensive and well-informed policies and procedures that are adapted to the Northern Territory context assists staff in achieving the best outcomes when delivering child protection services.
- **Regularly reviewed:** as factors that affect the child protection system change there must be timely reviews of policies and procedures to ensure these documents remain relevant.
- **Publicly Available:** public visibility of policies allows those affected by decisions to better understand the basis on which they were made.
- **Supported by a strong evidence base:** Territory Families must ensure it collects relevant data and invests in research to ensure changes to policies and procedures are supported by a strong evidence base.

The Commission notes that Territory Families has recently undertaken external reviews to build a better understanding of current processes within the child protection system. These include the Mercer review into the Territory Families organisational structure (discussed further below) and the PwC Indigenous Consulting functional analysis of Central Intake.<sup>300</sup> The Commission considers that using independent reviews and implementing their recommendations, where appropriate, will assist Territory Families in developing more comprehensive and effective policies and procedures, and ensure those policies remain up to date.

Notably, the Commission heard that although there are numerous policies in place, poor resourcing, workforce capacity issues and a crisis-driven and reactive response to circumstances can result in a lack of compliance with policies and procedures. While the first step for Territory Families is to ensure comprehensive and up-to-date policies and procedures are in place, it is an empty exercise if the Northern Territory Government through Territory Families does not also ensure adequate funding and resources are provided to put these policies into practice.

## ***Funding and sources***

In 2015–16, Territory Families (then the Department of Children and Families) had a budget of \$182.8 million to provide:<sup>301</sup>

- services aimed at protecting and minimising harm to children, including receiving and investigating reports of abuse and responding to ensure the safety of children
- services to children in the care of the Chief Executive Officer, including placement and case management, as well as recruiting, assessing and supporting carers so they can provide a range of placement options for children
- targeted support for vulnerable families, to prevent their children entering the child protection system and to help them improve the wellbeing of their children, and
- corporate and governance services to support the effective operation of the Department.

In 2015–16, Territory Families (then the Department of Children and Families) also received revenue from the Commonwealth Government through the Stronger Futures in the Northern Territory Partnership Agreement (since replaced by the National Partnership Agreement on Northern Territory Remote Aboriginal Investment).<sup>302</sup>

## Child protection system expenditure

Table 30.7 outlines the expenditure for the major components of the child protection system since 2010–11.<sup>303</sup>

**Table 30.7: Child protection system expenditure, 2010–11 to 2015–16**

| Component   | 2010–11 | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|---|---------|---------|---------|---------|---------|---------|
|   | \$000s  |         |         |         |         |         |
| Child protection services                         | 38,900  | 49,400  | 55,300  | 31,743  | 32,061  | 26,733  |
| Out of home care services                         | 52,300  | 65,700  | 85,400  | 79,000  | 96,719  | 106,645 |
| Family and parent support services <sup>304</sup> | 26,300  | 30,300  | 35,900  | 41,514  | 43,089  | 39,420  |
| Total   | 130,900 | 162,100 | 176,600 | 152,257 | 171,869 | 172,798 |

There is a clear trend in spending increasing amounts on out of home care services. The estimated spending in 2016-17 for out of home care services is over double the spending in 2010-2011. The increased use of purchased home-based care in the Northern Territory has contributed to the increased spending on out of home care services.<sup>305</sup> Further discussion of purchased home-based care is found in Chapter 33 (Children in out of home care).

## Workforce

As at 31 March 2017, Territory Families had a workforce of 787 full-time-equivalent (FTE) employees. Of these, 172 identified as Aboriginal.<sup>306</sup>

As at March 2017, the child protection workforce comprised 305 FTE employees. The workforce is predominantly based in Darwin, with office locations in Casuarina and Palmerston. Table 30.8 shows a breakdown of locations for the child protection workforce.<sup>307</sup>

**Table 30.8: Breakdown of locations for the child protection workforce**

| Location      | Workforce |
|---------------|-----------|
| Darwin        | 182       |
| Nhulunbuy     | 14        |
| Katherine     | 30        |
| Tennant Creek | 9         |
| Alice Springs | 70        |
| Total         | 305       |

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There is a high turnover rate of staff in Territory Families; 25% of child protection employees have a length of service of less than one year.<sup>308</sup> The Northern Territory Government has acknowledged that recruiting for child protection roles – particularly for professional-stream child protection workers – is an ongoing challenge.<sup>309</sup>

In October 2016, Territory Families engaged Mercer to review its ‘structure, capabilities and composition’ to ensure it meets the needs of Territorians.<sup>310</sup> Consultations for the review mentioned concerns about recruiting, developing and retaining a capable workforce, and the need for better training and development for all staff members.<sup>311</sup>

Mercer also reported that while employees within Territory Families were generally passionate about their roles, ‘widespread cultural issues affect morale and outcomes.’<sup>312</sup> The review found that:

*‘Organisation culture is a particular challenge given the diversity of the workforce (in terms of demographics, roles and experiences), driving silos and segregation, with it being reported that there ha[v]e been instances of bullying (particularly of Aboriginal staff) which have not yet been sufficiently addressed. Poor culture has been attributed to the high level of turnover within Territory Families, which is problematic in terms of corporate knowledge loss.’<sup>313</sup>*

It was of great concern to the Commission that a number of individuals in Territory Families’ workforce have raised allegations of bullying in the department. Due to time constraints, the Commission could not investigate these allegations.

Bullying is a serious allegation and warrants appropriate action to ensure staff can work in a respectful and supportive environment. Building a cohesive and supportive workplace culture will help build a strong and effective workforce in Territory Families.

In recognition of the challenges of developing a strong and sustainable workforce, the Northern Territory Government engaged Mercer to produce a Workforce Development Strategy for Territory Families. Mercer began this work in March 2017, focusing on workforce planning, leadership development, learning and development, and Indigenous Workforce Development.<sup>314</sup> The Commission supports the Northern Territory Government’s efforts to improve its workforce capacity, noting the critical role child protection workers play in the statutory child protection system.

## Role of the Commonwealth

The Commonwealth Government plays an important role in supporting the protection of Australia’s children, including in the Northern Territory.<sup>315</sup>

As part of this role, the Commonwealth Government progresses policy initiatives that affect the child protection system in the Northern Territory, including the National Framework for Protecting Australia’s Children 2009–2020, and the National Plan to Reduce Violence Against Women and their Children.

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The Commonwealth Government is also heavily involved in Indigenous affairs, and its policies in this area also give it a role relating to the child protection system in the Northern Territory. Through the Council of Australian Governments (COAG), the Commonwealth Government leads engagement with key stakeholders on Indigenous affairs. The Department of Prime Minister and Cabinet also chairs the Australian Government Indigenous Affairs Forum in the Northern Territory, which operates as an information-sharing platform and provides an opportunity for discussions on key issues affecting Aboriginal people.<sup>316</sup>

The Commonwealth Government directly funds the Northern Territory Government and the private and not-for-profit sectors. Funding for the Northern Territory Government includes funding under the National Partnership Agreement on Northern Territory Remote Aboriginal Investment, which replaced the Stronger Futures in the Northern Territory Partnership Agreement.<sup>317</sup> This supports extra teachers, additional police in remote communities, additional services in health clinics, and Indigenous Engagement Officers. Funding is also available to build the capacity of local Aboriginal organisations.<sup>318</sup> This funding, along with other funding from the Commonwealth Government, enables the delivery of services that support children and their families in the Northern Territory. Further discussion of the funding context in the Northern Territory can be found in Chapter 6 (Funding and expenditure).

## Role of non-government organisations

### *Non-government organisations in the child protection system*

While responsibility for the child protection system sits with the Northern Territory Government, non-government organisations play an important role by providing:

- residential care services to children in need of care
- community-based childcare services
- support and advocacy for children in out of home care and when they are leaving care, and
- advocacy and support to foster and kinship carers.

Non-government organisations also have a broader role in protecting and supporting the wellbeing of children, by providing:

- early intervention, prevention and support services to prevent family breakdowns
- early childhood development services
- targeted support services for vulnerable children
- support and accommodation for women and children experiencing domestic and family violence, and
- advocacy and representation for sections of the community, particularly children and Aboriginal people in the Northern Territory.

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The Commission heard evidence from a range of non-government organisations working in the Northern Territory, including the:

- Central Australian Aboriginal Congress – an Aboriginal community controlled primary healthcare service based in Alice Springs<sup>319</sup>
- CREATE Foundation – a national organisation that advocates for children in care<sup>320</sup>
- Foster Care NT – an independent, not-for-profit agency that provides advocacy and support services for foster and kinship carers<sup>321</sup>
- National Association for Prevention of Child Abuse and Neglect (NAPCAN) – a not-for-profit organisation aimed at raising public awareness of child abuse and neglect and its impact<sup>322</sup>
- Northern Territory Council of Social Services – a peak body for the social and community justice sector in the Northern Territory, which advocates for social justice on behalf of communities in the Northern Territory who may be affected by poverty and disadvantage<sup>323</sup>
- Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women’s Council – a tristate organisation that operates across the Northern Territory, Western Australia and South Australia<sup>324</sup>
- SNAICC – National Voice for our Children – the national non-government peak body for Aboriginal children, which advocates for the rights of Aboriginal children and provides resources and training to support communities and organisations working with families<sup>325</sup>
- Tangentyere Council – the service delivery agency for the 18 housing associations known as ‘town camps’ in Alice Springs, which run a number of programs relevant to the child protection system as part of its Access to Education and Domestic and Family Violence programs<sup>326</sup>
- Anglicare – a provider of welfare, social justice and community development programs in the Northern Territory, including residential care and intensive youth support services<sup>327</sup>
- Catholic Care NT – a not-for-profit organisation that provides counselling services, drug and alcohol programs, family support services, mental health programs, employment services and a housing support program<sup>328</sup>
- Jesuit Social Services – a non-government organisation that provides programs and advocacy across justice and crime prevention; mental health and wellbeing; settlement and community building; and education, training and employment.<sup>329</sup>
- Bushmob Aboriginal Corporation – a therapeutic community-based service for high-risk young people<sup>330</sup>
- Balunu Foundation – an Aboriginal owned and operated charity that provides culturally appropriate healing and therapeutic programs,<sup>331</sup> and
- Mission Australia – a large, non-denominational Christian community service organisation with a focus on reducing homelessness and strengthening communities.<sup>332</sup>

In addition to the organisations that gave statements and appeared before the Commission, other non-government organisations made submissions to the Commission, including Save the Children, UNICEF Australia, First Peoples Disability Network and Aboriginal Medical Services Alliance Northern Territory.

Furthermore, a number of expert witnesses and academics gave evidence to the Commission, including Professor Fiona Arney, Professor Leah Bromfield, Professor Larissa Behrendt, Professor Frank Oberklaid and Professor Sven Silburn.

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## ***Territory Families partnership with non-government organisations***

Territory Families partners with a number of organisations with the objective of keeping children safe, strong and connected.<sup>333</sup> In 2015-16, Territory Families (then the Department of Children and Families) allocated \$41.9 million to external service providers for out of home care services; domestic and family violence; family support; and early childhood and youth services.<sup>334</sup> Territory families also funds peak bodies that provide Northern Territory – wide advocacy, information and sector development services. Throughout 2015-16, Territory Families partnered with the:<sup>335</sup>

- Foster Carers Association of the Northern Territory, supporting the recruitment of foster carers; providing mentoring and support to foster and kinship carers; and supporting Territory Families staff members with carer induction and related training
- CREATE Foundation, supporting children in out of home care by providing CREATE Your Future workshops and the Speak Up Program, and by producing the 'Go Your Own Way' Kits to assist children transitioning from care, and
- NAPCAN, working with service providers to ensure they develop and implement child-safe policies and practices; promote children's rights; prevent child abuse and neglect; and provide mandatory reporting workshops to increase community awareness about reporting responsibilities.

The Northern Territory Government has also committed to transferring out of home care to the non-government sector within seven years. As part of this significant development, Territory Families will co-design and develop the out of home care service system with the non-government sector, and establish an out of home care accreditation system.<sup>336</sup>

Transitioning out of home care services to the non-government sector will substantially increase the role of non-government organisations in the child protection system. Consequently, the Northern Territory Government will need to increase its investment in the non-government sector to build and strengthen the sector's capacity to provide services.

Further discussion of Territory Families' engagement with the non-government organisation sector can be found in Chapter 33 (Children in out of home care) and Chapter 31 (Engagement in child protection).

## **The role of Aboriginal organisations**

As previously discussed in this chapter, in 2011 the Northern Territory Government funded an Aboriginal organisation called SAF,T – a peak body that aimed to increase Aboriginal decision-making and evidence-based approaches in child protection.<sup>337</sup> The peak body was also meant to establish Aboriginal Child Care Agencies in Darwin and Alice Springs, to provide case management and family support to vulnerable families referred from the Office of Children and Families, which was then the child protection agency in the Northern Territory. However, in 2012, the Northern Territory Government substantially cut funding to SAF,T and the Aboriginal Child Care Agencies.

The Commission has heard that Aboriginal Child Care Agencies should be funded in the Northern Territory to provide a range of assistance to Aboriginal families and communities engaging

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with child protection services.<sup>338</sup> However, since the funding cuts in 2012 the Northern Territory has not provided additional funding nor made any commitments to fund a peak body or Aboriginal Child Care Agencies. Further discussion of the funding of Aboriginal organisations and supporting Aboriginal engagement and empowerment in child protection matters can be found in Chapter 31 (Engagement in child protection).

## Oversight of the child protection system

The Northern Territory Children’s Commissioner has a key role in overseeing the child protection system. The Commissioner has many functions under the *Children’s Commissioner Act* relating to oversight of the child protection system, including:<sup>339</sup>

- receiving and dealing with complaints about services provided to vulnerable children, and monitoring service provider responses to any reports by the Children’s Commissioner
- using its ‘own initiative’ and investigative power in relation to a matter that may form a ground for making a complaint
- undertaking inquiries related to the care and protection of vulnerable children
- monitoring the implementation of any government decisions arising from an inquiry undertaken by the Children’s Commissioner or any other inquiry relating to the care and protection of vulnerable children
- monitoring the response of Territory Families to allegations of the abuse of children in out of home care, and
- monitoring the administration of the *Care and Protection of Children Act* insofar as it relates to vulnerable children.

Previously, the Northern Territory Ombudsman investigated complaints about ‘vulnerable children’ as defined in the *Care and Protection of Children Act*. However, amendments to that Act in 2011 transferred this power to the Children’s Commissioner.<sup>340</sup>

Further discussion regarding oversight of the child protection system and services, and changes to the powers and functions of the Children’s Commissioner, can be found in Chapter 37 (Child protection oversight) and Chapter 39 (Changing the approach to child protection).

## Recent reforms to child protection in the Northern Territory

Since the Commission was announced, the Northern Territory Government has committed to reforming the Northern Territory child protection system in a number of ways, with the aim of establishing significant long-term change.<sup>341</sup>

In November 2016, Territory Families developed a high-level *Reform Direction for Child Protection and Youth Justice* (the Reform Direction), which envisages that the child protection and youth justice systems will:<sup>342</sup>

- be part of a broader community service system
- respond early to children and their families, to address the causes of abuse, neglect, antisocial and offending behaviours, and

- 
- rehabilitate and restore families and individuals through strong social and cultural connections.

In June 2017, the Territory Families' Chief Executive Officer appeared and gave evidence to the Commission. In his statement, he said that the Department intended to review and change the child protection and youth justice systems where necessary, to ensure that they:<sup>343</sup>

- focus on early intervention services
- provide services that are therapeutic and trauma-informed
- promote the development and maintenance of partnerships with the non-government sector and the community
- operate under contemporary legislation and governance
- promote integration with and coordination of services, and
- provide Territory Families with a capable workforce

The Territory Families' Chief Executive Officer told the Commission about the current actions being taken to implement the Reform Direction, which include:<sup>344</sup>

- undertaking a client-level review of all children in care to assess whether the agency is effectively meeting their needs
- reviewing Territory Families' organisational, functional and structural design to improve outcomes and service delivery to clients
- introducing a carer partnership framework; Territory Families has commenced work towards integrating foster and kinship carers into its child protection and youth justice systems, seeing them as part of the care team and involving them in decisions related to children in care
- engaging with the Commonwealth Government to align family support efforts; currently there is little coordination between the funding and services invested in the Northern Territory by the Commonwealth Government and those delivered by the Northern Territory Government. An emphasis on alignment of services is directed at reducing overlap
- developing earlier referral and support services for families at risk of entering the child protection system, through a dual-pathway approach, and
- producing a Territory Families workforce strategy that reconsiders and affirms workforce capability needs and requirements; Territory Families is working towards developing in its workforce a new mindset that focuses on early intervention and prevention strategies, and cooperation with other departments.

In June 2017, the Minister for Territory Families circulated *Progress and Challenges in Child Protection and Youth Justice*, a communique to stakeholders regarding current reforms. These reforms include:

- investing in early childhood intervention and developing a whole-of-government early childhood development plan. The Northern Territory Government recognises that early investment can change the trajectory for children going into care and the youth justice system
- setting up a Children's Subcommittee of Cabinet, comprising the Minister for Territory Families and the Ministers for Children, Education, Health and Housing and Community Development. Part of the work implementing the announced reforms will involve Territory Families working with the departments of Health and Education to strengthen the capacity for these departments to provide



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- targeted intervention services in schools, child and family centres, and health centres<sup>345</sup>
  - introducing an out of home care accreditation scheme, transitioning all out of home care services to the non-government sector within seven years, and investing in Aboriginal-controlled organisations to work with children in care.<sup>346</sup>
  - investing \$3 million of new ongoing funding, as allocated in the 2017 Budget, to establish a dual-pathway model. This aims to connect families to support services at the community level without involvement in the child protection system. In support of this initiative, non-government organisations will receive funding so they can provide an expanded range of support services<sup>347</sup>, and
  - changing child protection and youth justice legislation, which will be progressed through consultation with governments, the non-government sector and the community.<sup>348</sup>

Evidence submitted to the Commission also indicated that Territory Families will include cross-jurisdictional analysis in the design and consideration of its reform of the *Care and Protection of Children Act*, having specific regard to contemporary or recent amendments underway in South Australia, Western Australia and New Zealand.<sup>349</sup>

In August 2017, Territory Families published its *Strategic Plan 2017–2020* (Strategic Plan), which lists six goals and includes numerous key actions for each goal, to be completed in 2017–18. These actions include:

- developing a Carer Recruitment and Support Strategy, and implementing and embedding the Foster and Kinship Carer Charter of Rights<sup>350</sup>
- improving after-hours services for young people in Alice Springs and Tennant Creek,<sup>351</sup> and
- introducing Therapeutic Residential Care.<sup>352</sup>

To progress its reform priorities, in early 2017 Territory Families engaged Deloitte to help it work on implementing the dual-pathways approach. From March to July 2017, Deloitte consulted with all levels of government, peak representative bodies and non-government organisations.<sup>353</sup> In November 2017, Deloitte provided the final version of its report, *A holistic family support system*, to Territory Families. The report found that:

- stakeholders want to change the system as a whole
- the current system is fragmented and poorly coordinated<sup>354</sup> and,
- a holistic system should be built around the wellbeing of children and supporting families as a unit.

In October 2017, the Northern Territory Government launched a draft 10 year plan to support children in their early years. *Starting Early for a Better Future* focuses on three areas of action – engaging parents, families and communities, building the early childhood development sector and fostering leadership and advocacy.<sup>355</sup>

The Commission welcomes the various initiatives that have been announced since its inquiry began in August 2016. It is a matter of regret for the families and children of the Northern Territory that action was not taken earlier, when inquiries and investigations offered practical recommendations for effecting beneficial change, despite the obvious flaws in the system.

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The current problems in the system are not new. They have been raised by numerous past inquiries and reports. The BOI report clearly and unequivocally recommended focusing on early intervention services and investing in the early childhood years. While the Commission largely supports the Northern Territory's new reform direction, the steps being taken are long overdue and must be delayed no longer.

## ENDNOTES

- <sup>1</sup> Exh.684.001, Statement of Dr John Rudge, 15 June 2017, tendered 30 June 2017, para. 32.
- <sup>2</sup> Exh.577.000, Statement of DB, 9 June 2017, tendered 26 June 2017, para. 131.
- <sup>3</sup> Moore, T, 2011, 'Wicked Problems, Rotten Outcomes and Clumsy Solutions: Children and Families in a Changing World', delivered at the NIFTeY / CCCH Conference 2011, p. 1.
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- <sup>138</sup> Exh.495.000, *Children’s Commissioner Northern Territory Annual Report 2015–2016*, 31 October 2016, tendered 2 June 2017, Figure 4. *Source: Territory Families 2016*
- <sup>139</sup> Exh.495.000, *Children’s Commissioner Northern Territory Annual Report 2015–2016*, 31 October 2016, tendered 2 June, Figure 6.
- <sup>140</sup> Exh.495.000, *Children’s Commissioner Northern Territory Annual Report 2015–2016*, 31 October 2016, tendered 2 June, Figure 6. *Source: Territory Families 2016. Note: Notifications with unknown status not display*
- <sup>141</sup> Exh.495.000, *Children’s Commissioner Northern Territory Annual Report 2015–2016*, 31 October 2016, tendered 2 June, Figure 8.
- <sup>142</sup> Exh.495.000, *Children’s Commissioner Northern Territory Annual Report 2015–2016*, 31 October 2016, tendered 2 June, Figure 8. *Source: Territory Families 2016. Note: Caution should be used when analysing figures from the most recent year displayed as some child protection investigations from that year have not concluded and therefore not represented in the figure.*
- <sup>143</sup> Exh.512.000, A statistical overview of children’s involvement with the NT child protection system, Undated, tendered 19 June 2017, slide 4.
- <sup>144</sup> Exh.495.000, *Children’s Commissioner Northern Territory Annual Report 2015–2016*, 31 October 2016, tendered 2 June 2017, p. 37; Submission, Northern Territory Government, Response to Adverse Material 14, 31 August 2017.
- <sup>145</sup> Exh.512.000, A statistical overview of children’s involvement with the NT child protection system, Undated, tendered 19 June 2017, slide 4.
- <sup>146</sup> Based on Exh.618.000, *DCF 2015-16 Annual Report*, 30 September 2016, tendered 28 June 2017, Chart 7.
- <sup>147</sup> Exh.680.002, Annexure ST-1 to statement of Sven Thormann, 4 January 2017, tendered 30 June 2017, table 16. The Commission received two statements which gave differing accounts of the number of children in out of home care at 30 June 2017 (Exh.680.001, Statement of Sven Thormann, 4 January 2017, tendered 30 June 2017 (1,020 children), cf. Exh.613.000, Statement of Kim Charles, 12 May 2017, tendered 28 June 2017 (1,032 children)). The Commission sought clarification as to reason for the discrepancy and for which number was most accurate. The Northern Territory Government confirmed that the numbers of Mr Thormann should be preferred and that the reason for the discrepancy was that the figures had been prepared using slightly different methodologies used in the collection of the data.
- <sup>148</sup> Transcript, Sven Silburn, 19 June 2017, p. 4394: line 45.
- <sup>149</sup> Transcript, Sven Silburn, 19 June 2017, p. 4397: lines 3-18.
- <sup>150</sup> Exh.510.000, Statement of Sven Silburn, 12 December 2016, tendered on 19 June 2017, paras 19-22.
- <sup>151</sup> As highlighted in Chapter 3 (Context and challenges), of the 20,465 child protection notifications received in the Northern Territory in 2015–16, 78% related to Aboriginal children and young people.
- <sup>152</sup> Based on data from the Productivity Commission, 2017, *Report on Government Services 2017*, Productivity Commission, place of publication unknown, Table 16A.9.
- <sup>153</sup> Submission, Northern Territory Government, Response to Notice of Adverse Material 14, 31 August 2017.
- <sup>154</sup> Productivity Commission, 2017, *Report on Government Services 2017*, Productivity Commission, place of publication unknown, Table

- 16A.17.
- <sup>155</sup> 'Family Matters: Strong Communities. Strong Culture. Stronger Children' is a national campaign to ensure Aboriginal and Torres Strait Islander children and young people grow up safe and cared for in family, community and culture. It is led by SNAICC and supported by an alliance of Aboriginal and non-Aboriginal organisations, academics and educational institutions. For further information, see <<http://www.familymatters.org.au/about-us/>>.
- <sup>156</sup> Family Matters, 2016, *The Family Matters Report: Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal*, Family Matters, place of publication unknown, pp. 7-9.
- <sup>157</sup> Australian Institute of Health and Welfare, 2017, *Child Protection Australia 2015–16*, Australian Institute of Health and Welfare: Canberra, Appendix G.
- <sup>158</sup> Exh.024.008, *Bringing them home – Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, tendered 13 October 2016, p. 488.
- <sup>159</sup> Exh.024.008, *Bringing them home – Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, tendered 13 October 2016, p. 348.
- <sup>160</sup> Exh.024.008, *Bringing them home – Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, tendered 13 October 2016, p. 349.
- <sup>161</sup> Exh.018.001, Annexure 1 to Statement of Patricia Anderson AO, *Little Children are Sacred Report*, 30 April 2007, tendered 12 October 2016, p. 13.
- <sup>162</sup> Exh.018.001, Annexure 1 to Statement of Patricia Anderson AO, *Little Children are Sacred Report*, 30 April 2007, tendered 12 October 2016, p. 22.
- <sup>163</sup> Exh.018.001, Annexure 1 to Statement of Patricia Anderson AO, *Little Children are Sacred Report*, 30 April 2007, tendered 12 October 2016, p. 135.
- <sup>164</sup> Exh.024.008, *Bringing them home – Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, tendered 13 October 2016, p. 336.
- <sup>165</sup> Exh.018.001, Annexure 1 to Statement of Patricia Anderson AO, *Little Children are Sacred Report*, 30 April 2007, tendered 12 October 2016, p. 146.
- <sup>166</sup> Exh.018.001, Annexure 1 to Statement of Patricia Anderson AO, *Little Children are Sacred Report*, 30 April 2007, tendered 12 October 2016, p. 50.
- <sup>167</sup> Department of Families Housing Community Services and Indigenous Affairs, 2012, *Northern Territory Emergency Response Evaluation Report 2011*, Department of Families Housing Community Services and Indigenous Affairs: Canberra, p. 3.
- <sup>168</sup> Human Rights and Equal Opportunity Commission, 2008, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission: Sydney, p. 221.
- <sup>169</sup> Human Rights and Equal Opportunity Commission, 2008, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission: Sydney, p. 233.
- <sup>170</sup> Inquiry into the Protection of Aboriginal Children from Sexual Abuse, 'Media Release', Inquiry into the Protection of Aboriginal Children from Sexual Abuse [website], undated, <[www.inquiriesac.nt.gov.au/media\\_release.html](http://www.inquiriesac.nt.gov.au/media_release.html)>, accessed 29 September 2017.
- <sup>171</sup> Inquiry into the Protection of Aboriginal Children from Sexual Abuse, 'Media Release', Inquiry into the Protection of Aboriginal Children from Sexual Abuse [website], undated, <[www.inquiriesac.nt.gov.au/media\\_release.html](http://www.inquiriesac.nt.gov.au/media_release.html)>, accessed 29 September 2017.
- <sup>172</sup> Exh.469.009, *The Children's Commissioner Annual Report 2008–2009*, 30 October 2009, tendered 31 May 2017, p. 31.
- <sup>173</sup> Human Rights and Equal Opportunity Commission, 2007, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission: Sydney, p. 197.
- <sup>174</sup> Australian Human Rights Commission, 2012, *Submission to the Senate Community Affairs Legislation Committee in the Inquiry into the Stronger Futures in the Northern Territory Bill 2011 and two related Bills – Appendix A: Chronology – Northern Territory Emergency Response*, p. 1.
- <sup>175</sup> Exh.011.011, Statement of Howard Bath, 1 October 2016, tendered on 12 October 2016, paras 11-12.
- <sup>176</sup> Exh.011.001, Statement of Howard Bath, 1 October 2016, tendered on 12 October 2016, para. 14.
- <sup>177</sup> *Care and Protection of Children Act 2007* (NT), s 4.
- <sup>178</sup> Exh.469.009, *The Children's Commissioner Annual Report 2008–2009*, 30 October 2009, tendered 31 May 2017, p. 14.
- <sup>179</sup> Exh.469.009, *The Children's Commissioner Annual Report 2008–2009*, 30 October 2009, tendered 31 May 2017, p. 5.
- <sup>180</sup> Exh.024.012, *Northern Territory Emergency Response – Report of the NTER Review Board*, 2008, tendered 13 October 2016, p. 9.
- <sup>181</sup> *Care and Protection of Children Amendment Act 2009* (NT).
- <sup>182</sup> Exh.469.009, *The Children's Commissioner Annual Report 2008–2009*, 30 October 2009, tendered 31 May 2017, p. 99.
- <sup>183</sup> Exh.469.009, *The Children's Commissioner Annual Report 2008–2009*, 30 October 2009, tendered 31 May 2017, p. 100.
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- <sup>186</sup> Exh.011.011, Statement of Howard Bath, 1 October 2016, tendered on 12 October 2016, paras 28-29.
- <sup>187</sup> Exh.011.011, Statement of Howard Bath, 1 October 2016, tendered on 12 October 2016, para. 30.
- <sup>188</sup> Exh.011.011, Statement of Howard Bath, 1 October 2016, tendered on 12 October 2016, paras 28, 37.
- <sup>189</sup> Exh.011.011, Statement of Howard Bath, 1 October 2016, tendered on 12 October 2016, paras 32-34.
- <sup>190</sup> Exh.469.002, *Report into Northern Territory Families and Children Intake and Response Processes 2009*, Undated, tendered 31 May



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- <sup>191</sup> Exh.014.001, *Board of Inquiry Report – Growing Them Strong, Together, Promoting the Safety and Wellbeing of the Northern Territory’s Children – Volume 1*, 18 October 2010, tendered 12 October 2016, p. 53.
- <sup>192</sup> Exh.013.001, *Board of Inquiry Report – Growing Them Strong, Together, Promoting the Safety and Wellbeing of the Northern Territory’s Children – Summary Report*, 18 October 2010, tendered 12 October 2016; Exh.014.001, *Board of Inquiry Report – Growing Them Strong, Together, Promoting the Safety and Wellbeing of the Northern Territory’s Children – Volume 1*, 18 October 2010, tendered 12 October 2016; Exh.014.002, *Board of Inquiry Report – Growing Them Strong, Together, Promoting the Safety and Wellbeing of the Northern Territory’s Children – Volume 2*, 18 October 2010, tendered 12 October 2016.
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- <sup>194</sup> Exh.540.007, Annexure CGB-7 to Statement of Clare Gardiner-Barnes, 18 October 2010, tendered 21 June 2017.
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- <sup>197</sup> Exh.540.012, Annexure CGB-12 to Statement of Clare Gardiner-Barnes, April 2011, tendered 21 June 2017, pp. 4, 6, 8.
- <sup>198</sup> Exh.010.002, Annexure CR-1 to Statement of Carolyn Richards, *Annexure 1: Ombudsman NT – A lifelong shadow: Report of a partial investigation of the Child Protection Authority*, 1 June 2011, tendered 11 October 2016, p. 16.
- <sup>199</sup> Exh.010.001, Statement of Carolyn Richards, 7 October 2016, tendered 11 October 2016, paras 22, 29.
- <sup>200</sup> Explanatory Statement, Care and Protection of Children (Children’s Commissioner) Amendment Bill 2011 (NT), p. 1.
- <sup>201</sup> Exh.540.024, Annexure CGB-24 to Statement of Clare Gardiner-Barnes, July 2011, tendered 21 June 2017, Attachment A.
- <sup>202</sup> Exh.540.025, Annexure CGB-25 to Statement of Clare Gardiner-Barnes, 17 April 2012, tendered 21 June 2017, pp. 5, 13-15.
- <sup>203</sup> Exh.840.001, Renewal Management Board, 2012, *Progress Report*, Renewal Management Board, Northern Territory, tendered 24 October 2017, p. 5.
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- <sup>207</sup> Exh.672.001, Statement of Luke Twyford, 23 May 2017, tendered 30 June 2017, para. 15.
- <sup>208</sup> Exh.540.001, Statement of Clare Gardiner-Barnes, 4 June 2017, tendered 21 June 2017, para. 111.
- <sup>209</sup> Exh.535.000, Statement of Robyn Lambley, 6 June 2017, tendered 20 June 2017, para. 15.
- <sup>210</sup> Exh.016.001, Statement of Colleen Gwynne, 7 October 2016, tendered on 12 October 2017, para. 8.
- <sup>211</sup> Exh.655.001, Statement of Jodeen Carney, 9 June 2017, tendered 30 June 2017, para. 24; Exh.655.003, Annexure JC-1 to Statement of Jodeen Carney, 2014, tendered 30 June 2017, p. 1.
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- <sup>215</sup> *Care and Protection of Children Act 2007* (NT) ss 14, 137B.
- <sup>216</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, para. 4.
- <sup>217</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, para. 16.
- <sup>218</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, para. 34.
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- <sup>220</sup> Exh.014.001, *Board of Inquiry Report – Growing Them Strong, Together, Promoting the Safety and Wellbeing of the Northern Territory’s Children – Volume 1*, 18 October 2010, tendered 12 October 2016, p. 53.
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- <sup>224</sup> Exh.540.004, Annexure CGB-4 to Statement of Clare Gardiner-Barnes, 7 April 2010, tendered 21 June 2017, p. 5.
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ENGAGEMENT IN CHILD  
PROTECTION



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# ENGAGEMENT IN CHILD PROTECTION

## INTRODUCTION

The evidence and submissions received by the Commission have consistently emphasised the need for and benefits of greater involvement of Aboriginal people in policy and program design and service design and delivery.<sup>1</sup> Aboriginal children are overrepresented in the child protection system in the Northern Territory. In light of this, the engagement of Aboriginal people in child protection decision-making processes is fundamental to achieving better outcomes for Aboriginal children and their families and nationally for the whole community and the Northern Territory. Chapter 7 (Community engagement) sets out the views of the Commission on the importance of community participation.

This chapter considers the different avenues through which Aboriginal people and communities can participate in the child protection system and in the provision of services for children and their families. The Commission believes the necessary reforms to improve the system will only be effective if Aboriginal people are engaged in these reforms and play a leadership role. To achieve this, a fundamental shift is required in the Northern Territory that recognises and strengthens the role of Aboriginal people in decision-making processes and embeds this recognition in child protection policies and practices.



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## Reflecting on past practices

The contemporary challenges in relation to the wellbeing of Aboriginal children cannot be understood without an appreciation of the historical policies that have sought to control and intervene in the family life of Aboriginal people. Past practices of forced removal of Aboriginal children from their families remain very much alive in the minds of people today. A number of witnesses before the Commission shared their stories, including vulnerable witness, DJ:

*When Welfare came that day all the grandparents took off. They took their grandkids to outstations to try to keep them safe. Those grandparents can still remember the Stolen Generation days so they were thinking all the kids in [the town] would get taken that day.<sup>2</sup>*

In 2007, the Northern Territory Emergency Response (the Intervention) was developed and implemented by the Commonwealth Government to protect Aboriginal children from sexual abuse and family violence. However, the Northern Territory Emergency Response Board of Review acknowledged that the Intervention was received by Aboriginal people with a sense of betrayal and disbelief and that there was intense hurt and anger at being isolated on the basis of race and subjected to collective measures that would never be applied to other Australians.<sup>3</sup>

Since the Intervention, there has been a disproportionate increase in the number of Aboriginal children in all aspects of the child protection system in the Northern Territory.<sup>4</sup> Unfortunately, these poor outcomes are exacerbated by the failure to provide service responses that are shaped and driven by Aboriginal people.<sup>5</sup>

## A lack of participation

In the Northern Territory, there is currently no established ongoing forum that involves the participation of Aboriginal people at the family or organisational level regarding the care, wellbeing and protection of Aboriginal children and the support of their families and communities. The issues that relate to over-representation of Aboriginal children are compounded by this lack of participation.

The Secretariat of National Aboriginal and Islander Child Care (SNAICC) put the view that this lack of participation is not:

*... by the choice of families, communities, or organisations, but by exclusion by a system that does not encourage or mandate such participation, or build the requisite capacity to participation. This exclusion denies Aboriginal and Torres Strait Islander peoples their right to self-determination in relation to their own children, contributes to disempowerment of communities, leads to poor outcomes for children, and limits accountability.<sup>6</sup>*

In the absence of such participation, governments could be making important decisions about the wellbeing and protection of Aboriginal children without a complete and current understanding of a particular situation. The North Australian Aboriginal Justice Agency (NAAJA) noted:

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*Aboriginal decision-making processes and traditional protection systems steeped in cultural understandings have not been respected ... there is a lack of trust between child protection services and Aboriginal people, and that this distrust is the most significant barrier to the provision of effective child services in communities.<sup>7</sup>*

Participation is all the more important given the potential for cultural incompatibilities, which have already led to a level of mistrust between Aboriginal people and child protection agencies.<sup>8</sup>

*Welfare thinks that all you need to do to look after a baby is to give it food and a house, keep an eye on it and take it for regular check-ups. That's for balanda babies. For aboriginal babies there's more. We have to show our ancestors who the new babies are. We take them out to the bush and we show the ancestors the babies and we tell them who is the mother one and who is the father one. We put ash on that little baby and he is part of the family then. Welfare know nothing about our gurrutu [respect] and our raypirri [law]. There are lots of things about our culture and raising aboriginal children that Welfare don't know.<sup>9</sup>*

Vulnerable Witness, DI

## The future

Without a significant change to the environmental and structural factors that contribute to abuse and neglect, and mechanisms to enable Aboriginal people to participate in decisions about the protection of their children, the current trajectory will continue to see many more Aboriginal children in the system. In its submission to the Commission, NAAJA notes:

*Given that the overwhelming majority of families involved with child protection services are Aboriginal, the new paradigm must be Aboriginal-centric and Aboriginal-controlled at all levels. This necessitates wholesale change to governance and service delivery arrangements, with an increased emphasis on local decision-making.<sup>10</sup>*

Opportunities for reform include new legislative mechanisms, a potential role for Aboriginal organisations, and building on the existing capacity of the Aboriginal community-controlled sector. Collectively taking steps to build and improve these avenues for participation will create a system that ensures Aboriginal people are more actively engaged in child protection matters, and the system better services Aboriginal children and families.

Importantly, the proposed way forward is built on the premise that engaging Aboriginal people as substantive decision-makers in the design, delivery and evaluation of responses is a vital ingredient for enhancing outcomes in child protection systems. NAAJA, quoting the Irish Taskforce on the Child and Family Support Agency, stated that, as was the case in Ireland:

*[t]his is a "once in a generation opportunity to fundamentally reform children's services".<sup>11</sup>*

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## HUMAN RIGHTS FRAMEWORK FOR PARTICIPATION

The human rights instruments to which Australia is a signatory provide a framework for Aboriginal people to have greater control over their own lives and to participate in matters that affect them, including decisions relating to the care and protection of their children.

Collectively, the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration), the Convention on the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR) establish key rights around self-determination, culture and participation, which are fundamental to improve Aboriginal peoples' involvement in matters that affect them.

Articles 4 and 5 of the Declaration recognise the concurrent rights of Indigenous peoples to pursue self-determination through their own autonomous decision-making institutions and processes as well as through full participation in the life of the State.<sup>12</sup> Article 18 states that Indigenous peoples have the right to participate in decision-making in matters that affect their rights, through their own representatives, and the right to develop and maintain their own decision-making institutions.<sup>13</sup>

Further, Article 19 specifically states that:

*States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.*<sup>14</sup>

Together with the rights articulated in the CRC, the participation of Aboriginal people within the child protection system is necessary to ensure a cultural lens is applied when considering the best interests of an Aboriginal child.<sup>15</sup> The CRC stresses that the Aboriginal community should be consulted and given an opportunity to participate in the process of determining how the best interests of Aboriginal children can be decided in a culturally sensitive way.<sup>16</sup>

Additional provisions in the CRC also speak to the role of parents and families in child welfare matters more generally. Article 18 provides that '*States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child*'.<sup>17</sup> In addition, '*State parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities*' and that they take steps to ensure the development of institutions, facilities and services for the care of children.<sup>18</sup>

Much more needs to be done to ensure the Northern Territory's compliance with the human rights standards outlined above, both in terms of family support, early intervention services and greater agency in decision-making. As stated in Chapter 7 (Community engagement), the *Social Justice Report 2012* advocates for Aboriginal people to be able to exercise these rights effectively, and that governments and stakeholders must:

- respect and support Aboriginal representatives and participation in decision-making processes and structures
- provide Aboriginal people with complete access to all relevant information in a culturally

- 
- appropriate manner, including in native languages
  - engage with Aboriginal people and representative organisations in a cooperative and fair manner that is respectful of Aboriginal people’s needs and priorities
  - provide Aboriginal people with adequate timeframes to make a decision, and
  - allow Aboriginal people the opportunity to say ‘no’.<sup>19</sup>

## PREVIOUS CALLS FOR ENHANCED PARTICIPATION

The *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Bringing Them Home report), published two decades ago, emphasised the need for Aboriginal people to exercise their right to self-determination in relation to child protection matters. This included the transfer of greater control to Aboriginal agencies, backed by adequate funding, as well as greater control over policy, program design and decision making structures.<sup>20</sup>

A number of inquiries and reports throughout the Northern Territory and Australia have consistently argued that a lack of meaningful Aboriginal participation is a major contributor in failures of government policy with respect to Aboriginal people.<sup>21</sup> Recent reports include:

- The 2007 *Ampe Akelyernemane Meke Mekarle ‘Little Children are Sacred’*: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (Little Children Are Sacred report), which outlined that many Aboriginal people perceived that present government policy tended to focus more on government control than on supporting community-owned initiatives. The Board of Inquiry believed there needed to be a process of ‘de-colonising’ attitudes and developing new policies that recognise both Aboriginal strengths and deficiencies, and work to support the former and the latter.<sup>22</sup>
- The 2010 *Growing them strong, together – Promoting the Safety and Wellbeing of the Northern Territory’s Children – Report of the Board of Inquiry into the Child Protection System in the Northern Territory* (BOI report) identified the absence of respectful engagement with Aboriginal people within the child protection system. Given the lack of trust of ‘welfare’ by Aboriginal communities, having no overt influence on or involvement in the system adds to mistrust.<sup>23</sup>

The Bringing them Home report neatly encapsulated the position in relation to meaningful engagement, which must be considered in the current context and with the agency of individuals as well as organisations in mind:

*“Partnerships” between Indigenous children’s agencies and government departments, where they exist, are unequal partnerships. Departments retain full executive decision making power and the power to allocate resources affecting Indigenous children’s welfare. Judicial decision making occurs within non-Indigenous courts. In no jurisdiction are Indigenous child care agencies permitted to be involved in the investigation of an allegation of neglect and abuse. The difference between being allowed to participate and having the right to make decisions is evident in Indigenous communities’ experiences of child welfare systems.<sup>24</sup>*

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These findings are particularly relevant to the present situation facing Aboriginal children and their families in the Northern Territory. The Bringing them Home report stressed that a 'new framework' centred on the principle of self-determination was urgently needed, in recognition that approaches based 'on the assumption that consultation and participation in service delivery are adequate responses' do not work.<sup>25</sup>

Despite these major reports, reforms have failed by largely confining the participation of Aboriginal peoples to consultative, occasional or incidental roles rather than substantive roles, often occurring outside of crucial decision-making phases.

The evidence provided to the Commission and the burgeoning rates of Aboriginal child removals across the country is indicative of these failures and reinforces that more needs to be done to improve the relationship between Aboriginal people and government.

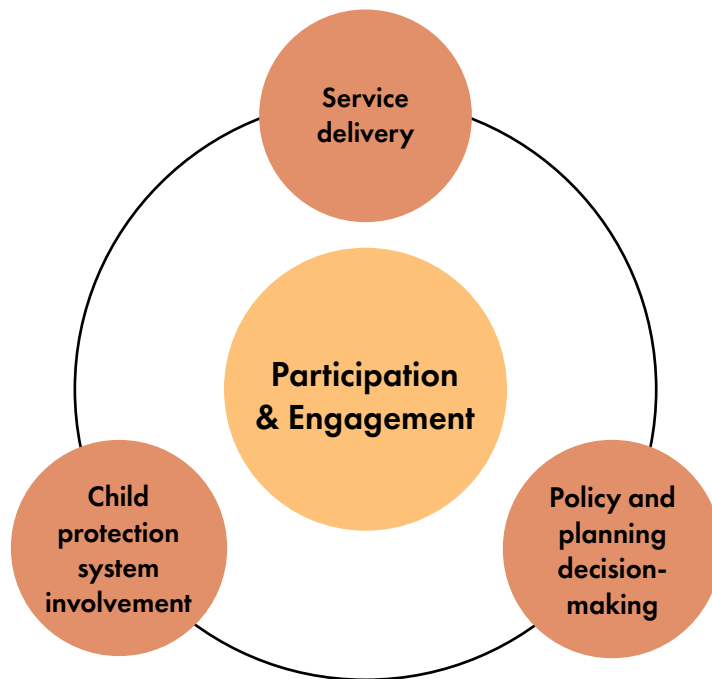
## ARENAS AND FORMS OF PARTICIPATION

Engagement and participation in relation to Aboriginal involvement with child protection can take different forms. In Chapter 7 (Community engagement), the Commission suggests that a shared network governance model must underpin engagement with Aboriginal communities in the child protection context. The model is premised on the understanding that one entity working alone, whether it be the government, the community, Aboriginal organisations or NGOs, cannot achieve the necessary reform required in the Northern Territory. Instead, communities, governments and organisations must have a shared vision for reform, take responsibility, be accountable and be involved in changes to the system. Three areas where the engagement and participation of Aboriginal organisations and communities in connection with child protection needs to be enhanced are:

- service delivery – the need for Aboriginal organisations to be more engaged in the delivery of family support and child protection services to Aboriginal families
- policy and planning – the need for greater involvement of Aboriginal organisations and communities to work in partnership with government on policy and planning decisions about family services and child protection issues, and
- child protection decision-making – new mechanisms need to be put in place to enable the participation of Aboriginal organisations in child protection decision-making in the courts and in Territory Families.

These three arenas are related and interdependent and must be addressed concurrently and not as stand-alone components of engagement and participation. The lack of opportunity for Aboriginal people to participate in decision-making throughout child protection processes is compounded by the absence of Aboriginal community-controlled organisations that would support families to seek out, demand and attend opportunities to be involved in decision-making processes.<sup>26</sup> Each is an essential element of a child protection system that will be more effective for Aboriginal families.

**Figure 31.1: Arenas to enhance participation and engagement**



Importantly, the proposed way forward is built on the premise that engaging Aboriginal people as substantive decision-makers in the design, delivery and evaluation of responses is an essential ingredient for enhancing outcomes in child protection systems.

## ABORIGINAL ORGANISATIONS AND DELIVERING SERVICES

### The effectiveness of Aboriginal organisations

The Commission heard evidence that supported the view that Aboriginal community-controlled organisations are the most effective and best-placed organisations to provide services and support to Aboriginal children and their families.<sup>27</sup>

The Policy Manager at SNAICC gave evidence that services led and managed by Aboriginal peoples are well placed to be able to overcome barriers such as a mistrust of mainstream services and will have an understanding of cultural or community pressures affecting Aboriginal families.<sup>28</sup> Similar views, with an emphasis on the need for community-based organisations, were put forward by Aboriginal organisations in the Northern Territory:

*The solution does not stop at better investment in family support services; it must include investment in community-informed and community-led programs. This is because the best outcomes in community wellbeing and development are achieved where those involved have control over their own lives and are empowered to respond to and address the problems impacting them. The necessity for the participation of community*

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*controlled organisations, the importance of culture and the involvement of local family and community in the design and delivery of services.<sup>29</sup>*

A key argument to improving the participation of Aboriginal peoples in the child protection system of the Northern Territory has centred on strengthening the community controlled sector through the establishment of Aboriginal child care agencies (ACCA).

In its submission to the Commission, NAAJA highlighted the benefits of an ACCA:

*Establishing an agency that has the trust of Aboriginal people is a critical step towards building effective strategic partnerships with Aboriginal communities and organisations. It will also ensure that cultural competence and expertise is embedded from the top with an Aboriginal chaired board ... and services provided by Aboriginal community-controlled organisations.<sup>30</sup>*

In her evidence to the Commission, Professor Muriel Bamblett, Chief Executive Officer of the Victorian Aboriginal Child Care Agency, also outlined the important role played by ACCAs:

*'... having a dedicated Aboriginal and Islander child care – or Aboriginal and Islander child care agency then gives you the capacity to be an advocate, to be able to be representative, to be able to develop programs and initiatives to be able to work with a number of stakeholders and develop partnerships and relationships. To be able to do training, to be able to run cultural programs, and to be a resource for the community.'<sup>31</sup>*

The need for ACCAs was further emphasised by the evidence of Dr Christine Fejo-King, who stressed they should be an integral part of the child protection system in the Northern Territory, as they represented an important bridge between Aboriginal families and Territory Families. She explained that an ACCA would have the expertise, cultural awareness and networks to assess and engage with potential kinship carers as well as help explain to families why child protection case workers have become involved with a family, what family support services are available, how they can be accessed and what needs to be done to avoid a child being removed.<sup>32</sup>

The best known example of an ACCA is the Victorian Aboriginal Child Care Agency, which first began operating in 1977 and is now is a model of a holistic Aboriginal child care agency providing a range of services to families and communities in that state.<sup>33</sup>



## Victorian Aboriginal Child Care Agency

Victorian Aboriginal Child Care Agency (VACCA) is a leading Aboriginal agency providing statewide child protection services to Aboriginal families such as:

- early intervention
- specialist advice to government
- training and development support for carers
- placement and support for carers
- policy, planning and strategic projects
- Link-Up services
- services aimed at strengthening culture
- VACCA playgroup for Koori children
- healing services
- parenting support services
- case planning and advice for families who come into contact with the child protection system, and
- Aboriginal family-led decision-making.

The Commission understands the view that the delivery of the services and functions outlined above is integral to improving the position of Aboriginal families and children at risk, and recognises that for many families, these services are best carried out by Aboriginal organisations.

## Current role of Aboriginal organisations in Northern Territory child protection

Currently, there is no network of Aboriginal community-controlled organisations dedicated to child welfare concerns and designed specifically to promote or deliver Aboriginal child safety, wellbeing and protection services in the Northern Territory.

The Commission is aware that there have previously been Aboriginal organisations dedicated to child care and protection issues established and funded by the Northern Territory Government. The Karu Aboriginal Child Care Agency was established in Darwin in 1985 to provide child and family services, followed by the Central Australian Aboriginal Child Care Agency in 1992. These were both subsequently disbanded in 2004 and 2008 respectively.<sup>34</sup>

Following the Board of Inquiry and its recommendation for the establishment of a peak body and ACCAs, there were moves to set up ACCAs in Darwin and Alice Springs.<sup>35</sup> However, Northern Territory Government decisions in 2012 resulted in the withdrawal of funding for the ACCAs,<sup>36</sup> which were still in the process of being established. For further information on the ACCAs, see Chapter 30 (The child protection landscape).

However, the absence of an ACCA network in the Northern Territory does not mean that there are not Aboriginal-controlled organisations addressing these issues. A number of the functions that would



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be undertaken by ACCAs are being undertaken by organisations that provide services relating to child welfare alongside their core work. For example, organisations such as Tangentyere Council, the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council (NPY Women's) and the Central Australian Aboriginal Congress all provide services in the Central Australian area to Aboriginal families and children.<sup>37</sup> In this respect, the Northern Territory has developed a service model along different lines to the ACCA model in place elsewhere and the model recommended by the Board of Inquiry.

These organisations are well established and already do important work with families. An issue is whether the absence of ACCAs, organisations with a dedicated focus and purpose on supporting children and providing services for families, means that such a model should be established, or whether the Northern Territory should opt for a model that engages existing organisations and builds on them and creates new bodies, where necessary.

## Leveraging from current services

Aboriginal Peak Organisation Northern Territory (APO NT) called on the Commission to recognise the strength of the existing Aboriginal community-controlled sector and the need to further develop the sector in areas where there is a current lack of capacity or support.<sup>38</sup> Notably, the capacity of Aboriginal community-controlled organisations to provide services that meet the needs of Aboriginal children and families has already been established across a broad range of policy areas, including early childhood development, education and health.<sup>39</sup> The 2010 Board of Inquiry also heard evidence that existing organisations could undertake different work elements of an Aboriginal child care agency instead of needing to create new organisations.<sup>40</sup>

The Chief Executive Officer for Danila Dilba Health Service identified organisations that are well placed to take up roles in relation to child welfare, such as in early intervention and family support. Historically, services are, instead, contracted out to non-Aboriginal agencies:<sup>41</sup>

*Danila Dilba provides health care services to more than 60% of the Aboriginal population residing in the greater Darwin region, however, are not contracted by Territory Families to provide any of the following services:*

- *Early intervention and support services to vulnerable families at risk of child removal*
- *Child health and developmental assessments, treatment or other related health services*
- *Alcohol and other drug and social and emotional wellbeing services (counselling)*
- *Identification and assessment of potentially suitable kinship carers, and*
- *Services to recruit local Aboriginal families to become foster carers.*<sup>42</sup>

The Commission has not undertaken a detailed review of the Northern Territory Government's contracting policies or procedures, but suggests that it should reconsider the approach currently taken to one that engages more Aboriginal organisations to deliver services to Aboriginal people.

The Commission has heard that other jurisdictions are leveraging from existing services and taking steps to expand partnerships with Aboriginal organisations. Evidence presented to the Commission

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by SNAICC highlighted recent investments by the New South Wales Government to transfer the case management of all Aboriginal children to Aboriginal community-controlled organisations in out of home care over a 10-year period.<sup>43</sup> This process is intended to be facilitated by the Aboriginal Child, Family And Community Care State Secretariat (Absec), the peak agency to help build the capacity of Aboriginal community-controlled organisations to become out of home care providers during that time.

The Commission heard that a similar approach is being taken in Victoria. Professor Bamblett told the Commission that an appropriate first step in this process would be to map the services and service provider currently delivering services to Aboriginal families, and identify those that could eventually be transferred to Aboriginal people:

*'I think a good starting point is to look at a lot of who gets funding now to deliver on Aboriginal child and family welfare, and taking back those services and giving them to the control of Aboriginal people. In Victoria, the Victorian government has committed to transferring all resources that are for Aboriginal children back to Aboriginal community controlled organisations. So – and they have invested in a transition unit and all of the community sector organisations in Victoria have signed off a document called Beyond Good Intentions which is about transferring their commitment to say that all Aboriginal children should be managed by an Aboriginal organisation. So that is followed in New South Wales as well. So other states and territories are saying that Aboriginal control needs to be with Aboriginal people.'*<sup>44</sup>

It appears both logical and cost-effective that any scheme to extend child services and create a child welfare sector should be built on the existing expertise, geographical distribution and trust that Aboriginal organisations already have within Aboriginal communities in the Northern Territory. Adding to the demands of these services in order to build an Aboriginal child protection sector must not come at a cost to those organisations. Instead, they must be appropriately resourced to provide any additional child protection related services. The Commission notes the history of bodies such as the Central Australian Aboriginal Congress, Tangentyere Council and the NPY Women's Council in delivering services to their communities, and the potential for them to take on more prominent roles in the provision of child welfare services.

The creation of an effective child welfare sector will require more extensive change than just working with existing organisations to provide services to children and their families. New organisations will also need to be created across the Northern Territory to cater effectively to the needs of the many different communities. These decisions should be made on a place by place basis, by the communities involved.

## **Aboriginal community-controlled health organisations**

The view was put to the Commission that an Aboriginal child services sector could also be developed using the framework provided by the existing network of Aboriginal community-controlled health organisations (ACCHOs). The Commission was told that ACCHOs are well positioned to provide comprehensive services to children, including child protection services. This is due to their demonstrated public health expertise, established reach of existing services to Aboriginal families and communities, cultural knowledge and understanding.<sup>45</sup>

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ACCHOs have been operating in the Northern Territory for more than 40 years and these organisations bring with them an existing presence in communities, as well as strong relationships with Aboriginal communities and an implicit understanding of their needs.<sup>46</sup>

ACCHOs have also demonstrated success in providing services that are valued by Aboriginal clients and produce increased levels of patient satisfaction, better compliance with treatment regimes and improved health outcomes.<sup>47</sup> This is evident where ACCHOs currently provide around 60% of primary health care to Aboriginal people in the Northern Territory, including the provision of health services to children and young people in out of home care and youth detention.<sup>48</sup>

In support of this view, the Chief Executive Officer for Danila Dilba Health Service told the Commission:

*'I think the Aboriginal health sector has a lot to offer by way of a model and an example of how you can build capability to deliver high quality, very complex services to vulnerable people. There surely isn't anything more complex perhaps than looking after people's health care needs, and the fact that we're able to do this, and to engage with a whole range of people from different areas within the held services, so it's not just GPs and doctors, it's nurses, it's Aboriginal health workers, it's the outreach and family support workers. So it's a really good model of where you've got a multidisciplinary approach where the whole ethos of the organisation and the services that we provide is very much embedded around cultural safety. That is working in ways that ensures the trust and respect and the cultural imperatives, if you like, in being able to provide those services in a way that delivers good outcomes for people.'*<sup>49</sup>

There is merit in the view put forward by Danila Dilba, which proposed building on the strengths of the Aboriginal community-controlled health sector at least in the short term as a transitional arrangement that helps to rebuild the child welfare presence.

In the Commission's view, if a public health approach is to be adopted in the Northern Territory some ACCHOs are well positioned to offer a platform for the development of an Aboriginal community controlled sector that delivers child protection functions. The Commission recommends that planning new services should start by ascertaining what role, if any, existing services – particularly the ACCHOs – are willing to play.

## Future planning

It is the Commission's view that a child welfare organisational presence in the form of a network of organisations is necessary to begin improving the life outcomes of all children and families. For the purpose of this report these organisations are referred to as Family Support Centres. The Commission is therefore recommending, following a planning process where needs and essential services are identified, a fully resourced network of Centres be established in the Northern Territory, available across urban, regional and remote areas.

The Commission does not envisage uniform services being delivered across the Northern Territory. Different communities will have different needs that must be accommodated with services that are

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tailored, as far as it is practicable, for the individual needs of each community. However, there would be a minimum set of compulsory services each organisation would have to provide in a particular area with additional services negotiated depending on need and capacity. This minimum would include a set of universal support services to children and families relating to child health, parenting, early childhood education and financial literacy. Each Centre would have locally determined opening hours.

For reasons of timeliness, cost and familiarity, it is the Commission's view that in creating this network of centres, the Northern Territory Government must build on the role and work of successful existing organisations that already have:

- an extensive track record of working effectively with Aboriginal children, families and communities
- the trust of the Aboriginal community as a culturally safe and competent service
- in-depth knowledge and understanding of the Northern Territory child protection system
- the capability to be declared as 'recognised entities' (which is discussed further in Chapter 34 (Legislation and legal process))
- the highest standards of corporate governance.

It is the Commission's view that a Centre would have two core functions. Its primary role would involve providing support and services to families and its secondary role would include involvement in the child protection decision-making process as a 'recognised entity'. As outlined in Chapter 34 (Legislation and legal process), the Commission is recommending that the CEO could declare an organisation as a 'recognised entity' that would have a right to participate in the court processes as well as engage with Territory Families before and after court proceedings in relation to decisions about individual children.

For more detailed discussion of the Commission's recommendation for a network of Family Centres, see Chapter 39 (Changing the approach to child protection).

## A peak body in the Northern Territory?

The Commission received submissions advocating for the establishment of a peak body for child protection agencies in the Northern Territory to help support and advance the interests of children and families in the Northern Territory.

The Commission is aware that following recommendations of the 2010 Board of Inquiry, the Northern Territory Government established a peak body for Aboriginal children and families called Strong Aboriginal Families, Together (SAFT), but its funding agreement was terminated in 2013.<sup>50</sup> An outline of the history of SAFT is set out in Chapter 30 (The child protection landscape), in the context of the implementation of the recommendations from the BOI report.

The uncertainties around the role of SAFT exemplify the need to ensure that any newly established organisation has a clear role and purpose and an understood place in the sector.

In considering the future steps needed to establish an Aboriginal child protection presence in the Northern Territory, the SAFT experience must be remembered to avoid the mistake of seeing the

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creation of a peak body as an easy or all-encompassing solution in an environment still largely underpopulated by organisations actually delivering family support services.

The Commission therefore has concerns about any proposal requiring investing too quickly in the establishment of a peak body for child protection. There is the risk of simply repeating the experience of the establishment of SAFT, which failed to serve as a peak body given the absence of child protection organisations that it was meant to represent. To date, there is still no network of organisations dedicated to providing services to children. Furthermore, the Commission is of the view that a peak body should be designed and established by the groups it represents, rather than as a body established by government and imposed on organisations. The Commission notes the presence of at least two well established peak bodies, APO NT and Aboriginal Medical Services Alliances Northern Territory (AMSANT), which may be well placed to assume this role.

The Commission concludes that the Northern Territory Government should prioritise greater investment in the Aboriginal community sector and the establishment of the network of services providers before a peak body is established, as well as ensuring there is enhanced Aboriginal ownership and partnership in the child protection system and a repair of the relationship between government and Aboriginal people.

Consequently, the Commission does not recommend the establishment of either an ACCA or an Aboriginal peak body. The Commission has, instead, recommended the establishment of a network of Family Support Centres, which would deliver a range of services to communities. Further discussion of the Family Support Centres can be found in Chapter 39 (Changing the approach to child protection).

## INVOLVEMENT IN POLICY AND PLANNING

As the principle of self-determination is crucial to the child protection system, Aboriginal people should be involved in designing programs and organisations to operate in their community.<sup>51</sup>

The Commission heard of a strong appetite from Aboriginal organisations for a greater role in policy and planning of services for Aboriginal people.

The Central Australian Aboriginal Legal Aid Service (CAALAS) notes that Aboriginal communities and community organisations play a critical role in family support and child protection. It argues that there should be greater involvement of Aboriginal people and community organisations in designing programs, service delivery and policy.<sup>52</sup> SNAICC also notes that partnering with community leaders and organisations in service design and delivery supports accountability to community needs and priorities.<sup>53</sup>

Professor Larissa Behrendt told the Commission why Aboriginal involvement in policy-making,



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program design and service delivery improve outcomes:

- Aboriginal people understand the issues of concern and priority in their local areas and regions
- the involvement of Aboriginal people in policy, services and programs ensures ‘buy-in’ from the local community and ensures culturally appropriate solutions
- the inclusion of Aboriginal people in policy development, service delivery and programs builds community capacity and social capital, and
- the involvement of Aboriginal people is more likely to create culturally sensitive spaces and improve the cultural competence of non-Aboriginal staff members, thus improving Aboriginal engagement.<sup>54</sup>

In Chapter 7 (Community engagement), the Commission’s review of the recent history of Aboriginal affairs and programs reinforces that top-down policy and program development from governments does not work. The Commission has therefore suggested a shared network governance model be used to engage Aboriginal communities. Under this model, local and regional networks of community representatives work together with government agencies and strengthen service providers to improve the wellbeing of children in the Northern Territory and to develop a shared commitment to the design and implementation of agreed policies and programs. This only comes with the participation of all parties involved and must include the very people who are affected by the policies and programs.

## Approaches in other jurisdictions

SNAICC told the Commission that nationally it has witnessed a growing recognition and investment in a range of measures to increase community-controlled agency capacity and involvement in child protection decision-making, service design and delivery.<sup>55</sup> For example, the Queensland Government has invested \$150 million over five years in new community-controlled Family Wellbeing Services to prevent entry into care. Aboriginal community-controlled organisations will be leading the design and delivery of the new services to ensure the support is culturally safe and responsive.<sup>56</sup>

Other initiatives relating to enhancing participation of Aboriginal people and organisations in policymaking include Victoria’s Aboriginal Children’s Forum and Queensland’s Our Way generational strategy.

### *Victoria’s Aboriginal Children’s Forum*

The Victorian Commissioner for Aboriginal Children and Young People provided the Commission with information about the establishment and operation of the Aboriginal Children’s Forum (Forum). The Forum aims to progress self-determination for Aboriginal people<sup>57</sup> and its purpose is to develop a joint partnership approach to improving outcomes for vulnerable Aboriginal children.<sup>58</sup> Each quarter, the Forum brings together heads and senior executives from government, and Aboriginal and non-Aboriginal community service providers that deliver services to Aboriginal children in out of home care.<sup>59</sup>

Notably, a key principle and focus of the Forum is to promote *‘innovative, best practice and self*

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determining approaches to design, development, implementation and evaluation of policies, initiatives and related programs'.<sup>60</sup>

## Queensland's Our Way strategy

An example of engaging Aboriginal people and organisations in the development of government policy and strategy is Queensland's recently released Our Way, a 20-year generational strategy aimed at ensuring all Aboriginal children grow up cared for and safe.<sup>61</sup>

The strategy was co-developed by the Queensland Government and Family Matters.<sup>62</sup>

### About Family Matters

**Family Matters: Strong Communities. Strong Culture. Stronger Children.**

Family Matters is a national campaign that seeks to ensure Aboriginal children grow up safe and cared for and aims to eliminate the overrepresentation of Aboriginal children in out of home care within a generation.<sup>63</sup>

Family Matters is led by SNAICC and supported by a strategic alliance of more than 150 Aboriginal and non-Aboriginal organisations. It is a collaboration of Aboriginal leaders, mainstream and community-controlled service providers, peak bodies, community leaders, academics and institutions, which work together to see all Aboriginal children 'grow up safe and cared for, thriving in family, community and culture'.<sup>64</sup>

Within the strategy itself, the Queensland Government and Family Matters emphasise that:

*This strategy represents our shared commitment, and the use of the word 'we' throughout refers to the shared voice of the Queensland Government and Family Matters Queensland, and reflects the combined voices of families and communities.*<sup>65</sup>

The strategy and its first action plan, Changing Tracks, is informed by the voices of more than 800 Aboriginal peoples from across Queensland<sup>66</sup> and reflects the views and voices of many Aboriginal Elders, community members and non-government organisations.<sup>67</sup>

## Our Way – The generational strategy

Its **vision** is that all Aboriginal children in Queensland grow up safe and cared for in family, community and culture.

Its **target** is to close the gap in life outcomes for Aboriginal children and families, and eliminate the disproportionate representation of Aboriginal children in the child protection system by 2037.

The desired **outcome** is that Aboriginal children experience parity across a number of wellbeing domains, including safety, health, culture and connections, home and environment, learning and skills, and economic wellbeing.<sup>68</sup>

The strategy involves four building blocks:

- all families enjoy access to quality, culturally safe, universal and targeted services
- Aboriginal people and organisations participate in and have control over decisions that affect their children
- law, policy and practice in child and family welfare are culturally safe and responsive, and
- governments and community services are accountable to Aboriginal people.<sup>69</sup>

Changing Tracks will be delivered from 2017 to 2019.<sup>70</sup> The priority areas in these years include:

- meeting the needs of young Aboriginal women and their partners, before and during pregnancy and parenting, especially during the first 1000 days
- increasing access to and involvement in early years, health and disability programs for Aboriginal children aged two to five, and
- providing Aboriginal families who have complex needs and children at risk with the right services.<sup>71</sup>

The Commission views the development of Our Way as a strong example of effectively including the participation of Aboriginal families, communities and organisations in developing plans and solutions to address the higher rates of disadvantage and poorer life outcomes faced by Aboriginal children. The Commission also acknowledges the Queensland Government and Family Matters' commitment to '*sharing the power and responsibility with Aboriginal and Torres Strait Islander peoples*' in its work to achieve better outcomes for children. Working with Aboriginal people and organisations in the design, development and delivering of policies, practices and programs will ensure solutions meet the needs of Aboriginal people and is therefore fundamental to seeing children grow up safe and cared for.

## Implications for the Northern Territory

The progress in other States provides important examples of how Aboriginal people and organisations are being empowered on the continuum of participation. They represent the active role of Aboriginal people in shaping the outcomes for Aboriginal children and families, away from typical models of consultation where Aboriginal organisations are on the fringes of decision-making.



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The Commission recommends that the Northern Territory Government seek new and enhanced partnerships with Aboriginal people and communities to ensure their effective participation in policy and decision-making in relation to children and families engaging with the child protection system.

To ensure the engagement of Aboriginal people and community in policy development and design there must be an ongoing mechanism for the voices of Aboriginal people to be heard. The Commission recommends the establishment of a Tripartite Forum made up of the:

- Northern Territory Government
- Commonwealth Government, and
- representatives of the Northern Territory community, particularly but not only the Aboriginal community.

This forum would facilitate the effective coordination of policy and programs for children in the child protection and youth justice systems. Further discussion of the Commission's recommended forum can be found in Chapter 43 (Implementing reform).

## ENHANCED PARTICIPATION IN CHILD PROTECTION PROCESSES

*Welfare need to go to family members and communicate and really consult with them. Welfare need to make sure they understand and know what they need to do to look after their kids. Welfare need to make sure they listen to families ...<sup>72</sup>*

Vulnerable witness DJ

The Aboriginal and Torres Strait Islander Child Placement Principle (the Principle) sets the framework for participation in the child protection system. Complying with the Principle is fundamental to ensuring Aboriginal families and communities can effectively participate in decisions made about their children. The fundamental goal of the Principle is to preserve and enhance the connection of Aboriginal children and young people involved in the child protection system to community, culture and country.

The Principle grew from a community movement initiated by ACCAs during the 1970s. Developed from an understanding of the devastating effect of the forced removal of Aboriginal children from their families and communities, the Principle:

- upholds the rights of the child's family and community to have some control and influence over decisions about their children, and
- prioritises options to support ties to families, culture and community when an Aboriginal child is placed in care.<sup>73</sup>

The Principle should guide and inform all child protection decision-making processes for Aboriginal

children. It is underpinned by the recognition that removal of the child must only happen as a last resort and that an Aboriginal child should, as far as practicable, be placed in close proximity to the child's family and community.

### Aboriginal and Torres Strait Islander Child Placement Principle

SNAICC states the Principle aims to:

- recognise and protect the rights of Aboriginal children, family members and communities
- increase the level of self-determination for Aboriginal people in child welfare matters, and
- reduce the disproportionate representation of Aboriginal children in the child protection system.<sup>74</sup>

While the Principle has been introduced into legislation and policy across all Australian states and territories, it is often conceptualised as simply a placement hierarchy and does not fully accomplish the Principle in its entirety.<sup>75</sup> SNAICC told the Commission:

*A significant limitation has been the narrow focus on the hierarchy for out-of-home care placement as constituting the entire Principle. This focus undermines the broader intent and holistic nature of the Principle and starts from an assumption of out-of-home care. It excludes the critical requirement to support family and community environments that keep children safe and does not encourage continued focus on the detailed processes required to identify and respond to cultural support and connection needs at all stages of interaction with child protection systems.<sup>76</sup>*

SNAICC describe five core elements of the Principle, with out of home care placement being just one of those elements. The elements are:

- **Prevention**, recognising the rights of Aboriginal children to be brought up within family and community
- **Partnership** with Aboriginal community representatives, including their participation in all decision-making
- **Placement** of Aboriginal children in out-of-home care, if necessary, prioritised in a hierarchy that starts with Aboriginal kin
- **Participation** of Aboriginal families in decision-making about their children, and
- **Connection** of Aboriginal children in out of home care with family, community and culture.<sup>77</sup>

The gap between the intent to implement the Principle and its successful application is well

documented nationally. Barriers to implementation include:

- a shortage of Aboriginal foster and kinship carers
- poor identification and assessment of Aboriginal foster and kinship carers
- poor support for the involvement of Aboriginal families and communities in decision-making about their children
- limitations to cultural care planning and support for ongoing connection to culture
- inconsistent measurement of compliance to the Principle, and
- factors impacting the operation of ACCAs.<sup>78</sup>

In the Northern Territory, the Principle is legislated in section 12 of the *Care and Protection of Children Act (NT)*.

### **Section 12 – Aboriginal children**

1. *Kinship groups, representative organisations and communities of Aboriginal people have a major role, through self-determination, in promoting the wellbeing of Aboriginal children.*
2. *In particular, a kinship group, representative organisation or community of Aboriginal people nominated by an Aboriginal child's family should be able to participate in the making of a decision involving the child.*
3. *An Aboriginal child should, as far as practicable, be placed with a person in the following order of priority:*
  - a. *a member of the child's family*
  - b. *an Aboriginal person in the child's community in accordance with local community practice*
  - c. *any other Aboriginal person*
  - d. *a person who:*
    - i. *is not an Aboriginal person; but*
    - ii. *in the CEO's opinion, is sensitive to the child's needs and capable of promoting the child's ongoing affiliation with the culture of the child's community (and, if possible, ongoing contact with the child's family).*
4. *In addition, an Aboriginal child should, as far as practicable, be placed in close proximity to the child's family and community.<sup>79</sup>*

In response to concerns that there were poor decision-making practices within the Department of Children and Families concerning the Principle and its inconsistent application,<sup>80</sup> the 2010 BOI report recommended that a comprehensive guide around the application of the Principle be developed through consultation with Aboriginal people and relevant service providers, and be made available to all stakeholders.<sup>81</sup>

Territory Families' Aboriginal Child Placement Principle Practice Guide (the Guide) currently provides guidance to caseworkers on the considerations required in the practical application of the Principle.<sup>82</sup> It outlines the people and organisations a caseworker should consult and the parties who should

attend family meetings when identifying possible placement options. The Guide stipulates that family must be involved and consulted on every decision when a placement is required for a child, and that those consultations must be documented.<sup>83</sup>

The Commission is aware that both Queensland and Victoria have reviewed compliance with the Principle in their respective jurisdictions.<sup>84</sup> Since 2008, three audits have been conducted in Queensland, with the second and third reports delivered in 2010–11 and 2012–13. The audits assessed compliance based on the five requirements outlined in section 83 of the *Child Protection Act (Qld)*, which are to be followed when considering placement options for Aboriginal children. None of the five requirements were complied with in 2008, compliance was achieved in 15% of the audit sample in 2010–11 and 12.5% in 2012–13.<sup>85</sup> A review released in October 2016 by the Victorian Commission for Children and Young people found that, although there was strong policy and program compliance in Victoria, there were no matters between January 2013 and December 2014 that achieved full practical compliance with the Principle.<sup>86</sup>

NAAJA highlighted to the Commission that there was no published data available to facilitate a proper examination of the application of the Principle in the Northern Territory. The only reference to Aboriginal status in Territory Families' monthly reports on children in out of home care was the number of Aboriginal children in care and the percentage with Aboriginal carers.<sup>87</sup>

The Commission strongly recommends the Northern Territory conduct periodic reviews into the Northern Territory's child protection system's compliance with the Principle, with reference to the aims and the five elements of the Principle as outlined above.

### **Recommendation 31.1**

**The Northern Territory Government review periodically its compliance with the Aboriginal and Torres Strait Islander Child Placement Principle.**

## **Strengthening legislation and participation with Recognised Entities**

Following the Bringing them Home report, there have been legislative reforms across all Australian jurisdictions, addressing the following matters:

- ensuring greater recognition of the cultural needs of Aboriginal children – for example, through the introduction of the Aboriginal Child Placement Principle
- improving the participation of Aboriginal people in the child protection system through more effective consultation procedures, and
- ensuring greater sensitivity to Aboriginal child rearing practices and traditions.<sup>88</sup>

An overview of the legislative provisions in relation to the participation of Aboriginal peoples across Australian jurisdictions can be found in a table prepared by Family Matters, reproduced as Table 31.1 below.

The table sets out for each jurisdiction whether its legislation:

- extends to self-determination being a recognised principle
- recognises the principles of participation and/or consultation
- expressly requires consultation with an external Aboriginal agency for all significant decisions, including prior to placement decisions, and
- expressly requires input from external Aboriginal agencies in judicial decisionmaking.

**Table 31.1: Existing legislative provisions across jurisdictions<sup>89</sup>**

|   | ACT   | NSW  | NT           | QLD            | SA   | TAS                                  | VIC   | WA   |
|---|---|--|--------------|----------------|--|--------------------------------------|---|--|
| Aboriginal and Torres Strait Islander self-determination is a recognised principle in the Act.  | No  | Yes s. 11(1)   | Yes s. 12(1) | No             | No   | Yes s. 10G(1)                        | Yes s. 12                                       | Yes s. 13  |
| Aboriginal and Torres Strait Islander participation and/or consultation is a decision-making principle in the Act.                          | No See s. 7(d) (participation requirements not specific to decision-making) | Yes s. 11(1)   | Yes s. 12(2) | Yes s. 6       | No   | Yes s. 10G(2)                        | Yes s. 12                                       | Yes ss. 13, 14                                   |
| Consultation/participation of an external Aboriginal and Torres Strait Islander agency is expressly required for all significant decisions. | No See s. 10(b) (submissions considered)                                    | Yes s. 12 (organisations and means of participation not specified) | No           | Yes s. 6(1)    | No See ss. 5(2)(a), (b) (submissions considered) | No See s. 10G                        | No  | No   |
| Consultation with an external Aboriginal and Torres Strait Islander agency is expressly required prior to placement decisions.              | Yes s. 457(1)(a)(iv)  | Yes ss. 12, 13(1)(d), 13(7) s. 78A(4)                              | No           | Yes s. 83(2)   | Yes s. 5(1)                                      | No See s. 10G                        | Yes s. 12(1)(c)                                 | No See s. 81 (internal or external consultation) |
| Input from external Aboriginal and Torres Strait Islander agencies is expressly required in judicial decision-making.                       | No See s. 482(1)(g) (limited input requirement for long-term orders)        | No   | No           | Yes s. 6(4)(a) | Yes ss. 5(1), (2)                                | No (evidence and submissions, s. 51) | Yes s. 3.23(2) (for permanent care orders only) | No   |

GREEN – Legislation aligned RED – Legislation not aligned GREY – limited / significantly qualified alignment

Table reproduced from Family Matters report, with minor amendments.<sup>90</sup>

Three of the five types of legislative provisions outlined in the diagram above relate to the role of Aboriginal organisations and, in particular, the role of approved or recognised organisations in child protection decision-making.

The Northern Territory legislation does not currently provide any clear scheme or role for approved or recognised organisations. Section 12 of the *Care and Protection of Children Act* stipulates that ‘representative organisations’, as nominated by the child’s family should be able to participate in decision making, but does not provide clarity on what constitutes such an organisation or the extent of the participation and in what circumstances.<sup>91</sup> The *Care and Protection of Children Act* also provides a broad legislative basis for the engagement of Aboriginal peoples in the decision-making process in subsections 12(1)–(2). However, it does not specify the decisions or processes where participation should occur. It does not currently ‘require advice, consultation, or participation of Aboriginal agencies in relation to the making of significant decisions’,<sup>92</sup> including placement decisions. It does not recognise other key elements of the Principle, which highlight the importance

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of partnership and participation with Aboriginal people, communities and organisations. Issues relating to the implementation of the Principle in relation to placing children in out of home care are considered in Chapter 33 (Children in out of home care).

In practice, the absence of Aboriginal community-controlled organisations with dedicated child protection functions renders legislative provisions allowing participation by ‘representative organisations’ relatively meaningless, limiting the ability of Aboriginal agencies to provide input in relation to placement or other significant decisions. This means that decisions in relation to the child’s welfare and wellbeing, placement, removal, contact with family members and siblings, cultural care plans and potential for reunification are all made without any significant input from Aboriginal organisations. In the absence of other sound, culturally informed participation by kinship groups and communities, no adequate information is provided for the decision-maker.

### **Legislation in other jurisdictions**

Provisions exist in Queensland, the Australian Capital Territory, South Australia and Victoria that enable Aboriginal involvement in decision-making.

Notably, in Victoria, where there is a well-established ACCA, the *Children, Youth and Families Act 2005 (Vic)* requires that where a decision in relation to an Aboriginal child is to be made, a meeting will be convened with an Aboriginal convenor, approved by an organisation declared to be an Aboriginal agency under that Act.<sup>93</sup> The *Children, Youth and Family Act (Vic)* also requires that:

- Before placing an Aboriginal child in out of home care, regard must be had to the advice of the relevant Aboriginal agency, including about the feasibility of placement with extended family or relatives,<sup>94</sup> and
- Permanent care orders to place an Aboriginal child solely with a non-Aboriginal person cannot be made by the Court unless the Court has received a report from an Aboriginal agency that recommends the making of that order.<sup>95</sup>

Under the *Children, Youth and Family Act (Vic)*, an Aboriginal agency can also be authorised to perform other functions on behalf of the child protection authority, with respect to Aboriginal children.<sup>96</sup> Once a protection order for an Aboriginal child has been made, an Aboriginal agency may be authorised to take on responsibility for the child’s case management and case plan.<sup>97</sup>

In Queensland, it is mandatory for Aboriginal agencies to be consulted regarding all ‘significant’ decisions regarding Indigenous children, in addition to a general requirement to consult.<sup>98</sup> The Queensland legislation, the *Child Protection Act 1999 (Qld)* also provides that an Aboriginal organisation that is a ‘recognised entity’ can participate in certain decision-making processes with respect to Aboriginal children. Recognised entities are to be consulted and have their views taken into account in relation to any significant decisions about an Aboriginal child, including placement decisions,<sup>99</sup> case planning and family group meetings,<sup>100</sup> and court-ordered conferences.<sup>101</sup>

In South Australia, the *Children’s Protection Act 1993 (SA)* provides for the establishment of recognised Aboriginal organisations,<sup>102</sup> such as the Aboriginal Family Support Services (AFSS). The AFSS plays a role in the implementation of the Principle. The *Children’s Protection Act (SA)* mandates

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that no decisions or order may be made about where or with whom an Aboriginal child will reside unless there has been consultation with a recognised Aboriginal organisation.<sup>103</sup> Further, in making any decisions or orders in relation to an Aboriginal child, regard must be had to any submissions of a recognised Aboriginal organisation that has been consulted in relation to the child.<sup>104</sup> Recognised Aboriginal organisations can also nominate persons to attend family care meetings convened under the *Children's Protection Act (SA)*.<sup>105</sup>

In New South Wales, the *Children and Young Person's (Care and Protection) Act 1998 (NSW)* states Aboriginal families, kinship groups, representative organisations and communities are to be given the opportunity, by means approved by the Minister, to participate in decisions made concerning the placement of their children and young people, and in other significant decisions made under the *Children and Young Person's (Care and Protection) Act (NSW)*.<sup>106</sup> The *Children and Young Person's (Care and Protection) Act (NSW)* specifically provides that, in certain circumstances where there is an intention to place an Aboriginal child or young person permanently with a non-Aboriginal person, such an order should be made only in consultation with a local, community-based and relevant Aboriginal organisation and the local Aboriginal community.<sup>107</sup> In certain circumstances, appropriate Aboriginal organisations must also be consulted about suitable persons with whom Aboriginal children are to be placed.<sup>108</sup>

One way to improve the implementation of the current framework in the Northern Territory is to strengthen the Northern Territory legislation consistently with provisions already operative elsewhere in Australia, together with the establishment of an Aboriginal child welfare presence,<sup>109</sup>

Recommendation 4.3 of the 2010 BOI report stressed the importance of recognising the role of Aboriginal agencies in child protection legislation. Professor Bamblett told the Commission that this was the *'acknowledgment of the need to consult with an Aboriginal agency when children are involved in child protection'*.<sup>110</sup>

The Commission is therefore recommending the establishment of a process for participation by approved organisations, or 'recognised entities', in child protection decision-making. The approach recommended by the Commission is outlined in Chapter 34 (Legislation and legal process).

## MECHANISMS FOR ENHANCED PARTICIPATION

In addition to creating a role for Aboriginal organisations in the decision-making process for a child, there is an increasing move across Australia to similarly engage Aboriginal families in the decision-making process regarding the safety and wellbeing of their children. The Commission heard that these approaches have been inconsistently applied, underfunded, underutilised, not implemented as agreed, or used too late in the decision-making process, limiting their impact on the demands of the child protection system.<sup>111</sup>

Initiatives such as mediation, Family Group Conferencing, Aboriginal Family-led Decision-Making and Care Circles are examples of engaging Aboriginal people in child protection decision-making. No one model is right for all contexts, instead a flexible approach that takes into account the *'nature*

*of the issues to be considered, the circumstances of the child and his or her family, the community*

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setting and the resources<sup>112</sup> is needed.

## Mediation

There are currently provisions in the *Care and Protection of Children Act* relating to mediation. Mediation conferences can be arranged by Territory Families who appoint a convener who may invite the parents or family if deemed appropriate.<sup>113</sup> As discussed in Chapter 34 (Legislation and legal process), this capacity is rarely used.

Courts also often order mediations, to seek to deal with a matter through a less formal and more consultative process. However, in the Northern Territory, this does not occur as the relevant provisions of the *Care and Protection of Children Act* with respect to court ordered mediations have not been commenced. It is disappointing that these options have not been more fully embraced and put into practice for use as vehicles for involving families, communities or representative organisations.

Case conferencing is also available to attempt to narrow issues in dispute prior to court hearings.<sup>114</sup> However, unlike Chief Executive Officer initiated and court-ordered mediations, there are no convenors for case conferences.<sup>115</sup> As noted in Chapter 34 (Legislation and legal process), while there is support for the use of case conferences, they are not a substitute for mediation conferences.<sup>116</sup> Proposed amendments to strengthen the mediation provisions and their operation are addressed in Chapter 34 (Legislation and legal process).

## Family Group Conferencing

Family Group Conferencing (FGC) is another model that facilitates greater participation by families. It has been used in most Australian child protection contexts since the early 1990s.<sup>117</sup> FGC encourages partnerships between families and statutory agencies in order to respond to child protection concerns in a forum where families are active participants in the decision-making process.<sup>118</sup>

The conference involves a meeting where the immediate and extended family of a child and relevant professionals come together to talk about their concerns for that child or young person, and together make decisions in the best interests of that child.<sup>119</sup> Family group conferences can be used in the context of court proceedings, but importantly, can also be convened where court orders would otherwise have been sought,<sup>120</sup> as a way for families to engage with the child protection authority more effectively.

FGC aims to reduce the need for child protection matters to be determined through court processes while placing the family at the core of decision-making. This process recognises that the court may be limited in its ability to make decisions in the best interests of the child,<sup>121</sup> while also recognising that decisions made in the best interests of an Aboriginal child need to be decided in a culturally appropriate way. Judge Andrew Becroft, the New Zealand Children's Commissioner, told the Commission that FGC means that:

*'... wherever possible, rather than a court institutional decision, there would be a*



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*decision made as a result of families and wider family community getting together that would be endorsed by the court, and monitored and supervised by the court. So the Family Group Conference was really an exercise in delegating decision-making power from the courts to the family, victim and community.*<sup>122</sup>

Judge Becroft has observed that a family empowered in this way is particularly beneficial, as the judiciary will never understand a child or young person and their situation to the same extent that their family does – *‘the best and most relevant solutions ... are often found in their communities.*<sup>123</sup> The Commission was told the FGC has several other benefits including:

- providing a mechanism for families to engage in decisions affecting their own children enabling them an opportunity to address concerns raised by Territory Families<sup>124</sup>
- assisting in the identification and discussion of potential kinship options, and
- facilitating a process where a child’s connection to community and culture can be emphasised and given appropriate weight in decision-making processes.<sup>125</sup>

Positive outcomes of FGC include increased uptake of support services, satisfaction by families involved in the decision-making process and an increase in the number of alternative family placements.<sup>126</sup>

### **Family conferences in action**

Last year, a mother struggling to meet the needs of her children while attending to the significant health concerns of their father had been too ashamed to ask her family for help. However, she was able to explain her difficulties to family members during a meeting also attended by a solicitor sent by Territory Families and an interpreter. At the meeting, family members volunteered to spend time looking after the children. As a result, a safety plan was drawn up and the Department withdrew the application for protection orders.<sup>127</sup>

The BOI report recommended the establishment of an effective and culturally appropriate FGC model in the Northern Territory, suggesting that the following occur:

- that an Aboriginal FGC model and/or other culturally appropriate decision-making models be developed and progressively implemented to cover all key service regions of the Northern Territory
- that the programs are formally evaluated
- that they are funded (in time) as part of the normal budget process,<sup>128</sup> and
- that both Chief Executive Officer and Court ordered mediations form an active part of the child protection system across the Northern Territory.<sup>129</sup>

Following the recommendation of the Board of Inquiry, a trial of FGC was conducted in Alice Springs. This pilot demonstrated the potentially transformative nature of the forum to participant families,<sup>130</sup> which is evidenced through the following statements:

*It is good for the case workers to come to these meetings to learn more about*

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*Aboriginal way so we are putting our two cultures together. (Auntie)*

*Before this meeting I never knew I could take my child home. I thought they were with welfare for good. (Mother)*

*This meeting is good. Before I did not know these kids was in so much trouble. Now we are talking. (Father)<sup>131</sup>*

The FGC trial in Alice Springs was discontinued when Commonwealth Government funding for the trial ceased.<sup>132</sup>

### **Alice Springs Family Group Conferencing Pilot Program**

In December 2009, funding was secured through the Alice Springs Transformation Plan to establish a pilot program of FGC in Alice Springs.<sup>133</sup> The pilot program, which operated between October 2011 and June 2012, was an attempted implementation of sections 48 and 49 of the *Care and Protection of Children Act*. The object of those provisions is to ensure that, as far as possible, the wellbeing of a child is safeguarded through agreements between the parents of the child and other interested parties. Section 49 allows the Chief Executive Officer to arrange mediation conferences with parents where concerns have been raised about the wellbeing of a child.

The FGC Pilot suffered some implementation delays, however once fully operational it received 28 referrals between October 2011 and April 2012, relating to 47 children.<sup>134</sup> There were 16 conferences convened involving 97 family members of Aboriginal children. All of the conferences resulted in a Partnership Agreement.<sup>135</sup>

The Menzies School of Health Research evaluated the pilot positively. However, the model was seen as too costly to be implemented in each region and in remote communities.<sup>136</sup> The decision was made to discontinue FGC altogether.<sup>137</sup> The

Department acknowledged that one consequence would be a negative impact on its capacity to locate kinship carers.<sup>138</sup>

With the distinct lack of Aboriginal family participation in the child protection system, community groups and organisations have advocated for the re-establishment of a culturally appropriate FGC model in the Northern Territory.

A FGC model would provide an effective mechanism for Aboriginal families to engage in decisions affecting their own children and give them the opportunity to address the concerns raised by Territory Families. FGC could also be effective in identifying kinship carers so Aboriginal children can remain with their family and community.

Options for amending the legislation to include family group conferencing in the *Care and Protection*

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of *Children Act* are discussed in Chapter 34 (Legislation and legal process).

## Aboriginal Family-led Decision-Making

In Victoria, a Family-led Decision Making (FLDM) model is used. The program is offered both to Aboriginal and non-Aboriginal families.<sup>139</sup> FLDM is a way for families to lead decision-making in partnership with the child protection authority.<sup>140</sup> At FLDM meetings, a convener brings together family members, support people, Elders and the child, where appropriate.<sup>141</sup> In some instances, a foster care agency representative may also be involved.<sup>142</sup>

Aboriginal families are offered FLDM where protective concerns have been substantiated and where an Aboriginal child is subject to a court order.<sup>143</sup> Aboriginal FLDM allows Aboriginal families to meet and explore options to improve their family situation in a supported cultural environment.<sup>144</sup> The program builds upon the fundamental philosophies of FCG and aims to assist conveners of meetings in providing a decision-making process that empowers families to make good decisions and plans in relation to the safety and care of their children.<sup>145</sup>

The Commission heard Victoria is the only state in Australia to *'implement a statewide, culturally specific model of Aboriginal Family-Led Decision-Making (AFLDM) in partnership with Aboriginal agencies.'*<sup>146</sup> Trials of AFLDM, drawing on the Victorian model, have occurred in NSW and Queensland. These trials have considered the use of AFLDM at earlier stages of decision-making, including in early intervention cases and at the early stages of responding to notified concerns.<sup>147</sup>

## Care Circles

Care Circles offer another pathway to enhanced community input, control and ownership in determining the best interests of Aboriginal children and have been used in New South Wales.<sup>148</sup> The circles are a means by which *'Aboriginal culture and identity may be taken into account'*<sup>149</sup> in the child protection system.

Unlike formal adversarial processes, Care Circles are conducted outside the courtroom, in the community, where they are attended by the parties and their legal representatives, respected community members and the Magistrate.

A Magistrate can order a Care Circle and bring together the relevant stakeholders to formulate a care plan.<sup>150</sup> This plan sets out who would be allocated legal responsibility for a child, what kind of placement is proposed, what kind of contact would occur between siblings and family members, any services that may be required and which agencies would supervise the placement.<sup>151</sup>

Care Circles offer avenues of enhancing the participation of Aboriginal families in decision-making processes similar to mediation. These methods assist in informing decisions around placement, restoration, support options and visitation but do nothing to address the underlying causes that bring children and families to the attention of authorities in the first place.

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## An improved system for all children and families

The Commission is conscious that, while Aboriginal children and families are significantly overrepresented in the child protection system, non-Aboriginal children remain affected by the shortcomings of the system and experience poor outcomes. The Commission's approach to resolving this situation is informed by three key principles:

- Improving the system for Aboriginal children and families will also improve the system for non-Aboriginal children. The issues faced by all children and families affected by child abuse and neglect are, by and large, similar. It is the scale, the precedent and the degree to which these problems are intergenerational that may differ greatly.
- Aboriginal people need to be actively engaged by government in the decisions made about their children and families and this requires specific, intentional consultation and engagement strategies. These processes should have sufficient flexibility to support engagement with non-Aboriginal communities and families, including the growing number of families from culturally and linguistically diverse backgrounds, and newly arrived migrants and refugees.
- 'Recognised entities', discussed in further detail in Chapter 34 (Legislation and legal process), would be designed to enhance participation of organisations that have an interest or involvement in the child protection process for both Aboriginal and non-Aboriginal children.

## CONCLUSION

The argument for enhanced participation and control of those who need and use services to produce better outcomes is well articulated, stressing the importance of increased Aboriginal participation and community control in achieving positive outcomes for Aboriginal children and families.<sup>152</sup>

Principles of good engagement and a human rights based approach, while essential, are of limited value if they do not lead to the empowerment of families, particularly Aboriginal families, to participate across the spectrum of decision-making with respect to their children. This means enlivening the specific participation of Aboriginal people in the design, delivery and oversight of services.

Insufficient value has been placed on the role of Aboriginal people as decision makers and service providers, confirmed by the present lack of investment in an Aboriginal child services model for the Northern Territory. Much work remains to be done in order to establish an Aboriginal presence in child protection within an environment that appropriately engages both organisations and families.

Ensuring that there is an Aboriginal child services sector, together with mandating engagement at all stages of family support, early notification, removal and reunification will go a long way towards enhancing the participation of Aboriginal people.

The evidence before the Commission reiterates the message that the cost of not including Aboriginal people in the co-design and development of solutions is high. It is imperative that this occurs in all aspects of the child protection process.

## ENDNOTES

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- 2 Exh.623.000, Statement of DJ, 15 June 2017, tendered 28 June 2017, para. 45.
- 3 Exh.024.012, *Northern Territory Emergency Response – Report of the NTER Review Board*, 2008, tendered 13 October 2016, p. 8.
- 4 Exh.453.000, Statement of Larissa Behrendt, 27 May 2017, tendered 29 May 2017, para. 60.
- 5 University of Melbourne, the Centre for Evidence and Implementation, Secretariat of National Aboriginal and Islander Child Care & Save the Children, *The Family Matters Report*, 2016, p. 41.
- 6 Exh.459.001, Annexure 1 to Statement of John Burton, SNAICC submission to Royal Commission into the Protection and Detention of Children in the Northern Territory, February 2017, tendered 29 May 2017, p. 9.
- 7 Exh.526.000, Statement of Bunawarra Dispute Resolution Elders (Maningrida), 15 June 2017, tendered 20 June 2017, para. 9; Submission, North Australian Aboriginal Justice Agency, August 2017, p. 2.
- 8 Submission, North Australian Aboriginal Justice Agency, August 2017, p. 2.
- 9 Exh.651.000, Statement of DI, 15 June 2017, tendered 20 June 2017, para. 81.
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- 11 Submission, North Australian Aboriginal Justice Agency, August 2017, p. 3.
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- 17 Exh.005.001, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, article 18(1).
- 18 Exh.005.001, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, article 18(2).
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- 20 Exh.024.008, *Bringing them Home – Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, tendered 13 October 2016, p. 497.
- 21 New South Wales Ombudsman, October 2011, *Addressing Aboriginal Disadvantage: The need to do things differently*, Sydney, p. 4.
- 22 Exh.018.001, Annexure 1 to Statement of Patricia Anderson AO, Little Children are Sacred report, 30 April 2017, tendered 12 October 2016, p. 53.
- 23 Exh.014.001, Board of Inquiry Report – Growing them strong, together: Promoting the Safety and Wellbeing of the Northern Territory’s Children - Volume 1, 18 October 2010, tendered 12 October 2016, p. 124.
- 24 Exh.024.008, *Bringing them Home – Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, tendered 13 October 2016, p. 449.
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- 29 Submission, North Australian Aboriginal Justice Agency, August 2017, p. 26.
- 30 Submission, North Australian Aboriginal Justice Agency, August 2017, pp. 8-9.
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- 34 Exh.459.001, Annexure 1 to Statement of John Burton, SNAICC submission to Royal Commission into the Protection and Detention of Children in the Northern Territory, February 2017, tendered 29 May 2017, p. 10.
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- <sup>42</sup> Exh.548.000, Statement of Olga Havnen, 21 June 2017, tendered 22 June 2017, para. 29.
- <sup>43</sup> Exh.459.001, Annexure 1 to Statement of John Burton, SNAICC submission to Royal Commission into the Protection and Detention of Children in the Northern Territory, February 2017, tendered 29 May 2017, p. 11.
- <sup>44</sup> Transcript, Muriel Bamblett, 13 October 2016, p. 210: lines 29-39.
- <sup>45</sup> Submission, Danila Dilba Health Service, August 2017, pp. 37-38.
- <sup>46</sup> Submission, Aboriginal Peak Organisations Northern Territory, July 2017, p. 50.
- <sup>47</sup> Deeble Institute for Health Policy Research and Australian Healthcare and Hospitals Association, 'The relative effectiveness of Aboriginal Community Controlled Health Services compared with mainstream health service', Australian Healthcare and Hospitals Association [website], September 2009, <<http://ahha.asn.au/publication/evidence-briefs/relative-effectiveness-aboriginal-community-controlled-health-services>>, accessed 23 October 2017.
- <sup>48</sup> Submission, Aboriginal Peak Organisations Northern Territory, July 2017, p. 50.
- <sup>49</sup> Transcript, Olga Havnen, 22 June 2017, p. 4766: line 39 - p. 4767: line 3.
- <sup>50</sup> Exh.614.000, Ministerial Briefing: letter dated 10 December 2013, tendered 28 June 2017, p. 1.
- <sup>51</sup> Transcript, Larissa Behrendt, 29 May 2017, p.3995: lines 5-20.
- <sup>52</sup> Submission, Central Australian Aboriginal Legal Aid Service, Care and Protection, July 2017, p. 64.
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- <sup>59</sup> Exh.558.000, Statement of Andrew Jackomos, 13 June 2017, tendered 23 June 2017, para. 23.
- <sup>60</sup> Exh.558.000, Statement of Andrew Jackomos, 13 June 2017, tendered 23 June 2017, para. 24.
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- <sup>69</sup> Queensland Department of Communities, Child Safety and Disability Services, 2017, *Our Way: A generational strategy for Aboriginal and Torres Strait Islander Children and Families, 2017–2037*, Queensland Department of Communities, Child Safety and Disability Services, Brisbane, p. 8.
- <sup>70</sup> Queensland Department of Communities, Child Safety and Disability Services, 2017, *Our Way: A generational strategy for Aboriginal and Torres Strait Islander Children and Families, 2017–2037*, Queensland Department of Communities, Child Safety and Disability Services, Brisbane, p. 18.
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- <sup>76</sup> Exh.459.001, Annexure 1 to Statement of John Burton, SNAICC submission to Royal Commission into the Protection and Detention of Children in the Northern Territory, February 2017, tendered 29 May 2017, p. 7.
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- <sup>78</sup> Arney, F et al, August 2015, 'Enhancing the implementation of the Aboriginal and Torres Strait Islander Placement Principle', *Child Family Community Australia Paper No. 34*, Australian Institute of Family Studies, pp. 7-8.
- <sup>79</sup> *Care and Protection of Children Act (NT)* s. 12.
- <sup>80</sup> Exh.014.001, Board of Inquiry Report – Growing them strong, together: Promoting the Safety and Wellbeing of the Northern Territory's Children - Volume 1, 18 October 2010, tendered 12 October 2016, p. 133.
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- <sup>86</sup> The University of Melbourne and the Secretariat of National Aboriginal and Islander Child Care, *The Family Matters Report*, 2016, The University of Melbourne and the Secretariat of National Aboriginal and Islander Child Care, p. 42.
- <sup>87</sup> Submission, Northern Australian Aboriginal Justice Agency, August 2017, p. 80.
- <sup>88</sup> Harris-Short, S, 2011, *Aboriginal Child Welfare, Self Government and the Rights of Indigenous Children*, Ashgate Press, Surrey, UK, p. 71.
- <sup>89</sup> The University of Melbourne and the Secretariat of National Aboriginal and Islander Child Care, *The Family Matters Report*, 2016, The University of Melbourne and the Secretariat of National Aboriginal and Islander Child Care, p. 44. Relevant legislation includes: *Children and Young People Act 2008 (ACT)*; *Children and Young People (Care and Protection) Act 1998 (NSW)*; *Care and Protection of Children Act (NT)*; *Child Protection Act 1999 (Qld)*; *Children's Protection Act 1993 (SA)*; *Children, Young Persons and Their Families Act 1997 (Tas)*; *Children and Community Services Act 2004 (WA)*; *Children, Youth and Families Act 2005 (Vic)*.
- <sup>90</sup> Amendments to table show that in the Australian Capital Territory, consultation with an external Aboriginal agency is expressly required prior to placement decisions. Also, amendments show that in Victoria, the relevant section that indicates input from external Aboriginal agencies is expressly required in judicial decision-making in relation to permanent care orders is s. 323(2) of the *Children, Youth and Families Act 2005 (Vic)*.
- <sup>91</sup> Exh.459.001, Annexure 1 to Statement of John Burton, SNAICC submission to Royal Commission into the Protection and Detention of Children in the Northern Territory, February 2017, tendered 29 May 2017, p. 10.
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- <sup>93</sup> *Children, Youth and Families Act 2005 (Vic)* ss. 6, 12(b).
- <sup>94</sup> *Children, Youth and Families Act 2005 (Vic)* ss. 13(1)(a), 13(2)(b).
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- <sup>99</sup> *Child Protection Act 1999 (Qld)* ss. 6(1), 83.
- <sup>100</sup> *Child Protection Act 1999 (Qld)* s. 51L.
- <sup>101</sup> *Child Protection Act 1999 (Qld)* s. 70.
- <sup>102</sup> *Children's Protection Act 1993 (SA)* s. 5(3).
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- 138 Exh.540.003, Annexure CGB-03 to Statement of Clare Gardiner-Barnes, 4 June 2017, tendered 11 June 2017, p. 16.
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- 145 Victorian Government, 2016, *Family-Led Decision Making Program Guidelines: Including program requirements and practice guidance – Version 3*, p.1.
- 146 Exh.459.001, Annexure 1 to Statement of John Burton, SNAICC submission to Royal Commission into the Protection and Detention of Children in the Northern Territory, February 2017, tendered 29 May 2017, p. 9.
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- 148 New South Wales Government, 'Care Circles', New South Wales Government [website], undated, <[http://www.keepthemsafe.nsw.gov.au/initiatives/supporting\\_aboriginal\\_children\\_and\\_families/care\\_circles](http://www.keepthemsafe.nsw.gov.au/initiatives/supporting_aboriginal_children_and_families/care_circles)>, accessed 26 October 2017.
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- 150 See, *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 65A, which allows the Children's Court to order the



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parties to attend an alternative dispute resolution conference.

<sup>151</sup> *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 78.

<sup>152</sup> Exh.459.001, Annexure 1 to Statement of John Burton, SNAICC submission to Royal Commission into the Protection and Detention of Children in the Northern Territory, February 2017, tendered 29 May 2017, p. 8.



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ENTRY INTO THE CHILD  
PROTECTION SYSTEM



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# ENTRY INTO THE CHILD PROTECTION SYSTEM

## INTRODUCTION

International law has long recognised the right of children to be protected from harm. The *Geneva Declaration of the Rights of the Child* (1924), the *Universal Declaration of Human Rights* (1948), Article 10 of the *International Covenant on Economic, Social and Cultural Rights* (1966), Articles 23 and 24 of the *International Covenant on Civil and Political Rights* (1966),<sup>1</sup> and the *Convention on the Rights of the Child* (1989)<sup>2</sup> all recognise the right of every child to be protected from harm.

The Northern Territory, like most Australian jurisdictions, relies on the statutory child protection system as the primary means for protecting children and addressing child abuse and neglect. Like child protection systems elsewhere, the Northern Territory child protection system was historically designed to deal with the physical abuse of children, often where there were observable physical injuries.<sup>3</sup> These systems focused on the immediate safety of a child, based on the assumption that such abuse only occurred in a small number of cases, and was easily detectable.<sup>4</sup>

As the evidence base has grown around the harmful impacts of neglect and exposure to violence on children, child protection systems have come to respond to a much wider scope of harm.<sup>5</sup> Notification data for the Northern Territory shows that neglect is now the most common primary type of abuse or neglect substantiated for children, followed by emotional abuse.<sup>6</sup>

In 2010, the Northern Territory Board of Inquiry in its report *Growing them strong, together - promoting the safety and wellbeing of the Northern Territory's children* found the child protection system to be overwhelmed by demand and under-resourced to cope with this demand.<sup>7</sup> The Board of Inquiry recommendations represented a roadmap for change based on working beyond the front-line system, investing in early intervention and building the capacity of Aboriginal organisations. However, this change did not eventuate and the situation in the Northern Territory is now far worse. In 2010–11, 6,533 notifications were received and 634 children were living in out of home care; by

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2015–16, 20,465 notifications were received and 1,020 children were living in out of home care.<sup>8</sup> As it currently exists, the child protection system in the Northern Territory is incident-based and reactive. A recent Senate Inquiry reported that Australia’s child protection systems are too narrowly focused on legislation to stop child abuse rather than the overall outcomes for children, and that this has led to a risk-averse approach to child protection decisions that favours the removal of children from potentially unsafe situations.<sup>9</sup>

The growth in child protection notifications in the Northern Territory has required expansion of the statutory response system. This has occurred without commensurate increases in early intervention and support services.<sup>10</sup> Without reforms to reduce levels of harm and consequent notification numbers, there is a real risk for the capacity of the statutory response system to be overwhelmed.<sup>11</sup>

The Commission heard from Professor Leah Bromfield that the longstanding approach to child protection is incapable of keeping pace with the growing demands on child protection authorities, let alone changing the focus to prevent children and families entering the system when they reach a crisis point.<sup>12</sup> Professor Sven Silburn of the Menzies School of Health Research told the Commission that ‘*very radical change*’ was needed if the Northern Territory Government was to meet its statutory responsibilities.<sup>13</sup>

Dr Howard Bath, co-Chair of the 2010 Board of Inquiry, told the Commission a preventive mindset was needed if the numbers of children entering the child protection system were to be reduced:<sup>14</sup>

*‘In the absence of preventive services, all we’re doing is waiting until the harm is done and then trying to provide some sort of remediation. There has to be a focus on preventing those children coming into care but also on enabling their families to provide safety and nurture.’<sup>15</sup>*

The Commission also heard evidence suggesting that child abuse and neglect might not be as rare as previously thought.<sup>16</sup> Professor Fiona Arney suggested to the Commission that the prevailing assumptions about the level of child abuse and neglect in the community could be inaccurate, and that the problem could be even more extensive than currently understood.<sup>17</sup>

Reform recommendations for child protection systems like the current system in the Northern Territory often include strategies to address problems of process, such as differential or dual pathways, caseload reductions, threshold changes and calling on backlog teams. These can be valuable interventions to address specific problems in the system, but they can only ever have a temporary effect on demand as they are not preventive in nature, and are mobilised to help the system cope with the task of responding after the harm is suspected to have occurred. To have any more lasting effect, preventive system changes must be considered in conjunction with strategies to target better and provide early support to children and their families.<sup>18</sup>

This chapter examines a number of aspects of the current child protection system in the Northern Territory, including intake, assessment, investigations and support services. It reviews some of the strategies used to date to improve the system, and recommends further changes to increase the wellbeing of children and their families. It does this in the context of emphasising that reforms to improve the child protection system will not succeed if they are the only action taken to improve the position for children in the Northern Territory.

## The intake process

The intake process is the entry point to the statutory child protection system. The process is governed by the *Care and Protection of Children Act* (NT), which gives Territory Families the authority to act where a child has suffered or is likely to suffer harm or exploitation as a result of acts or omissions by their parents or caregivers. The types of harm and exploitation the child protection system addresses are set out in the *Care and Protection of Children Act*.

### Sections 15 and 16 of the Act explain the meaning of ‘harm’ and ‘exploitation’.

1. Harm to a child is any significant detrimental effect caused by any act, omission or circumstance on:
  - a. the physical, psychological or emotional wellbeing of the child; or
  - b. the physical, psychological or emotional development of the child
2. Without limiting subsection (1), harm can be caused by the following:
  - a. physical, psychological or emotional abuse or neglect of the child
  - b. sexual abuse or other exploitation of the child
  - c. exposure of the child to physical violence.

Exploitation includes:

1. Sexual and any other forms of exploitation of the child
2. Without limiting subsection (1), sexual exploitation of a child includes:
  - a. sexual abuse of the child
  - b. involving the child as a participant or spectator in:
    - i. an act of a sexual nature
    - ii. prostitution
    - iii. a pornographic performance.

The objects of the *Care and Protection of Children Act* include promoting the wellbeing of children, protecting children and young people from harm and exploitation, and maximising the opportunities for children to realise their full potential.<sup>19</sup>

Territory Families is further guided by its *Care and Protection Practice Manual*, which sets out the departmental policies and procedures, and the practice framework entitled ‘Practice with Purpose’.<sup>20</sup>

The challenges facing the child protection system start with the intake process, when Territory Families receives and processes reports about children thought to be at risk of harm. Understanding how these notifications are screened, assessed and investigated is essential to understanding the problems facing Territory Families.

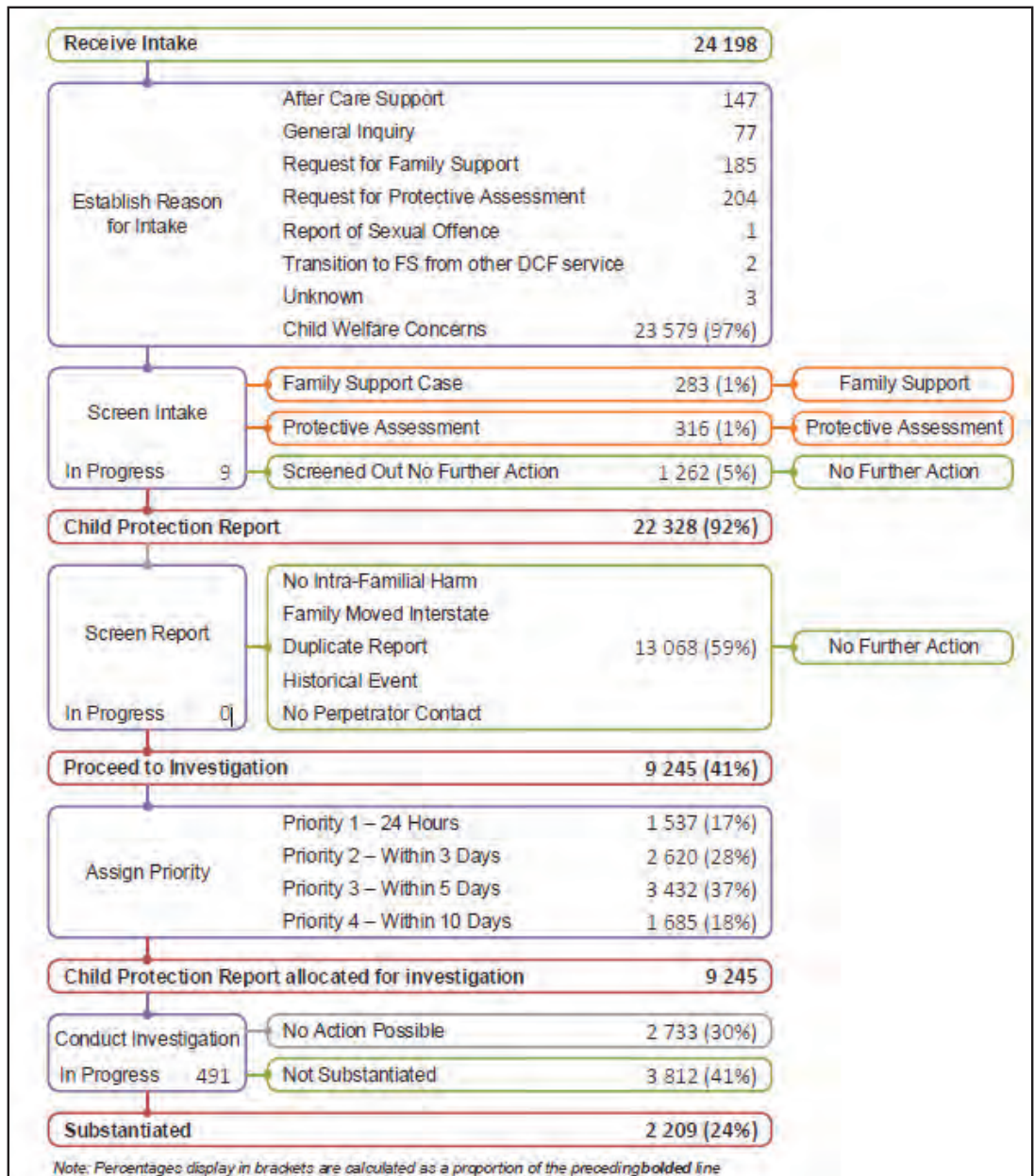
Figure 32.1 below shows a simplified version of the Territory Families intake process without the SDM risk assessments, identifying at each stage the number and proportion of particular outcomes. As would be expected, at each stage of the intake process, fewer cases require responsive action.



Of the 24,189 notifications received, 97% related to child welfare concerns. At intake, 5% were screened out with no further action, 1% were referred for protective assessment and 1% were referred to family support.

Of the 22,328 that were part of child protection reports, 41% proceeded to investigation and 24% of those that proceeded to investigation were substantiated.

**Figure 32.1: Central Intake case allocation and outcomes, 2016–17<sup>21</sup>**



# STRUCTURED DECISION-MAKING TOOLS

## Set-up and description

The Northern Territory uses Structured Decision Making (SDM) tools to support and guide its decision-making in relation to child protection. The National Council on Crime and Delinquency Children's Research Centre (Children's Research Centre), based in the United States, developed a suite of SDM tools<sup>22</sup> that aim to improve the consistency of decision-making and reduce subsequent notifications, substantiations, harm and foster placements.<sup>23</sup> The tools are used to guide and support decision-making, but need to be used with professional judgement.<sup>24</sup>

### Structured Decision Making (SDM) tools used in the Northern Territory

#### *Screening criteria and response priority*

This tool is used at intake and consists of two parts: the screening criteria and the response priority.

**Screening criteria:** the screening tool assesses whether the information received at intake meets the threshold for a child protection report; if it does not, it is screened out.<sup>25</sup> If the result is to screen in, the information must be applied through a series of decision trees to allocate a response priority assessment relating to either physical abuse, neglect, sexual abuse, emotional abuse or a child at risk being under two years of age.<sup>26</sup>

**Response priority:** this tool recommends a priority, which can be overridden using a mandatory or discretionary override. With approval from a supervisor, the intake worker can select a response that is different from the decision tree, and document the reason for this decision.<sup>27</sup> The following response priority categories apply:

- Priority 1: child in danger – 24-hour investigative response
- Priority 2: child at risk, under two years of age – within three days
- Priority 3: child safety concern – within five days, and
- Priority 4: child concern – within 10 days.<sup>28</sup>

#### *SDM safety assessment*

A safety assessment must be completed following the initial interview of a child and parent, to identify if a child is at immediate risk of harm. The safety assessment determines whether a child may safely remain in the home with or without a safety plan, or whether the child is unsafe and needs to be removed. The assessment of the household in which the allegation occurred considers the immediate danger and the need for immediate intervention.

There are three possible outcomes of a safety assessment:

- **Unsafe:** a child is assessed to be in urgent need of safeguarding under section 51 of the *Care and Protection of Children Act*
- **Safe with plan:** risks have been identified but there is capacity to create a safety plan with the parents to mitigate the risks for the period of the investigation, or
- **Safe:** no risks are identified during the investigation and no additional planning is required.

For a child subject to a safety plan, the SDM Safety Assessment Tool must be applied and achieve a 'safe' result before the case can be closed. For children identified as 'unsafe', the investigation process continues. An investigation outcome is determined by analysing all information gathered during an investigation, and assessment from multiple sources. The four possible outcomes of a child protection investigation are:<sup>29</sup>

- **No abuse or neglect:** a child has not been harmed and is not at risk of harm, or has been harmed or is at risk of being harmed but the parent has not caused the harm
- **Substantiated:** a child has been harmed or is at risk of harm as a result of action or omission by a parent
- **No action possible – could not locate child or family:** the investigation cannot be finalised because the child or family has not been located, and
- **No action possible – other:** an investigation cannot be finalised for another reason, for example, because the family moved interstate during the investigation.

### ***SDM family risk assessment***

If the investigation outcome is 'no abuse or neglect' or 'substantiated', a SDM family risk assessment must be undertaken. This tool estimates the likelihood of future harm to the children in the household, and helps determine which cases should receive ongoing services and which can be closed at the end of the investigation.<sup>30</sup> This tool is intended to be used within 28 days of an investigation commencing.<sup>31</sup> A child protection case can be closed only if the outcome of a family risk assessment is a low or moderate risk. Ongoing child protection is required for high or very-high risk outcomes.<sup>32</sup>

### ***SDM family strengths and needs assessment (FSNA)***

This tool is part of the ongoing child protection case.<sup>33</sup> It informs case planning by structuring the worker's assessment of family caregivers and all children across a common set of factors related to family functioning.<sup>34</sup> For the case plan, the caseworker identifies priority areas of need that could be addressed to improve and support family functioning and child safety.<sup>35</sup>

### ***SDM risk re-assessment***

The risk re-assessment tool combines items from the original risk assessment with

additional items that are used to evaluate a family's progress towards the goals set out in their case plan.<sup>36</sup> This helps guide ongoing child protection work and should be finalised within 90 days of completing the initial case plan.<sup>37</sup> For families receiving in-home services, actuarial risk reassessments help the ongoing service worker determine when the risk has been reduced sufficiently for them to recommend the case be closed.<sup>38</sup>

The SDM risk assessment tools adopted in the Northern Territory in July 2011 were based on actuarial risk assessments from another jurisdiction. This is not uncommon, as it allows for time to collect the necessary data to inform amendments to the tools. The data is then used in a validation study to make sure the tools are suitable for the population, ensuring that risk factors and cut points are appropriate in the jurisdiction.<sup>39</sup> Generally, a process of validation occurs within the relevant jurisdiction within two to four years of implementation, to ensure that the assessment accurately classifies risk levels for families.<sup>40</sup>

While data is necessary to determine how appropriate for the jurisdiction the risk factors and cut points are, the tools must be customised to suit the local service delivery system before they are implemented. This customisation includes adapting the tools according to local legal threshold,; definitions of abuse and neglect, terminology, cultural considerations, and policies and procedures.<sup>41</sup> The Children's Research Centre told the Commission that customisation occurs through collaboration between Children's Research Centre staff members, agency staff members and other stakeholders selected by the agency, including those familiar with policy and service delivery in the region.<sup>42</sup> This customisation process occurred in the Northern Territory before the SDM tools were implemented there.<sup>43</sup>

During the initial implementation period and before conducting the validation study, the Children's Research Centre conducted several quality assurance case readings. For example, in February 2013 it conducted a quality assurance case reading to ensure that the safety and risk assessment tools were being implemented properly.<sup>44</sup> Although the implementation was encouraging, further work was required to ensure that the tools and forms were being completed at the appropriate times.<sup>45</sup>

A review conducted by Territory Families Practice Integrity and Performance Unit in November 2016 raised concerns about appropriate implementation of the structured decision-making risk assessment tools. The Unit reviewed 60 child protection investigations that had been started and not substantiated, and 25 intakes that had been screened out between 1 July 2015 and 30 June 2016. The review focused on whether child protection practitioners were appropriately considering cumulative harm in their decision-making, and how current procedures and tools influenced the assessment of cumulative harm.<sup>46</sup>

The review found that:

- in 67% of cases, use of the SDM risk assessment tool could be improved, and<sup>47</sup>
- in 72% of the risk assessments completed, there were errors in how the tool was applied.<sup>48</sup>

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The overall finding was that accurate use of the risk assessment tool should be a key area for improvement in the Northern Territory.<sup>49</sup> This illustrates the importance of training staff how to use SDM tools, and the need to prioritise this training if the tools are to continue to be used.

## Validation of SDM Family Risk Tool

Territory Families engaged the Children's Research Centre to validate its use of the family risk assessment tool in June 2016.<sup>50</sup> The Commission heard there was a delay in this validation due to the work required to capture the data for analysis.<sup>51</sup> The delay was also attributed to the small size of the Northern Territory, which meant that it took longer to collect a statistically significant dataset.<sup>52</sup>

The validation process included a risk validation study, a risk assessment equity study, and feedback from training and quality assurance workshops involving Territory Families staff members. Territory Families received feedback in the form of three memoranda, and provided copies of these to the Commission.<sup>53</sup>

The validation process followed a sample of 1,461 families with completed risk assessments that had been investigated between July 2013 and June 2014, to determine whether the family was referred for a subsequent investigation or there was substantiation of a notification.<sup>54</sup> A construction sample (N=1,102) was used to examine current risk assessment performance and test possible revisions to the tool, and a validation sample (N=359) was used to ensure any changes were not over-fitted to the families.<sup>55</sup> Of the sampled families, 56% were the subject of another investigation, and 30% had a subsequent substantiated investigation.<sup>56</sup>

With respect to the risk validation study, the Children's Research Centre reported that:

*'When looking at overall risk level, the current assessment performed adequately, with one exception. As expected, the outcome rates increased from the low to moderate risk classifications and from the moderate to high risk classifications. However, families classified as very high risk had outcome rates similar to, but somewhat lower than, those for high-risk families.'*<sup>57</sup>

The Children's Research Centre acknowledged that only 4% of families sampled were classified as very high risk, so it was difficult to draw conclusions about how well the risk assessment was working at that level. Given this finding, the Children's Research Centre tested some revisions to the Risk Assessment Tool and, on the basis of this testing, recommended combining the high and the very high risk groups, and implementing a three-level risk classification of low, moderate and high. It also recommended modifying the neglect and abuse level cut points and expanding the range of the moderate category, which would have the effect of changing some cases from the high category to the moderate category.<sup>58</sup> As the Executive Director, Strategy and Policy Division said in his evidence, implementing these recommendations would mean a small number of families would receive a lower level of support or no support. As at July 2017, Territory Families was considering whether to make the recommended changes.<sup>59</sup>

The risk assessment equity study looked at how well the Family Risk Assessment Tool estimated the rate of future maltreatment, with a special focus on achieving equity across Aboriginal and non-Aboriginal families. As outlined above the family risk assessment takes place after a substantiation decision is made; it does not contribute to a substantiation decision.

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Due to the small size of the validation sample, the equity analysis was limited to the construction sample.<sup>60</sup> The analysis revealed that the risk assessment classified a higher percentage of Aboriginal families in the high and very high risk categories (33%) compared with non-Aboriginal families (20%).<sup>61</sup> Based on this, the Children’s Research Centre tested revisions to the tool. The revised assessment classified 21% of Aboriginal families and 14% of non-Aboriginal families as high risk.<sup>62</sup>

The Children’s Research Centre concluded that the recommended revisions to the risk assessment instrument ‘strive to classify families the same way for both Indigenous and non-Indigenous families based on their likelihood of experiencing subsequent outcomes.’<sup>63</sup> It pointed out that:

*‘the creation of a perfectly equal and equitable risk assessment is complicated by the higher level of system involvement for Indigenous families and the risk assessment tool could not mitigate system-level inequities.’<sup>64</sup>*

It encouraged Territory Families to investigate and work towards mitigating system-level factors that contributed to higher levels of involvement among Aboriginal families.<sup>65</sup> It also highlighted the importance of caseworkers recording accurate and complete data.<sup>66</sup>

The validation study also considered discretionary overrides to the outcomes of the risk assessment tools. A caseworker may apply discretionary overrides to the outcome of SDM tool if they believe the level of risk, as determined using the Risk Assessment Tool, is too low. The caseworker, with the approval of the Team Leader, may override the risk level by increasing it one level.<sup>67</sup> The Commission heard that discretionary overrides were infrequent. The Children’s Research Centre indicated from the sample reviewed between July 2013 and June 2014 that the override rate was less than 2% in the Northern Territory, in contrast to the recommended override rates of between 5% and 10%. It emphasised that ‘it is critical for workers to supplement the assessment with professional judgment and override the scored risk level when appropriate’.<sup>68</sup>

The training and quality assurance workshops held by the Children’s Research Centre and attended by Territory Families staff members in March 2017 produced a memorandum of feedback, which Territories Families received in June 2017.

Territory Families staff members concerns, specific to the SDM risk assessment tool, included that:

- the threshold for adequate shelter is too high and could be revised<sup>69</sup>
- the threshold for emotional abuse items – other than the risk of emotional abuse – are too high and should be revised<sup>70</sup>
- the definition of domestic violence and confusion around the definition of the presence of a child in the area when domestic violence occurs<sup>71</sup>
- policy directions they receive do not match the direction of the SDM assessment, policy directions which require them to screen in certain issues under specific items in the assessment despite the issue not meeting the definition for that item<sup>72</sup>
- cumulative harm is not an item on the assessment, yet workers are asked to consider it. Staff members suggested that cumulative harm should be added as a risk factor in the SDM screening criteria, and that the definition associated with it should consider the age of the child and the frequency, seriousness, type, source and duration of the harm<sup>73</sup>
- overreliance on tool examples with some workers focusing too much on the examples, rather than the definitions they illustrate, which can result in screening out notifications that do not fit the exact example<sup>74</sup>

- whether there is cultural bias embedded in the SDM assessment, and<sup>75</sup>
- the SDM would benefit from customisation to take account of Northern Territory context.<sup>76</sup>

Other concerns were more generic in nature, including difficulties working in remote communities; lack of information provided by mandatory reporters; long waits for callers wanting to report; poor supervision and lack of training; poor communication between caseworkers and Team Leaders; poor communication between the regions and Central Intake; and high staff turnover.<sup>77</sup>

## Children’s Research Centre recommendations

The Children’s Research Centre recommended the following changes as a result of the validation process:

- implement the revised assessment based on combining the high and very high risk groups; implement a three-level risk classification of low, moderate and high; and modify the neglect and abuse level cut points, and
- implement quality assurance measures to monitor risk assessment completion; worker use of overrides; risk level distribution; case opening by risk level; and, if possible, outcome rates by risk level. Monitoring completion, override rates, and case opening by risk level can help ensure workers adhere to risk assessment policies. Changes to risk level distribution or outcome rates by risk level may indicate the need for further examination of risk performance.<sup>78</sup>

The Children’s Research Centre also suggested that Territory Families, in conjunction with the Children’s Research Centre, consider ‘providing additional training and technical assistance opportunities’.<sup>79</sup>

The Executive Director Strategy and Policy Division of Territory Families indicated to the Commission that Territory Families was considering these recommendations and that the Children’s Research Centre was preparing a cost estimate for implementation.<sup>80</sup> He also stated:

*‘I am conscious that any acceptance and implementation of a recommendation must consider the broader systemic implications and consequences. In this instance, amendments to the family risk assessment tool must be considered in the context of proposed changes at central intake, the implementation of the dual pathways model, and the commitment to new ways of working with families and greater investment in family support services, early intervention and prevention.’<sup>81</sup>*

He acknowledged that:

*‘If Territory Families decides to expand the ‘moderate’ classification, it is expected that some families who are currently at the low end of the ‘high’ risk classification would instead be classified as being of moderate risk. As a result, some families who would currently likely receive ongoing case worker support, would more likely receive a lower level of, or no, ongoing support.’<sup>82</sup>*

The Commission considers that any implementation of the Children’s Research Centre’s recommendations should not disadvantage any family requiring support in the Northern Territory.

## Recommendation 32.1

**Territory Families review the Structured Decision Making tools to ensure they are appropriate to the Northern Territory.**

### Notifying harm and exploitation

An outline of the notification and intake process provides an important context for understanding the problems identified in the system in the evidence before the Commission.

The Northern Territory has a universal mandatory reporting requirement, which means that everyone in the Northern Territory is required to report if they 'believe on reasonable grounds' that a child has suffered or is likely to suffer harm or exploitation or has been or is likely to be a victim of a sexual offence.<sup>83</sup> All such notifications are made to the Territory Families Central Intake Team, which is required to receive the reports as notifications and to assess and respond to them accordingly. The Commission does not recommend changing the universal mandatory reporting requirements in the Northern Territory, although it does recommend improving the mandatory reporting process.

Mandatory reports to Territory Families can be made by telephone or through SupportLink, an email system that allows police to submit reports via email.<sup>84</sup>

### Central Intake Team

Chapter 2 Division 4 of the *Care and Protection of Children Act* confers powers on the Chief Executive Officer of Territory Families to determine whether the wellbeing of a child is at risk. This includes the power to make inquiries, investigate and have access to the child.

The Central Intake Team operates a 24/7 call centre to receive reports. The Team handles the assessment, prioritisation and referral of intake information. It also provides after-hours support and crisis response, including conducting or co-ordinating investigations that need an immediate response; responding to safety concerns or documenting critical events; and, for children in out of home care, providing some emergency responses.<sup>85</sup>

The Central Intake Team uses the SDM screening criteria and response priority tools to assess the information it receives in a notification.<sup>86</sup> The team uses a 'one piece work flow', where specific information relating to one report received must be dealt with before the next call is answered.<sup>87</sup> Territory Families policy states that when receiving a call or email, the intake worker should conduct a thorough search of the child's and/or family's history of involvement with child protection services.<sup>88</sup> The Central Intake Team is responsible for categorising reports into one of four separate outcome categories:<sup>89</sup>

- create a **child protection report** when the notifier believes a child is being or is likely to be harmed or exploited by or as a result of a lack of protection by the parent or caregiver
- create a **family support case** or **initiate a protective assessment**:
  - family support cases are created and allocated to services where participation is voluntary



- protective assessment reports are initiated when children and their families do not require a child protection investigation but there are concerns about the wellbeing of the child; in these situations, Territory Families has a responsibility to assess the child and their family circumstances<sup>90</sup>

- **refer the matter on**, which includes referring general inquiries, after-care or family support requests to another provider, and
- **take no further action** if a notification does not meet the criteria for creating a case or a child protection report. The concern is noted, but as not requiring further action. This category includes cases where there is insufficient information. It also includes reports about unborn children, where an intake is created to record information about the child to help identify cumulative harm and any risk to the child after birth. This information is recorded as a Child Welfare Concern.

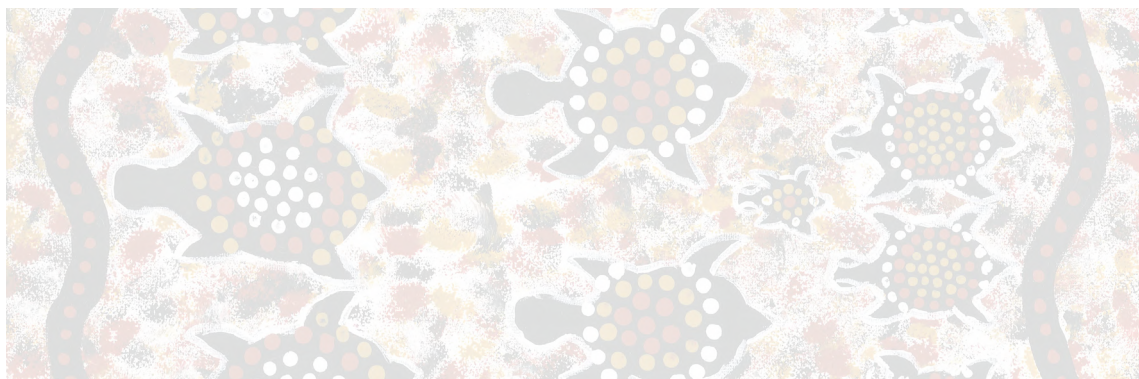
To assist with decision-making, intake workers may make inquiries to gather additional information before and after deciding the response priority. They can request this information from other agencies or individuals, including police, departments of health or interstate child protection departments. Internal procedures require intake workers to request this information within 24 hours of receiving the report.<sup>91</sup>

Concerns about the standard of care provided to a child in the care of the Territory Families Chief Executive Officer that is, or is likely to, affect that child's safety and wellbeing are also referred to the Central Intake Team. The Central Intake Team records this as a child protection report, and assigns a priority as follows:<sup>92</sup>

- when a child has suffered, is suffering or is likely to suffer harm or exploitation, the response priority is 24 to 72 hours and
- for all other concerns, the response priority is three to five working days.

## Increasing notifications

The number of children reported to child protection increased fourfold over the relevant 10-year period (2006–07 to 2016–17), from 2,493 to 10,851. Table 32.1 shows that Aboriginal children are significantly over-represented in notifications to the Central Intake Team. Although they comprise less than half of all children in the Northern Territory, Aboriginal children constitute almost 80% of notifications.<sup>93</sup> Between 2006–07 and 2015–16, the proportion of children that were the subject of a notification and who are Aboriginal increased from 65% to 78%.<sup>94</sup>



**Table 32.1: Total number of notifications by Aboriginal and non-Aboriginal status<sup>95</sup>**

|                    | 06–07 | 07–08 | 08–09 | 09–10 | 10–11 | 11–12 | 12–13 | 13–14  | 14–15  | 15–16  |
|--------------------|-------|-------|-------|-------|-------|-------|-------|--------|--------|--------|
| Notifications (n)  | 2,988 | 3,668 | 6,192 | 6,589 | 6,534 | 7,968 | 9,972 | 12,932 | 17,032 | 20,465 |
| Children (n)       | 2,493 | 2,996 | 4,305 | 4,719 | 4,829 | 5,740 | 6,615 | 7,917  | 9,892  | 10,851 |
| Aboriginal (%)     | 65    | 67    | 70    | 73    | 74    | 75    | 77    | 77     | 77     | 78     |
| Non-Aboriginal (%) | 32    | 30    | 29    | 26    | 25    | 24    | 23    | 23     | 23     | 22     |
| Unknown (%)        | 3     | 2     | 1     | 1     | 1     | 1     | 0     | 0      | 0      | 0      |

The influx of notifications, particularly over the past three years, has put pressure on the Central Intake Team to gather, assess and refer information quickly and efficiently. Anecdotal evidence from Territory Families staff members suggests that this has affected the capacity of Territory Families to identify and respond in a timely way to high-priority concerns about the safety of children and young people.<sup>96</sup> The large increase in notifications has put pressure on an already over-burdened child protection system, and the capacity of Territory Families to adequately assess and investigate those reports.<sup>97</sup>

## Types of abuse or neglect in notifications

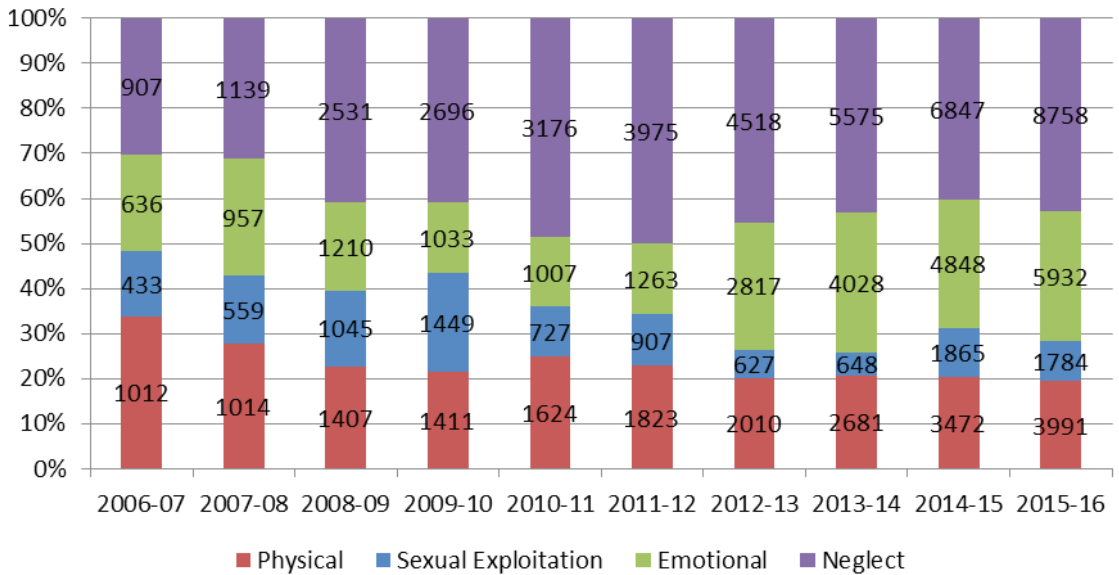
Abuse and neglect are recorded in one or more of four categories when harm and exploitation are reported to Territory Families.

- **Physical abuse** includes non-accidental physical injuries or impairments inflicted on a child<sup>98</sup>
- **Sexual exploitation** involves a child being exposed to or involved in ‘sexual processes beyond his or her understanding or contrary to accepted community standards’<sup>99</sup>
- **Emotional abuse** refers to any significant emotional deprivation or trauma experienced by a child as a result of acts of or omissions by a caregiver. It includes exposure to family violence, and<sup>100</sup>
- **Neglect** is a failure to provide conditions that are essential for the healthy physical and emotional development of a child, which is considered within the bounds of cultural tradition.<sup>101</sup>

As in other jurisdictions, notifications reported to Territory Families over the relevant period increasingly relate to neglect and emotional abuse; physical abuse and sexual exploitation account for a much smaller proportion of reported concerns. Single notifications can include a number of harms, so recording the ‘primary harm’ type may not fully reflect the complexity of the adversity the notified child is experiencing.

Figure 32.2 and Figure 32.3 show the relative proportions of notifications for each type of harm, and the increase of notifications over the relevant period in each primary type of harm.

**Figure 32.2: Proportion of child protection notifications annually, by primary harm type<sup>102</sup>**



**Figure 32.3: Number of child protection notifications annually, by primary harm type<sup>103</sup>**

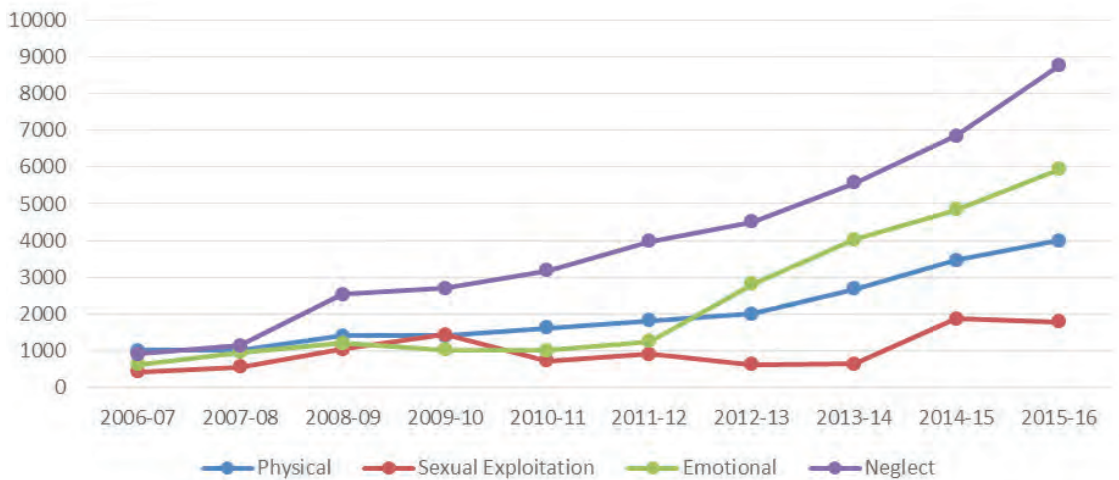


Table 32.2 also shows an increase over the relevant period in the proportion of children and young people who may be subject to multiple notifications within a year. In 2006–07, the number of notifications were around 20% higher than the number of children the notifications related to. By 2015–16 the number of notifications was more than twice the number of children notified, suggesting that more children were being notified multiple times. Professor Sven Silburn reported to the Commission that the ratio of notifications made relative to substantiations had also increased significantly since 2007.<sup>104</sup>

**Table 32.2: Cases with a commenced investigation and notifications with a substantiated outcome<sup>105</sup>**

|  | 06–07 | 07–08 | 08–09 | 09–10 | 10–11 | 11–12 | 12–13 | 13–14  | 14–15  | 15–16  |
|--|-------|-------|-------|-------|-------|-------|-------|--------|--------|--------|
| Notifications (n)  | 2,988 | 3,668 | 6,192 | 6,589 | 6,534 | 7,968 | 9,972 | 12,932 | 17,032 | 20,465 |
| Children in notifications (n)  | 2,493 | 2,996 | 4,305 | 4,719 | 4,829 | 5,740 | 6,615 | 7,917  | 9,892  | 10,851 |
| Commenced investigations (n)   | 1,732 | 2,019 | 2,819 | 3,683 | 3,995 | 4,001 | 3,802 | 4,900  | 7,091  | 7,862  |
| Children in a commenced investigation (n)                                    | 1,558 | 1,821 | 2,256 | 2,850 | 3,186 | 3,292 | 3,107 | 3,759  | 5,245  | 5,459  |
| Substantiation of an investigation (n)                                       | 750   | 843   | 1,006 | 1,473 | 1,765 | 1,748 | 1,481 | 1,796  | 2,046  | 1,797  |
| Children substantiated (n)   | 690   | 789   | 876   | 1,235 | 1,523 | 1,548 | 1,318 | 1,540  | 1,801  | 1,574  |
| Notifications investigated as a percentage of total notifications (%)        | 58    | 55    | 46    | 56    | 61    | 50    | 38    | 38     | 42     | 38     |
| Notifications substantiated as a percentage of total notifications (%)       | 25    | 23    | 16    | 22%   | 27    | 22    | 15    | 14     | 12     | 9      |
| Investigations substantiated as a percentage of commenced investigations (%) | 43    | 42    | 36    | 40    | 44    | 44    | 39    | 37     | 29     | 23     |

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## Timeliness in responding to notifications

Although the Central Intake Team must be able to quickly receive and assess information about the safety of children, the Commission heard that there have been delays in responding to notifications. The importance of ensuring that the intake system is working effectively is reflected in the fact that many reviews of intake have been conducted.

The Commission is aware of six reports that reviewed the Central Intake Team in the relevant period, including:

- the *Review Report of NTFC Intake Service* (Tolhurst 2009)<sup>106</sup>
- the *Report into Northern Territory Families Intake and Response Processes* (Children's Commissioner, 2009)<sup>107</sup>
- the *Extension of Review Report DCF Intake Service* (Armstrong, 2011)<sup>108</sup>
- staff views of DCF's operational efficiency – report on the outcomes of workshops conducted by the Professional Practice Division (Luke Twyford, 2014)<sup>109</sup>
- the *Central Intake Review* (David Ah Toy, 2015), and<sup>110</sup>
- *Central Intake Functional Analysis – PwC Cooper Indigenous Consulting* (the PwC Intake Review, May 2017).<sup>111</sup>

The most recent review recorded high rates of notifications not resulting in investigations.<sup>112</sup>

The Commission heard about some delays in triaging call and email notifications, and a lack of clear processes for the Central Intake Team to monitor and respond to all email notifications.<sup>113</sup>

The Commission received data showing that the Central Intake Team received 28,078 calls in the 2015–16 financial year, of which 20,452 were recorded as notifications.<sup>114</sup> The Central Intake Team is also contacted through less formal channels, such as via Team Leaders' mobile phones numbers and email accounts.<sup>115</sup> The Commission heard that not all this information is tracked, so the total volume of contact with the Central Intake Team is unknown.<sup>116</sup> In the Commission's view, it is a basic and essential requirement of an intake service that there be certainty, at any given time, about the total numbers of notifications received through all channels, accepting that the Central Intake Team receives communications other than those relating to child protection notifications.

To ensure the safety of children and young people, the Central Intake team needs to receive, assess and prioritise information quickly and efficiently.<sup>117</sup> The Commission heard that the time to receive and process the reported information can vary, especially for:<sup>118</sup>

- time waiting on the phone, which can range from five minutes to more than half an hour, and<sup>119</sup>
- after the call, the process of writing up an intake, including the screening and prioritisation, which was said to take 'about an hour'.<sup>120</sup>

The risks that arise from notifications being missed or delayed because of this lack of structure are apparent.<sup>121</sup> The Commission was told there may be instances when an email account is not checked during the shift in which the email is received, or when emails will not be dealt with during the shift due to a lack of a formal process, causing delays in assessments. If the delay continues, the Team Leader may consider bringing in an additional person to clear the backlog.<sup>122</sup> Territory Families has advised the Commission that it is addressing these delays.<sup>123</sup>

Similar delays were reported regarding calls made to the Central Intake Team. A Team Leader told the Commission that notifiers had the option of a call-back function, and calls were generally returned within a few hours. However, there were times when it could be days before the call-back was completed and the notification documented.<sup>124</sup> Over the past three years, most callers have opted for a call-back rather than waiting on hold.<sup>125</sup> A Team Leader told the Commission that Central Intake Team notifiers who chose to remain on hold rather than get a call-back were not kept on hold for more than an hour or two, but it was possible for people to sit on hold for up to five hours.<sup>126</sup> The PwC Intake Review supported this finding,<sup>127</sup> highlighting that within one seven-day period, 118 calls were abandoned.<sup>128</sup>

This analysis strongly suggests that the Central Intake Team is not adequately staffed to consistently carry out its role.

It is a serious concern that urgent notifications regarding potentially serious harm to children may be missed or delayed due to under-resourcing or ineffective operation of the intake system. The PwC Intake Review recommended creating one queue for all reports coming into the Central Intake Team, so that calls can then be assessed for the appropriate response.<sup>129</sup>

## Notifications reported by professionals

The Commission heard of particular concerns regarding the high numbers of professional notifications that are then referred for investigation.<sup>130</sup>

Professional notifiers include school teachers and administrators, members of the police, medical practitioners, allied health professionals and Aboriginal health workers.<sup>131</sup> Territory Families policy requires that special consideration be given to notifications from health professionals.<sup>132</sup> There is no discretion for the Central Intake Team to screen out reports from professional notifiers before applying the SDM screening tool.<sup>133</sup>



**Table 32.3: Percentage of notifications reported each year, by category of notifier<sup>134</sup>**

|                         | 2006–07 | 2007–08 | 2008–09 | 2009–10 | 2010–11 | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|-------------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| Community members       | 31      | 26      | 29      | 25      | 24      | 20      | 21      | 16      | 15      | 16      |
| Child protection staff  | 5       | 7       | 6       | 8       | 8       | 8       | 6       | 4       | 6       | 5       |
| School personnel        | 10      | 10      | 14      | 15      | 16      | 16      | 15      | 14      | 16      | 16      |
| Police                  | 32      | 32      | 24      | 23      | 23      | 27      | 35      | 44      | 41      | 40      |
| Other professionals     | 3       | 3       | 3       | 2       | 2       | 2       | 1       | 1       | 1       | 2       |
| NGOs                    | 4       | 4       | 7       | 6       | 7       | 7       | 5       | 5       | 5       | 6       |
| Hospital/health centres | 15      | 18      | 17      | 21      | 21      | 19      | 16      | 15      | 15      | 16      |
| Total (n)               | 2,988   | 3,668   | 6,192   | 6,589   | 6,534   | 7,968   | 9,972   | 12,932  | 17,032  | 20,465  |

Police account for the largest proportion of notifications by a significant margin – 40% in 2015–16. However, in 2015-16, 30% of police notifications were investigated, with only 9% of notifications being substantiated.<sup>135</sup> Of the total notifications received last year, police accounted for 5,730 notifications which were assessed as not reaching the threshold for investigation.

The Commission recognises the special community role of the police, and that members of the police are obliged under the *Domestic and Family Violence Act* (NT) to report when a child is involved in or present at an event of domestic or family violence. Northern Territory Police also receive reports under section 26 of the *Care and Protection of Children Act*.<sup>136</sup> There are likely to be a number of reasons for the low percentage of substantiations compared to numbers notified. For example, in 2014–15, almost 50% of notifications related to children who had already been reported.<sup>137</sup>

Other professional reporters include health and education professionals. Of all health notifications, 47% were investigated, and 10% were ultimately substantiated. 42% of all education notifications progressed to investigation, and 7% were substantiated.<sup>138</sup> This may suggest that it would be helpful for professional notifiers to receive more training in how to effectively make a notification.<sup>139</sup>

Four of the recent intake reviews identified the need to increase professional notifiers’ education, training and awareness. This has included suggestions to develop supported online reporting tools, to help professionals produce appropriate and high-quality reports.<sup>140</sup>

Members of the Central Intake Team sometimes report concerns about the lack of information included when police, teachers and clinic staff report concerns about a child protection matter. A Team Leader told the Commission that a significant number of notifications from professional notifiers fell short of the definition of ‘harm’, and that some professional notifiers did not provide enough information.<sup>141</sup> Such deficiencies limited the ability of Central Intake Team staff to make informed screening decisions.<sup>142</sup> Reviews of the intake process and its functions identified this as an ongoing issue as early as 2009.<sup>143</sup>

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The Commission heard that the SupportLink system, which allows members of the police to notify the Central Intake Team of child protection notifications via email, did not always provide sufficient information.<sup>144</sup> The intake assessment procedure states that when there is insufficient information to complete an assessment, the intake worker may make inquiries to enable an informed decision about the response or response priority.<sup>145</sup> The Commission heard that Central Intake Team staff members sought additional information in less than half of all notifications.<sup>146</sup>

Territory Families and Northern Territory Police have implemented a new initiative involving regular monthly meetings, with the purpose of improving the information reported to the Central Intake Team. These meetings have been occurring for several months, and the Commission heard they were improving the content of notifications.<sup>147</sup> This model could be extended to other categories of professional notifiers – such as health professionals and educators, who provide a large percentage of notifications.

The Central Intake Team has received a number of suggestions for how to improve the quality of reports. The Children’s Research Centre suggested it could provide additional training for professional notifiers, or help develop a mandated reporting guide, to standardise the information the call centre receives and help notifiers understand when to make a report.<sup>148</sup>

The Commission notes that other jurisdictions use mandatory reporting guides developed by the Children’s Research Centre to support better reporting processes. A Central Intake Team Leader noted that intake staff would like to play a greater role in training professional notifiers.<sup>149</sup>

## Reasons for the increasing number of notifications

Although there has been a sixfold increase in notifications over the past 10 years, there is no evidence of a commensurate increase in the level of substantiated abuse and harm in the Northern Territory. It is possible that the significant increase reflects better awareness of mandatory reporting obligations and more diligent reporting.

What is at issue is the extent to which the marked increase in the number of notifications since 2007 reflects changes in reporting practice alone, or indicates an increase in the underlying levels of abuse and neglect in the Northern Territory.<sup>150</sup> If underlying levels of abuse were increasing and the assessment system was working properly, the number of substantiated cases would be expected to rise concurrently. The absence of such an increase may indicate a failing in the system, in that the investigation and substantiation process is not capturing cases that it should.

It is difficult to draw any firm conclusion without an audit of the decisions being made at each stage of the intake and investigation process. Such an audit would reveal the procedural and clinical appropriateness of the decisions being made. Nevertheless, the increase in notifications without a matching increase in substantiations warrants closer examination. In the Commission’s view, an audit of the notification system should be designed and carried out, examining a sample of notifications to test the capability of the system and whether cases are wrongly being screened out.

The recent Child Protection Systems Royal Commission in South Australia conducted a similar exercise, auditing a small sample of each intake outcome category and the response priority attributed.<sup>151</sup> The analysis revealed that of the notifications which were examined and screened out from the statutory system, 90% actually met the legislative threshold.<sup>152</sup> Professor Arney suggested to



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the Commission that the audit brought into question assumptions about the level of child abuse in the community, which may be more widespread than previously thought.<sup>153</sup>

It is worth bearing in mind that in the 2014–15 and 2015–16 years, according to Table 32.1: ‘Total number of notifications, by Aboriginal and non-Aboriginal status’, about 50% of notifications involved children already notified. Furthermore, the Northern Territory investigates a higher proportion of notified cases than South Australia, so a comprehensive audit of screened-out notifications is unlikely to reveal a similar outcome. Nonetheless, the Commission believes this is an important issue and that more research should be carried out, but notes that some parts of that work may already have been undertaken in previous reviews of the intake process.<sup>154</sup>

The Children’s Commissioner also considered such an audit was important, but did not have access to the relevant data to be able to examine and understand the underlying cause of the increasing number of notifications and their appropriateness.<sup>155</sup>

An audit of what is reported to Central Intake and the outcome of notifications would have a broader value and allow for a better understanding of whether:

- some notifications are not being properly assessed and are being wrongly screened out
- the decision-making tools are being appropriately calibrated
- there is a lack of understanding on the part of professional and community notifiers about what constitutes a child protection concern, and
- the cumulative effect of multiple notifications is not being considered during the screening process.<sup>156</sup>

On the basis of the South Australian audit, if abuse is more widespread than presently known – and while noting that there are significant differences between the two jurisdictions – the current child protection system would require substantial expansion to be capable of adequately responding. Irrespective of any actual increase resulting from such an exercise, if the current trajectory of notifications continues, expansion will still be required in order to respond.

## Notifications that do not receive a response

In 2015–16, 62% of notifications received by the Central Intake Team were screened out and did not proceed to investigation.<sup>157</sup> As has been mentioned, there may be many reasons other than incorrect assessment, but the Children’s Commissioner was concerned about the proportion of notifications being screened out and the lack of clarity regarding the underlying reasons and implications, particularly considering the rate of multiple notifications and the risk of cumulative harm not being investigated.<sup>158</sup>

**Table 32.4: Number and proportion of notifications screened out<sup>159</sup>**

|                                | 06–07 | 07–08 | 08–09 | 09–10 | 10–11 | 11–12 | 12–13 | 13–14 | 14–15 | 15–16  |
|--------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|
| <b>Number</b>                  | N/A   | N/A   | N/A   | N/A   | N/A   | 3,964 | 6,165 | 8,031 | 9,941 | 12,603 |
| <b>Proportion of total (%)</b> | N/A   | N/A   | N/A   | N/A   | N/A   | 50    | 62    | 62    | 57    | 62     |

In practice, notifications can be screened and assessed as a matter for family support services, then referred to services. However, most notifications received are screened out and receive no response. As noted in Figure 1 above (Central Intake Team case allocation and outcomes, 2016–17) of the 24,198 notifications received, 283 were screened and assessed as a matter for family support services.<sup>160</sup>

### **Recommendation 32.2**

**Territory Families commission an independent audit of the outcomes of notifications reported to the Central Intake Team to examine the assessment process, the application of the structured decision-making tools and whether cases have been incorrectly screened out.**

### **Recommendation 32.3**

**All notifications to the Central Intake Team, whether received by hotline or email, be consolidated into a single chronological queue to ensure that they are properly recorded, assessed and given appropriate priority.**

### **Recommendation 32.4**

**Territory Families:**

- **develop mandatory reporting guidelines for professional and community notifiers**
- **conduct information seminars and provide written guidelines to assist professional notifiers meet their reporting obligation under section 26 of the *Care and Protection of Children Act (NT)*, and**
- **explore the establishment of central points to receive notifications from police and educators.**

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## REPEAT NOTIFICATIONS

When the same children are repeatedly notified to child protection services, it means the needs of these children and their families are not being met and that the harm they are exposed to is likely to be cumulative. It may mean that many people are concerned about the safety of these children, or that the same people are concerned about them on multiple occasions.

Children who are subject to abuse or neglect on multiple occasions are at an increased risk of negative outcomes, including an increased risk of becoming involved in the youth justice system.<sup>161</sup> Multiple notifications or substantiations for an individual child place an increasing burden on the child protection system. Not only is there repeat processing involved, but children being the subject of multiple notifications and substantiations suggests that the initial response may not have been adequate, and that the assessment of cumulative harm throughout the intake and investigation process is inconsistent. This inconsistency may delay engagement with and support being delivered to families.

An effective child protection system should have the capacity to provide an assessment and response that minimises the likelihood of further risk of harm. Re-substantiation or subsequent contact with the child protection system is a measure of how effectively the child protection system is ensuring the safety of children and young people.<sup>162</sup>

Children having repeat contact with the child protection system is a significant issue in the Northern Territory. Previous research using notification data between 1999 and 2010 showed that over that 12-year period, 46% of Aboriginal children and 37.5% of non-Aboriginal children who were the subject of notifications in the Northern Territory were subject to multiple notifications.<sup>163</sup> The highest number of notifications for a single child was 25.<sup>164</sup>

The Children's Commissioner reported that in 2014–15, 22% of children and young people – 91% of whom were Aboriginal – were subject to a repeat substantiation within 12 months.<sup>165</sup>

In 2015–16, for children with a substantiated notification:

- 87.9% were the subject of one substantiated notification
- 10.1% had two substantiated notifications, and
- 1.9% had three substantiated notifications.<sup>166</sup>

The Children's Commissioner queried if the proportion of children being subject to a re-substantiation may be an underestimate, because of the current policy of recording a repeat notification only where the existing one has been closed.<sup>167</sup> The Children's Commissioner observed that:

*'A second substantiated notification will only be counted as a repeated substantiation if the first notification has been closed off. If the first is still open when the second arrives, it is (for administration purposes) to be treated as part of the first notification.'*<sup>168</sup>

On this basis, it is possible that the correct figures for repeat substantiations are in fact higher. Furthermore, these figures regarding the proportion of children who are subject to repeat involvement with child protection services are only from a 12-month period, and only relate to notifications that have been substantiated.

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An audit of Territory Families practices with respect to cumulative harm provides further insight into the number of notifications and substantiations per child in the child's lifetime and within a one-year period.<sup>169</sup> Within the sample of 25 screened-out notifications in this review, children and young people were the subject of between:

- three and 10 notifications within the one-year review period, and
- three and 23 notifications over their lifetime.<sup>170</sup>

A similar picture was evident across a sample of 60 unsubstantiated investigations, where the number of notifications ranged between:

- three and 13 within the one-year review period, and
- three and 38 over their lifetime.<sup>171</sup>

Compounding this, 78% of children in this review had been the subject of at least one previous child protection investigation.<sup>172</sup>

Additional evidence was provided in the validation of the SDM Risk Assessment Tool Memorandum by the Children's Research Centre. Of the 1,102 families investigated between July 2013 and June 2014, the following proportions had subsequent child protection involvement within an 18-month period:

- 60% of Aboriginal families and 38% of non-Aboriginal families had at least one more investigated notification, and
- 34% of Aboriginal families and 19% of non-Aboriginal families had at least one more substantiated notification.

This illustrates that Territory Families is repeatedly notifying, screening in and investigating many of the same children and families.

While the circumstances and needs of children and families change over time, warranting further investigation, the number of children and young people being notified and investigated multiple times suggests that the supports and services – assuming they have been offered and accepted – have failed to address the underlying causes of the family difficulties. That, in turn, adds to the increasing pressure on the child protection system. This points to how urgently necessary it is to effectively support children and families, and engage them with appropriate services as early as possible before the need for a statutory response arises.

## Consideration and assessment of cumulative harm

*Cumulative harm refers to the effects of multiple adverse or harmful circumstances and events in a child's life. The unremitting daily impact of these experiences on the child can be profound and exponential, and diminish a child's sense of safety, stability and wellbeing.*<sup>173</sup>

It is important that intake and investigation assessments take into account a holistic picture of the child's safety and needs, and not just focus on individual incidents or notifications. Inaccurate or deficient assessments of cumulative harm can create lost opportunities to respond early to risks or

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concerns before they escalate, and force the child into the child protection system.

As outlined above, the Territory Families Practice Integrity and Performance Unit conducted a practice audit in November 2016, which highlighted how cumulative harm is being inconsistently assessed throughout intake and investigation.<sup>174</sup> The existence of different definitions of cumulative harm in the *Territory Families Care and Protection Manual* illustrates this inconsistency, and likely contributes to confusion about what should be considered when assessing cumulative harm.<sup>175</sup>

The audit found that the tools and resources available for practitioners to thoroughly consider and assess cumulative harm are limited, despite cumulative harm being recognised in Territory Families policies.<sup>176</sup> The audit further highlighted the lack of an assessment framework and appropriate resources.<sup>177</sup> It also identified concerns about the need for sufficient training and time to consider cumulative harm.<sup>178</sup>

This audit examined whether child protection practitioners appropriately consider cumulative harm in their assessment and decision-making at the intake and investigation stages. It specifically examined 25 notifications, that had been screened out and 60 child protection investigations that had commenced but had not been substantiated.<sup>179</sup> The review period for the audit was 1 July 2015 to 30 June 2016.

This internal audit highlighted that at intake, 18 of the 25 cases considered cumulative harm and of these 89% were identified as involving an accurate assessment.<sup>180</sup> At the investigation phase, 35% of cases were found to contain no consideration of cumulative harm; further review determined that 71% of these cases possessed factors related to cumulative harm, but were not considered. 14% of investigations were found to have placed incorrect weight on factors relating to cumulative harm.<sup>181</sup>

Of the finalised investigations identified as high or very high risk following a SDM risk assessment, 78% were closed with no ongoing intervention and 50% of these cases were the subject of notification again by November 2016. It was determined that the decision to close these cases was based on an incident-based, short-term-oriented assessment.<sup>182</sup>

Rigorous internal oversight of this core work of the Territory Families child protection role is essential to informing and improving practice and policy. The Commission encourages the continuation of such internal audits.

Similar to parallel bodies in other jurisdictions, Territory Families frequently responds to the same children and families many times within a 12-month period and across their lifetime. Improvements are required so that cumulative harm is uniformly considered and assessed throughout the intake and investigation processes.

### **Recommendation 32.5**

**Territory Families amend data-recording processes so that any subsequent substantiated notifications in relation to a particular child are separately recorded notifications, so there is a clear recording of the total number of notifications pertaining to that particular child.**

## Recommendation 32.6

### Territory Families:

- adopt a consistent definition of cumulative harm, and
- develop internal guidance for practitioners regarding the assessment of cumulative harm.

## CONCERNS ABOUT THE CENTRAL INTAKE TEAM WORKFORCE

Reports provided to the Commission highlighted workforce concerns relating to the Central Intake Team, including rostering, and lack of access to training, support and supervision.<sup>183</sup> The intake roster and staff numbers do not appear to match demand.<sup>184</sup> A seven-day sample from 3–9 April 2017 revealed high volumes of calls in the evenings (from 6pm to 12am), with drop-off in the number of calls on the weekend.<sup>185</sup> Within the week 118 calls were abandoned, which suggests that the roster is not meeting demand, particularly on weekdays.<sup>186</sup> The PwC Intake Review recommended that the Central Intake Team roster be reviewed and updated to provide adequate resourcing at peak times, specifically in the afternoons and evenings.<sup>187</sup>

The Commission considers that any review of staffing adequacy within the Central Intake Team needs to be part of a broader consideration of the workforce needs of the entire child protection system.

A Team Leader noted that the fluctuating nature of the work undertaken by the Central Intake Team sometimes made it difficult to anticipate staff requirements for some shifts, so at times responses to children and young people in need may be delayed. The afternoon, evening and night shift sometimes had only two staff members working, so after-hours services need to be managed more effectively.<sup>188</sup> A memorandum on feedback from training and quality assurance workshops held by the Children’s Research Centre in June 2017 indicated that some Central Intake Team staff members expressed concern about the rotating nature of the work, and that Team Leaders did not supervise workers consistently.<sup>189</sup>

### Training resources and support

The Children’s Research Centre memorandum on training and quality assurance also outlined issues raised by Central Intake Team workers and supervisors about the lack of coaching, supervisor support and regular training opportunities available to staff members.<sup>190</sup>

- supervisors were concerned about the lack of specific training or resources for dealing with workers who are under stress<sup>191</sup>
- workers mentioned a high staff turnover rate, which also created a lack of understanding regarding one another’s roles and responsibilities, and<sup>192</sup>
- workers also indicated that there was an absence of Aboriginal staff members in the team, and talked about the need for greater connection between the communities and the call centre, including possibly having a cultural advisor to consult on child protection issues.<sup>193</sup>

The impact on caseworkers of inadequate formal training and mentoring is further compounded by the heavy workload required of senior staff members. Team Leaders with their own heavy workloads may not always be available to support other workers.

### **Recommendation 32.7**

**Territory Families ensure that Central Intake is adequately resourced to accommodate peak periods including by the provision of standby practitioners.**

## **DUAL PATHWAYS**

The Commission is aware that the Northern Territory is planning to implement a dual-pathway approach to child protection.

A central recommendation of the 2010 Board of Inquiry was a dual-pathway approach for referring and assessing vulnerable children and families.<sup>194</sup> This entailed an alternative to notifying a child protection intake centre if an individual was concerned for the safety and wellbeing of a child. Instead, they could contact a designated family support service as a referral gateway. The purpose was to create an earlier pathway to support services, without referring the case for assessment through the statutory system.<sup>195</sup>

One of the objectives of the dual-pathway system was to ensure that families who might previously have been reported to the child protection agency – but who did not meet the threshold for a statutory response – were taken out of the notification process, and could be more directly connected to family support services.<sup>196</sup>

The Family Support and Referral Gateways described by the Board of Inquiry would be administered by a non-government organisation in Darwin and Alice Springs, and would manage referrals from the broader community. They would provide strength and needs assessments for vulnerable families and children, before linking them with an appropriate support or therapeutic service. The idea was that the Gateways could be co-located in a multi-service centre, or could operate as stand-alone services.<sup>197</sup>

In the process proposed by the Board of Inquiry, all services would have access to a simple decision-making pathway model that screened children and families to determine issues of immediate and significant risk. This would allow for a direct notification to the Central Intake Team via the Family Support and Referral Gateway. Referral to a designated gateway was also intended to satisfy mandatory reporting requirements, following appropriate amendments to those laws.<sup>198</sup>

The Board of Inquiry rightly cautioned that there was no advantage in introducing a dual-pathway model without having services available to accept, assess and intervene with families. The successful implementation of a dual-pathway process depended on the existence of adequate services. A substantial investment would be required to build this integrated system of support and therapeutic services.<sup>199</sup>

Immediately following the release of the Board of Inquiry's report, the Northern Territory Government committed to adopting all 147 recommendations, including developing a process for dual pathways

as a component of an integrated service system for vulnerable children and families.<sup>200</sup> Other components of the recommendation included creating Community Child Safety and Wellbeing teams; expanding of the scope of the children and family centres to include targeted and indicated services for at-risk children and families; and developing more children and family centres in areas of need.

By June 2013, the Northern Territory Government decided that the dual-pathways proposal would not proceed, since the Government was operating in a constrained budgetary environment and had prioritised front-line child protection work to meet increasing demand.<sup>201</sup>

## Dual-pathway approaches in other jurisdictions

A dual-pathway strategy is not new; various models have been implemented in other parts of Australia. New South Wales, Victoria, Queensland, Tasmania, South Australia and Western Australia all use this response, in various forms. Their approaches are described below.

### Examples of dual-pathway approaches in other Australian jurisdictions

- **Child FIRST in Victoria** begins with an intake point that receives referrals from professionals, vulnerable families and members of the public, with a focus on children and families in situations that raise significant concerns for a child's wellbeing, but not at the level of significant risk of harm. Child FIRST assesses the child's wellbeing and family needs before referring families to support services or to the statutory system.<sup>202</sup>
- **Child Wellbeing Units in New South Wales** were established in three government agencies that had the highest rates of reporting to child protection: the NSW Police Force, the Department of Education and Communities and NSW Health.<sup>203</sup> The Child Wellbeing Units began operating in January 2010 and were designed to reduce the burden on the Child Protection Helpline by helping each department use the Mandatory Reporter Guide, ensuring all reports that met the threshold of 'risk of significant harm' were reported to the Helpline. Reporters with concerns that did not meet the threshold – but were dealing with cases that nevertheless related to children and families in need of support – were assisted to identify available services or actions they could take within their own agency to support the family. Relevant information was recorded in the Child Wellbeing Unit database WellNet, to help identify and assess cumulative harm.<sup>204</sup>
- **Child Wellbeing Practitioners in South Australia** provide advice and referral information to school staff members, and engage directly with children and families already identified as at risk.<sup>205</sup>
- **The Gateway Model in Tasmania** introduced gateway intake points in four regions. These gateways receive referrals from families, professionals and the public, and their role is to offer information and advice, assess family's needs, and refer families to support services. Each gateway has an integrated family support service that coordinates service provision for families requiring longer-term intensive interventions. Each gateway has a child protection Team Leader who serves as a conduit between the diversionary and the statutory system.<sup>206</sup>



**The Family Support Networks Model in Western Australia** facilitates local partnerships between not-for-profit agencies and the statutory system. A lead not-for-profit manages a common entry point to local secondary services. Agencies or members of the public can contact the Family Support Network.

- **Child and Family Connect in Queensland** is a place where individuals can make child concern reports. The service makes an initial assessment and provides a response – like providing information or advice, referring to other services, or actively engaging with families in intensive family support services. Each location includes a number of service providers and employs a Child Protection Practitioner who can assist and respond to more serious concerns.<sup>207</sup>

A number of these models have been evaluated, principally on how they affect growing pressure on the statutory system.

In New South Wales, managing calls within Child Wellbeing Units has reduced the burden on the child protection system.<sup>208</sup> A 2014 Ernst & Young evaluation found that the Child Wellbeing Units have played a key role in supporting mandatory reporting, by coaching mandatory reporters and helping them develop identification and reporting skills.<sup>209</sup> Since then, Child Wellbeing Units have made an active contribution to managing the overall volume of contacts to the Child Protection Helpline<sup>210</sup> and building the confidence of mandatory reporters.<sup>211</sup>

The 2014 Ernst & Young evaluation also found that while more vulnerable children are likely to be receiving support as a result of referrals facilitated by Child Wellbeing Units, the rate at which these referrals are followed through, or their success in driving the appropriate outcomes is unknown to Child Wellbeing Units.<sup>212</sup> Only the police unit facilitates its own direct referrals for children and families, and while the rate of referrals has fluctuated, there has been a general upward trend.<sup>213</sup>

Child FIRST in Victoria has also moderated growth in the number of notifications and investigations within the statutory child protection system, and there has been an increase in the number of families accessing support services.<sup>214</sup> A KPMG report prepared for the Victorian Government measured referrals coming into Child FIRST from a range of sources, and found that in 2006–07 and 2007–08, there was an initial increase in referrals coming from child protection services. The increase coincided with the commencement of the staged Child FIRST roll-out. However, the initial increase was followed by a decline in referrals in 2008–09. Feedback included in the KPMG report suggested that the decline in referrals was due to child protection workers struggling to complete the referral forms, having a lack of confidence in community-based services or simply not being aware of the value of community-based services.<sup>215</sup>

An evaluation of the Tasmanian Gateway model found that children and families were being referred to family services rather than to the statutory system. Interviews with past clients suggested they were highly satisfied with the service and had increased confidence in their parenting skills; however, more than half of families referred to a gateway or integrated family support services were the subject of a subsequent notification.<sup>216</sup> Within this Gateway model, families who were traditionally not easy to engage agreed to participate, but once the case was formally closed they disengaged from these services.<sup>217</sup>

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The evaluations of current dual-pathway models in Australia are limited by their focus on managing pressure on the child protection system rather than pursuing outcomes of child safety, child wellbeing or family functioning.<sup>218</sup> While evaluating these dual-pathway models shows they are effective at alleviating the pressure on child protection systems, the Commission is of the view that the focus should be on evaluating whether these models ensure that children and families are referred to, engage with and remain in touch with suitable supports as early as possible, and ultimately improve the outcomes for the child and their family.

## Territory Families 2017 dual-pathway proposal

Territory Families told the Commission that it had allocated \$3 million to implement a dual-pathway model in the Northern Territory.<sup>219</sup> This formed part of \$10.6 million funding allocation, the majority of which will be directed to the non-government sector for services and pilot projects contributing to the development of the dual pathway service.<sup>220</sup>

The aim of this model, as proposed by the Board of Inquiry, is to allow families that would not otherwise receive a statutory child protection response to reach support services directly.<sup>221</sup> Developing and delivering a dual-pathway model so families and children in need of support have more than one way to access is a key action in the *Territory Families Strategic Plan 2017–2020*.<sup>222</sup>

Territory Families outlined features of this model in its evidence to the Commission. Under this plan, it would:

- act as a point of contact for people within the community who are looking for help
- manage and coordinate referrals to family and parenting support services
- liaise with child protection services and share information, including referring concerns where necessary, and
- conduct campaigns to encourage the use of the family and parenting support services.<sup>223</sup>

Territory Families engaged Deloitte Consulting to undertake a project titled 'Implementing a Dual Pathway in Child Protection',<sup>224</sup> to help it design and work towards implementing a dual-pathway system in the Northern Territory.<sup>225</sup> This has involved stakeholder consultation with the Government, peak representative bodies and a number of non-government organisations.<sup>226</sup>

Between March and July 2017 Deloitte conducted consultations – engaging with 50 organisations and more than 100 people – to obtain stakeholder views on the dual pathway project.<sup>227</sup>

Many organisations that were consulted stated that the current child protection system focuses too heavily on intensive intervention where families are in crisis.<sup>228</sup>

The report from the consultation made it clear that the level of change sought by those in the Northern Territory goes well beyond implementing a call centre or case tracking solution. Stakeholders are seeking a 'system that addresses families as a whole, in a coordinated manner', not just a change in investment allocation.<sup>229</sup> They want a shift from a child protection system to a family-centred support system<sup>230</sup> where non-statutory services work with a family for as long as it takes for them to become self-reliant.<sup>231</sup> This project has been retitled the 'Northern Territory Child Safety and Wellbeing Strategy' to emphasise the expanded scope of the family support reform.<sup>232</sup>

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The Commission understands that Territory Families is considering a phased implementation of the dual-pathway model.<sup>233</sup> This phased approach is intended to allow for necessary further consultation and co-design of a model that would be delivered by a non-government organisation.<sup>234</sup> It is not clear whether extra services will be made available in the first phase, although in the Commission's view this would be necessary to receive the flow-on referrals that will emerge.

In an option under consideration, the first phase would see Territory Families establish a triage-based call centre so it can firstly respond better to reports that do not meet the threshold for investigation. It can then connect families with prevention and early intervention support services.

In the second phase, Territory Families would:

- finalise the design of a fully outsourced dual-pathway model
- complete the necessary legislative reform to the *Care and Protection of Children Act*, covering information sharing, mandatory reporting and privacy changes
- introduce the requisite information technology and reporting systems
- commence reporting against the family and parenting support monitoring and evaluation framework, and
- complete the necessary procurement efforts by June 2018.<sup>235</sup>

In the third phase Territory Families would involve the implementation of a fully outsource family support service coordination function and continued improvement of the service system. Territory Families will also expand regular reporting on the outcomes being achieved through integrated family and parenting support services and conduct scheduled program evaluations to inform future investment and service design decisions.<sup>236</sup>

Under this option, the dual-pathway model would be fully outsourced by 1 July 2019.<sup>237</sup>

The Commission supports the Northern Territory Government's proposal to introduce a dual-pathway model, but cautions that this alone is not sufficient to address the child protection issues in the Northern Territory.

Addressing the high rate of neglect in the Northern Territory requires a suite of flexible early intervention family support services to reach families long before neglect becomes a notifiable problem.<sup>238</sup>

A dual-pathway model can only be as successful as the range, quality and availability of the services to which it can make referrals. No gateway will have any measurable effect if it does not lead into a network of ready and available service providers, with the mix of services to meet the needs of the local community. Without establishing such a network of services, there will simply be too little behind the gateway to make any report to it worthwhile, and this will soon become apparent to those making reports.

If the dual-pathway model is to be introduced, the Commission, like the Board of Inquiry, is of the view that it should not be delivered by Territory Families. An element of separation is fundamental to encourage people to refer through the new gateway, especially those who may otherwise not do so for fear of entering the statutory system.

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A number of other issues would also need to be resolved prior to implementation, as recognised by the Northern Territory Government. In particular, it would need to be made clear with appropriate statutory amendments if a referral to the gateway, if located outside Territory Families, meets mandatory reporting obligations.

Territory Families needs to resolve how the system would approach a family that has been reported to the gateway, and what steps would be carried out following a notification to encourage a family to consent to receive support services. It remains unclear how the referral pathway will ultimately interact with the Territory Families Central Intake Team. The system will need to retain some method of appropriately and quickly responding to concerns about child abuse and neglect that require an immediate response.

The Commission also considers that there is value in Territory Families considering a model that enhances professional reporting efficiency and quality control, with a central referral point within the Northern Territory Police that can receive notifications from police officers and refer them as appropriate to the Central Intake Team. Given that notifications from Northern Territory Police make up 40% of all notifications received, filtering contracts and delivering calls to service agencies could reduce the pressure on the Central Intake Team and improve the quality of police reporting. If successful, the approach could be adopted for notifications from other types of professional reporters, such as teachers and medical personnel.

### **Recommendation 32.8**

#### **Territory Families in developing its dual pathways model:**

- **consult with stakeholders regarding the design and operation of the model**
- **ensure a range of services are available providing 'soft entry' referral pathways**
- **develop strategies to encourage families to access those services, and**
- **amend the *Care and Protection of Children Act (NT)* to implement a dual-pathways model.**

## **INVESTIGATION AND ASSESSMENT**

Investigation and assessment teams in the Northern Territory carry high caseloads and have limited time frames in which to complete critical tasks. Although investigations are allocated and commenced in a timely way, the rate at which they are completed within set time frames is low. The Northern Territory is not alone in facing this problem.<sup>239</sup>

Unless the number of investigations decreases, Territory Families may find it difficult to meet the growing demand in this area. Bringing more workers into the current system would help address immediate shortcomings but is unlikely to be an effective long-term strategy.<sup>240</sup> The backlog identified by the Board of Inquiry, and continuing backlogs today, show the need for fundamental changes that reduce the strain on investigations.

Professor Leah Bromfield told the Commission that Territory Families is trying to *'do social work and*

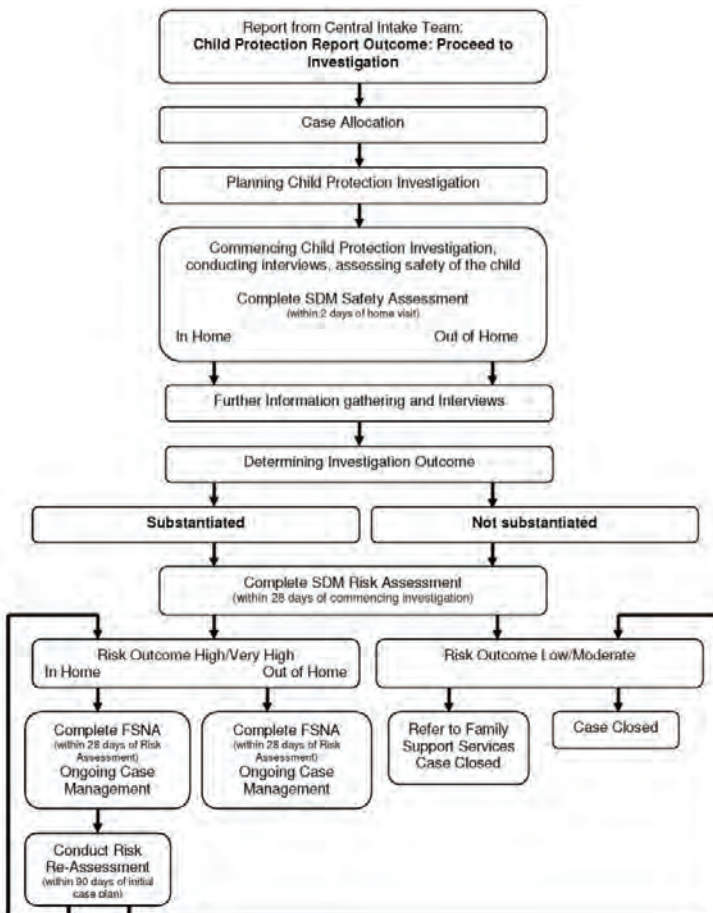
*policing and absolutely can't do it for the magnitude of the problem that it's facing'.<sup>241</sup>*  
 The Children's Commissioner was critical of the approach to investigations; her 2015–16 Annual Report highlighted that the trend in complaints for the year included:

*Inadequate child protection investigations, poor responses to the concerns raised by professionals, and insufficient inquiries to establish the correct level of risk associated with a child's circumstances.<sup>242</sup>*

## The investigation process

The Investigation and Assessment Team and Child Abuse Taskforce carry out investigations and assessments.<sup>243</sup> At the conclusion of an investigation, the caseworker and Team Leader decide whether the child has experienced or is at risk of experiencing harm as a result of acts or omissions by their parent or caregiver.<sup>244</sup> This is the investigation process that determines the immediate and ongoing safety of children and young people in the home, and can lead to a decision to remove a child from their family. The investigation process is set out in Figure 32.4.<sup>245</sup>

**Figure 32.4: Child protection case flowchart**



Source: Exh.483.000, Intake Process, 11 September 2015, tendered 1 June 2017.

Figure 32.4 shows that potential investigations outcomes include:

- **not substantiated** – where there is insufficient evidence to determine that a child has been harmed or at risk of being harmed
- **substantiated** – where there is sufficient evidence to determine that a child has been or is at risk of harm as a result of acts or omissions by a parent or carer, and
- **no action possible** – where the family could not be located, or where the investigation could not be finalised.<sup>246</sup>

The child may be removed from their home and taken into provisional protection at any stage throughout the process where there are serious concerns about their immediate safety that cannot be mitigated.<sup>247</sup>

## Number of unallocated investigations

Territory Families policy defines an unallocated case as a notification that has been screened in, but for which the investigation is yet to commence. The system allows a 24-hour period to allocate the investigation,<sup>248</sup> so having large numbers of unallocated cases older than 24 hours indicates that child protection concerns are not being evaluated in a timely manner.<sup>249</sup>

In 2010, the Board of Inquiry reported on the backlog of investigations and found chronic delays in matters awaiting allocation for formal investigation.<sup>250</sup> Before the Board of Inquiry handed down its report, the department commenced addressing the backlog.<sup>251</sup> The Board of Inquiry recommended that the department:

*immediately develops and implements a strategy to clear up the backlog of unallocated child protection investigations whilst ensuring all notified children are safe. Furthermore, that Northern Territory Families and Children develop a longer term sustainable approach based on a resource allocation model to ensure that such backlogs do not re-emerge.*<sup>252</sup>

Following the Board of Inquiry, Territory Families seconded nine qualified and experienced child protection workers from New Zealand to help it reduce the backlog of unallocated cases.<sup>253</sup> Although this was a short-term strategy, the investigation backlog did drop from 870 to 100 unallocated cases as at 8 April 2011,<sup>254</sup> and to zero by May 2011.<sup>255</sup> The impact of the effort was short-lived; in 2014 and 2015 the number of unallocated cases again grew very significantly, spiking from 45 to 321 in one year.

**Table 32.5: Number of screened-in cases not allocated for investigation**<sup>256</sup>

|                                | 06–07 | 07–08 | 08–09 | 09–10 | 10–11 | 11–12 | 12–13 | 13–14 | 14–15 | 15–16  |
|--------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|
| <b>Number</b>                  | N/A   | N/A   | N/A   | N/A   | N/A   | 3,964 | 6,165 | 8,031 | 9,941 | 12,603 |
| <b>Proportion of total (%)</b> | N/A   | N/A   | N/A   | N/A   | N/A   | 50    | 62    | 62    | 57    | 62     |

However, as Table 32.5 shows in 2015–16 the number of unallocated cases reduced by 70%.<sup>257</sup>

Territory Families appears to have made a significant improvement in allocating investigations<sup>258</sup> and reducing unallocated cases. However, there is still a backlog in overdue investigations.

## Timeliness of investigation commencements and closures

Territory Families policy states that an investigation begins when the ‘first meaningful step is taken to assess the circumstances and safety of the child’.<sup>259</sup> Starting in 2013 and continuing to date, the priority allocations include:

- Priority 1 – child in danger - within 24 hours
- Priority 2 – child at risk - within 3 days - children under two years old
- Priority 3 – child safety concern - within 5 days - children two years and older, and
- Priority 4 – child Concern - within 10 days.<sup>260</sup>

Table 32.6 shows the proportion of notifications referred for investigation that were commenced within the appropriate priority time frame.

**Table 32.6:** Proportion of investigations commenced within the allocated time frame, by financial year<sup>261</sup>

|                | 2006–07 | 2007–08 | 2008–09 | 2009–10 | 2010–11 | 2011–12 | July–Dec 2012 | Jan–July 2013 | 2013–14 | 2014–15 | 2015–16 |
|----------------|---------|---------|---------|---------|---------|---------|---------------|---------------|---------|---------|---------|
| Priority 1 (%) | 75      | 74      | 83      | 82      | 74      | 86      | 90            | 93            | 95      | 89      | 96      |
| Priority 2 (%) | 53      | 49      | 49      | 50      | 41      | 67      | 82            | 88            | 77      | 78      | 89      |
| Priority 3 (%) | 32      | 25      | 24      | 26      | 21      | 49      | 84            | 85            | 75      | 71      | 88      |
| Priority 4 (%) | N/A     | N/A     | N/A     | N/A     | N/A     | N/A     | N/A           | 89            | 80      | 61      | 89      |

Under the Procedure for Commencing a Child Protection Investigation, the initial interview with the child and parents must be followed by a Safety Assessment of the household in which the allegation occurred, within two working days of the visit.<sup>262</sup> However, the Commission heard evidence that it was possible to have meaningful contact with the family and complete the commencement phase without finishing the safety assessment report.<sup>263</sup> The Commission was advised that although an initial assessment might have been completed, during oral evidence Territory Families was not able to advise if an initial safety assessment had been done for each of those cases where the report had not been finished.<sup>264</sup>

The Commission was advised that the Greater Darwin Investigation and Assessment Team aims to complete the investigation and make a substantiation decision wherever practicable within seven days of the investigation commencing.<sup>265</sup> The seven-day workflow schedule was designed to help practitioners schedule their time and prioritise tasks, so they can complete investigations in a timely manner.<sup>266</sup> The Territory Families Case Allocation and Planning a Child Protection Investigation Procedure states that once commenced, an investigation must be completed within 28 days.<sup>267</sup> The evidence establishes that some investigations do not meet this 28-day policy requirement.<sup>268</sup> In 2014, the Children’s Commissioner revealed:

*a significant backlog of child protection investigations that had been officially commenced, or at least flagged in the data system as having commenced, but not completed within the 28 day target timeframe.*<sup>269</sup>

This backlog of incomplete investigations totalled 839 by June 2014. The Children’s Commissioner also identified a further backlog of 321 cases where investigations had not yet been commenced – the same type of backlog identified by the Board of Inquiry.<sup>270</sup>

The inability to complete investigations within the 28-day time frame suggests an emerging backlog.

What is yet to be completed in each investigation may vary, but the consequences of not finalising an investigation and determining whether a notification has been substantiated or not delays the family risk assessment and other interventions that flow from this risk assessment.

In a statement in June 2017, the Territory Families Acting General Manager of Operations reported that the 28-day timeframe is often not achievable in practice and that child protection investigations often remain open for longer periods.<sup>271</sup> She explained that the reasons for investigations remaining unfinalised for longer periods were varied but included geographic constraints, family and community factors, and staff availability.<sup>272</sup> Overall, she specified that ‘[e]nsuring investigations result in strong and safe outcomes for children is more important than meeting the policy deadline’.<sup>273</sup> Despite this, the Manager of the Greater Darwin Investigation and Assessment Team suggested that in her experience, the seven-day time frames could be met if there was no backlog, the office was fully staffed, and parents or services could be contacted.<sup>274</sup>

Annual reports prepared by the Office of the Children’s Commissioner provide the data set out in Table 32.7, showing the proportion of completed investigations finalised within 28 or 62 days.<sup>275</sup> In 2015–16, only half of the investigations were completed within the 28-day time frame set out in the Territory Families policy.

**Table 32.7: Percentage of investigations completed within 28 days or less, and 62 days or less**

|                     | 2006–07 | 2007–08 | 2008–09 | 2009–10 <sup>276</sup> | 2010–11 <sup>277</sup> | 2011–12 <sup>278</sup> | 2012–13 <sup>279</sup> | 2013–14 <sup>280</sup> | 2014–15 <sup>281</sup> | 2015–16 <sup>282</sup> |
|---------------------|---------|---------|---------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|
| 28 days or less (%) | N/A     | N/A     | N/A     | 65                     | 56                     | 57                     | 58                     | 43                     | 44                     | 50                     |
| 62 days or less (%) | N/A     | N/A     | N/A     | 79                     | 73                     | 78                     | 77                     | 66                     | 65                     | 73                     |



The Manager of the Greater Darwin Investigation and Assessment Team confirmed that to her knowledge, there has never been a time when she has been working in Territory Families that there has been full staff occupancy rates and a nil backlog.<sup>283</sup>

Table 32.8 details the number of investigations older than 28 days, by investigation work unit, in the preceding six, 12 and 24 months, as at June 2017.

**Table 32.8:** Investigations older than 28 days, by extract date and investigation work unit<sup>284</sup>

|                                    | 15 November 2014 | 15 November 2015 | 15 May 2016 | 15 November 2016 |
|------------------------------------|------------------|------------------|-------------|------------------|
| CAT - North                        | 37               | 10               | 14          | 6                |
| DCF Alice Springs                  | 297              | 13               | 44          | 154              |
| DCF Barkly                         | 59               | 5                | 0           | 4                |
| DCF Casuarina                      | 107              | 12               | 3           | 3                |
| DCF Central Intake Team            | 0                | 2                | 6           | 0                |
| DCF East Arnhem                    | 23               | 23               | 23          | 39               |
| DCF Katherine                      | 124              | 89               | 103         | 167              |
| DCF Northern Remote Service Centre | 143              | 395              | 237         | 166              |
| DCF Palmerston                     | 110              | 151              | 201         | 523              |
| <b>Total</b>                       | <b>900</b>       | <b>700</b>       | <b>631</b>  | <b>1062</b>      |

The Commission heard evidence from the Manager of the Greater Darwin Investigation and Assessment Team about the factors preventing full compliance with the 28-day timeframe, including the large numbers of intake reports received each month, and fluctuating staff numbers related to ongoing issues of recruitment and retention.<sup>285</sup>

As set out above, Territory Families screens each notification and allocates a response priority before conducting an initial risk safety assessment to determine whether a child is safe, safe with a plan or unsafe. However, the Manager of Investigation and Assessment told the Commission that:

*'... depending on how many reports are coming into the office, if we don't have the resources to continue on after an initial assessment after we assess the child is safe or safe with plan and finish off the rest of the process, then we will reallocate resources to respond to the new matters that are coming into the ... work unit.'*<sup>286</sup>

The Children's Commissioner reported that investigations could be delayed as a consequence of current caseloads, and that the office had implemented a workload management strategy of adjusting the priority time frames that was not approved by the Chief Executive Officer.<sup>287</sup> The Children's Commissioner said *'the strategy is one that contradicts child protection best practice and the OCC is currently monitoring DCF's progress in phasing it out.'*<sup>288</sup>

Children may be exposed to ongoing harm when investigations are not completed on time. Professor Bromfield said that:

*'... if children are left in situations where, whether it's low or moderate or even*

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*severe maltreatment, if they're left in these situations over time, then each incident is accumulating in terms of its impact on the child and seriously compromising their development and wellbeing.*<sup>289</sup>

## Greater Darwin Investigation and Assessment Team

Additional information about the ongoing backlog of investigations was provided to the Commission in relation to the Greater Darwin Investigation and Assessment Team ('DCF Palmerston' in Table 32.8 above).

As at May 2017, there were approximately 1,025 open investigations in the Greater Darwin Investigation and Assessment area. In a statement, the Manager of Investigation and Assessment in Greater Darwin differentiated between 515 cases where the investigation was complete but open only because administrative tasks were not completed, and 510 where the investigation was ongoing.<sup>290</sup> Territory Families refers to incomplete investigations with only administrative tasks outstanding as the 'administrative backlog'.<sup>291</sup>

Administrative delays may result in the introduction of a new caseworker who is unfamiliar with the case, to reconstruct the file, finalise the administrative issues and close the case.<sup>292</sup> The Manager of Investigation and Assessment in Greater Darwin told the Commission that the cases that are still open for administrative purposes do not currently have any new notifications reported to Territory Families.<sup>293</sup> If a new notification is made about the child or family, the old investigation is rolled into the new investigation.<sup>294</sup>

The Commission understands that resource strategies are being implemented to clear the backlog, specifically with regard to outstanding administrative tasks and investigations that still require substantive tasks to be completed.<sup>295</sup>

The Manager of Investigation and Assessment in Greater Darwin indicated that the 510 cases where investigations were ongoing included investigations within and outside the 28-day policy time frame.<sup>296</sup> Consequently, she said these cases were '*not in the strict sense a backlog*'.<sup>297</sup> Of the 510 cases where investigations were ongoing, the oldest had an intake report dating back to September 2016.<sup>298</sup>

## Attempts to fix the backlog

The Commission heard evidence that Territory Families had made attempts to address the backlog of investigations.<sup>299</sup> An example of a November 2014 strategy for Katherine and the Northern Region is extracted below:

### **Workload management strategy for Katherine and the Northern Region, 20 November 2014**

The extract below is advice from the then Department of Children and Families to the Children's Commissioner in November 2014, provided as an example of a workload management strategy.<sup>300</sup>

The number of child protection investigations to which this strategy would apply, are as follows:

- Katherine Office - 141;
- Northern Remote Office - 152; and
- East Arnhem Office - 31.

It is proposed to finalise some investigations for these cases without meeting full policy requirements.

### **Incomplete investigations, children five years of age and younger**

All investigation cases where the subject child is five years of age or younger will receive a full policy compliant investigation.

### **Incomplete investigations. Children six years of age and older**

Investigation cases where the subject child is six years of age or older will have the following response:

- contact with notifier to determine whether concerns remain current;
- contact with school to seek their observations and knowledge of the child/family;
- contact with other relevant agencies e.g. Health, Police and Remote Services staff for current information;
- consideration of child protection history, severity/chronicity of concerns, child's vulnerability, parental risk factors and whether other services are monitoring;

Where the initial investigation including the above gathered information indicates the child is not experiencing harm/risk of harm, in line with the requirements of the Care and Protection of Children Act, the case will be closed without full policy compliance with investigation procedures; in these cases the Closure summary, documenting information gathered with an analysis of risk and protective factors is to be endorsed by the Team Leader and Manager and closure approved by the Regional Executive Director; and where the information gathered indicates ongoing concerns about harm/risk of harm, in line with the requirements of the as per the Care and Protection of Children Act, to the child, an investigation compliant with policy procedures must be undertaken.

### **Written documentation**

For all investigation write ups, the documentation is to focus on key investigation actions and analysis/rationale for outcome, not replicating what is already in case notes or other documents.

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The Commission also heard that a further workload management strategy was employed in the Northern Region in November 2016, to address child protection cases where no action had been taken in the previous 30 days (as at 8 November 2016).<sup>301</sup>

Workload management strategies continue to be developed and implemented in an attempt to reduce delays and investigation backlogs. For example, with respect to the current backlog in the Greater Darwin Region, Territory Families is considering a project to address the older cases in the backlog where administrative tasks are incomplete, and cases that have some outstanding substantive investigation tasks.<sup>302</sup>

However, these responses do not address the underlying issues and are unsustainable as ongoing workload management measures.<sup>303</sup>

Continued attention must be given to examining how the investigation process could be streamlined or made more efficient. In reality, while the Central Intake Team faces such a high rate of notifications, attempts to fix the backlog can only be temporary solutions. The hope is that backlogs can be met more fully in the long term by more fundamental reforms to the system.

### **Recommendation 32.9**

**Territory Families develop a strategy to address the current backlog of overdue investigations.**

## **INVESTIGATION AND ASSESSMENT CASELOADS**

One of the persistent underlying issues associated with investigation and case management backlogs stems from the Territory Families workforce capacity issues and high caseloads.

High caseloads are not a new issue to the Northern Territory; the 2010 Board of Inquiry reported that in some regions workers were carrying complex caseloads of around 40 children, and one worker had more than 60 cases.<sup>304</sup>

Seven years later, as at 31 March 2017, the average caseload is 39.3 cases per worker.<sup>305</sup> This only includes open cases related to child protection, family support, protective assessment or substitute care and guardianship, averaged across the roles of 'Professional 1 Child Protection Practitioner' and 'Professional 2 Senior Child Protection Practitioner'.<sup>306</sup> These figures need to be interpreted with caution as each case varies in complexity, the number of children involved, and the presence of multiple and diverse needs.<sup>307</sup>

Further detail provided to the Commission reported that it is not unusual for senior practitioners in the Katherine Investigation and Assessment Team to carry a caseload of more than 100 child protection investigations.<sup>308</sup> This indicates that children in Katherine are currently at risk and that more staff are needed to prevent further increases in the number of overdue investigations. Staff members in the Katherine Investigation and Assessment Team have raised concerns with '*management higher up in Territory Families*'.<sup>309</sup>

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Difficulties within the Investigation and Assessment Team include recruitment, staffing and high workloads. Territory Families has difficulty attracting experienced child protection workers, experienced social workers and psychologists who have a similar professional backgrounds.<sup>310</sup> For example, Territory Families identified difficulties in attracting and retaining people well qualified to undertake the work in the Katherine office.<sup>311</sup> The Commission also heard that Team Leaders in Investigation and Assessment Teams often carry cases that are awaiting closure or transfer, or which the team did not have capacity to address.<sup>312</sup>

The Commission heard that despite ongoing efforts to recruit quality staff members, there are simply not enough people to do the work.<sup>313</sup>

High caseloads do not allow caseworkers to engage with and serve families effectively, and the growing volumes of administrative work and complexity of the cases they deal with further increase these workloads.<sup>314</sup>

A Team Leader said that excessive caseloads clearly jeopardise the achievement of best practice in child protection.<sup>315</sup> A Remote Family Support Worker told the Commission that she:

*'...has to explain to clients regularly that their case manager has many other people to see in a short time so they only have limited capacity. This means that important issues are sometimes overlooked which can disadvantage the client and their families. In addition, occasionally SFSS has to decline taking on certain tasks particularly if staff do not have the required training or experience.'*<sup>316</sup>

Given the significance of the work, the workforce needs to feel adequately supported and trained to undertake their difficult roles, and make complex decisions about children's safety.

## Training

The Executive Director of Territory Families outlined the current training provided to Territory Families staff. She explained that there is a training team within the Workforce Capability Unit that is responsible for delivering and facilitating child protection training. This training is focused on orienting and improving practice, and delivering leadership and professional development through accredited training programs.<sup>317</sup>

The Executive Director also stated that staff members in the professional stream have minimum tertiary qualifications and training at the point of entry, and that additional training takes account of these levels of competency.<sup>318</sup>

Four qualified staff members deliver face-to-face training on a regular basis. The current courses include Case Management – Children in Care; Court and Legal Training; Engaging and Interviewing Children; Pre-Service Training; Structured Decision-Making Tools; Supervision Policy and Practice; and Writing Skills for Child Protection.<sup>319</sup>

In December 2016, Territory Families launched the 'Child Protection Practice in the Northern Territory' e-Learning program. This program builds on pre-service training and targets all front-line staff as authorised officers under the *Care and Protection of Children Act*. The seven modules designed for Territory Families are Contemporary Child Protection Practice; Understanding Harm; Understanding Trauma in Children, Families and Communities; Practice within the context of Family Violence; Assessing

Risks, Protectiveness and Needs; Collaborative Practice; and Goal Setting and Case Planning.<sup>320</sup> In addition to this, a Professional Development Officer delivers a two-day course concerning Aboriginal Cultural Practice in Child Protection.<sup>321</sup>

Notwithstanding this training, one senior Aboriginal community worker stated that in her experience, a number of people employed in the child protection area lacked knowledge, skills and experience working within Aboriginal communities. She said '*some professional stream workers did not have knowledge or experience in working with Aboriginal people*'.<sup>322</sup>

Concerns regarding training were also raised during community meetings held by the Commission. Territory Families staff members reported feeling under extreme pressure from high caseloads, combined with the crisis-driven nature of their work. Caseworkers raised concerns that following the five-day mandatory training, they received very limited further training.<sup>323</sup> They also mentioned issues about lack of time to attend training or clashes in training opportunities were also raised.<sup>324</sup>

## Recommendation 32.10

### Territory Families:

- review the caseworker workforce requirements
- redesign recruitment strategies
- develop in-service and optional training
- develop fixed caseworker to file ratios taking into account the complexity of the child and family, issues of remoteness and other relevant considerations, and
- develop cultural awareness and competence training in consultation with Aboriginal controlled organisations.

## CHILD ABUSE TASKFORCE

The Child Abuse Taskforce (CAT) is the second unit that conducts investigations and assessments for children and young people in the Northern Territory. The CAT is a multi-agency specialty unit that includes the Australian Federal Police, the Northern Territory Police, and Territory Families child protection practitioners, who investigate allegations of sexual assault, physical assault or neglect where there is a criminal element to the allegations.<sup>325</sup> CAT comprises two separate teams. The Northern Child Abuse Taskforce covers the Northern Territory north of Elliot and is located at Berrimah. The Southern Child Abuse Taskforce is located in Alice Springs.

This taskforce is responsible for investigating and assessing complex physical and sexual abuse using a strengths-based approach framework and the SDM Making Risk Assessment and SDM Safety Assessment tools.<sup>326</sup> For more information about the work conducted by CAT see Chapter 36 (Sexual health and harm).

**Table 32.9: Number of finalised investigations during the financial year, by financial year<sup>327</sup>**

|                          | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 | 2016–17 |
|--------------------------|---------|---------|---------|---------|---------|---------|
| <b>CAT North</b>         |         |         |         |         |         |         |
| Finalised investigations | 96      | 155     | 215     | 422     | 759     | 637     |
| Substantiations          | 17      | 21      | 61      | 154     | 163     | 70      |
| <b>CAT South</b>         |         |         |         |         |         |         |
| Finalised investigations | 93      | 24      | 2       | 0       | 0       | 0       |
| Substantiations          | 35      | 6       | 0       | 0       | 0       | 0       |

Note: This table provides for the number of investigations completed for each financial year since 2011.<sup>328</sup>

The Commission heard that the Northern CAT has approximately 90 open child protection investigations, of which approximately 60% are joint investigations with police. Around 20 of the open cases relate to incomplete child protection investigations dating back to April 2017. The Commission was told that:

*‘in these cases, the Child Protection Practitioners in the team are able to complete the tasks necessary to determine an investigation outcome decision but are not able to complete the necessary documentation within the preferred time frames.’<sup>329</sup>*

## Investigation outcomes

Following an investigation, the CAT Team Leader and caseworker determine whether they have a reasonable belief that a child has experienced or is at risk of experiencing harm or exploitation as a result of acts or omissions of their parent or carer.<sup>330</sup>

**Table 32.10: Finalised investigations by outcome, for each year in the relevant period<sup>331</sup>**

|                           | 2006–07      | 2007–08      | 2008–09      | 2009–10      | 2010–11      | 2011–12      | 2012–13      | 2013–14      | 2014–15      | 2015–16      |
|---------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| <b>Substantiated</b>      | 699          | 768          | 1,028        | 1,349        | 1,843        | 1,818        | 1,453        | 1,703        | 2,061        | 1,907        |
| <b>Not substantiated</b>  | 558          | 580          | 925          | 1,235        | 1,855        | 2,002        | 1,735        | 2,012        | 3,270        | 3,743        |
| <b>No action possible</b> | 173          | 487          | 772          | 566          | 916          | 422          | 400          | 613          | 1,538        | 2,517        |
| <b>Total</b>              | <b>1,430</b> | <b>1,835</b> | <b>2,725</b> | <b>3,150</b> | <b>4,614</b> | <b>4,242</b> | <b>3,588</b> | <b>4,328</b> | <b>6,869</b> | <b>8,167</b> |

Table 32.10 shows that the investigation outcome of ‘no action possible’ increased considerably between 2014 and 2016. The Commission was told that the explanation was administrative – that reports of similar concerns for a child were being incorporated into a new investigation, and if the concerns or harm type was different, a new case would be opened. This approach avoids having multiple cases open, and in some ways reduces duplication.<sup>332</sup> The Commission heard that it can

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be difficult to ascertain from the Community Care Information System (CCIS) if previous reports are being investigated as part of a new case.<sup>333</sup> This difficulty appears to be a by-product of closing previous cases regarding a child when a new report is received, and investigating the previous case within the new case.<sup>334</sup>

Another Central Intake Team Leader highlighted this process as being a systemic issue that created difficulties for the Central Intake Team. They mentioned that if they receive a notification for a child and there are already open cases, the open cases will often be rolled into the new notification and recorded as ‘no action possible’, which does not accurately record the information about the open cases and results in much information not being recorded or investigated. This approach also affects the identification of cumulative harm matters,<sup>335</sup> and creates a false understanding when reading the data about the safety (or otherwise) of children whose cases are labelled as ‘no action possible’.

The Commission considers that Territory Families should review its practices for dealing with new reports when there are open files for the same child, to ensure that older reports continue to be investigated and resolved in a timely manner and are not delayed by any subsequent report. If the present approach is obscuring accurate statistical recording or causing open cases to be double-handled, the practice should be revisited.

Following an investigation, ongoing intervention by child protection can be provided in the following three ways, guided through the use of the structured decision-making tools:<sup>336</sup>

- where families present a **low to moderate risk** of future abuse or neglect, they can be provided with a short, focused intervention to engage families with services, or have their case closed with no further action
- if identified as being at **high or very high risk** of future abuse or neglect, but there are significant protective factors in place for the child to remain in the home, case management implements a planned intervention aimed at strengthening protective factors, enhancing family resources, and reducing the risk to a child. These cases are referred to the Strengthening Families team, and
- where the risk is **high or very high** and the child cannot remain in the home, legal action is taken to remove the child, and a planned intervention with the parents to resolve child protection concerns is commenced.

Access to post-investigation services depends on the level of risk identified using the SDM tools.

## Referral to family and parenting support services

One of the possible outcomes of an assessment or investigation involves Territory Families referring a family to one of the support services offered within the child protection system. Such referrals aim to connect the family with support services and avoid the need for any further statutory intervention.

The family support services offered through the Northern Territory child protection system are sometimes referred to as ‘early intervention’ services,<sup>337</sup> but in fact, given how they are reached and the point at which they are offered, they should not be characterised as early intervention. The services offered through the child protection system (statutory support services) typically become available to a family by referral, after their child has become known to the statutory child protection agency.<sup>338</sup>



In the Commission’s view, this timing for the provision of services to a family in need will often be too late. The opportunity to assist the family in a way that could help avoid further intervention may have passed well before any statutory notification.

Different types of services are offered through the Northern Territory child protection system, covering the two categories of service identified by the Commonwealth Productivity Commission:<sup>339</sup>

- **Family support services:** These activities are typically associated with lower-level, non-intensive services for families in need. They include identifying and assessing family needs; providing support and diversionary services; delivering counselling; and actively linking and making referrals to support networks. These services are typically delivered via voluntary arrangements (as distinct from court orders) between the relevant agency and the family, and
- **Intensive family support services:** These specialist services aim to prevent the imminent separation of children from their primary caregivers as a result of child protection concerns, and to reunify families where separation has already occurred. They are intensive in nature, averaging at least four hours of service per week for a specified short period of time (usually less than six months), and generally respond to referrals about a child.

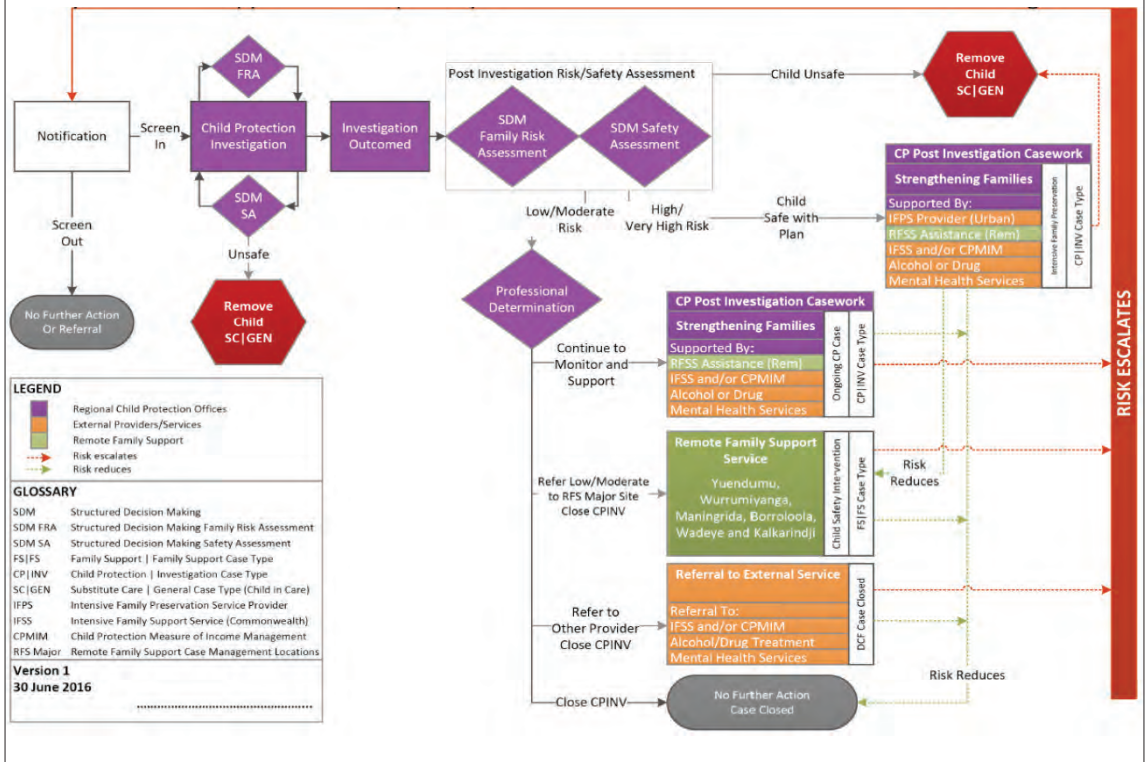
Figure 32.5 below illustrates the existing referral pathways in the Northern Territory, showing the process for families being given access to statutory support services.

A family can be referred to most statutory support services regardless of whether investigation of their case resulted in a substantiated outcome. Referrals include families assessed as at high or very high risk of future harm, as well as families identified as a low or moderate risk but their case has not been closed with ‘no further action’.

The Intensive Family Support Service program is limited to families with a substantiated notification. Families wanting to access this program must also agree to child protection income management, which is not required for the other services.



Figure 32.5: Territory Families family and parent support services referral pathways<sup>340</sup>



The change of government in the Northern Territory in August 2012 brought with it a different approach toward funding.<sup>341</sup> The Commission was told that the new Northern Territory Government deemed it financially impossible to implement all 147 of the Board of Inquiry’s recommendations.<sup>342</sup> Faced with fiscal constraints, the Government prioritised front-line services,<sup>343</sup> reducing family and parenting support services. Only a small number of grant programs were continued.<sup>344</sup>

In 2015, the Department of Children and Families began implementing services under a Family Intervention Framework, which identifies and informs four service streams:

- Child Safety Intervention for families with low to moderate child safety concerns, to prevent future harm
- Intensive Family Preservation for families with a high level of child safety concerns, to prevent the removal of the child into the care of the (then Department of Children and Families) Chief Executive Officer
- Reunification Support for families, so that children in the care of the Chief Executive Officer can safely return home, and
- Relative and Kinship Carer Support for families, so that a child taken into care can be placed with their extended family.<sup>345</sup>

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Currently, the Family Intervention Framework focuses entirely on the statutory support services within the child protection system, which are:<sup>346</sup>

- Strengthening Families
- Remote Family Support Services
- the Family Support Panel, and
- Intensive Family Preservation Services.

In addition to these options, families with a substantiated outcome following an investigation may be referred to the Commonwealth-funded Intensive Family Support Services.

## FAMILY SUPPORT SERVICES

### *Strengthening Families*

Strengthening Families is a program funded by Territory Families and delivered through the Territory Families Care and Protection Offices.<sup>347</sup> Strengthening Families teams are located in the Greater Darwin, Katherine and Central Australia Care and Protection Offices.<sup>348</sup> In addition, multi-function teams located in the Arafura, East Arnhem and Barkly Care and Protection Offices carry out the functions of the Strengthening Families team in those areas.<sup>349</sup>

Strengthening Families teams receive referrals in relation to families identified as high or very high risk following the SDM Risk Assessment, and are responsible for providing case management and intervention services to children who remain at home,<sup>350</sup> with the aim of preserving the family unit.<sup>351</sup> They provide a direct response to families and determine an appropriate response in collaboration with non-government service providers. In the 2015–16 financial year, Strengthening Families teams commenced 1,073 cases across the Northern Territory.<sup>352</sup>

The teams work to address protective concerns identified during the investigation and assessment phase, to reduce the risk of future harm to the child.<sup>353</sup> A team utilises the SDM Strengths and Needs Assessment to inform case planning through the assessment of family and children across a common set of domains of family functioning.<sup>354</sup>

The teams operate under a three-month assessment, care planning and review cycle, and actively engages Aboriginal community workers to be involved in the case planning and intervention for Aboriginal children and young people.<sup>355</sup> Strengthening Families case planning involves identifying how the family can be supported at home to meet the needs of the child, and may involve the child, family, extended family and kinship networks and service providers.<sup>356</sup> A Strengthening Families team can refer cases to intensive services to support children and young people to remain at home.<sup>357</sup> It can also engage appropriate services to assist the family, including intensive case management responses to assess client needs and tailor responses to those needs.<sup>358</sup>

There are a range of options available including:<sup>359</sup>

- referring the child and/or family to community-based services agencies for support (such as family support services)
- using family supports, neighbours or other individuals in the community as safety resources or supports for the child and/or family

- 
- providing parenting information and parenting skill enhancement
  - providing psychological or other allied health assessment or treatment for the child (such as speech therapy or physiotherapy)
  - conducting a comprehensive family assessment to identify family functioning, needs and capacity for change, and
  - facilitating parental involvement in drug and alcohol counselling.

The Commission was told that Strengthening Families teams experience similar issues relating to caseloads and understaffing faced by other teams within Territory Families. Workers can carry over 50 child protection cases,<sup>360</sup> and although there are six positions in each team, usually there are only three or four workers employed.<sup>361</sup> A Team Leader from the Katherine office accepted that these caseloads were insupportable.<sup>362</sup> The issues relating to caseloads are intensified by difficulties reaching remote locations. Strengthening Families teams operate services in the regional centres where they are located, but service all remote communities in the Northern Territory on a fly-in, fly-out basis.<sup>363</sup>

The Commission understands that families at high or very high risk are generally automatically referred to the Strengthening Families teams within Territory Families.<sup>364</sup> However, the Commission also heard that some child protection investigations for families found to be at high or very high risk may be closed with no further support provided if a detailed analysis of circumstances is provided for in the Investigation Summary Report that supports the case closure decision, mitigates risks and is approved by the office manager.<sup>365</sup>

As outlined above, a sample of 60 child protection investigations reviewed by the Territory Families Practice and Integrity Unit found that 78% of investigations that reached a high or very high risk outcome proceeded to case closure rather than being referred to ongoing intervention. Of these, 50% then received a further notification.<sup>366</sup>

There is also the potential for cases to be double-handled between the Investigation and Assessment Team and Strengthening Families teams.<sup>367</sup> Territory Families procedure provides that when a new notification is received and referred for investigation and a child already has a similar case open, the open cases for this child are rolled into one.<sup>368</sup> For example, when a new investigation is referred after a family has been allocated to the Strengthening Families team, the family may be sent back to the Investigation and Assessment Team, and Strengthening Families closes its file on the family. If the Investigation and Assessment Team then refers the family back to Strengthening Families after the new investigation, the Strengthening Families file has to be reopened.

To date, the work of the Strengthening Families teams has not been formally reviewed or evaluated.<sup>369</sup> Territory Families is currently developing outcome measurement and reporting processes for the Strengthening Families program.<sup>370</sup>

## **Remote Family Support Service**

The Remote Family Support Service is a division within Territory Families that is currently funded by the Commonwealth Government until 30 June 2020, through the Northern Territory Remote Aboriginal Investment National Partnership.<sup>371</sup> It is estimated to receive a total of \$35.846 million from the Commonwealth Government from 2015–16 to 2019–20.<sup>372</sup> This service is offered in remote communities and aims to improve the delivery and coordination of child protection and family

support services. It is intended to enable vulnerable children to stay safe in their communities and with their families, and to help families under pressure get the support they need.<sup>373</sup> The ultimate goal is to keep children out of the statutory child protection system.<sup>374</sup>

The Remote Family Support Service represents a transition from the previous Mobile Outreach Service Plus and Remote Aboriginal and Family Workers to a new service model<sup>375</sup> – a ‘place-based’ model offering ‘task-based assistance’.<sup>376</sup> It operates as an additional component of the Northern Territory child protection system, integrating its client information and referral systems, reporting procedures, practice frameworks and learning pathways.<sup>377</sup>

The model used in each ‘place-based’ Remote Family Support Service location involves four staff members: a Family Support Team Leader, a Family Support Case Practitioner, and two local Aboriginal family support workers.<sup>378</sup> The Executive Director of the Remote Family Support Service division of Territory Families told the Commission that the service provides:

- case management of family support case work at an early intervention stage, and
- Child Safety Coordination groups conducted fortnightly or monthly, with other service providers, such as police, local health clinics, schools and other authorised information-sharing agencies.<sup>379</sup>

The Commission heard from a Remote Family Support Service Team Leader that the service’s work with families through various services and programs relies on voluntary engagement by the family,<sup>380</sup> and that involving staff members from the formal child protection system would ‘compromise’ the trust that the Remote Family Support Service engenders through its voluntary support model.<sup>381</sup>

The Executive Director told the Commission that the ‘indicators of success’ for the Remote Family Support Service would be fewer children leaving their communities, because those children’s families were supported early on, before ‘challenges require[d] a crisis based intervention’.<sup>382</sup>

The Executive Director informed the Commission that from 1 July 2016, the Remote Family Support Service was delivered through Territory Families on a place-based remote service delivery model in:

- Maningrida
- Wadeye
- Borroloola
- Yuendumu
- Kalkarindji, and
- Wurrumiyanga.<sup>383</sup>

The Executive Director approximated the cost of delivering the service to each of these sites as being between \$350,000 and \$450,000 per site, including administration and management support.<sup>384</sup> The Deputy Chief Executive Officer of Territory Families informed the Commission that on request, local Aboriginal staff members in an additional nine remote communities are supported by visiting Territory Families Team Leaders, to provide advice and assistance for visiting child protection staff members and community-based agencies.<sup>385</sup>

The Commission understands that once fully implemented, the Remote Family Support Service will be delivered across 12 sites each year<sup>386</sup> through community-based Aboriginal support workers who have defined roles, depending on the size of the community. Under this model:

- in smaller communities, Remote Family Support Service workers will offer advice and assistance, supported through regular and planned visits from their supervisors, and
- in larger communities, Remote Family Support Service workers will operate alongside community-based practitioners to provide family support. Multi-agency Child Safety Coordination Groups are being established to respond to child safety and community needs.

The Commission notes that the six sites where the Remote Family Support Service currently operates is short of the 12 proposed under the full implementation plan, which is scheduled for 2017–18.<sup>387</sup> The Commission received evidence from the Executive Director, who highlighted some impediments to successfully delivering the Remote Family Support Service:

- it is important for Territory Families to support 'place-based' teams, due to the infrastructure limitations of many of these remote locations and the impact this has on access to information<sup>388</sup>
- the Remote Family Support Service would work best in a '*reasonably substantial community which provides a relevant body of ongoing work, service providers for a multiagency approach*', and '*sufficient community infrastructure in the form of house and office space*'. Physical infrastructure was also noted as a '*challenge[s] to quickly implementing ... services*',<sup>389</sup>
- it is '*critical*' to have well-defined roles, noting that it was a '*common risk*' in place-based service delivery, especially in remote areas, that without clear roles and accountabilities that services are not delivered, and<sup>390</sup>
- there is a risk of overextension and overreaching as a result of '*spreading resources too thin*'.<sup>391</sup>

These concerns were echoed in the experience of the Team Leader who gave evidence about the Remote Family Support Service.<sup>392</sup>

In addition, the Executive Director considered that it was '*crucial*' for programs like the Remote Family Support Service to employ local Aboriginal staff members, and for the program to be seen as part of the local community.<sup>393</sup> Furthermore, the Executive Director considered that investment in the program had to be sustained for at least a couple of years in order for it to have an impact.<sup>394</sup>

The Remote Family Support Service has no statutory authority or delegations under the *Care and Protection of Children Act*. Although it does not provide child protection services, it does provide information and opinions to case managers, to help them assess the family's situation, introduce families to caseworkers and explain child protection processes using the local language.<sup>395</sup>

The potential of the Remote Family Support Service deserves to be evaluated, so a local evidence base can be built.

## ***Family Support Panel***

In 2015–16, Territory Families established a Family Support Panel to address the gap in providing early support for families in the Darwin urban area.<sup>396</sup> Territory Families explained that if the SDM Risk Assessment Tool determines that a family has a low or moderate probability of abusing or neglecting a child in the near future, the child protection practitioner will refer the case to the Family Support Panel. This will occur once family consent has been sought.<sup>397</sup>

The Family Support Panel meets weekly. It consists of a representative from the Territory Families Investigation and Assessment Team, and representatives from non-government family support programs provided by CatholicCare, Save the Children, Somerville Community Services, Relationships Australia, Anglicare, YWCA and TeamHEALTH.<sup>398</sup>

The Panel considers referrals and assesses which service would be most suitable to work with the family being referred.<sup>399</sup> This process also highlights service delivery gaps in family support program representation on the panel. When this occurs, the Territory Families Investigation and Assessment Team identifies a suitable family support program to join the panel.<sup>400</sup>

The Commission received positive feedback from caseworkers about the panel, including that it allowed for quick referral of families, although some caseworkers had concerns about the limited range of services represented, and their lack of flexibility around target age groups and service types.<sup>401</sup>

### **Intensive Family Preservation Service**

Under the Family Intervention Framework, Territory Families funds a panel of non-government service providers to provide intensive support to families to ensure their child can remain safely at home, through the Intensive Family Preservation Service.<sup>402</sup> Intensive Family Preservation Service (IFPS), is for families who have been identified by Territory Families as being at high risk of having their child removed.<sup>403</sup> It is not designed or resourced to deliver services to children and families in remote communities.<sup>404</sup> In the period August 2016 to March 2017, 88 people were referred by Territory Families to the Intensive Family Preservation Service, which provided 16, 488 hours of services. In Alice Springs, for example, there were two to three referrals to an Intensive Family Preservation Service provider each month.<sup>405</sup>

Referrals to these services are made by the Strengthening Families team, when it is determined that a collaborative approach to supporting the family is required. The Commission was advised that there are five providers of Intensive Family Preservation Services in the Northern Territory. The providers are listed in Table 32.11.

**Table 32:11: Intensive Family Preservation Services providers<sup>406</sup>**

| <b>Providers of Intensive Family Preservation Services</b> |  |
|--|--|
| <b>Darwin</b>  | CatholicCare<br>Save the Children<br>Somerville Community Services |
| <b>Alice Springs</b>                                       | CatholicCare<br>Tangentyere Council Aboriginal Corporation         |
| <b>Katherine</b>   | CatholicCare   |
| <b>Tennant Creek</b>                                       | CatholicCare   |
| <b>Nhulunbuy</b>   | Anglicare NT, subcontracted by CatholicCare                        |

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The objectives of the Intensive Family Preservation Services are to:

- protect children from harm
- reduce child safety concerns
- build resilience and capability in referred families to care for and protect their child, and
- preserve the family and allow the child to live at home.<sup>407</sup>

Once a family is referred to this service, Territory Families attends an introductory visit with the Intensive Family Preservation Service team, family, children (where appropriate) and any other significant stakeholders, where a family preservation plan is developed.<sup>408</sup> Support is then targeted at achieving the outcomes specified in this plan, such as home support and specialist services designed to address safety concerns, which would be provided for individual families for up to 12 months.<sup>409</sup> Participation in the Intensive Family Preservation Service is voluntary.<sup>410</sup>

The tender contract for IFPS is estimated at \$13.5 million for a period of three years from 2015–16, plus the option of a 12-month extension valued at an addition \$4.5 million.<sup>411</sup>

A review of international research identified that while intensive family preservation programs were not often successful in preventing out of home placement, they were effective in improving family function.<sup>412</sup> Research also identified that only a small group of 'at-risk' families benefited from these programs in the intended way.<sup>413</sup> This highlights the importance of programs and services that clearly identify the desired outcome of the programs and measure their performance against these outcomes. As of June 2017, an evaluation of the IFPS program had not been conducted in the 12-month operational period.<sup>414</sup>

## ***Intensive Family Support Services***

Following the release of the Board of Inquiry report, the Commonwealth Government established the Intensive Family Support Services program.<sup>415</sup> This '*home-based parenting modelling*' program was established through a memorandum of understanding between the Commonwealth and Northern Territory Governments.<sup>416</sup> Funding for the service in the Northern Territory totalled \$8.871 million in 2016–17.<sup>417</sup>

Intensive Family Support Services are available to families with children from birth to 12 years old, where there are child neglect concerns. It focuses on teaching parents and carers skills such as meeting the child's basic physical needs; preventing and treating illnesses; and providing positive and effective parent–child interactions.<sup>418</sup>

Intensive Family Support Services providers are expected to develop and maintain strong and productive working relationships with local Territory Families offices. Territory Families retains statutory responsibility for the ongoing case management, risk assessment and risk management of the child or children. The Intensive Family Support Services provider is required to participate in regular joint case management meetings for their family clients.<sup>419</sup>

The entry pathway into Intensive Family Support Services has primarily been via referral from the Northern Territory child protection agency. Initially the only pathway into Intensive Family Support Services was from substantiation of neglect and a referral to child protection income management, in practice making Intensive Family Support Services an extension of the statutory system.



However, due to under-utilisation of the service, Intensive Family Support Services now accept three tiers of referrals:

- Tier 1: Families on child protection income management
- Tier 2: Families on other forms of income management, and
- Tier 3: Community referrals.<sup>420</sup>

The Commonwealth Government prefers to continue receiving Tier 1 referrals after a case has been notified to Territory Families and before a child is placed in out of home care.<sup>421</sup> This is reflected in the Intensive Family Support Services operational guidelines, which specify that Tier 2 and Tier 3 referral pathways should be negotiated with and approved by the Commonwealth Department of Social Services on a site-by-site basis.<sup>422</sup>

The Commonwealth Government has clarified that referrals from schools or community workers do not require a family to be on child protection income management.<sup>423</sup> In areas where service providers have had the capacity to accept community referrals, these have increased and Intensive Family Support Services staff members have been able to provide support to families before problems became entrenched.<sup>424</sup>

A range of Aboriginal and non-Aboriginal non-government organisations across the Northern Territory receive funding to deliver these services. As at June 2017, the Intensive Family Support Services program operated in 20 sites across the Northern Territory, with expansion to a further two communities planned for later in 2017.<sup>425</sup>

**Table 32:12: Intensive Family Support Services sites, as at April 2017<sup>426</sup>**

| Site           | Provider                                     |
|----------------|--|
| Ali Curung     | Anyinginyi Aboriginal Health Corporation     |
| Alice Springs  | Central Australian Aboriginal Congress       |
| Amata          | NPY Women’s Council                          |
| Bagot (Darwin) | Save the Children Australia                  |
| Barunga        | Save the Children, Good Beginnings Australia |
| Beswick        | Save the Children, Good Beginnings Australia |
| Darwin         | Save the Children Australia                  |

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| <b>Elliot</b>                                       | Anyinginyi Aboriginal Health Corporation     |
| <b>Finke</b>  | NPY Women's Council                          |
| <b>Gudorrka</b>                                     | Save the Children Australia                  |
| <b>Imanpa</b>                                       | NPY Women's Council                          |
| <b>Indulkana</b>                                    | NPY Women's Council                          |
| <b>Kaltukatjara (Docker River)</b>                  | NPY Women's Council                          |
| <b>Knuckey Lagoon</b>                               | Save the Children Australia                  |
| <b>Lajamanu</b>                                     | <i>Operational late 2017</i>                 |
| <b>Ltyentye Apurte (Santa Teresa and Homelands)</b> | CatholicCare NT                              |
| <b>Mataranka</b>                                    | Save the Children, Good Beginnings Australia |
| <b>Minmarama Park (Darwin)</b>                      | Save the Children Australia                  |
| <b>Mutitjulu</b>                                    | NPY Women's Council                          |
| <b>Ngkurr</b>                                       | Sunrise Aboriginal Health Service            |
| <b>Ntaria and Homelands (Hermansburg)</b>           | Lutheran Community Centre                    |
| <b>Palmerston</b>                                   | Save the Children Australia                  |
| <b>Pukatja (formerly Ernabella)</b>                 | NPY Women's Council                          |
| <b>Tennant Creek</b>                                | Anyinginyi Aboriginal Health Corporation     |
| <b>Wadeye</b>                                       | Save the Children Australia                  |
| <b>Yuendumu</b>                                     | <i>Operational late 2017</i>                 |

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A key feature of the Intensive Family Support Services program is the additional implementation support provided to the workforce through an external organisation, the Implementation Support Partner. The purpose of this support is to strengthen local workforce capacity; the partner provides on-the-job coaching and training for Intensive Family Support Services staff members in various locations.<sup>427</sup>

The Commonwealth Department of Social Services reports that the program has maintained a strong emphasis on employing and training local Aboriginal staff members, and has worked to improve selection processes based on community consultation.<sup>428</sup> Dr Christine Fejo-King told the Commission:

*'Alleviating poverty and assisting families with the fundamentals of living at the early stages will avoid or minimise the risks of a child later being removed from the family. Services such as Intensive Family Support Services (IFSS) located in a number of sites across the Northern Territory (Darwin, Katherine, Tennant Creek and Alice Springs) are therefore critical.'*<sup>429</sup>

Between January and June 2016, of the 202 families participating in Intensive Family Support Services, service providers reported that only one family exited the program due to children being removed into the out of home care system.<sup>430</sup> Previous evaluations of the program have also shown decreases in child neglect in the areas of physical care and emotional development, and improvements in parental supervision.<sup>431</sup>

## **Access to family support services via child protection income management**

The Director of Research at the Jumbunna Indigenous House of Learning at the University of Technology Sydney reported:

*A trend or several instances in cases that we've worked with where people who have been in situations where they have required assistance and have sought to have some kind of family support – intensive family support – can only access that if they agree to go on a 70 per cent income management program where their income is managed by 70 per cent, and in some instances that call for help for intensive family support has, instead of people receiving support, been used as a mechanism for removal of the children as the eventual result.'*<sup>432</sup>

The Commonwealth Government first introduced income management in 2007 as part of the Northern Territory National Emergency Response under the *Social Security and Family Assistance Legislation Amendment Welfare Payments Reform Act 2007* (Cth).

Child protection income management occurs when 70% or more of welfare income paid to a family is quarantined so it can only be spent on 'life essentials' such as food, rent, bills, health, school expenses and travel. It is accessible via a Basics Card that is only accepted at selected stores, or by electronic payments direct to stores or service providers.

In some cases, Territory Families refers a family to child protection income management if their child or children have experienced or are at risk of experiencing neglect.

Several limitations to the implementation of income management have been reported, particularly

in relation to the use of the Basics Card. Issues reported in the Northern Territory include the limited number and variety of approved stores; having to pay higher prices at these stores; minimum purchase limits and surcharges when using the card in stores; a limited ability to travel interstate due to lack of local approved stores; difficulty determining the remaining card balance; and a variety of issues relating to rent and utility payments.<sup>433</sup> The Commonwealth Government has informed the Commission that recent changes have allowed more merchants to participate, and that Basics Card balances can be checked online, via a mobile app, via a dedicated hotline, at self-service terminals and at Basics Card kiosks.<sup>434</sup> However, there is no data on the extent to which these services are available in remote communities.

The Commonwealth-funded Intensive Family Support Service has expanded significantly since its inception, and is delivered in a range of remote and urban communities across the Northern Territory. The Commission is aware that this service has great potential to engage families early.<sup>435</sup> However, as outlined above, access is still prioritised for families on child protection income management.

An unpublished 2014 evaluation of the Intensive Family Support Service program identified that a primary barrier to referrals into the program in the Northern Territory was *'almost universally thought to be the CPIM requirement'*. It noted that *'it would appear that CPIM has had a negative impact not only on referrals into IFSS, but for a small number of practitioners,[and] the reputation of the programme itself'*. This view was reinforced in evidence given to the Commission.<sup>436</sup> The evaluation revealed the association between income management and, to a lesser extent, removals, led to some community members perceiving Intensive Family Support Service as the program *'where providers and government take your money and remove your children'*.<sup>437</sup>

The criteria for accessing Intensive Family Support Service has since been broadened to extend beyond only families on income management, accepting three tiers of referrals as outlined above. The Commission considers it important for access to be broadened to include *'soft'* entry points to the service via community organisations and families, without the barrier of having to seek approval from the Commonwealth Government to do this. The Commission has heard evidence that although the Intensive Family Support Service is a *'positive early intervention program'*, it is limited if its referral pathway is solely or primarily through Territory Families.<sup>438</sup>

### **Recommendation 32.11**

**Child protection income management no longer be required to access the Intensive Family Support Service.**

## **STRENGTHENING AND EXTENDING FAMILY SUPPORT SERVICES**

It is clear that present family support services funded or delivered by Territory Families and the Commonwealth aim to prevent out of home care placement. There are limited support services available to families that may be at low to moderate risk, and few services that accept community referrals or family self-referrals. Although establishing the Family Support Panel and Remote Family Support Service is a shift towards providing earlier support, these services are only available once

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a family becomes known to Territory Families, and they have limited coverage across the Northern Territory.

The flow of children into care and detention systems will continue if access to family support services is limited to a referral pathway via Territory Families. The current criteria for referral to family support services are used as an administrative tool for screening the high volume of notifications to Territory Families, prioritising the children and families at highest risk. The Commission heard in evidence from Robyn Lambley, former Northern Territory Minister for Children and Families, that these are 'the tough decisions' that need to be made under fiscal restraints.<sup>439</sup>

The Commission heard evidence that the Northern Territory Government's increased focus on funding Intensive Family Preservation Services resulted in a loss of funding for Aboriginal-controlled organisations delivering Targeted Family Support Services in 2015-16.<sup>440</sup> Funding contracts for those services ceased at the end of the funding period. Services affected included the Ketyeye Program (Tangentyere Council) (ceased 30 June 2016)<sup>441</sup> and Targeted Family Support Services (Central Australian Aboriginal Congress), both of which accepted lower-level referrals from other professionals and families. The Commission was told this has left a gap in early support services for vulnerable families in the Northern Territory, particularly Aboriginal families.<sup>442</sup>

Although the Territory Families Acting General Manager of Operations stated that 'IFPS [Intensive Family Preservation Service] planning focuses on ensuring families are provided the level of support relevant to their circumstances: starting with 'high intensity' and tapering down to 'low intensity' as appropriate',<sup>443</sup> the service's Protocol and Implementation Guidelines state that 'The Intensive Family Preservation Service (IFPS) is for families who have been identified by Territory Families as being at high risk of having their child removed from their care due to ongoing safety concerns'.<sup>444</sup>

The Manager of the Access to Education Division of Tangentyere Council Aboriginal Incorporated said that because Intensive Family Preservation Service eligibility criteria only apply to families at high risk of child removal, the service excludes vulnerable families that require support but are not known to the child protection system, as well as families that are known to Territory Families but present low to medium risk factors.<sup>445</sup>

Andrew Walder from Tangentyere Council said the changes mean the Ketyeye Program is no longer funded to provide support for families who walk in the door, actively seeking support.<sup>446</sup>

*'They absolutely did self-referral. We still have a lot of self-referrals, in the sense that families still visit that office looking for support. Unfortunately, we are not able to provide it. Which is, you know, a really heartbreaking situation. But other referral streams would have been police, the Alice Springs Hospital, schools, other social workers, other services that were able to identify early that that family were in need of a level of support, but that level of support was not yet at a stage where it required a notification.'*<sup>447</sup>

Territory Families provided evidence to the Commission to clarify that the Intensive Family Preservation Service was funded following a Request for Tender process, and that existing service providers, including those that delivered Targeted Family Support Services, were invited to apply for funding. The aim was to prioritise continuity of the previously grant-funded service providers.<sup>448</sup>

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The Commission heard strong calls for further investment in family support services that can be accessed earlier and through multiple referral pathways, other than from the statutory system, to support effective parent engagement.<sup>449</sup> These pathways could begin with community organisations, health and education professionals and parents themselves, reflecting a shift in program goals from preventing placement to improving how families function.<sup>450</sup>

The Commission also notes that the issue of whether services can only be accessed through the child protection system will have to be re-visited in the context of introducing a dual-pathway model, which itself aims to make services more accessible and more available to families at an earlier stage.

## Removal of children from home

The Commission heard evidence demonstrating how important it is to have early interventions that fully explore all options for children to remain with their parents before the decision to remove them.

Despite this, for some children prioritising their best interests means they should be removed from the care of their parents, but this should only happen where there is a clear need to safeguard their wellbeing and where there is no other course of action that can mitigate the risk of harm. This decision can be made at any time throughout the investigation and assessment process.

Territory Families procedure regarding the removal of a child to ensure their safety provides that under the *Care and Protection of Children Act* the Chief Executive Officer has the authority to remove a child if the child is in need of urgent protection by taking a child into provisional protection for a period not exceeding 72 hours under section 51 of the *Care and Protection of Children Act* or by applying for a temporary protection order under section 103.<sup>451</sup>

Under section 51, a child may be taken into provisional protection if the Chief Executive Officer reasonably believes that the child is in need of protection and that provisional protection is urgently needed to safeguard the wellbeing of the child, and there is also no protection order or temporary protection order currently in force for the child.<sup>452</sup>

Additionally, a child may be removed subject to a temporary protection order. Under section 103 of the *Care and Protection of Children Act*, the Chief Executive Officer may apply to the Court for a temporary protection order if the Chief Executive Officer reasonably believes the child is in need of protection and the proposed order is urgently needed to safeguard the wellbeing of the child, and there is also no protection order in force.<sup>453</sup> This application can be made whether or not an assessment order for the child is in force; whether or not a permanent care order is in force; and whether or not the child is in provisional protection.<sup>454</sup>

The complexity and consequences of the decision to remove a child means that caseworkers should not be individually responsible for making it. Under present Territory Families policy, caseworkers must consult with a Team Leader, Manager, Aboriginal Community Worker and legal services before they can together reach the decision that removal is the only suitable course of action.<sup>455</sup>

The use of the SDM Safety Assessment tools can assist with this decision-making process, as long as the urgency of securing the child's safety does not require immediate action.

A Team Leader from the Remote Family Support Service in Maningrida told the Commission that

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caseworkers actively tried to explain to families why their children were being taken away,<sup>456</sup> but accepted – notwithstanding efforts to communicate the decision to families – that some families may not know or understand what was happening.<sup>457</sup> This aligns with evidence from Aboriginal Elders in different communities, including Maningrida, that some families were not told what was happening when their child was removed, or were not supported in this process.<sup>458</sup>

The Commission heard many stories of the trauma inflicted by removing a child from their family. Families shared their experience of being unsupported at the time of removal, or described their recollections of events.

As DB recalled:

*'[t]he police tried to grab me but I ran ... I ended up running around the house but eventually they grabbed me and put me in the car. I was scared and crying and I knew I was being taken away from Mum and Dad. It was a terrible day and the worst experience of my life.'*<sup>459</sup>

DJ explained that she did not feel Territory Families was honest with her family about their concerns. She said:

*'[W]elfare need to go to family members and communicate and really consult with them ... When they see something they are worried about, they shouldn't go away and just report what they saw. This is just being against the family. Instead they should work with the family and fix that problem.'*<sup>460</sup>

Bunawarra Dispute Resolution Elders (in Maningrida) told the Commission:

*'We feel that child protection workers could communicate more effectively about decisions that are made about our children. Sometimes we don't know why our children have been taken away and what we need to do to get them back. If a child has to be removed then workers should give us regular updates. We don't know what our children are doing when they are away. We think the worst possible things must be happening because we just don't know.'*<sup>461</sup>

A number of witnesses who had had family members removed told the Commission that they did not understand what was happening. DS, an Aboriginal woman from a remote community, spoke of the need for better communication with Territory Families. Her baby granddaughter was removed from her family and community and placed with a non-Aboriginal foster carer in Darwin, but was returned to the care of DS some seven months later. When the family was informed that the baby would be placed in foster care, DS felt that 'we didn't really get to put forward what we thought'.<sup>462</sup> DS considered that the problems identified by Territory Families prompting the baby's removal could have been explained and worked out between the family and the department.<sup>463</sup>

If removal is the only course of action to ensure that children are safe, Territory Families need to ensure that families know and understand what is happening and why, and ensure that all other options have been explored.

The current Territory Families procedure for removing a child to ensure their safety outlines the steps a caseworker must take before a child is taken into provisional protection. This includes consulting

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with the Team Leader and Manager to reach an agreement that the child is in urgent need of protection; developing a plan to remove the child, taking into account the safety of the child and the caseworker; and making a placement request for the child.<sup>464</sup>

The procedure also provides that in taking a child into provisional protection, an authorised officer can, without a warrant, enter a place where the officer reasonably believes the child may be found, search the place in order to find the child, stay at the place for as long as the officer considers reasonably necessary, and remove the child from the place.<sup>465</sup> Under the *Care and Protection of Children Act*, an authorised officer is a person appointed as an authorised officer by the Chief Executive Officer or a police officer.<sup>466</sup>

Furthermore, the current procedure also provides that under section 52(3) of the *Care and Protection of Children Act*, an authorised officer can use reasonable force or assistance to remove a child. The procedure does also mention that unless there is no alternative the authorised officer should not use force to remove a child, and should instead seek the assistance of Northern Territory Police, although importantly, police assistance is not routine. Finally, the procedure outlines steps a caseworker must take before a child may be removed directly from a school.<sup>467</sup>

The Commission is of the view that Territory Families should review the procedures for removing children, so they include processes for communicating and sharing information with families about the removal, and the actions Territory Families may take on the day of the removal. This review should be conducted in consultation with Aboriginal organisations and communities.

### **Recommendation 32.12**

**Territory Families ensure that any family where a child is to be removed is given all appropriate information about the reason for the removal, the steps the family must take to have the child returned, and legal advisors the family may contact in a form and language suitable for the family.**

## **CONCERNS ABOUT 'FAMILY WAY' PLACEMENTS**

The phrase 'family way' placements has been used to describe informal care arrangements where a child stays with another family member by informal agreement.<sup>468</sup> The 2010 Board of Inquiry received anecdotal evidence about the use of 'family way' placements and identified a number of concerns associated with them, including:

- the lack of a formal agreement with parents on what actions are required in order for children to be returned home<sup>469</sup>
- a lack of proper assessment compared to the way foster placements are assessed<sup>470</sup>
- a failure to obtain informed consent<sup>471</sup>
- a failure to monitor the risk to children, since there is no case management support provided, and<sup>472</sup>
- carers receiving no financial support as part of the placement.<sup>473</sup>

The Board of Inquiry recommended that the Northern Territory Government formalise all 'family way' placements or return children in such placements to their homes, and ensure that no officers



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participated in any placement arrangements that might be considered to be contrary to the provisions of the *Care and Protection of Children Act*.<sup>474</sup>

The Commission did not receive detailed evidence on ‘family way’ placements. However, Mr Walder of Tangentyere Council did describe them as a form of kinship care:

*‘There are a lot of what’s called informal kinship carers who are not supported at all at present. It’s not recognised truly as a placement type, but these people are really doing it tough and work along the traditional lines, raising children in a fantastic way.’<sup>475</sup>*

Mr Walder also noted that in addition to the lack of financial support, informal kinship carers received no training and are unable to access group settings to share their experiences.<sup>476</sup>

In her evidence to the Commission, the Children’s Commissioner noted that ‘family way’ placements were still being used as an alternative to pursuing a protection order application before a court.<sup>477</sup> However, Territory Families Deputy Chief Executive Officer told the Commission that Territory Families does not currently use ‘family way’ placements or any other type of informal placement arrangement,<sup>478</sup> and that any such type of arrangement is always formalised through a voluntary temporary placement agreement under section 46 of the *Care and Protection of Children Act*.<sup>479</sup>

On the evidence before it, the Commission can draw no conclusions about the continued use of ‘family way’ placements, since the Board of Inquiry last considered the issue. However, the Children’s Commissioner should continue to examine whether and to what extent these placements continue to be used.

## CONCLUSION

The Northern Territory displays symptoms of a statutory child protection system facing increasing and heavy demands. This is reflected in the increasing number of reports to statutory child protection services; the number of multiple reports about individual children; the caseloads carried by workers; delays in completing investigations.

Strategies such as differential or dual pathways, caseload reductions, threshold changes and backlog teams can be valuable interventions in a wider effort to address these problems, but they can only produce short-term relief for the system and it cannot be assumed that they will adequately reduce the pressure on the system over the long term. Making preventative system changes that help families avoid having to enter the child protection system, as recommended elsewhere in this report, should have flow-on effects in other parts of the system, reducing the number of notifications and easing investigation and assessment workloads.



## ENDNOTES

- <sup>1</sup> Exh.005.001, *International Covenant on Civil and Political Rights*, 16 December 1966, tendered 11 October 2016.
- <sup>2</sup> Exh.005.002, *Convention on the Rights of the Child*, 20 November 1989, tendered 11 October 2016.
- <sup>3</sup> Kempe, C, Silverman, FN, Steele, BF, Droegemueller, W & Silver, HK, 1985, 'The battered-child syndrome', *Child Abuse & Neglect*, vol. 9, no. 2, pp. 143-154; Transcript, Professor Leah Bromfield, 26 June 2017, p. 5048: lines 12-15.
- <sup>4</sup> Bromfield, L, Arney, F & Higgins, D, 2014, 'Contemporary issues in child protection intake, referral and family support', in Hayes, A & Higgins, D (eds.), *Families, Policy and the Law: Selected Essays on Contemporary Issues for Australia*, Australian Institute of Family Studies, Melbourne, p. 123.
- <sup>5</sup> Bromfield, L, Arney, F & Higgins, D, 2014, 'Contemporary issues in child protection intake, referral and family support', in Hayes, A & Higgins, D (eds.), *Families, Policy and the Law: Selected Essays on Contemporary Issues for Australia*, Australian Institute of Family Studies, Melbourne, p. 123.
- <sup>6</sup> Australian Institute of Health and Welfare, *Child Protection 2015–2016*, 16 March 2017, pp. 22-23.
- <sup>7</sup> Exh.014.001, Board of Inquiry Report: *Growing them strong, together, Promoting the Safety and Wellbeing of the Northern Territory's Children*, Volume 1, 18 October 2010, tendered 12 October 2016, p. 18.
- <sup>8</sup> Exh.617.000, *DCF Annual Report 2012–2013*, tendered 28 June 2017, pp. 20-21; Exh.618.000, *DCF Annual Report 2015–16*, tendered 28 June 2017, p. 18.
- <sup>9</sup> The Senate Community Affairs References Committee, 2015, *Out of Home Care Report*, Commonwealth of Australia, Canberra, pp. 74-75.
- <sup>10</sup> Exh.013.001, Board of Inquiry Report: *Growing them strong, together, Promoting the Safety and Wellbeing of the Northern Territory's Children – Summary Report*, 18 October 2010, tendered 12 October 2016, p. 19-20.
- <sup>11</sup> Transcript, Fiona Arney, 26 June 2017, p. 5054, lines: 36-43.
- <sup>12</sup> Transcript, Leah Bromfield, 26 June 2017, p. 5048: line 1 – p. 5050: line 15.
- <sup>13</sup> Transcript, Sven Silburn, 19 June 2017, p. 4394: line 38 – p. 4395: line 11.
- <sup>14</sup> Transcript, Howard Bath, 31 May 2017, p. 4205: line 46 – p. 4206: line 2.
- <sup>15</sup> Transcript, Howard Bath, 31 May 2017, p. 4205: lines 39-42.
- <sup>16</sup> Exh.024.026, Child Protection Systems Royal Commission Report: *The life they deserve – Volume 1 – Summary and Report*, August 2016, tendered 13 October 2016; Transcript, Professor Fiona Arney, 26 June 2017, p. 5050: lines 21-47 – p. 5051: lines 1-17.
- <sup>17</sup> Transcript, Professor Fiona Arney, 26 June 2017, p. 5050: lines 21-47 – p. 5051: lines 1-40.
- <sup>18</sup> Transcript, Howard bath, 31 May 2017, p. 4205: lines 39-42; Transcript, Professor Leah Bromfield, 26 June 2017, p. 5045: lines 34-47; Transcript, Professor Fiona Arney, 26 June 2017, p. 5058: lines 40-46.
- <sup>19</sup> *Care and Protection of Children Act* (NT), s. 4.
- <sup>20</sup> Exh.672.004, Annexure LT-84 to Statement of Luke Twyford, 23 May 2017, tendered 30 June 2017.
- <sup>21</sup> Exh.1176.001, Central Intake Case Allocation and Outcomes, 2016-17, tendered 3 November 2017.
- <sup>22</sup> The National Children's Research Centre collaborates with child welfare agencies in the US, Australia, Canada, Taiwan and Bermuda to construct actuarial risk assessment instructions design and implement decision support and data analysis systems, conduct workload studies, and evaluate agency service-delivery programs: *National Council on Crime and Delinquency*, 2017, viewed 10 October 2017, <<http://www.nccdglobal.org/what-we-do/children-s-research-center>>.
- <sup>23</sup> Exh.515.010, CPPM 160315SDM Policy and Procedures Manual, 10 October 2014, tendered 30 June 2017, p. 1.
- <sup>24</sup> Exh.553.000, Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, para. 25.
- <sup>25</sup> Exh.482.004, Annexure JL-4 to Statement of Jonathan Linggood, 9 May 2017, tendered 1 June 2017, pp. 1, 22-23.
- <sup>26</sup> Exh.482.004, Annexure JL-4 to Statement of Jonathan Linggood, 9 May 2017, tendered 1 June 2017, pp. 25-29.
- <sup>27</sup> Exh.482.004, Annexure JL-4 to Statement of Jonathan Linggood, 9 May 2017, tendered 1 June 2017, p. 42.
- <sup>28</sup> Exh.515.096, CPPM Rev Child Protection Report Screening and Response Priority Procedure, July 2015 v1.1, July 2015, tendered 30 June 2017, p. 4.
- <sup>29</sup> Exh.553.000, Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, para. 83.
- <sup>30</sup> Exh.553.000, Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, para. 92.
- <sup>31</sup> Exh.515.010, CPPM 160315 SDM Policy and Procedures Manual, 10 October 2014, tendered 30 Jun 2017, p. 45.
- <sup>32</sup> Exh.553.000, Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, para. 96.
- <sup>33</sup> Exh.553.000, Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, para. 27.
- <sup>34</sup> Exh.553.000, Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, para. 211.
- <sup>35</sup> Exh.553.000, Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, para. 211.
- <sup>36</sup> Exh.515.010, CPPM 160315 SDM Policy and Procedures Manual, 10 October 2014, tendered 30 Jun 2017, p. 87.
- <sup>37</sup> Exh.515.010, CPPM 160315 SDM Policy and Procedures Manual, 10 October 2014, tendered 30 Jun 2017, p. 73.
- <sup>38</sup> Exh.515.010, CPPM 160315 SDM Policy and Procedures Manual, 10 October 2014, tendered 30 Jun 2017, p. 87.
- <sup>39</sup> Exh.867.001 Annexure LT-1 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, pp. 1-2.
- <sup>40</sup> Exh.867.001, Annexure LT-1 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, p. 1.
- <sup>41</sup> Exh.867.001, Annexure LT-1 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, p. 1.
- <sup>42</sup> Exh.867.001, Annexure LT-1 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, p. 1.
- <sup>43</sup> Exh.867.000, Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, para. 21.
- <sup>44</sup> Exh.662.001, Statement of Luke Twyford, 10 May 2017, tendered 30 June 2017, para. 40.
- <sup>45</sup> Exh.662.027, Annexure LT-59 to Statement of Luke Twyford, 10 May 2017, tendered 30 June 2017, p. 8.
- <sup>46</sup> Exh.553.029, Annexure BT-029 to Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, p. 1.

- 47 Exh.553.029, Annexure BT-029 to Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, p. 5.
- 48 Exh.553.029, Annexure BT-029 to Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, p. 5.
- 49 Exh.553.029, Annexure BT-029 to Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, p. 1.
- 50 Exh.867.000, Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, para. 28.
- 51 Exh.867.000, Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, paras 22-28.
- 52 Exh.867.000, Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, para. 20.
- 53 Exh.867.003, Annexure LT-3 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017.
- 54 Exh.867.003, Annexure LT-3 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, p. 0040.
- 55 Exh.867.003 Annexure LT-3 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, p. 0040.
- 56 Exh.867.003, Annexure LT-3 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, p. 0051.
- 57 Exh.867.003, Annexure LT-3 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, p. 0051.
- 58 Exh.867.003, Annexure LT-3 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, p. 0052.
- 59 Exh.867.000, Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, para 11-12.
- 60 Exh.867.003, Annexure LT-3 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, p. 0040.
- 61 Exh.867.003, Annexure LT-3 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, p. 0042.
- 62 Exh.867.003, Annexure LT-3 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, p. 0044.
- 63 Exh.867.003, Annexure LT-3 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, p. 0046.
- 64 Exh.867.003, Annexure LT-3 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, p. 0046.
- 65 Exh.867.003, Annexure LT-3 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, p. 0046.
- 66 Exh.867.003, Annexure LT-3 to Statement of Luke Twyford, 14 July 2017, tendered 24 October 2017, p. 0046.
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- 468 Exh.520.000, Statement of Colleen Gwynne, 29 May 2017, tendered 19 June 2017, para. 38.
- 469 Exh.013.001, Board of Inquiry Report – *Growing them strong, together, Promoting the Safety and Wellbeing of the Northern Territory's Children* – Summary Report, 18 October 2010, tendered 12 October 2016, p. 46.
- 470 Exh.014.002, Board of Inquiry Report – *Growing them strong, together, Promoting the Safety and Wellbeing of the Northern Territory's Children* – Volume 2, 18 October 2010, tendered 12 October 2016, p. 403.
- 471 Exh.014.002, Board of Inquiry Report – *Growing them strong, together, Promoting the Safety and Wellbeing of the Northern Territory's Children* – Volume 2, 18 October 2010, tendered 12 October 2016, p. 403.
- 472 Exh.013.001, Board of Inquiry Report – *Growing them strong, together, Promoting the Safety and Wellbeing of the Northern Territory's Children* – Summary Report, 18 October 2010, tendered 12 October 2016, p. 46.
- 473 Exh.014.001, Board of Inquiry Report – *Growing them strong, together, Promoting the Safety and Wellbeing of the Northern Territory's Children* – Volume 1, 18 October 2010, tendered 12 October 2016, p. 348.
- 474 Exh.014.002, Board of Inquiry Report – *Growing them strong, together, Promoting the Safety and Wellbeing of the Northern Territory's Children* – Volume 2, 18 October 2010, tendered 12 October 2016, p. 403.
- 475 Transcript, Andrew Walder, 29 May 2017, p. 4044: lines 20-25.
- 476 Transcript, Andrew Walder, 29 May 2017, p. 4044: lines 25-27.
- 477 Exh.520.000, Statement of Colleen Gwynne, 29 May 2017, tendered 19 June 2017, para. 45.
- 478 Exh.702.001, Statement Jeanette Kerr, 23 June 2017, tendered 10 July 2017, para. 7.
- 479 Exh.702.001, Statement Jeanette Kerr, 23 June 2017, tendered 10 July 2017, para. 13.

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CHILDREN IN OUT OF  
HOME CARE



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# CHILDREN IN OUT OF HOME CARE

## INTRODUCTION

The *United Nations Convention on the Rights of the Child* (CRC), to which Australia is a party, contains several articles which endorse the family as the primary carer and teacher of children. Significantly, in relation to this chapter, it enshrines the right of children not to be separated from their parents unless their wellbeing dictates otherwise.<sup>1</sup>

The fundamental justification for a government agency having the power to remove a child from their family is that the agency can ensure the child is protected from unacceptable risks of harm when it judges that the child's family cannot do so. The exercise of public power in removing a child and separating them from their family is exceptionally intrusive and the corresponding duty of care a government owes to that child is high and must be fully and properly met.

In this report, the term 'out of home care' refers to all alternative accommodation arrangements provided to children or young people who are no longer able to live with their parents or guardians due to experiencing, or being at risk of experiencing, abuse or neglect. Out of home care includes any type of overnight care for children aged 0–17 where the state or territory makes or offers a financial payment for the child's care.<sup>2</sup>

The social and statutory legitimacy of such an intervention in the life of a family relies on the state being able to ensure the best interests of the child are met while they are in statutory care. Where the government removes a child but proves incapable of doing what is reasonably required to protect the child from harm, then the system has objectively failed: it has breached its duty to the child, the trust of the community and the law by which it is bound.



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Removing a child from their family and placing them in out of home care should be undertaken as a last resort. It should only be used to ensure the safety of the child, and justified by the expectation that statutory care for the child will lead to better outcomes than if the child remained with family. Aboriginal Peak Organisations Northern Territory (APO NT) recommended to the Commission:

*That Territory Families entrenches the principle of removal only as a last resort in the legislation, policy and practice by including safeguards to ensure that children are removed only where there is evidence that all other avenues for their protection have been exhausted.<sup>3</sup>*

*'When I see kids in welfare it makes me sad, it makes me cry. I want welfare to know: how you feel, the kids feel the same as you, they got one heart, if you[are] cruel [to] them it hurts them. We all have one heart. Show us love, respect and kindness like we're your own kid.'*

Vulnerable witness DG<sup>4</sup>

Where removal is necessary, safe reunification with family should be a priority.<sup>5</sup> It is essential that the system supports meaningful collaboration with a family to explore opportunities to reunify a child with their parents and/or other family members.

The Commission acknowledges that some parents who have had their children taken into care struggle to overcome or effectively address the reasons for the removal and sometimes do not succeed in doing so. Therefore, an effective out of home care system that provides the best possible care and opportunities for children for longer periods is a crucial component of child protection practice. A key part of this care is the provision of therapeutic and trauma-informed care that enables a child to overcome adversity and supports them to remain connected to their family, community and culture.

Most jurisdictions are experiencing major structural problems with their out of home care system. Whether a child is placed in a foster home, kinship care or residential care, these placements often fail to provide the care the child needs. Some children experience abuse while in such care.<sup>6</sup> Often, the outcomes for children in statutory care are very poor. Problems associated with statutory care have been the subject of repeated inquiries into child protection systems in Australia, often following high-profile cases of preventable harm.<sup>7</sup>

The out of home care system presents enormous challenges for the Northern Territory. The Northern Territory has the highest rate of children in care nationally and there has been a very significant increase year on year in the number of children in care. Between June 2007 and June 2016, the number of children living in out of home care rose from 409 to 1,020.<sup>8</sup> In 2016, 89% of those children were Aboriginal.<sup>9</sup> The Northern Territory has the added challenges of having a small population spread over a vast area and a high proportion of people living in remote communities, as well as the complex disadvantages Aboriginal people experience.

Out of home care is also costly. It consumes the bulk of the child protection budget. The Northern Territory Government spent more than \$100 million on providing out of home care services in 2015–16.<sup>10</sup>

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It is likely that there will remain, for the foreseeable future, a large contingent of children already in, or on the verge of entering, the child protection system who will require quality out of home care. This chapter examines the evidence presented to the Commission about the problems in the out of home care system, their causes and consequences.

## Issues of concern

The Commission heard evidence suggesting that the Northern Territory out of home care system is dysfunctional. The system is failing to meet some of the minimum standards set by governing legislation and policy. Measured against reasonable and objective criteria, it is an ineffective system that needs fundamental reform. It is a system that is likely to increase the adversity faced by some children in care.

The Northern Territory Government has not implemented any meaningful reform to manage the growing number of children going into care and the spiralling demands placed on the system. Instead, the approach was to move to an unsustainable model of spending increasing amounts, seemingly whatever it takes, to buy care placements at higher prices to overcome the lack of foster care capacity. The current approach leaves children placed outside foster or kinship care and, by extension, outside the supervision and protections offered by departmental oversight. In addition, it is diverting funds from much-needed investment in foster and kinship care and improving the operation of the system.

The Commission heard concerns about many areas of out of home care in the Northern Territory, including:

- the recruitment, support and retention of foster and kinship carers
- the planning, consultation and management of cases of care
- the provision of stable, quality care
- the increasing cost of service provision, particularly relating to purchased home-based and residential care, and
- the lack of trauma-informed and therapeutic support for children with complex needs.<sup>11</sup>

Continued concerns were expressed to the Commission about Territory Families' failure to provide and update care plans, and facilitate participation in care planning. Specific alarms were raised about adequately exploring options to reunify children with their families; planning to maintain and enhance the connection of Aboriginal children and young people to their families, communities and culture; and planning for children to exit out of home care and transition to adulthood.

The 2010 *Growing them strong, together – Promoting the Safety and Wellbeing of the Northern Territory's Children – Report of the Board of Inquiry into the Child Protection System in the Northern Territory* (BOI report) recommended building the capacity of the foster and kinship care system as a matter of urgency to provide placements that support the individual needs of children, but this has not occurred.<sup>12</sup> Currently, there is a significant shortage of kinship and foster carers in the Northern Territory. This shortage is exacerbated by the limited understanding in the workforce of Aboriginal kinship systems and continued exclusion of Aboriginal people, organisations and communities from decision-making about Aboriginal children. Foster and kinship carers reported feeling unsupported and undervalued, meaning there is little incentive to become a carer, especially given the inequitable payment scheme that applies to purchased home-based carers.

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The lack of trauma-informed and therapeutic placement options in the Northern Territory limits the capacity to provide out of home care that interrupts the pathway of children from out of home care to involvement in the youth justice system, which is described in Chapter 35 (The crossover of care and detention). The most significant change to out of home care since the release of the BOI report has been the substantial growth of purchased home-based care, which allows individuals to provide care to children in their own home, subject to the standards and requirements governing the conduct of a business as a longday childcare provider. This solution to the scarcity of suitable placements for children has led to a model of care that leaves many children placed away from family and community and outside departmental oversight. It has also been very expensive, diverting funds from much-needed investment in foster care and, significantly, kinship care.

The development of an out of home care system that reflects the needs of children and families in the Northern Territory is a key opportunity identified by the Commission. Action must include building the capacity of the system to ensure that options to reunify a child with their parent or caregiver are adequately explored. Where a child is not able to remain at home, trauma-informed placements that meet their individual needs and present the same opportunities as children not in care must be provided.

## STATISTICAL OVERVIEW

This section provides an overview of out of home care in the Northern Territory and includes rates and types of care as well as the demographics of children in care.

### Rates of children on care and protection orders

The removal of a child into out of home care requires the exercise of judicial discretion and a Local Court order. Where Territory Families assesses that a child cannot safely remain at home, it will apply to the court for a child protection order under the *Care and Protection of Children Act (NT)* to have the daily care and control, or parental responsibility, of the child transferred to the Territory Families' Chief Executive Officer.

### Types of care and protection orders

**Provisional protection order** – Used when the investigation and assessment team believes that a child needs immediate protection, this order grants daily care and control of the child or young person to the Chief Executive Officer. The child must be returned to their primary caregiver or an application for a temporary protection order must be made within 72 hours. Parental responsibility for the child remains with the child's parents.<sup>13</sup>

**Temporary protection order** – This type of order is used when there is sufficient information available during the assessment process to warrant applying for a court order to secure the safety of the child for up to 14 days. Parental responsibility for the child or young person remains with the child's parents.<sup>14</sup>

**Short-term protection order** – This type of order transfers parental responsibility to the Chief Executive Officer for between six months and two years. Short-term protection orders are intended for use when the goal is to reunify the child with their parent or caregiver.<sup>15</sup>

**Long-term protection order** – This order transfers parental responsibility to the Chief Executive Officer for longer than two years and up until a child or young person turns 18. Long-term protection orders are intended for use when it is considered that it will not be possible to reunify the child or young person with their parent or caregiver.<sup>16</sup>

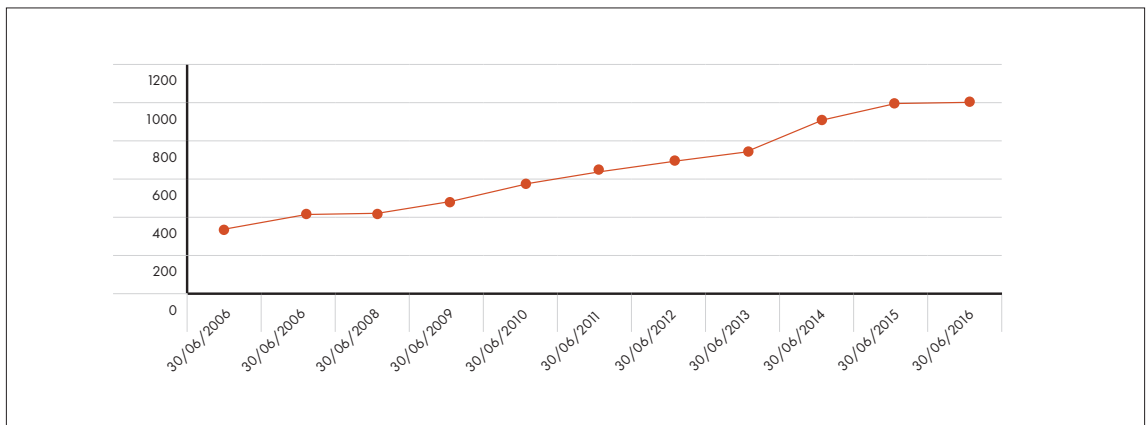
Not all children on care and protection orders in the Northern Territory are placed in out of home care. But the rates for children on short- and long-term protection orders, which transfer parental responsibility for the child to the Chief Executive Officer for at least six months, have increased since 2009.<sup>17</sup> The rates for children on long-term protection orders have increased 12-fold since 2009, suggesting children in the Northern Territory are now more likely to remain in out of home care for longer.

## Rates of children living in out of home care

As at 30 June 2016, the Commission understands there were 1,020 children in the Northern Territory living in out of home care,<sup>18</sup> representing 1.6% of the Northern Territory’s child population.<sup>19</sup>

The overall number of children living in out of home care has increased between 2006 and 2016.

**Figure 33.1:** The number of children in out of home care in the Northern Territory has increased between 2006 and 2016.<sup>20</sup>



## Rates of children admitted to out of home care in the Northern Territory

Nationally, despite the overall number of children living in out of home care increasing over the last 10 years, the number of children entering out of home care each year has remained relatively stable. This reflects the overall increase in the number of children in out of home care resulting from the growing number of children entering care earlier and remaining in care for longer.<sup>21</sup>

In the Northern Territory, this is reflected in the relatively stable number of children entering care over the past decade (see Table 33.1), but with an increasing proportion being placed on long-term orders. As children are staying in care longer, the total number of placements required continues to increase, even though the number of children entering care in any one year has not grown.

Table 33.1 shows the number of children who entered care in the Northern Territory each year from 2006–07 to 2015–16.

**Table 33.1: Number of children admitted to out of home care in the Northern Territory between 2006–07 and 2015–16<sup>22</sup>**

| Year    | Number of children admitted to out of home care |
|---------|---|
| 2006–07 | 384   |
| 2007–08 | 276   |
| 2008–09 | 318   |
| 2009–10 | 366   |
| 2010–11 | 356   |
| 2011–12 | 399   |
| 2012–13 | 365   |
| 2013–14 | 394   |
| 2014–15 | 334   |
| 2015–16 | 294   |

## Rates of children who exited out of home care in the Northern Territory

The Deputy Chief Executive Officer of Territory Families indicated to the Commission that in 2015–16, 256 children and young people exited out of home care and did not return within two months.<sup>23</sup> This figure does not reveal how many children were returned to the families they were removed from and how many left out of home care for other reasons (such as ageing out of care). Territory Families was also unable to identify the number of families that were working with its reunification program.<sup>24</sup>

The Commission requested from Territory Families a breakdown of child protection cases closed by age, placement and client status between 2006–07 and 2016–17.<sup>25</sup> Territory Families provided a snapshot in time of the status of children when their cases were closed. It did not specify whether children were returned to the families they were removed from, or, in cases where they were aged under 18, if they later returned to out of home care. In its submission, the North Australian Aboriginal Justice Agency (NAAJA) raised this lack of reunification data as a problem.<sup>26</sup>

The Commission was told Territory Families uses a proxy measure of the number of children aged 0–17 who exit out of home care and do not return within two months as a measure of reunification activity.<sup>27</sup> However, the use of the Community Care Information System option ‘child returned to family’ does not give a true proxy because it does not indicate whether the child or young person is returned to the family from which they were removed.<sup>28</sup> The Commission was told:

*Files maintained in relation to children in the care of the Chief Executive contain information as to reunification attempts and other outcomes. In order to extract that data, it would be physically necessary to go through and inspect each file and the*

relevant case notes. However, for quantitative data collection and statistical purposes, there is not a dedicated data field in [the] Community Care Information System (CCIS) that records the event of “reunification” of a child with their family of origin.<sup>29</sup>

## Extent of placement instability

Some children in out of home care in the Northern Territory experienced high levels of instability. Of the 1,045 children in care at 31 March 2017:

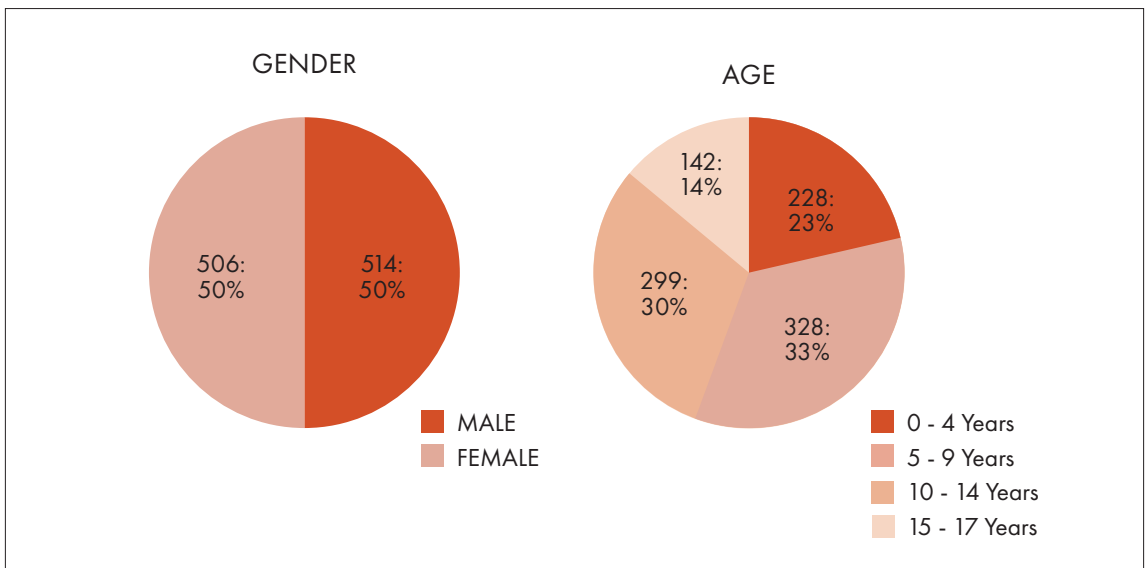
- 544 (52%) had had one or two placements since they entered care<sup>30</sup>
- 359 (34%) had had between three and six placements
- 93 (9%) had had between seven and 10 placements
- 49 (5%) had had more than 10 placements, and
- one child had had 23 placements.<sup>31</sup>

The Productivity Commission reported on the number of placements experienced by children exiting out of home care in 2015–16. Compared to other jurisdictions, the Northern Territory had the highest proportion of children in care for more than a year who experienced three or more placements.<sup>32</sup> The majority of children in the Northern Territory exiting care after more than 12 months had experienced three or more placements.<sup>33</sup>

The following are demographic characteristics of children in out of home care as at 30 June 2016:

- more than half were aged under 10, and
- there was an equal proportion of male and female children.

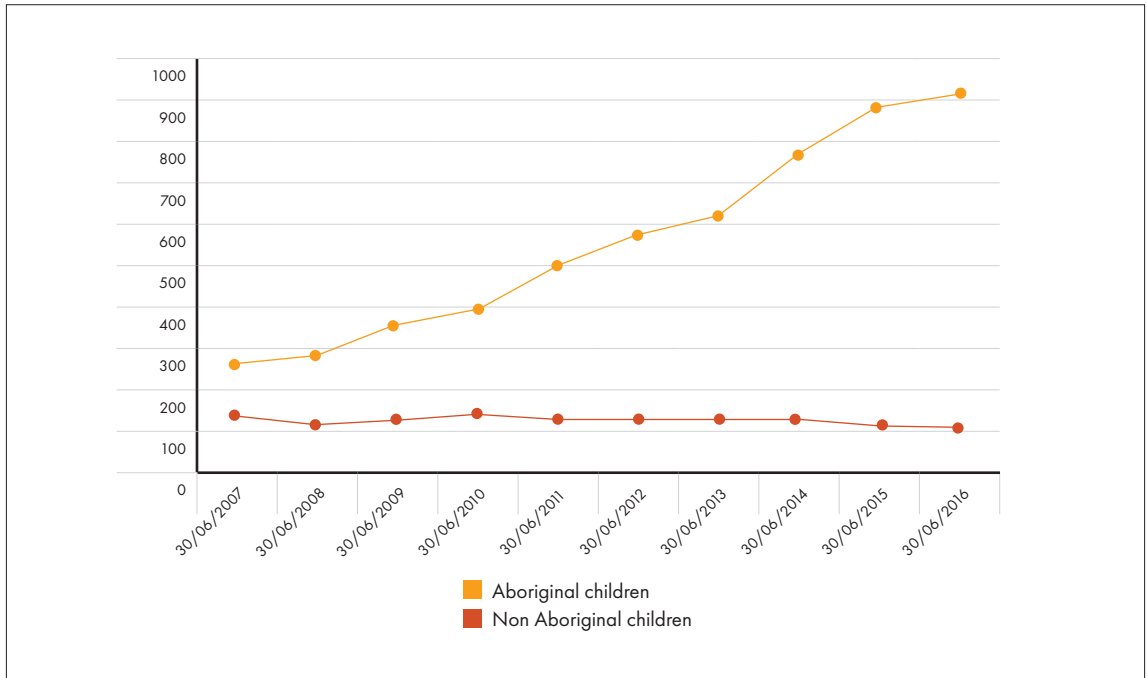
**Figure 33.2:** Number and percentage of children in out of home care by gender and age at 30 June 2016.<sup>34</sup>



## Over-representation of Aboriginal children in out of home care

As noted above, as at 30 June 2016, 89% of the children in out of home care in the Northern Territory were Aboriginal. For Aboriginal children, 34.4 per 1,000 children were in out of home care compared with 3.1 per 1,000 non-Aboriginal children.<sup>35</sup>

**Figure 33.3:** Number of children in out of home care in the Northern Territory by Aboriginality between 2006 and 2016.<sup>36</sup>



Over the last 10 years, the rates of Aboriginal children in out of home care nationally have continually increased. This trend is reflected in the Northern Territory, where the number of Aboriginal children in out of home care has tripled since 30 June 2007.<sup>37</sup>

It is clear that despite multiple inquiries and reviews into child protection systems nationally, there has been limited reform that has resulted in meaningful change for Aboriginal children.<sup>38</sup>

The reasons for the over-representation of Aboriginal children are complex and interrelated and are discussed in Chapter 30 (The child protection landscape). Specific considerations that apply to the development of a system that meets the needs of Aboriginal children and families are discussed in more detail later in this chapter.

## Proportions of children in different types of care

Territory Families provides five main types of out of home placement for children under the care of the Chief Executive Officer. These can be broadly separated into two categories: home-based care and non-home based care. These placement types form the Territory Families' *Continuum of Out-*

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*of-home Care*, which groups placements by their type and purpose.<sup>39</sup> In broad terms, the continuum prioritises placing children with their extended family and other types of home-based care before placing children in non-home based care.

## Types of out of home care placements

### *Home-based care*

Home-based care refers to placing children in the homes of carers who are paid or offered either a commercial fee or an allowance to cover the costs associated with caring for the child.

The types of home-based care used in the Northern Territory, as defined by Territory Families, include:

- **Kinship care** – This care is provided by a relative of an Aboriginal or non-Aboriginal child or other person with an existing relationship with the child, in the carer’s home. Territory Families authorises kinship carers, who are reimbursed with an allowance, which varies according to the age of the child and the complexity of their needs.<sup>40</sup>
- **Foster care** – This care is provided by a carer who is not related to the child, in the carer’s home. Territory Families authorises foster carers, who are reimbursed with an allowance, which varies according to the age of the child and the complexity of their needs.<sup>41</sup>
- **Purchased home-based care** – This is a fee-for-service arrangement in which a family day carer provides care in their home, subject to the standards and requirements governing the conduct of a business as a long-day childcare provider.<sup>42</sup>

### *Non-home based care*

Non-home based care refers to other types of out of home care, including where children are placed with rostered staff or in small groups.

The types of non-home based care used in the Northern Territory include:

- **Residential care** – This involves placing children one on one or in groups of up to six in a residential building with paid, rotating staff.<sup>43</sup>
- **Other forms of care** – This refers to other placements such as boarding school, hospital or a youth detention centre, which are made according to the child’s circumstances.<sup>44</sup>

There has been huge growth in the number of children placed in purchased home-based care and residential care since 2006, especially after the Board of Inquiry released its report in 2010. In particular, there has been a substantial increase in the number of children in purchased home-based care,<sup>45</sup> which has increased from one child placed in this form of care in 2006 to 324 children in 2016.

At 30 June 2016, 113 children were in residential care in the Northern Territory compared with six children in 2006.<sup>46</sup> The Northern Territory has one of the highest rates of children placed in residential care, at 11% compared with 5% nationally.<sup>47</sup>



Since 2006, the proportion of children in foster and kinship care has fallen from 75% to 53%.

The following chart shows the proportion of children in each type of care from 2006 to 2016, including the notable increase in the use of purchased home-based care.

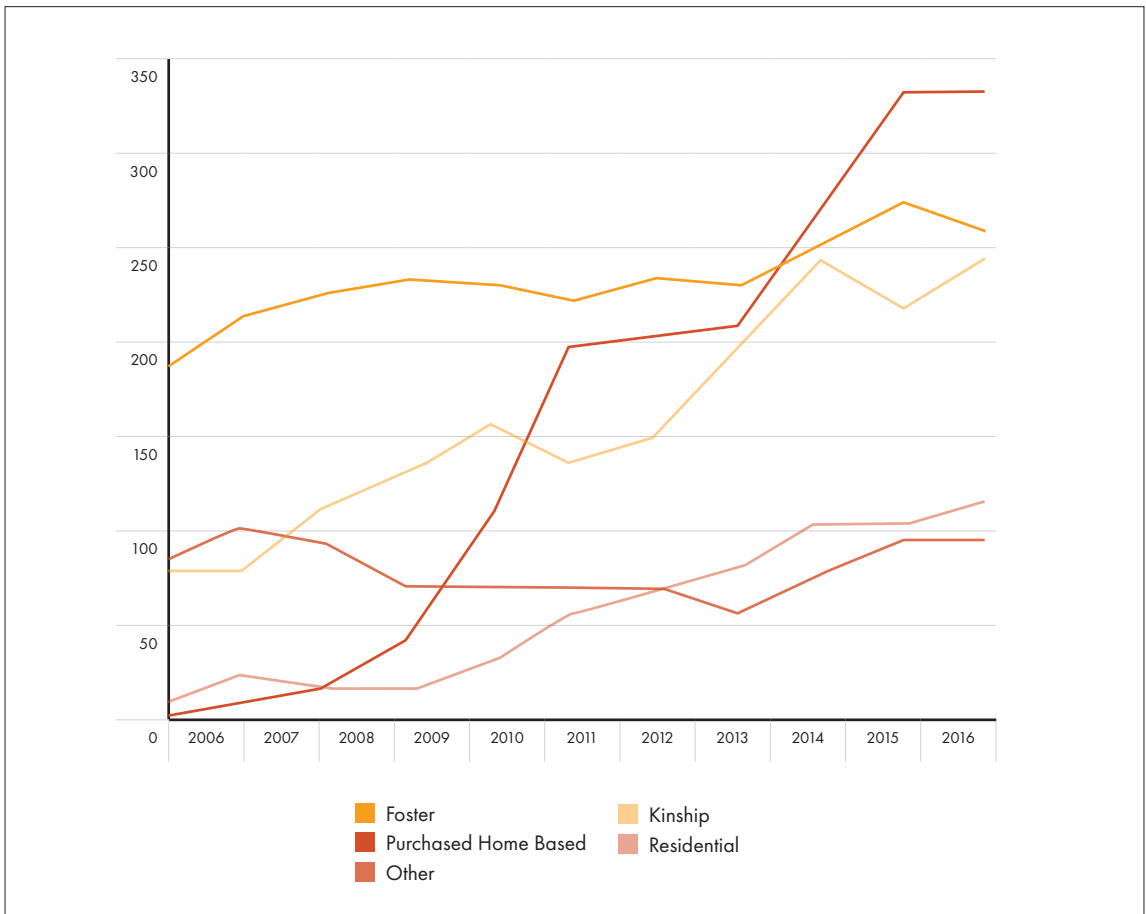
**Table 33.2: Number of children in each placement type between 2006 and 2016.<sup>48</sup>**

| Table        | Foster care | Kinship care | Purchased homebased care | Residential care | Other care types | Total |
|--------------|-------------|--------------|--------------------------|------------------|------------------|-------|
| 30 June 2006 | 183         | 76           | 1                        | 6                | 81               | 347   |
| 30 June 2007 | 208         | 79           | 6                        | 19               | 97               | 409   |
| 30 June 2008 | 221         | 108          | 16                       | 13               | 86               | 444   |
| 30 June 2009 | 228         | 128          | 40                       | 14               | 68               | 478   |
| 30 June 2010 | 225         | 152          | 101                      | 28               | 68               | 574   |
| 30 June 2011 | 217         | 132          | 192                      | 52               | 64               | 657   |
| 30 June 2012 | 225         | 145          | 199                      | 65               | 68               | 702   |
| 30 June 2013 | 225         | 189          | 203                      | 78               | 53               | 748   |
| 30 June 2014 | 249         | 237          | 257                      | 99               | 75               | 917   |
| 30 June 2015 | 269         | 214          | 325                      | 97               | 92               | 997   |
| 30 June 2016 | 256         | 235          | 324                      | 111              | 94               | 1020  |

Table 33.2 and Figure 33.4 on the next page show the number of children in each placement type each year between 30 June 2006 and 30 June 2016.



Figure 33.4: Number of children in each placement type between 2006 and 2016.<sup>49</sup>



## FRAMEWORKS AND PRINCIPLES FOR OUT OF HOME CARE

The *United Nations Guidelines for the Alternative Care of Children*, which support the effective implementation of the CRC, emphasises the importance of family<sup>50</sup> and the principle that removing a child should be a measure of last resort and for the shortest time possible.<sup>51</sup> As such, it is crucial that all options to keep a child at home and reunify them with their family are fully and adequately explored. Where this is not possible, out of home care must meet the National Standards for out of home care by promoting the best interests of the child and supporting their individual needs. If it is considered essential to remove a child, it is critical that the family knows and understands what is happening and that all other options have been considered and exhausted.

An out of home care system that delivers services based on the needs of the child and their family must provide the child with improved safety and stability, and ongoing connections to family and culture. This is essential to support the improved health, wellbeing and sense of identity held by children in care, and provides an opportunity to interrupt the pathway of children from out of home care to the youth justice system. This pathway is discussed further in Chapter 35 (The crossover of care and detention).

As described in this and previous chapters, the current child protection system fails to provide early support to families or address their needs as soon as possible. This has meant that increasingly complex and deeply entrenched problems have developed by the time the child protection system reaches a child and their family.

## National standards for out-of-home care

Under the National Framework for Protecting Australia's Children 2009–2020,<sup>52</sup> the Commonwealth Government, state and territory governments, and the non-government sector have developed National Standards to ensure optimal outcomes for children in out of home care, no matter where they live. There are 13 National Standards, each with defined and measurable outcomes.

### *The National Standards for out-of-home care*

**Standard 1** – Children and young people will be provided with stability and security during their time in care.

**Standard 2** – Children and young people participate in decisions that have an impact on their lives.

**Standard 3** – Aboriginal and Torres Strait Islander communities participate in decisions concerning the care and placement of their children and young people.

**Standard 4** – Each child and young person has an individualised plan that details their health, education and other needs.

**Standard 5** – Children and young people have their physical, developmental, psychosocial and mental health needs assessed and attended to in a timely way.

**Standard 6** – Children and young people in care access and participate in education and early childhood services to maximise their educational outcomes.

**Standard 7** – Children and young people up to at least 18 years are supported to be engaged in appropriate education, training and/or employment.

**Standard 8** – Children and young people in care are supported to participate in social and/or recreational activities of their choice, such as sporting, cultural or community activity.

**Standard 9** – Children and young people are supported safely and appropriately to maintain connection with family, be they birth parents, siblings or other family members.

**Standard 10** – Children and young people in care are supported to develop their identity, safely and appropriately, through contact with their families, friends, culture, spiritual sources and communities and have their life history recorded as they grow up.

**Standard 11** – Children and young people in care are supported safely and appropriately to identify and stay in touch with at least one other person who cares about their future, who they can turn to for support and advice.

**Standard 12** – Carers are assessed and receive relevant ongoing training, development and support, in order to provide quality care.

**Standard 13** – Children and young people have a transition from care plan, commencing at 15 years of age, which details support to be provided after leaving care.

The Northern Territory has accepted all 13 National Standards.

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Territory Families has also developed its own standards for out of home care, which are considered to align with the National Standards, the CRC and the *Charter of Rights for Children and Young People in care in the Northern Territory*.<sup>53</sup>

States and territories are required to provide data annually to the Australian Institute of Health and Welfare and the Productivity Commission on their performance against the indicators for the National Standards. The Commission understands that it was not possible to analyse data from the Northern Territory on a number of these indicators due to either the data not being available or concerns about its quality.<sup>54</sup>

The 2015 Senate Community Affairs References Committee inquiry into out of home care heard evidence that there were a number of national challenges to overseeing adherence to the National Standards. These challenges included lack of funding to monitor the standards and lack of enforceable measures, resulting in poor implementation of the framework.<sup>55</sup> Additionally, the Senate committee reported that there had been limited improvements to the outcomes for children in out of home care since the introduction of the National Standards. The Executive Director of the CREATE Foundation told the Commission there was no accountability to state or territory governments if the standards were not met.<sup>56</sup>

## The Aboriginal Child Placement Principle

As discussed in Chapter 31 (Engagement in child protection), the Aboriginal and Torres Strait Islander Child Placement Principle seeks to preserve and enhance the connection of Aboriginal children with their community, culture and country. Of particular relevance to out of home care, the Principle prioritises options that should be explored when an Aboriginal child is placed in out of home care, to support the child's ties to their family and culture. This aspect of the Principle is legislated in subsection 12(3) of the *Care of Protection of Children Act*.

### Subsection 12(3)

An Aboriginal child should, as far as practicable, be placed with a person in the following order of priority:

- (a) a member of the child's family;
- (b) an Aboriginal person in the child's community in accordance with local community practice;
- (c) any other Aboriginal person;
- (d) a person who:
  - (i) is not an Aboriginal person; but
  - (ii) in the Chief Executive Officer's opinion, is sensitive to the child's needs and capable of promoting the child's ongoing affiliation with the culture of the child's community (and, if possible, ongoing contact with the child's family).

Territory Families provides guidance in applying the Principle through the *Aboriginal Child Placement Principle Practice Guide*.<sup>57</sup> This guide gives an overview of steps that must be taken when identifying potential kinship carers and making decisions about placement.<sup>58</sup>

Despite the legislative requirements to aim to place Aboriginal children with relatives or Aboriginal carers, as well as the Territory Families’ Practice Guide, the Commission is concerned that in 2016 almost two-thirds of Aboriginal children were not placed with relatives, other Aboriginal caregivers or in Aboriginal residential care facilities.

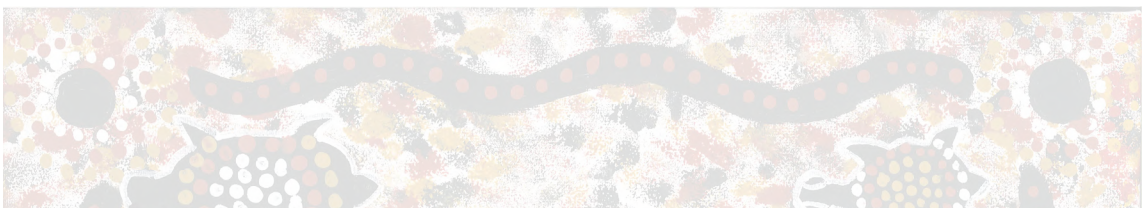
**Table 33.3: Aboriginal children in out of home care in the Northern Territory, by Aboriginality and relationship of carer, at 30 June 2016.<sup>59</sup>**

| Carer relationship   | Northern Territory (%) <sup>60</sup> |
|--|--------------------------------------|
| Indigenous relative/kin  | 30.1                                 |
| Other Indigenous caregiver   | 6.2                                  |
| Other relative/kin   | 0.0                                  |
| Total placed with relative/kin, other Indigenous caregiver or in Indigenous residential care     | 36.2                                 |
| Total not placed with relative/kin, other Indigenous caregiver or in Indigenous residential care | 63.8                                 |
| Total  | 100.0                                |

The Children’s Commissioner noted that one of the key challenges facing Territory Families in meeting the requirements of the Principle was the smaller number of available adults for Aboriginal children, compared to non-Aboriginal children.<sup>61</sup>

The Central Australian Aboriginal Legal Aid Service (CAALAS) told the Commission that the Principle was not being complied with in the Northern Territory. CAALAS said a failure to investigate all kinship options, because caseworkers do not understand the Aboriginal kinship system, was contributing to low placement rates.<sup>62</sup>

Further discussion of the limited understanding in the workforce of Aboriginal kinship systems can be found later in this chapter in ‘Factors contributing to the shortage of Aboriginal kinship and foster carers’. Further discussion of the Principle and monitoring its compliance in the Northern Territory is discussed in Chapter 31 (Engagement in child protection).



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## DECISION-MAKING BASED ON THE NEEDS OF THE CHILD AND THEIR FAMILY

In Territory Families' policy on placements, the safety, wellbeing and best interests of a child must be paramount when making decisions about the care of a child.<sup>63</sup> Currently in the Northern Territory, when a child requires placement, a caseworker completes a placement request form which identifies the child's placement needs. The forms are processed by Territory Families' Placement Unit, which sources a suitable placement for the child.<sup>64</sup>

This process requires careful consideration and planning. It involves assessing and weighing up multiple and sometimes conflicting factors, including keeping siblings together, preserving and enhancing ongoing connection to culture and the child's family, and considering the wishes of the child and their family.<sup>65</sup>

Case management and planning that recognise and promote the needs of the child and actively engages the child and their family in decision-making are required throughout all aspects of out of home care. They include the period when the child is being removed from home; while exploring reunification; when the child is living in long-term out of home care; and when a young person is preparing to leave long-term care having reached adulthood.

Front line care and protection positions have been described as among the most challenging jobs a person can undertake. Staff are required to engage frequently with children with challenging behaviours and families in highly stressful situations. Even experienced people with appropriate skills and support find it a demanding and difficult role.<sup>66</sup> These factors are intensified in the Northern Territory, where care and protection staff frequently have high case-loads, are required to perform their roles with relatively limited training and support, and often have to make professional judgments with limited information.<sup>67</sup>

The Northern Territory Children's Commissioner emphasised that in her experience, front line staff were passionately committed to working with families. She said it was to their credit that they persist with trying to improve the lives of families given the strains they experience.<sup>68</sup> Front-line staff can make a significant difference in the lives of children and families. Vulnerable witness DG told the Commission about the impact her former case manager, DH, had on her life. She said her case manager was someone who took the time to get to know her and could 'listen to my heart and ... feel what I was feeling'.<sup>69</sup> Similarly, vulnerable witness DB said her best caseworker 'understood me and listened to me'.<sup>70</sup>

Children and families have dynamic needs and planning for the trajectory of children and families throughout the out of home care system should take this into account. The needs of children and families and the related goals of case planning are likely to change. Decision-making that is in the best interests of the child remains a prerequisite throughout the child's time in care. Yet, the Commission heard that time and resource pressures impede this.<sup>71</sup> Planning and decision-making in the Northern Territory currently fail to meet some of the practices and standards required to ensure the best interests of children and families. APO NT commented on the:

*... "cookie cutter" or "cut-and-paste" care plans, which are effectively meaningless according to the individual needs of children and their families; a huge proportion of children [are] without a care plan relevant to their current circumstances; [there is] a lack of participation by children and their families in the drafting of the care plans.<sup>72</sup>*

## Assessing the needs of children

As part of the placement decision-making process, a thorough assessment of the child or young person's physical, behavioural and socio-emotional needs should be performed. This is intended to ensure that the carer can provide for the child or young person's specific needs.

The Complexity Tool, which is validated for determining the placement requirements of a child or young person, is used to measure the complexity or their needs in the areas of:

- substance use
- sexualised behaviour
- offending behaviour
- school behaviour
- general behaviour
- physical health
- child development and intellectual ability
- mental health, and
- physical disability.<sup>73</sup>

Based on this measure, children are given one of four complexity ratings, which are:

- Level 1 – standard care
- Level 2 – high care
- Level 3 – complex care, and
- Level 4 – extreme care.<sup>74</sup>

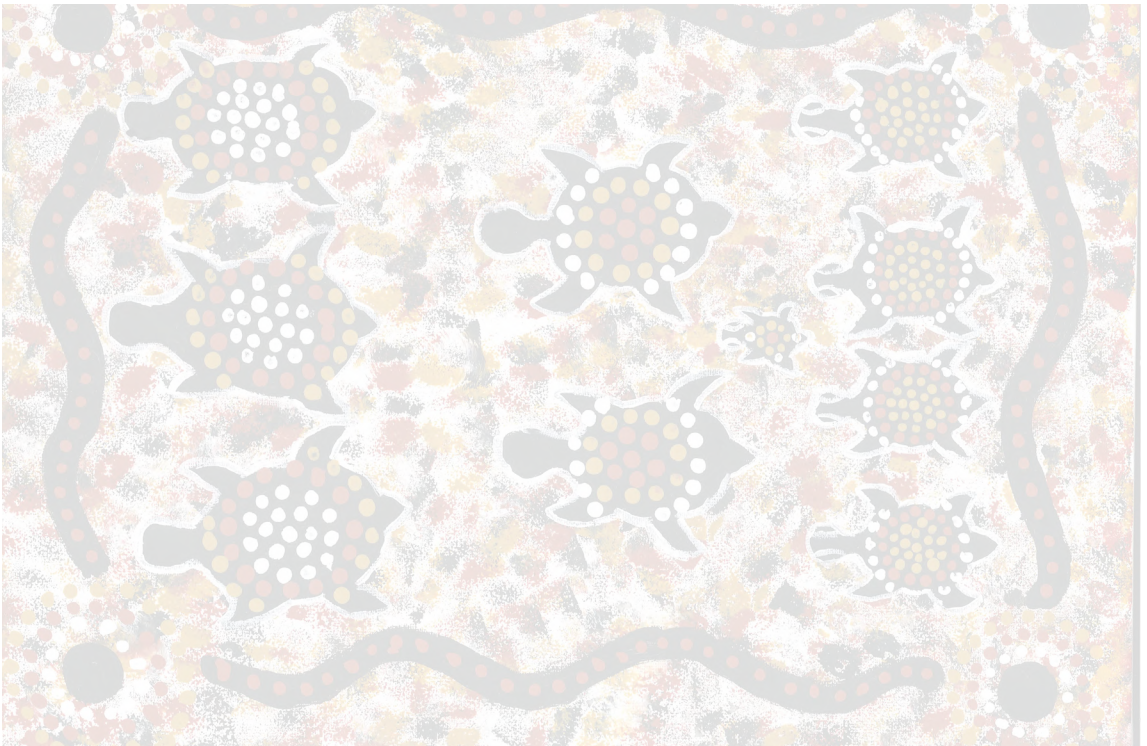
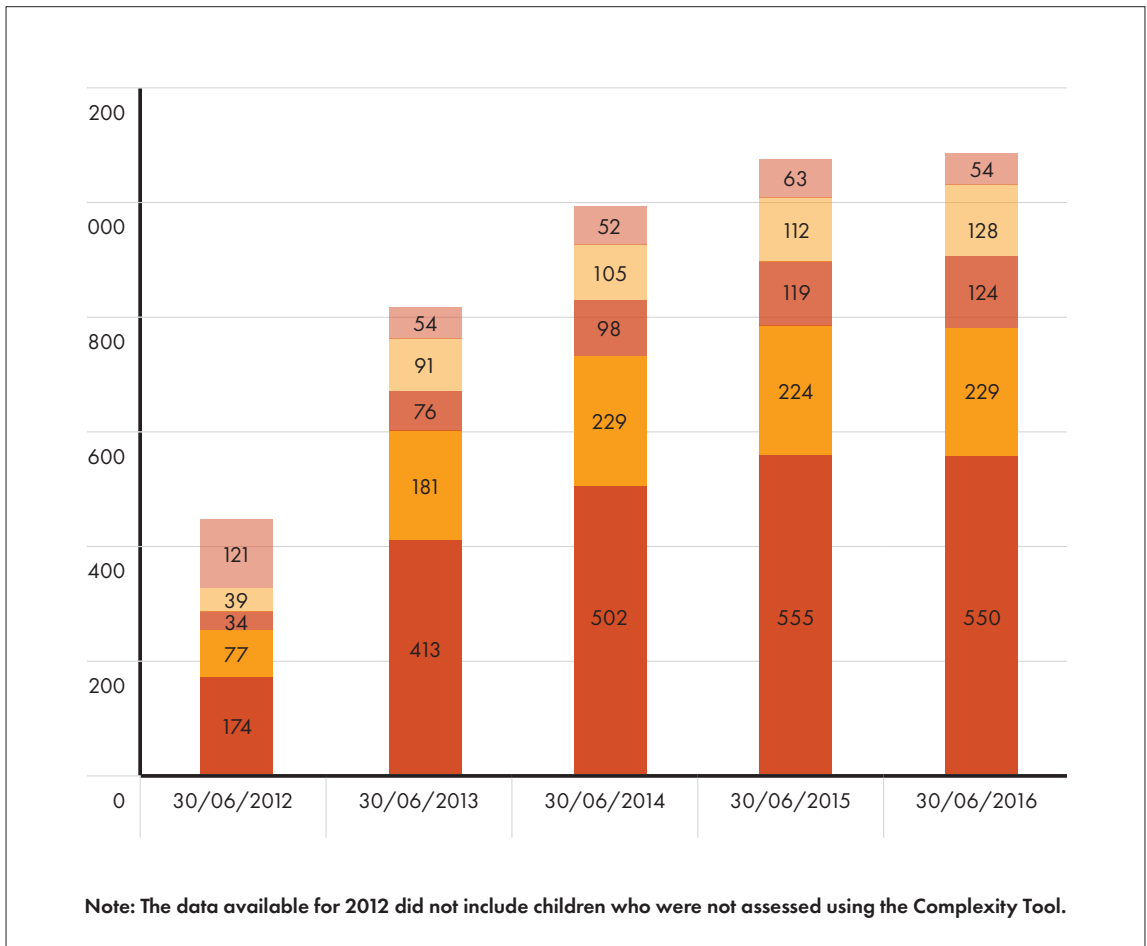


Figure 33.5 shows the increasing number of children with higher complexity ratings since 2012, signifying the increasing difficulty of providing sufficient placement options for children with highly complex needs.

**Figure 33.5: Complexity ratings of children on care and protection orders from 2012 to 2016**



Territory Families also prepares a Monthly Care Report for children in out of home care. These reports require a caseworker’s review of a child’s strengths and needs, including behavioural and emotional development, health needs, sense of identity/culture and educational needs.

## Participation of children in decision-making

The rights of a child or young person in care to be involved in decision-making about their situation are set out in section 11 of the *Care and Protection of Children Act*. Decisions are meant to involve consultations with them, their families and carers.<sup>75</sup> The Chief Executive Officer must also take into account the wishes of the child when preparing or modifying a care plan<sup>76</sup> and participation by the child in decision-making is one of the National Standards for Out of Home Care.<sup>77</sup>



In its submission to the Commission, the CREATE Foundation suggested that government agencies often fail to seek the opinion of a child about their placement in out of home care. The CREATE Foundation recommended that a formal mechanism be put in place for children to communicate directly with Territory Families.<sup>78</sup>

Other concerns were raised with the Commission about the limited participation of children in decisionmaking. The Commission heard from children who felt they had not been consulted regarding decisions about their care.<sup>79</sup>

Territory Families told the Commission it was working with the CREATE Foundation to establish a roundtable process for children in out of home care. This would allow children to provide their views about their experiences and contribute to the development of future policy and services.<sup>80</sup>

### **Recommendation 33.1**

**Territory Families develop strategies to give better effect to section 11 of the *Care and Protection of Children Act (NT)* at all stages of their engagement with children in their care.**

## ***Participation of families in decisions about their children***

Families are usually best placed to make decisions about the care of their children. The views of children and families, to the extent that they are able to participate, must inform the decision-making processes for children in out of home care.

The Commission heard that several factors influence the ability of Territory Families to engage productively with families, communities and organisations in processes and decision-making relating to child protection. They include:

- lack of mandated mechanisms, such as family group conferencing, to support the involvement of families in decision-making about their children,<sup>81</sup> and
- limited access to interpreters or other services to address language barriers.<sup>82</sup>

Territory Families recognised that inadequate staffing levels impacted the level of engagement staff members were able to have with families to rebuild trust. It prevented them from spending time with the parent(s) they were seeking to help; for example, taking them to a particular service, encouraging them to engage and supporting them with follow-up.<sup>83</sup>

## ***Participation of Aboriginal families***

The Board of Inquiry report identified the lack of participation by Aboriginal families in decision-making, suggesting that when it did occur, it was often limited to the placement decision. The report suggested that this was inadequate because consultation needed to occur in all decisions about children deemed to be at risk, as it may prevent the need to place children in care.<sup>84</sup> The Commission heard that these rights are not upheld. Members of the Lajamanu community told the Commission:

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*We want Welfare [the department] to keep children in the family, in the community and to try much harder to find a way to make this happen. At the moment, all the paperwork confuses us and stops us being able to care for our children – family is much more important than paperwork! We ask the government to provide more help with this paperwork or to make it easier for Aboriginal people to deal with. We also want to know what is happening with kids when welfare takes them away.<sup>85</sup>*

The Commission heard that factors which operate against Territory Families engaging productively with Aboriginal families and groups include:

- inadequate or inappropriate use of and consultation with Aboriginal workers when engaging with families,<sup>86</sup> and
- lack of consultation or engagement with Aboriginal Community Controlled Organisations.<sup>87</sup>

Language barriers can also curtail or prevent Aboriginal families' participation in decision-making about their children. DJ, a young Aboriginal woman from a remote community who speaks English as a second language, told the Commission that Territory Families' inconsistent use of interpreters affected her family's understanding of the department's involvement with their children. Her mother did not have an interpreter for a cognitive and parenting capacity assessment, which concluded that her mother lacked parenting capacity. *'I do not think my mum understood why that whole assessment was happening,'* she said.<sup>88</sup>

National and international research has highlighted that solutions designed by Aboriginal individuals, communities and organisations are far more likely to successfully address the needs of Aboriginal children and families.<sup>89</sup> As highlighted in a submission from the Secretariat of National Aboriginal and Islander Child Care (SNAICC) the lack of participation is an issue of great concern for Aboriginal families, who make up almost the entire population of families with children living in out of home care. This is further discussed in Chapter 31 (Engagement in child protection). Aboriginal families and communities continue to distrust government action on child protection as a result of past government practices. It is expressed in one unhappy word, *'welfare'*, which the Commission heard repeatedly as something to fear during its community meetings and consultations. The Commission heard from a Senior Aboriginal Community Worker that *'investigations and intervention is generally not welcomed by many families'*.<sup>90</sup> A worker from the Remote Family Support Service supported this view, conceding that people in Aboriginal communities still expressed concerns that she was part of the *'welfare mob'*.<sup>91</sup> The lack of engagement with Aboriginal families contributes to furthering this sense of mistrust.

## Returning children to family and community

Human rights principles provide that all efforts should be made to keep children and young people living with their parents where appropriate, and that where a child is removed, safe reunification should always be preferred.<sup>92</sup>

The *United Nations Guidelines for the Alternative Care of Children* emphasises the importance of family,<sup>93</sup> and the principle that removing a child should be a measure of last resort and should be for the shortest time possible.<sup>94</sup>

Legislation in the Northern Territory with respect to reunification is consistent with the underlying

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human rights principles. Section 8 of the *Care and Protection of Children Act* sets out the role of the family in the care and development of a child. It emphasises ongoing contact with family when a child has been removed and provides that, where practicable and consistent with the best interests of the child, the child should eventually be returned to the family. Reunification is an issue of longstanding concern in the Northern Territory. The BOI report included four recommendations relating to reunification.<sup>95</sup>

Reunification should be conceived in legislation and supported by relevant policies and procedures as a gradual and supervised process, accompanied by follow-up and support measures that take account of the child's age, needs and evolving capacities, as well as the cause of the removal.<sup>96</sup> Geographical distance and isolation, language and resourcing are just some of the hurdles that compound and delay an already complex process.

The Commission heard of families seeking the return of their children who criticised the approach taken by Territory Families.<sup>97</sup> The Commission was made aware of a strong view in Aboriginal communities that more effort should be made to reunify children and young people in out of home care with their families. Many factors to be considered in the reunification process were raised as areas of concern with the Commission, including engagement with families, contact arrangements and the absence of sufficient reunification services and supports.<sup>98</sup> CAALAS told the Commission:

*Many Aboriginal children are removed from their families and placed with carers in circumstances where connections to family, culture and home communities are not maintained; moreover, where Territory Families does not support children and families to maintain those connections.<sup>99</sup>*

The Commission strongly supports reunification as a key objective in the child protection system. But the Commission also acknowledges the reality that some parents whose children have been taken into care struggle to overcome or effectively address the reasons for the removal, and sometimes do not succeed in doing so. Even if reunification with parents cannot be achieved, the wider family of grandparents, aunts and uncles should be acknowledged and continuity of those relationships encouraged and nurtured. Reunification should remain a key objective in any consideration of the best interests of the child.

*'We are glad [my grandson] is back with us and he doesn't have to live in Darwin anymore. We love him a lot and we are proud of the way he is growing up. He is crawling round so fast and he is starting to walk. We wish this never happened to us, though. Our family will never forget the way it felt when he was taken from us. It will always be a hurt in our family.'*

Vulnerable witness DI<sup>100</sup>

The policy and procedures which apply to reunification are set out in two Territory Families' documents: *Policy: Reunification* and *Procedure: Reunification*.<sup>101</sup> The reunification policy defines reunification as 'the planned and timely process of safely returning a child home to their parents, or to other family or kin who had previously been exercising parental responsibilities for the child'.<sup>102</sup>

The reunification procedure outlines the essential factors to be considered during the reunification process. These include:

- timeframes for making decisions about reunification
- preparation and case planning for reunification
- contact arrangements
- reunification services and support
- assessing readiness for reunification
- assessing when reunification is no longer in the child’s best interest
- transitioning a child back to their parent(s) home, and
- providing support, monitoring and reviewing post reunification.<sup>103</sup>

These factors are not independent and each influences and impacts the others. For example, time frames for reunification are affected by the availability of reunification services and support, and parental uptake of the services. The availability of the services and support, and parental engagement will, in turn, have a bearing on contact arrangements and assessment of the readiness for reunification, or, alternatively, whether reunification is no longer in the best interests of a child. Attempts at reunification and assessment of when it is possible are also influenced by the extent to which earlier interventions have occurred and how entrenched, severe and complex the issues confronting the family are.

To implement the policies, Territory Families has a number of dedicated teams for short-term care and reunification. These teams provide case management and intervention services, and work with families to address safety concerns and allow for safe reunification with their children or young people. These teams are located in Darwin, Katherine and Alice Springs. Multi-function teams in the Arafura, East Arnhem and Barkly care and protection offices carry out the reunification program in these areas. The Reunification teams service the regional centres where they are located, with the reunification program operating on a fly-in fly-out basis in remote communities.<sup>104</sup>

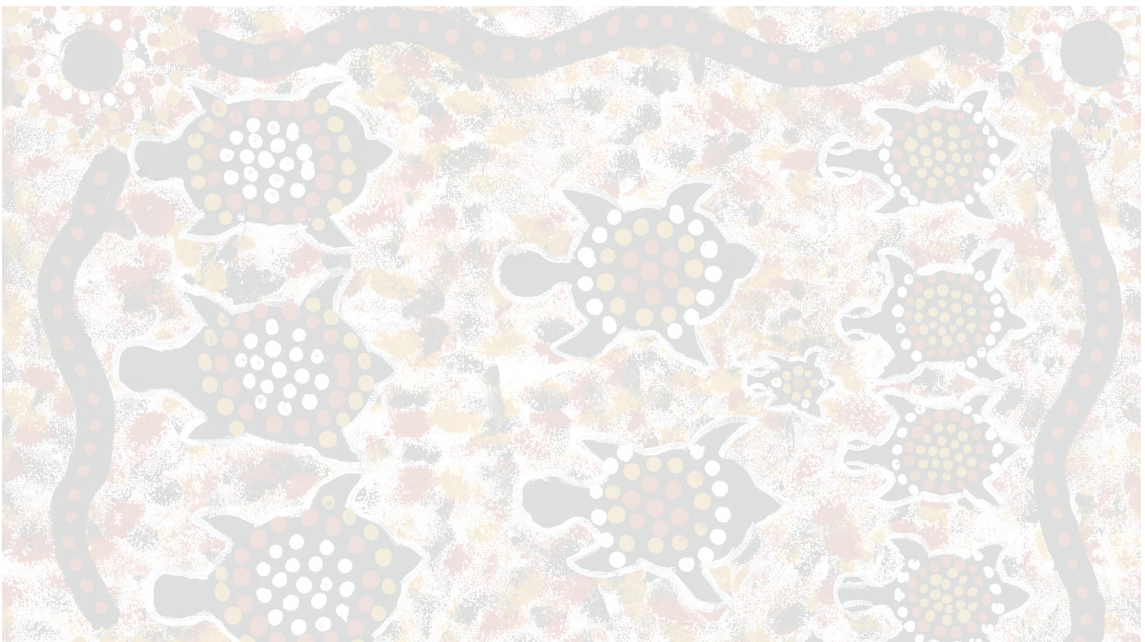
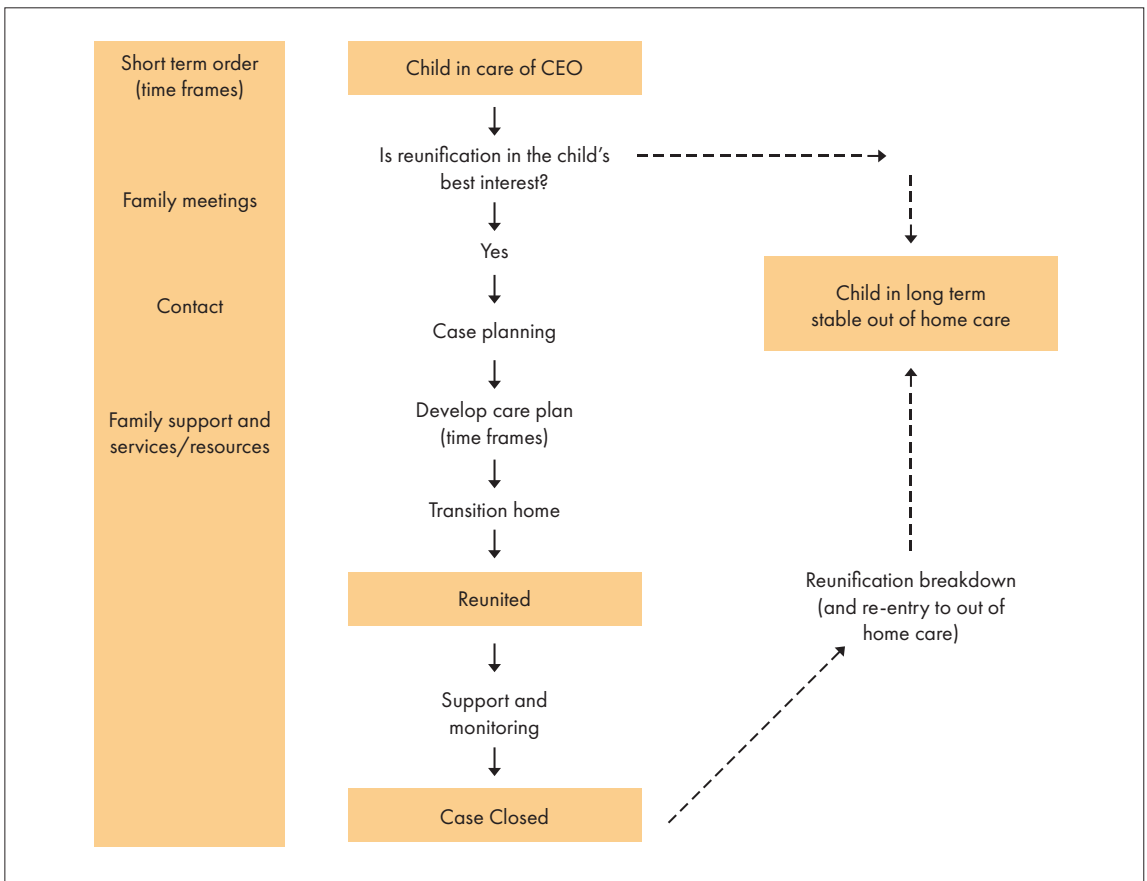


Figure 33.6: Flowchart of the Territory Families reunification process.<sup>105</sup>



Territory Families also provides guidance to caseworkers in a fact sheet, which details family strengths and the indicators of early reunification as well as poor prognosis.<sup>106</sup>

A checklist is also provided to caseworkers for assessing readiness for reunification. Factors that are considered include:

- level of functioning and parental capacity
- relationship with the child and mutual responsiveness
- attitude and understanding of the harm and changes required
- willingness and ability to act on the issues that led to the removal
- ability and capacity to provide adequate care
- ongoing commitment to the reunification process, and
- willingness to engage with the department and other providers.<sup>107</sup>



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## Communicating the requirements for reunification

Extensive concerns were raised that families do not understand the reunification process.<sup>108</sup> Where reunification is the goal, it is vital that parents know what they have to do to have their child returned to their care. In this respect, an acting Team Leader in Territory Families Reunification Team advised that Territory Families seeks to support families to achieve reunification by working with families to develop a realistic plan on how child protection concerns will be addressed and supporting the family to achieve this plan.<sup>109</sup> Problems with the reunification process were raised at the national level in the Senate Committee's inquiry into out of home care. It reported that it had heard in many cases that families are not aware of what is required to have their children returned, and are seldom supported to do so.<sup>110</sup>

NAAJA told the Commission:

*There is limited emphasis on family consultation and/or reunification ... To [NAAJA], work with families appears to be ad hoc and unstructured, without clear plans in place which communicate clearly to family members or Territory Families staff expectations and action points. In [NAAJA]'s experience, there is limited consultation with families or even the young person about the development and implementation of care plans.<sup>111</sup>*

The submission by CAALAS supported this view:

*[CAALAS] have observed that family members are not adequately or appropriately consulted by the department whilst care plans are being developed. Care plans are often poor quality, and lacking in substance regarding reunification plans and preserving and encouraging family and cultural connection.<sup>112</sup>*

*Postal service of documentation, combined with literacy and language barriers, can mean that parents are not always aware of care and protection matters being listed, or of the seriousness of proceedings. [CAALAS] observe many care and protection matters to be finalised at court are without a parent or other relative being present.<sup>113</sup>*

The Territory Families reunification procedure stipulates the need to establish baseline measures that are to be communicated to the family during initial planning meetings, including what actions must occur before a child can go home.<sup>114</sup>

The Commission heard that lack of understanding occurred in some cases because English was not the first language of many families. For those coming from more remote communities, English may not even be their second or third language. It is vital not to make assumptions about proficiency in English, and that interpreters are used when communicating with these families. This was emphasised by Maningrida's Bunawarra Dispute Resolution Elders.<sup>115</sup>

Territory Families' Acting General Manager Operations told the Commission there were practical challenges in accessing interpreters. However, the department had practice guidelines to assist its staff to use interpreters and in 2015–16, 249.43 interpreting hours were provided for child protection matters, with almost half used in remote areas.<sup>116</sup>

Language and the importance of using interpreters are discussed in detail in Chapter 34 (Legislation and legal process).

## Recommendation 33.2

Care plans must be kept up to date and provided to parents in clear and understandable language, with an interpreter if necessary, about what is required for reunification with their children.

### *Timeliness of reunification*

Research confirms that the earlier reunification takes place the more likely it is to succeed. Research conducted in Victoria, Tasmania and South Australia involved 1,337 children and young people aged 0–17 in out of home care. Their results showed that 60% of children and young people were still in out of home care two years after removal. Of those who returned home, almost 90% were reunified within the first year. Of the 535 children who returned home within two years, 57% (305) did so within the first three months, 16% (160) within six months and 16% (70) within 12 months.<sup>117</sup> Other recent Australian research suggests:

*The probability of reunification is greatest immediately following placement (within the first 50 days) into OOHC [out of home care]. The probability diminishes rapidly in the first few months of placement and then declines more slowly afterwards.*<sup>118</sup>

Timeliness is rightly emphasised in both Territory Families' policy and procedures. The procedures document highlights that successful reunification is more likely to occur in the first year, with the probability of success decreasing after this period. The procedures state that for children younger than two, the feasibility of reunification must be determined within 12 months of removal. For all other children, the decision must be made within 24 months.<sup>119</sup>

CAALAS told the Commission:

*A lack of family access during a period of removal compromises the chance of a successful reunification or restoration to family or kin, and about the barriers to access particularly for families from remote communities ... a major barrier to successful reunification of families is delay. Too many cases involve the kind of delay that frustrates the viability of reunification and leads to a scenario where reunification may no longer be in the best interests of the child.*<sup>120</sup>

Danila Dilba Health Service told the Commission:

*The current system doesn't focus on reunification until later in the care and protection process – reunification planning should begin from initial contact to ensure a consistent effort is made to reunify families.*

*Consideration should be given to embedding a person with reunification responsibility in investigation teams to facilitate timely referral and engagement of families to explore if there are good prospects of reunification.*<sup>121</sup>

The Commission recognises that delays can also occur as a result of families not meeting Territory Families' requirements within a specified time. For example, it was pointed out to the Commission that in some cases, the biggest delays in reunification were caused by the inability of the parents

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to address the risks to which the child was exposed.<sup>122</sup> This is particularly evident in circumstances where parents had substance misuse problems.<sup>123</sup>

However, the extent to which these problems impede reunification and the work of the Reunification Teams to address them has not been formally assessed or evaluated.<sup>124</sup> The Commission was told that the Northern Territory has not undertaken specific research relating to reunification.<sup>125</sup>

This lack of information makes it difficult to assess the current state of reunification efforts and form a view on what changes or improvements should be made.

The document on reunification procedures also advises that a reunification plan must not depend on the availability and/or provision of services and support for its success.<sup>126</sup> The reality is that many families will require services and support to make the necessary changes in their lives to achieve reunification with their children. Danila Dilba Health Service said:

*[There was] a lack of intensive, effective and appropriate support to Aboriginal families and kinship carers to remedy parenting and/or environmental issues which led to the removal of their children.<sup>127</sup>*

On this point, the Secretariat of National Aboriginal and Islander Child Care (SNAICC) stated in its submission to the Commission:

*An integrated service delivery approach is critical to strengthening families and addressing issues that they face. The lack of service availability and delay in service provision for families can limit timely and safe reunification. This may include delay in the form of waiting lists for critical services including housing, drug and alcohol counselling, mental health services, and family violence counselling.*

*In this context, we call for support for families in accessing vital services and an approach that continues to pursue reunification where families are facing lengthy waits for supports and services. While we support timely and safe reunification, we do not wish to see families losing opportunities at reunification because of delays that are no fault of their own.<sup>128</sup>*

Where possible and when it is in the best interests of a child to be reunified with their family, all efforts should be made to achieve this. Given the importance of reunification, it is the Commission's view that Territory Families should create a senior position in the department with overall responsibility for reunification policy and processes, oversight of reunification across the department and the role of promoting and reporting on reunification in the Northern Territory.

NAAJA recommended to the Commission that:

*Territory Families restrict the pursuance of orders placing a young person in their care until the age of 18 and re-emphasise reunification planning in order to better support families to address the issues and challenges they face. [NAAJA] recommend[s] Territory Families take a participatory approach with young people and their families regarding the development and implementation of reunification planning, and both support and adequately resource families to address the issues underpinning concerns of a care and protection nature.<sup>129</sup>*



### Recommendation 33.3

#### Territory Families:

- report on the number of children and young people successfully and unsuccessfully reunified with families and the duration of their period in out of home care and the systemic impediments to reunification, and
- create a senior position with overall responsibility for reunification policy and processes.

### *Reunification services and support*

Territory Families recognises that inadequate staffing levels impacted the level of engagement staff members were able to have with families.<sup>130</sup> Territory Families Acting General Manager Operations and the Chief Executive Officer both gave evidence about the very low rates of contact between the department and children but said that effort was being directed to improving contact.<sup>131</sup> The low staffing levels and resulting low rates of contact impact negatively on reunification plans. High staff turnover also hinders progress while new staff members are made familiar with matters. These factors all reduce the likelihood of successful reunification. It appears from the evidence that once a child is removed, Territory Families has insufficient resources to perform more than limited follow-up on reunification and other aspects of the welfare of children under its care.<sup>132</sup>

The CREATE Foundation observed that reunification was often tried before the birth parents had worked extensively on addressing the issues or concerns around their parenting which that led to the department's involvement in the first place. CREATE Foundation believes that reunification can only occur when all parties are able to clearly articulate the programs, process and counselling they have participated in and will continue to participate in once the child or young person returns to them. It also believes there should be ongoing monitoring and support for families so they can achieve reunification.<sup>133</sup>

### *Absence of mechanisms to facilitate care planning*

A care plan plays a crucial role in decision-making for a child by identifying their specific needs and how their best interests are to be met from when the child enters care through to reunification, longterm care or exit from care.

Legislation and policy currently provide formal mechanisms to facilitate planning and decision-making for children in out of home care. Both the *Care and Protection of Children Act* and Territory Families policy require all children under care and protection orders to have a care plan. Where a child has been placed in the care of the Chief Executive Officer, before a protection order comes into force an interim care plan is required.<sup>134</sup>



## Chief Executive Officer must prepare care plans

Section 70 of the *Care and Protection of Children Act* provides:

(1) As soon as practicable after the child is taken into the Chief Executive Officer's care, the Chief Executive Officer must prepare and implement a care plan for the child.

(2) The care plan is a written plan that:

- (a) identifies the needs of the child; and
- (b) outlines measures must be taken to address those needs; and
- (c) sets out decisions about daily care and control of the child, including, for example:
  - (i) decisions about the placement arrangement for the child; and
  - (ii) decisions about contact between the child and other persons.

Care plans are informed by the Family Strengths and Needs Assessment Tool<sup>135</sup> and are designed to address the needs of the child across a number of domains, such as cultural, emotional, educational, family relationships and health.<sup>136</sup>

Ongoing decisions for a child in care will generally be made by a case manager and should be guided by the care plan.<sup>137</sup> The care plan also provides clarity for the child and their family about relevant concerns and reunification goals.<sup>138</sup> The former Northern Territory Children's Commissioner told the Commission that without a plan, there is no explanation of why the state is involved in the child's life or the desired outcome of that involvement.<sup>139</sup>

The need for individually prepared care plans that take into account the needs of each child was raised with the Commission. As one foster carer said:

*Care plans are important because every child is unique. Every child has their own needs. They're already coming from the fact that they've been placed in care, and so the care plan must in some way try to – possibly heal some of that trauma, but at least give them a foundation for moving forward where they can be functioning in society as valued members and contributing to their own life and own direction.*<sup>140</sup>

The current Children's Commissioner explained the significance of individual care plans, emphasising that a care plan is a critical element of good child protection practice.<sup>141</sup> She also clarified the importance of care plans in articulating gaps in the child's care and identifying a framework for the child's continued care. She believes that the absence of a care plan could compromise a child's best interests.<sup>142</sup>

Regular review of care plans is also important, as the needs and circumstances of a child in out of home care are dynamic and can change frequently. The Act requires that care plans are reviewed within two months of a child entering care and every six months thereafter,<sup>143</sup> as well as any time a significant event occurs for a child.<sup>144</sup>

Territory Families policy requires that care plans are developed within six weeks of a child entering care.<sup>145</sup> The Commission was told that while draft plans are often prepared within that time, other

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priorities, such as court processes or transitioning a child to placement, may take precedence over developing the plan.<sup>146</sup>

The *Care and Protection of Children Act* expressly provides that all parties with a significant interest in the wellbeing of the child must be provided with a copy of the care plan.<sup>147</sup> A number of foster carers of children told the Commission they had not been involved in reviews of care plans. Relevantly, section 74(4) of the *Care and Protection of Children Act* requires the Chief Executive Officer, when conducting the review of a care plan, to have regard to any views expressed by the carer of the child. They also said that sometimes they were not shown or given a copy of the plan.<sup>148</sup>

The Productivity Commission collects data from most states and territories about the number of children on care and protection orders who have an up-to-date care plan. The Northern Territory currently does not provide this data to the Productivity Commission.<sup>149</sup>

The evidence before the Commission establishes that Territory Families is failing to ensure that each child and young person in out of home care has an up-to-date care plan. Territory Families officers gave evidence to the Commission that the department has regularly and systemically breached the Act with respect to care plans.<sup>150</sup> In March 2017, 28.9% of children under the care of the Chief Executive Officer did not have a current and finalised care plan. The Acting Executive Director of Operations for Territory Families agreed that this failure impacted at least 250 children.<sup>151</sup>

The Commission also heard from foster carers, service providers and the Children's Commissioner that children did not have adequate care plans and sometimes did not have care plans at all.<sup>152</sup> Evidence was provided to the Commission about delays in the development of care plans, with witnesses, including foster carers and residential care providers, referring to care plans not being put in place in a timely manner.<sup>153</sup> Furthermore, in some cases, care plans were not updated when the circumstances of a child changed.<sup>154</sup> The Act requires the Chief Executive Officer to conduct a review of the plan 'immediately' following the death of a parent or the carer of the child, a change of placement arrangement or an extension or variation of a court order where the Chief Executive Officer has daily care and control of the child.<sup>155</sup>

One residential care manager said that in most cases, she did not receive adequate information about a young person before they arrived at the facility,<sup>156</sup> she 'very rarely' received care plans and some she did receive were 'cut and paste', even referring to the child by the wrong gender.<sup>157</sup> The Chief Executive Officer of Anglicare NT, which operates residential care facilities in the Territory, told the Commission that 'Anglicare NT has variable levels of involvement in the development of care plans.'

Foster carers told the Commission they would prefer to have had input into care plans at the time they were drawn up. But they suggested that, in practice, they had varying levels of involvement in the process.<sup>158</sup> The Commission was told that foster carers were often simply presented with the previous care plan, with minor updates, and were asked if it was okay rather than 'really having a collaborative look'.<sup>159</sup> One foster carer said:

*'I believe most of the time there [have] been care plans. The majority of the time I have not sighted them, and also it depended on the staff member about the quality of the care plan or whether they've just rolled over a previous plan.'*<sup>160</sup>

Another foster carer said they had seen a shift in practice over time from a more collaborative planning process, when many people contributed to making an informed decision about a child, to the current process:

*'Now care plans are meant to be done and updated every six months. To me, it appears it's a desktop exercise. We believe that – you know, involving carers is best practice. That's the line coming from the department, but it's not actually policy, so that they don't actually have to fully consult with us.'*<sup>161</sup>

The Foster Carers' Association NT has been advised that space for a carer's signature is now included in the new template for a child's case plan, which suggests that carers may be more involved in the development of the care plan.<sup>162</sup> However, that alone is not sufficient to guarantee that carers are meaningfully engaged.

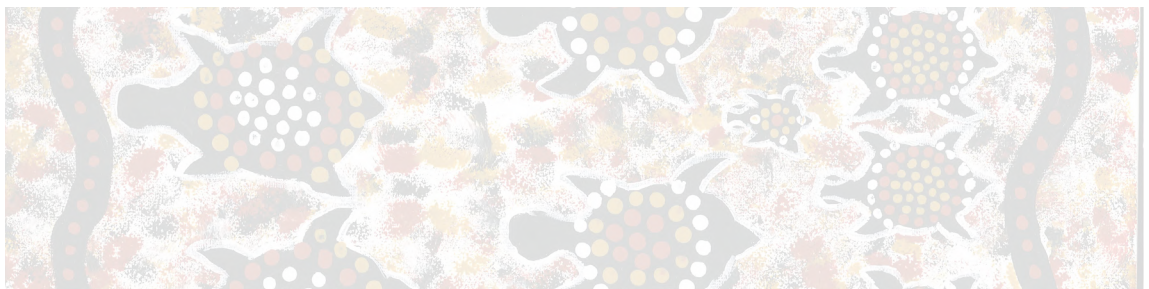
The development and implementation of a care plan for a child in out of home care is a basic and fundamental legal requirement. The inability of Territory Families to comply with such an elementary practice to ensure the best interests of vulnerable children is symptomatic of the failures of child protection in the Northern Territory.

### **Legislative and other amendments required**

Sections 70 and 74 of the *Care and Protection of Children Act* do not set a deadline for producing a care plan for a child coming into the care of the Chief Executive Officer. However, section 70 provides that it must occur *'as soon as practicable'* after the child comes into the Chief Executive Officer's care. Section 74 requires the Chief Executive Officer to regularly review a child's plan and to conduct the first review within two months of the child coming into care. This shows a clear legislative intention that a child's care plan be completed very early in the life of a protection order, sensibly within the first four weeks if a review is required within eight weeks. In addition, sections 70 and 74 impose clear obligations on the Chief Executive Officer in relation to both preparing and reviewing care plans, the content of the plans and who should be consulted in their preparation. Territory Families has failed to comply with those requirements.

The Local Court in its Family Matters division hears proceedings under the *Care and Protection of Children Act*. By Practice Direction issued on 1 July 2015 an application for a protection order for a child must include in the material supporting the application a *'copy of the child's care plan to be filed and served within 14 days of its creation or review.'*

The Commission considers care plans so important that these issues should be addressed by legislative amendments and incorporating judicial oversight into the process.



## Findings

The Northern Territory Government has failed to comply with the statutory requirements that all children in out of home care have timely care plans.

The Northern Territory Government has failed to ensure the preparation of care plans that are tailored to meet the specific needs and status of each child in out of home care.

The Northern Territory Government has compromised the best interests of children in out of home care by not providing adequate care planning for all children in out of home care.

The Northern Territory Government has not adequately or consistently consulted with the carers of children in out of home care while developing care plans.

### Recommendation 33.4

To ensure timely and quality care plans are developed and implemented for each child in out of home care:

- the *Care and Protection of Children Act* (NT) be amended to the effect that:
  - an application to the court for a 'protection order', as that term is defined in the Act, be accompanied by a care plan for the relevant child
  - if the application is not accompanied by a care plan, the court may set a date by which the care plan is to be filed with the court that is no longer than three weeks after filing the application for a protection order, and
  - any subsequent care plan developed and approved by the Chief Executive Officer of Territory Families during the course of the proceedings must be filed with the court within 14 days of its creation or review
- section 130 of the *Care and Protection of Children Act* (NT) be amended to provide that a court may not issue a protection order unless satisfied that the Chief Executive Officer has developed, approved and filed with the court a care plan that meets the needs and best interests of the child
- the Northern Territory Government collect care plan data in a form that will allow it to provide such data to the Productivity Commission for comparison with other states and territories
- section 74(4) of the *Care and Protection of Children Act* (NT) be amended to provide that the Chief Executive Officer 'must obtain, to the extent reasonably practicable, and have regard to the views expressed' by the specified persons, and
- section 70 of the *Care and Protection of Children Act* (NT) be amended to include a requirement that a cultural component of a care plan must be included in all care plans specifically tailored to the child.

## Successive short-term protection orders

The Commission understands that sometimes a child may need to be removed from their home quickly. In this case, an emergency carer may need to be identified and approved within a short time frame, including on weekends or outside business hours. Territory Families policy provides for this and has a process for assessing potential carers in emergency situations.<sup>163</sup> Emergency carer approvals are only permitted for a maximum of 12 weeks before a complete carer assessment is carried out.<sup>164</sup>

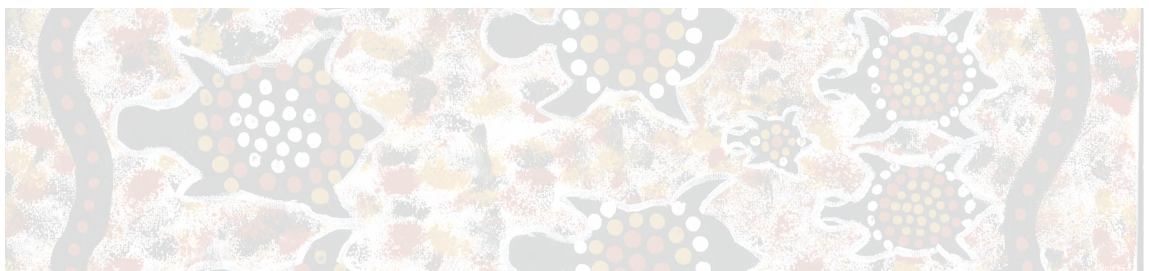
A former Manager of Safe Pathways told the Commission that often children placed in residential care are on short-term orders that can be repeatedly extended.<sup>165</sup> The Acting Executive Director of Governance for Territory Families agreed, acknowledging that urgent placements may become long term.<sup>166</sup>

The former Manager of Safe Pathways suggested that short-term orders, for one or two months, were sometimes preferred to allow time to address issues within families and identify kinship carers.<sup>167</sup> However, the use of successive short-term orders raises concerns about whether these children should be given the benefit of a long-term and stable placement.

## DECISION-MAKING THAT SUPPORTS CONNECTION TO FAMILY AND CULTURE

Although the right of Aboriginal people to participate in decision-making about their children is included in the Aboriginal and Torres Strait Islander Child Placement Principle, there are not enough appropriate structures in place to allow their full participation. The Commission understands that, at best, Aboriginal families have an advisory rather than authoritative role in decision-making processes.<sup>168</sup> This highlights the urgent need to re-envisage the child protection system in a way that places the community and the family at the centre of decision-making, but always puts the best interests of the child at the centre of that decision.<sup>169</sup>

The Commission heard evidence that highlighted the importance of including Aboriginal workers as a key element in facilitating engagement with Aboriginal families and communities in the child protection system. A Senior Aboriginal Community Worker described the importance of the role, and said *'the inclusion of Aboriginal Community Workers within the Territory Families system is a key service to support Aboriginal families who are involved in the system'*. The Aboriginal Community Worker said it enables culturally appropriate engagement with families. It also *'helps to empower Aboriginal people to question processes, and encourages them to be involved in decision-making'*.<sup>170</sup>



The Commission heard that Aboriginal Community Workers were not being used appropriately or effectively for cultural consultation,<sup>171</sup> and they felt their role and knowledge were not respected.<sup>172</sup> They felt undervalued and, despite their knowledge, experience and contribution to the department,<sup>173</sup> that other workers often do not listen to the cultural knowledge they provide, which would help when going into a community.<sup>174</sup> They suggested that the way their work was used and prioritised depended on the team leader.<sup>175</sup> An Aboriginal grandmother, DS, told the Commission that Territory Families should use and value the insights of Aboriginal Community Workers as they *'are in the community, can see when families are doing the right things'*.<sup>176</sup>

## Importance of supporting connection to culture

*'Children go into that system. Most often they don't come out until they're – they come to the end of the time that Child Protection can hold them. They've been placed with nonAboriginal families. They know nothing about their law. They know nothing about their culture. They know nothing about the people they're connected to. They've missed out on their ceremonies. They've missed out on all of those things, and it's hard to reconnect.'*

Christine Fejo-King, Aboriginal consultant<sup>177</sup>

Cultural safety is important for all children in out of home care. The need to support ongoing connection to community and culture was emphasised in concerns raised with the Commission about the outcomes for children who experience dislocation from their culture. The Commission heard that these Aboriginal children could find it difficult to return to their communities after being away during their childhood.

DG, a young Aboriginal woman, was in care from age two until she was 18. For most of that time, she was placed with a non-Aboriginal foster carer and then in residential care. She had always longed to *'live in the community, learn culture way'*.<sup>178</sup> She moved to an Aboriginal community after leaving care, but she found *'it's really hard for a kid to go back into a community and make their self Aboriginal again'*.<sup>179</sup>

A cultural adviser and language specialist told the Commission that when young people return home:

*They feel real different to everybody else, and the people in the community and the children in the community feel real different to him as well.*<sup>180</sup>

Anthropologist Dr Petronella Vaarzon-Morel agreed, adding that there may be *'a sense of alienation, of dislocation, confusion about identity'* for children who return to an Aboriginal community after long periods in out of home care.<sup>181</sup>

Mr Minawarra Japangardi Dixon, who was on the Elders Panel in Darwin, told the Commission:

*They can come back maybe 14 or 16 or 17 and you know, coming back, they don't*

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*even know their culture and they don't know where to stand. They don't even know where – because they were taken away and in the time that were growing up, they were losing their culture as well. That is why, you know, coming back to community that, you know, they don't know the culture. They don't know anything.*<sup>182</sup>

Another Elder, Ms Marcia Anne Wala Wala, told the Commission that young people returning to their communities had lost their language, 'song lines' and connections to their culture and community.<sup>183</sup>

## Culture in long-term care planning

Where children are unable to be returned home, the reality of the shortage of Aboriginal foster and kinship carers means that, at least in the short term, some Aboriginal children will need to be placed with non-Aboriginal carers. Where this is the case, these carers must commit to supporting the cultural identity of the child in their care. Aboriginal carers also require support to maintain connections to culture. Territory Families should equip them to do so, including by using cultural care plans.

*'It is important for children to know their language and culture so they know where they come from and to know that they belong in a community.'*

Vulnerable witness DS<sup>184</sup>

Legislation in all states and territories have general provisions for maintaining and enhancing a child's sense of cultural identity.<sup>185</sup> Some jurisdictions, such as Victoria, makes specific provision for preparing cultural plans for Aboriginal children that align with their care plans.<sup>186</sup> In the Northern Territory, there is no express legislative requirement to prepare a cultural care plan for each Aboriginal child in care, despite the number of Aboriginal children placed with non-Aboriginal families.

Territory Families policy requires the development and implementation of a care plan to promote and maintain a child's connection to their cultural heritage.<sup>187</sup> Cultural care plans include skin or clan name, language, community of origin and other information relevant to the Aboriginal Child Placement Principle.<sup>188</sup>

The Commission heard that since 2015, these components of cultural care plans have been consolidated into a single care plan document, whereas previously three separate documents were produced for each child.<sup>189</sup> The Children's Commissioner suggested that this might lead to Territory Families staff not giving specific consideration to separate parts of a plan.<sup>190</sup>

The Children's Commissioner's Office observed that the 'cultural care' section of these plans often appeared to be identical, as opposed to being developed with careful consideration of an individual child's needs.<sup>191</sup> A 'cut and paste' method of including culture in care planning does not give due consideration to the fundamental importance of culture to Aboriginal children. Professor Larissa Behrendt told the Commission:



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*When Aboriginal children weren't placed with direct family members, there was concern about their treatment within care and also with the fact that cultural care plans seemed to be very superficial, so included things like attendance at NAIDOC [National Aborigines and Islanders Day Observance Committee] events rather than really deeply understanding how important the connection to community was.<sup>192</sup>*

Other witnesses suggested to the Commission that Aboriginal Community Workers could be better used to support ongoing cultural connection for Aboriginal children in care.

## **Consultation with Aboriginal workers**

The Commission heard that Aboriginal Community Workers were not used appropriately or effectively, including for cultural consultation.<sup>193</sup> Territory Families' Practice Framework states that practices should be culturally responsive and competent, including working in ways that are respectful and safe, and recognise culture as a source of strength and resilience.<sup>194</sup>

It is considered best practice to allocate Aboriginal children and young people to Aboriginal workers, and when this is not possible, caseworkers must consult with an Aboriginal worker before beginning an investigation.<sup>195</sup> Aboriginal workers should assist when Territory Families has to engage with a community and provide cultural insight into issues to be investigated,<sup>196</sup> while also providing cultural mentoring and advice to caseworkers.<sup>197</sup>

The Commission heard evidence about the benefits of increasing the number and availability of Aboriginal Community Workers, who could assist in each case involving an Aboriginal family. The Aboriginal workers could accompany a Case Manager and assist with engaging in families and communities.<sup>198</sup> Appropriately and consistently applying policies on consultation with Aboriginal workers is in line with best practice and is a means of empowering families in the decision-making process.

The Commission heard an example of a success story where a Senior Aboriginal Community Worker organised a family meeting with clinic staff to discuss concerns about the safety of a baby, demonstrating early engagement of a family in the process:

*Not only did this family meeting prevent a child coming into care, but it empowered the family to resolve the issues within their family. Additionally, this child, despite not being directly cared for by her parents, will remain connected with her family, her culture and her country. She will have knowledge of her place within kinship systems, and will know her ceremony and language. The importance of this cannot be understated and is the primary reason I love my work.<sup>199</sup>*

The same worker told the Commission she believed that increasing the number of Aboriginal workers would 'reduce the number of children coming into care.'<sup>200</sup>

A former Aboriginal Community Worker further emphasised that empowering Aboriginal people and assisting them to become independent was an important component of the role. However this worker suggested that she did not feel as though the role was set up to do that.<sup>201</sup> She told the Commission:

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*We were not supporting people to move forward with their lives. It was a reactive rather than a proactive approach which, in my view, made people more reliant on our services and did not assist people in being empowered and having control over their own lives.*<sup>202</sup>

She told the Commission that non-Aboriginal caseworkers would go into communities without the support of an Aboriginal worker.<sup>203</sup>

There is also potential for a much greater use of Aboriginal Community Workers in the 'family finding' process, given their greater knowledge of families and communities. One Aboriginal Community Worker highlighted their value in assisting with identifying family members who may be able to care for a child,<sup>204</sup> or preparing documents such as genograms.<sup>205</sup> The Commission heard that currently this knowledge is not well utilised:

*In my experience, Aboriginal Community Workers remain in employment positions for a lengthy period of time. However, I believe they are not valued for their knowledge, experience and contribution to the department.*<sup>206</sup>

However, there was also evidence that there are insufficient Aboriginal Community Workers to support the high caseload,<sup>207</sup> and that they are overworked or diverted to less specialised tasks.<sup>208</sup>

The Acting Executive Director of Operations for Territory Families accepted that Aboriginal Community Workers were used inconsistently across the Northern Territory.<sup>209</sup> A former Aboriginal Community Worker reiterated this point, reflecting that the expertise of Aboriginal workers was often wasted. The former Aboriginal Community Worker told the Commission:

*Aboriginal Community Workers have shared concerns about being left to complete administrative duties, when their experience is that they are an important resource in the community when working alongside a practitioner.*<sup>210</sup>

It is the Commission's view that increasing the involvement of Aboriginal Community Workers in the case management of Aboriginal children could enhance support for families and carers when trying to ensure children maintain their cultural connection. However, the small number of Aboriginal Community Workers may mean that more measures will be needed to provide additional support in this area.

## Shortage of Aboriginal Community Workers

The Commission consistently heard about a shortage of Aboriginal Community Workers.<sup>211</sup> One Senior Aboriginal Community Worker told the Commission that she provides primary support to 16 case managers.<sup>212</sup> If the average caseload per worker of 39.3<sup>213</sup> was applied to the 16 case managers, this one Senior Aboriginal Community Worker could be expected to consult on more than 500 cases.

The Manager of Investigation and Assessment, Child Abuse Taskforce, suggested that one Aboriginal

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caseworker was insufficient for supporting the investigation teams. She told the Commission that currently, Senior Aboriginal Community Workers from the Child Abuse Taskforce support both teams. She said it would be beneficial to have additional Senior Aboriginal Community Workers.<sup>214</sup>

Similarly, Territory Families' Acting General Manager Operations conceded, that Aboriginal Community Workers were overworked.<sup>215</sup> This issue is not new to the Northern Territory. Concerns were raised with the 2010 BOI report about the shortage of Aboriginal workers. It was noted that caseworkers continued to visit remote communities without the support of an Aboriginal worker.<sup>216</sup>

## Finding

**The Northern Territory Government employs too few Aboriginal Community Workers, so that those employed are not able to effectively carry out their duties.**

### Ongoing contact with family

Territory Families identifies contact arrangements as an essential part of the reunification process. Its out of home care plan template includes a section on contact arrangements requiring consideration of the purpose of contact, whether it is supervised and how often arrangements are reviewed.<sup>217</sup> The Commission heard that limited contact between parent(s) and their children diminished the chances of reunification.<sup>218</sup> As discussed below, the evidence before the Commission identified distance and resourcing as primary areas of concern. The Family Contact Arrangements Policy recognises the importance of contact:

*Contact plays a vital role in helping children in care develop a strong sense of identity and increases the likelihood of family reunification. Case Managers must ensure that contact is not an isolated event and is part of the overall care planning and management for children in care.*<sup>219</sup>

The Commission was told that coordinating contact arrangements are an important part of a Reunification Team Leader's role.<sup>220</sup> Contact arrangements require careful consideration of the safety and impact on the child, the venue, who should be at the contact visit and whether the contact visit should be supervised.<sup>221</sup> Also highlighted was the need for regular care plan meetings to review contact arrangements with a view to moving towards unsupervised contact, and increased frequency and length of contact.<sup>222</sup>

In some cases, remoteness added to the difficulty of maintaining contact visits. For example, where children have been relocated from a remote area to Darwin, families may find it difficult to travel to a contact visit. Acting Chief Executive Officer NPY Women's Council said:

*For people, for families from remote communities, where children end up in care in the regional centres, access is very, very difficult because the onus is on them to be able to get to those regional centres, to find their own transport, to find their own accommodation, also to find the financial means to have that access. Again, it gets even trickier when we are talking about crossing borders, where the parent may live in one jurisdiction and the child is in care in another jurisdiction.*<sup>223</sup>

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The cost of travel is an obvious barrier created by distance. Territory Families Procedure on Family Contact Arrangements states that the department must provide support to facilitate contact. It acknowledges that, in some circumstances, this may include financial support for travel and/or accommodation expenses.<sup>224</sup> Preventative Family Care payments can be used to assist with reuniting or reconnecting a child and their family.<sup>225</sup> They can be one-off payments or continue for a period of no more than six months. Payments can only be made after the development and approval of a care plan.<sup>226</sup> Any delays in developing a care plan can negatively impact families receiving necessary financial support for contact purposes. If payments are required for longer than six months, a new care plan must be developed and approved.<sup>227</sup>

An Acting Team Leader of Territory Families also explained that the most significant challenge to working in the department was inadequate resourcing. Staff were carrying heavy caseloads as a result of vacancies and difficulties recruiting staff with the necessary expertise.<sup>228</sup> This affects capacity and efficiency of service delivery. She explained that meetings with families who were considered 'complex cases', with whom Territory Families was working toward reunification, could not take place as often as would be ideal.<sup>229</sup>

In this respect, the Commission heard evidence from a panel of foster carers about the difficulties of getting the department to assist with maintaining a child's connection with their family and culture. The foster carers said that in their experience it was often at the volition of the foster carer that children are able to maintain these connections. One foster carer told the Commission:

*Commissioner, you mentioned early on about the family access, and I think as four foster carers who are involved in the lives of the families of children they've cared for, that isn't normal, and I think that is quite – that does change the dynamics of being a foster carer. I think most foster carers who sign up through the department would not have that ability, or belief that that would happen, or be a part – a part of that role.*<sup>230</sup>

*'While I was there [in care], I asked for contact visits with my Mum and my other siblings. I was always told that something would be organised, but they never did anything. I would ask for phone calls and they would say that the phone was broken but then they'd make calls off it.'*

Vulnerable witness DF<sup>231</sup>

At one of the Commission's public meetings several non-Aboriginal foster carers spoke of their initiatives to keep the Aboriginal children in their care in contact with their birth families or communities. Those who contributed to the discussion expressed variously disappointment, frustration or anger at the lack of co-operation from the child's caseworker to facilitate this relationship.

The Commission also heard about the need for careful monitoring and supervised contact for parents with substance misuse problems, including the importance of parents not attending contact visits while affected by a substance. In some cases, parents may engage with community-based rehabilitation services, with Territory Families conducting random drug screening tests. In other cases, parents enter residential rehabilitation and the service provider conducts the screening. In some circumstances, contact visits occurred at residential rehabilitation facilities.

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The Acting Executive Director of Out of Home Care for Territory Families told the Commission about the sole Child and Family Contact Centre in the Territory, which is in Palmerston and largely services families in the Greater Darwin area.<sup>232</sup> This program is funded by Territory Families,<sup>233</sup> and administered by Somerville Community Services based on referrals from Territory Families.<sup>234</sup> There are no equivalent services in other regional or remote areas.<sup>235</sup>

In her statement to the Commission, the Deputy Chief Executive Officer of Territory Families said:

*'For the six-month period from 1 July 2015 to 31 December 2015, the number of clients accessing this service was as follows:*

- *10 families accessed the service for weekly supervised visits and 6 families accessed the service for fortnightly supervised visits;*
- *Those families had a combined total of 30 children in care; and*
- *The supervised visits were attended by a further 15 children who were not in care.'*<sup>236</sup>

The contact centre has not been formally assessed or evaluated.<sup>237</sup> Formal evaluation of this program is essential to determine whether, based on accurate and current data, it is providing positive and effective outcomes for children and young people. It is also vital that Aboriginal agencies and communities be consulted to determine their preferred style or model for contact arrangements.

## **Views of children about contact arrangements**

The Executive Director of the Strategy and Policy Division of Territory Families told the Commission that all child protection agencies focus on ensuring the views of children in care inform policy, practice and service delivery is a key focus of all child protection agencies.<sup>238</sup>

However, some children that felt their views were not valued whilst in care. In March 2014, the CREATE Foundation surveyed children in care in Alice Springs about family contact.<sup>239</sup>

Twenty children participated, representing 7% of the Central Australian out of home care population at that time.<sup>240</sup> Of the 20 children, eight had attempted reunification between one and four times.<sup>241</sup> Many were from residential care facilities because of the difficulties of locating children and young people in foster and kinship care.<sup>242</sup> These difficulties were attributed to 'the mobility and remoteness of the care population'.<sup>243</sup> The CREATE Foundation told the department that future research in the Northern Territory must overcome these difficulties.<sup>244</sup>

The CREATE Foundation said the findings were consistent with those of its survey in 2013, *Experiencing Out-of-Home Care in Australia: The Views of Children and Young People*, which involved more than 1,000 children and young people aged 8–17.<sup>245</sup>

The survey found that the majority of children and young people wanted more contact with family members<sup>246</sup> and also wanted to have a say in how much family contact they have.<sup>247</sup> The CREATE Foundation pointed out that it is essential to talk regularly with children about family contact and through the case management process.<sup>248</sup> The CREATE Foundation recommended to the department that:

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*A mechanism needs to be put in place that ensures children and young people can voice their views on the amount and type of family contact that they want. This mechanism must align with cultural planning for children and young people.<sup>249</sup>*

As part of the National Framework for Protecting Australia's Children, a national *Out-of-Home Care Children and Young Peoples Survey* was conducted in 2015, which sought the views of children living in out of home care. The survey revealed that:

*Contact plans often focused on face-to-face visits; however, children are highlighting that telephone and other uses of technology to connect with family are equally as important to them. Opportunities need to be explored that extend beyond face-to-face visits to increase children's sense of closeness to their family. All of the children born between 1998 and 2000 stated they communicated with their family by writing (messaging) less than they wanted.<sup>250</sup>*

The Executive Director of the Strategy and Policy Division of Territory Families indicated that the national survey helped Territory Families in that:

*...each individual case manager was able to receive specific results for children that they could respond to through their practice and care plans. Key managers and practice leaders in child protection offices also received the global results so they could discuss practice improvement initiatives.<sup>251</sup>*

He told the Commission that Territory Families would participate in the survey again in 2017. He also said Territory Families was proposing to adopt the survey tool as part of ongoing casework, so that it can incorporate results into each child or young person's individual care plan.<sup>252</sup> He indicated that when approached about the survey, case managers responded enthusiastically, commenting that they would like all children in care to have the opportunity to complete the survey and express their views.

## SUPPORTING DECISION-MAKING THROUGH REGULAR CONTACT WITH CASEWORKERS

*'A case manager should stick with the kid throughout the order, not changing back and forth, and they have to invest in the best interests of the kids, not what they think is best. They need to ask us what is best for us, not them. It's our life.'*

Vulnerable witness DF<sup>253</sup>

When children enter out of home care, their case is transferred to a Substitute Care Team of Territory Families. These teams are responsible for casework and case management for children living in out of home care.<sup>254</sup> Caseworkers have face-to-face contact with children and families for case planning and managing the day-to-day needs of the children. It is a significant aspect of their work day.<sup>255</sup> At a minimum, caseworkers are required to have face-to-face contact with children in out of home care once every four weeks.<sup>256</sup>

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The lack of face-to-face contact between children and caseworkers has been an issue of repeated concern in the Northern Territory since the 2010 BOI report. It is disconcerting that the evidence before the Commission demonstrates that some of the lessons apparent from the tragic deaths of two young people in out of home care have not been heeded.<sup>257</sup>

Territory Families advised the Commission that as at April 2017, approximately 50% of the children in out of home care had not been seen by a caseworker in the last month, while 27% had not been seen by a caseworker in the last two months, with a further 18% not seen by their caseworker in more than three months.<sup>258</sup>

One young person described their experience with caseworkers to the Commission:

*So, from 2009 to roughly to 2015, I had more than 12 Case Managers and half of them I didn't even meet, had no idea that they changed. Many Case Managers didn't even – when they did change they – you expect them to call you in the first two to three days, you know, just to let you know that you've got a new Case Manager. Maybe they meet up with you to get to know you, instead of just reading what's on your file. I don't know. None of them do that.<sup>259</sup>*

The Acting Executive Director of Operations for Territory Families accepted that children were being exposed to increased risks of harm as a 'direct result' of Territory Families failure to make regular face-to-face contact with children in out of home care.<sup>260</sup> She suggested that often caseworkers made it a priority to see children who were experiencing difficulties, as opposed to those who appeared to have stable long-term placements.<sup>261</sup>

## **Difficulties faced by caseworkers in the Northern Territory**

Difficulties achieving the required levels of face-to-face contact with children are intensified in the context of the Northern Territory. One witness spoke of the challenges presented by weather conditions and the remoteness of communities, making it very difficult for caseworkers to have regular contact with children.<sup>262</sup> A caseworker from the Katherine office of Territory Families referred to scheduled monthly travel for face-to-face contact with children and families in remote communities.<sup>263</sup> This travel included up to four overnight stays in communities to visit children or young people on placements and schools, and to meet families.

Another major factor that appears to reduce caseworker contact is the high caseloads coupled with minimal support and training.<sup>264</sup> The Commission heard that the average caseload as at 31 March 2017 was 39.3 cases per caseworker.<sup>265</sup> In her evidence to the Commission, the Children's Commissioner suggested that such high caseloads directly correlated with the inability of Territory Families to 'satisfy the legislative requirements and the policy requirements to be able to case manage [any] particular child'.<sup>266</sup> The Commission heard evidence to suggest that high caseloads were also linked to high staff turnover,<sup>267</sup> which may also contribute to inconsistent caseworker contact.

*'You feel like you're forgotten. You feel like you don't – your case or your situation does not matter enough for them to remember and keep track of you. And that might not necessarily be the case. It might just be that they're so busy that they cannot keep track, but that's the feeling. That's what you feel.'*

Vulnerable witness AI<sup>268</sup>

The evidence establishes a clear and obvious relationship between high caseloads, high staff turnover and the inconsistency in caseworker contact experienced by some children in the child protection system. Notably, the Commission heard from DG, a former child in care, about how critical caseworkers were in providing support:

*'[My old caseworker] help me a lot. Very lot. She made my life more and more happy than I've ever had. She made me experience that I could actually talk to and actually have a yarn and actually get all them bad things off my chest I needed to get off, that I wanted somebody else to hear but nobody wanted to sit down and take the time to listen to my story.'*<sup>269</sup>

## Finding

**The Northern Territory Government has failed to ensure compliance with its policies regarding the minimum frequency of contact between children in out of home care and their caseworkers puts children at a direct risk of harm.**

## BUILDING THE CAPACITY OF FOSTER AND KINSHIP CARE

Territory Families policy emphasises that kinship care placements are preferred for all children.<sup>270</sup> Where children cannot be placed with relatives, Territory Families policy suggests that other homebased placements with trained and authorised departmental carers provide the best environments for children.<sup>271</sup>

The 2010 BOI report highlighted the limitations of the out of home care sector in the Northern Territory. It suggested focusing on building the capacity of foster and kinship carers, to support the increasing number of children requiring long-term out of home care in the Northern Territory.<sup>272</sup> There is limited evidence of successful reforms arising from this finding. In this respect, an Acting Team Leader in a Territory Families Reunification Team specifically acknowledged in her evidence that *'there have been systemic failures by the department of Territory Families or its predecessors to identify kinship carers for Aboriginal children'*.<sup>273</sup> She also acknowledged *'widespread delays'* in assessing suitable kinship carers for Aboriginal children and said there have been *'systemic failures'* in assisting identified kinship carers with practical barriers such as housing.<sup>274</sup>

The vast majority of children in out of home care nationally are placed in home-based care, with 94% living either in foster care, kinship care or other types of home-based care at 30 June 2016.<sup>275</sup> The numbers of children placed in home-based care in the Northern Territory are inconsistent with the increasing use of kinship care nationally. It is troubling that the jurisdiction with the highest proportion



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of Aboriginal children in care has had decreasing rates of kinship care placements in recent years. The number of children in out of home care increased from 478 to 1,020 between 30 June 2009 and 30 June 2016.<sup>276</sup> While foster and kinship care placements have increased in absolute terms in this period, the proportion of children placed in foster and kinship care has dropped from 74% to 48%. This coincides with the growing use of purchased homebased care and residential care, which have increased by 24% and 8% respectively.<sup>277</sup>

The Acting Executive Director of Out of Home Care for Territory Families told the Commission that case managers were largely responsible for driving the kinship care process.<sup>278</sup> That work is currently undertaken through the Finding Kinship Care Model, which focuses on identifying long-term or short-term kinship care placements and identifying safe placements for children with family and community.<sup>279</sup>

The Commission heard concerns that the capacity of the current system to work with families in a way that supports the identification of appropriate foster and kinship carers was limited.<sup>280</sup> Experts, non-government organisations, the Children's Commissioner and Territory Families staff all indicated that the Finding Kinship Care Model has practical limitations and does not ensure that kinship care options are fully explored in all cases.<sup>281</sup> In its submission to the Commission, CAALAS advised that the placement of an Aboriginal child with non-Aboriginal foster carers does not appear to be an option of last resort. It may be inferred from these sources that, in many cases, Territory Families does not make adequate inquiries with the families of children before making placements. As such, Territory Families is not placing children in accordance with the Aboriginal and Torres Strait Islander Child Placement Principle, as specified in the Act.<sup>282</sup>

## Shortage of foster and kinship carers

The lack of foster and kinship carers presents an ongoing challenge to placing children. The Commission was told that difficulties matching children to placements were due to the 'lack of registered, quality foster carers'.<sup>283</sup> One witness spoke of the high demand for residential services in Katherine. A former Manager of Safe Pathways said there was a need for longer-term placements, for five days or more, as well as for young people aged around 14 or 15, for whom it is harder to find foster carers.<sup>284</sup>

The shortage of foster and kinship carers is a widely recognised problem nationally and internationally. Researchers have described the foster care system as facing 'catastrophe' across all Australian jurisdictions and around the world.<sup>285</sup> A number of factors are seen to contribute to the difficulties in recruiting and retaining foster carers, including:

- increasing numbers of women, who were traditionally the primary foster carers, entering the workforce, and
- increasing numbers of children in out of home care with highly complex needs.<sup>286</sup>

While the shortage of home-based placements is not just a Northern Territory problem, the limited availability of placements in remote areas may amplify difficulties finding suitable placements for children. The Commission heard that this results in many children being placed in Darwin, Katherine and Alice Springs.<sup>287</sup>

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Although applications to be a foster or kinship carer have declined since the start of the 2016–17 financial year, the number of unfinalised foster carer assessments was growing until April 2017.<sup>288</sup> At 31 March 2017, there were 102 incomplete carer assessments in the Northern Territory.<sup>289</sup> In April 2017, there were 107 incomplete carer assessments, even though only 12 new carer applications had been received.<sup>290</sup> In June 2017, 15 new carer applications were received, while the overall number of unfinalised foster care assessments was reduced by 12.<sup>291</sup> It is worrying that while there is a desperate need for foster carers, pending assessments are left incomplete for extended periods.

A factor contributing to the shortage of carers may be the amount of support and perceived respect carers receive. The Commission heard that some carers felt their opinions are not valued or respected— particularly in the case of advocating for the needs of a child.<sup>292</sup> The Commission also heard that carers felt the department was not providing an appropriate level of financial support to them, either through the reimbursements that the department paid or through the level of ongoing financial support provided.<sup>293</sup> The Commission acknowledges that Territory Families seeks to ‘respect, support and provide assistance’ to carers as part of its 2017–2020 strategic plan,<sup>294</sup> but considers that more needs to be done to understand the needs of carers and support them. Attracting additional people to act as carers, both foster carers and kinship carers, needs to be one of the highest priorities of Territory Families.

Territory Families should look at the full range of ways in which it can support and assist foster and kinship carers, identify what they need help with, and enhance its communication with carers and better understand their needs and concerns. The Commission suggests that further work be done by Territory Families with the Foster Carers Association NT to develop a campaign to raise awareness of the shortage of carers and to increase the number of carers in the Northern Territory. Such a campaign should involve and draw on the experiences of existing carers. The Commission also recommends an independent review into the adequacy of the financial supports paid to carers, who should be appropriately compensated for the vital work they do.

Territory Families policy emphasises that placement based on availability diminishes the opportunity to match carers to children’s needs, contributing to inappropriate placements, increased likelihood of placement breakdown and instability in out of home care.<sup>295</sup>

BushMob Aboriginal Corporation highlighted that young people referred to its program have been placed away from their homes and, in some instances, at interstate boarding schools over many years. BushMob also told the Commission that young people whose homes are in Central Australia are sometimes sent to the Top End.<sup>296</sup>

## Findings

**The Northern Territory Government has a major shortage of available foster and kinship care placements.**

**The Northern Territory Government has systematically failed to identify and use kinship carers for Aboriginal children.**

## Recommendation 33.5

### Territory Families:

- develop and implement a campaign in conjunction with Foster Carers Association NT, current carers and other relevant organisations to recognise the contribution of existing foster and kinship carers, draw attention to the current shortage of carers and encourage people in the Northern Territory, particularly in remote areas, to apply to become carers
- review the financial support provided to carers in the Northern Territory, and
- work with Aboriginal organisations to implement a joint program dedicated to increasing the number of Aboriginal foster and kinship carers, using community awareness and individualised community engagement.

## Factors contributing to the shortage of Aboriginal kinship and foster carers

The Commission repeatedly heard that despite the findings and recommendations of the Board of Inquiry, not enough has been done to identify and assess Aboriginal carers. Research into the most effective methods of recruiting Aboriginal kinship and foster carers has suggested that recruitment should be localised and low key, and that broad-based media campaigns are unlikely to work. Advice was provided to the Northern Territory Government about a wide range of alternative strategies which could enhance foster and kinship carer recruitment and retention in the Northern Territory.<sup>297</sup>

Chief Executive Officer of Danila Dilba Health Service, told the Commission:

*It seems that there was and perhaps continues to be a lack of willingness or capacity by the former Department of Children and Families and Territory Families to actively seek out Aboriginal carers. The current strategies for identifying suitable Aboriginal carers, kinship and foster, are deficient and the department and Territory Families appear not to have engaged with Aboriginal service providers, legal services, [or] health services, to assist in meeting this commitment.<sup>298</sup>*

The Commission heard from a kinship carer, DI, about her experience with Territory Families since her grandson was returned to her:

*'Welfare [Territory Families] are still watching me. I can look after myself and look after the baby. They told me they are going to watch me to make sure I'm feeding [my grandson] good and to see whether [my grandson] has sores. They are not supporting, they are just watching.'<sup>299</sup>*

The Acting Executive Director of Out of Home Care for Territory Families initially told the Commission that she was unaware of any mistrust of Territory Families on the part of Aboriginal communities.<sup>300</sup> But she subsequently accepted that the evidence provided to the Commission pointed to this being so, and added that there would be an increased risk of distrust 'with Aboriginal families given the history and the intergenerational trauma'.<sup>301</sup> Unless the engagement of potential kinship carers is done with rigour and sensitivity, the systemic failures in the process of identifying kinship carers will not be remedied.

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Territory Families told the Commission of a campaign promoting the need for Aboriginal foster and kinship carers using ‘Talking Posters’, with in-built audio messages about becoming a carer in several Aboriginal languages. Unfortunately, the campaign did not attract Aboriginal foster carers and, although it was said to be well received, there is no data available to suggest what effect it had on encouraging Aboriginal kinship carers.<sup>302</sup> The limited effectiveness of the campaign suggests that it did not adequately address the factors influencing Aboriginal people in their decisions to become carers, and greater consultation with Aboriginal communities is needed to find a way to reach out to potential carers.

## **Limited workforce understanding of Aboriginal kinship systems**

The Commission heard concerns about the capacity of the workforce in the Northern Territory to understand Aboriginal kinship systems and communities, and identify Aboriginal kin. This capacity includes varying levels of understanding of the cultural context of children and families in Aboriginal communities.<sup>303</sup>

Mrs Margaret Kemarre Turner, a cultural adviser and language specialist in Eastern and Central Arrernte, described the significance of understanding Aboriginal kinship systems and how this affects the way a child relates to their extended family:

*In Aboriginal society, we don't usually have just one mother or one father or one grandfather or one aunty. All those families are related to that one child. And that child is get looked after by all of those families, but mostly with his uncle, the uncle of his mother's brother, and some time with his father's brother. And also mostly the children are really brought up by grandparents. They relate more to their grandparents, to their grandma, and with their other uncles and aunts.<sup>304</sup>*

Dr Vaarzon-Morel, an anthropologist who gave evidence jointly with Mrs Turner told the Commission that AngloAustralians may make assumptions based on their own kinship systems, highlighting that for Aboriginal families, ‘it is not just biological blood relatedness, it's also about nurturance’.<sup>305</sup> This understanding is important for workers considering a placement with a child's kin.

Territory Families staff currently use genograms to explore family relationships. One witness suggested that genograms are not appropriate for identifying Aboriginal family members, as they fail to include important relationships in the child's life.<sup>306</sup> Dr Christine Fejo-King said they were based on a Western concept of family that is too narrow to apply to Aboriginal kinship systems:

*They're working on a Western concept; they should be using an Aboriginal concept. That was what we had talked about right at the beginning of the development of the Aboriginal Child Placement Principle, was it was to be based on Aboriginal knowledge and understanding, and – and our own law and culture, not on this little Western narrow view of your family.<sup>307</sup>*

The Commission was provided with two examples of how the current process for identifying Aboriginal kin might be improved.

The Commission was told that compared to genograms, kinship maps, which document a child's family ties by reference to skin groups, totems, bloodlines and ceremonial links, may better reflect the child's place in the kinship system.<sup>308</sup> However, Dr Fejo-King highlighted that the kinship system

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was complex and caseworkers cannot be expected to have the knowledge to create genograms or kinship maps without help.

It was strongly suggested that cultural training for child protection workers on kinship and family relationships should incorporate how practitioners gather information on a child's family, the nature of different relationships in the kinship system and how each person relates to the child.<sup>309</sup> Territory Families staff agreed that it was important that staff using genograms are 'versed in kinship care systems and family systems around a child'.<sup>310</sup>

## ***Limitations of screening processes***

The Commission is concerned that current screening checks may lack the nuance and context to take into account fully gradations and categories of risk; for instance, in relation to socio-economic factors that may affect the eligibility of Aboriginal people as foster and kinship carers. As recognised in the 2010 BOI report, while the safety of children must remain paramount, it is imperative that factors such as past criminal history are considered in the context of the child's best interests and do not become the primary determinant of an applicant's ability to care for a child.

Current carer screening processes require a Working with Children Clearance, called the Ochre Card, criminal history checks and child protection history checks for anyone aged over 15 living in the household.<sup>311</sup> In a fluid or overcrowded household, natural difficulties arise for Territory Families in conducting the screening efficiently.

One systemic barrier to recruiting and assessing Aboriginal foster and kinship carers is the higher rates of adult imprisonment or criminal history. The Commission was told of a kinship care application that was rejected because an applicant was in a relationship which had involved domestic violence seven years earlier.<sup>312</sup> Territory Families advised that where there are concerns about the criminal history of a kinship carer applicant, the applicant is given the opportunity to respond to the concerns.<sup>313</sup>

Every assessment turns on the individual judgement of risk and the specific needs of a child and their family. While Territory Families uses decision-making tools to assist with the process, some witnesses advocated for greater flexibility in screening processes.<sup>314</sup> Any increased flexibility must be consistent with the capacity to conduct an informed assessment of what are unacceptable risks, rather than whether there is an absence of risk. This assessment would be informed by the individual strengths and needs of the child.

The Commission considers that one method to find and approve more kinship carers would be to create at least two senior positions within the department's Out of Home Care Unit, with responsibility for the overall oversight of kinship care. These individuals would not have a caseload but would play a general role in promoting and reporting on kinship care, as well as reviewing processes for kinship carer assessments and placements with kinship carers. One position would be responsible for cases in the Top End and the second for Central Australia.

The role would include reviewing decisions relating to kinship care when families were dissatisfied, including when the department has failed to place a child in a kinship situation. It would also oversee the outcome of a kinship carer assessment or a failure to assess someone to become a carer. Cases could be referred by a caseworker or another member of the Out of Home Care Team. An individual

could seek a review of their assessment as a carer or a parent could ask for a review of a failure to assess a possible kinship carer. The positions should be filled by Aboriginal people. Territory Families' standard correspondence to a parent notifying them of a decision to remove a child should include advice to the parent that they can lodge a complaint about these aspects of departmental practice.

Those in the new positions could annually review a sample of kinship care assessments and kinship care placements and provide a report for inclusion in the Territory Families Annual Report about the level of compliance with the Aboriginal Child Placement Policy.

The Commission is of the view that there should be mechanisms in place to ensure foster and kinship carers, and those seeking or applying to be foster or kinship carers, have an avenue not only to voice any complaints about their engagement with Territory Families but also a legal right to seek a review of any adverse decision.

The Commission is therefore recommending the Northern Territory Civil and Administrative Tribunal be given review powers in relation to a range of decisions with respect to foster and kinship carers, including assessment and approval decisions. The Tribunal would provide an avenue for foster and kinship carers to have an independent review of relevant decisions made by Territory Families. The Tribunal's powers would include setting aside the decision and making a new one, or remitting the decision back to the decision-maker for reconsideration.

### **Recommendation 33.6**

**Territory Families create at least two senior positions, to be filled by Aboriginal people, in the Out of Home Care unit, with responsibility for:**

- increasing the number of Aboriginal foster and kinship carers
- overseeing training on kinship and kinship care decision-making
- reviewing decisions relating to kinship care, including carer assessments and failure to place children with identified kin, and
- reporting annually on aspects of kinship care, including the number of Aboriginal children placed in or outside kinship care.

### **Recommendation 33.7**

**The Northern Territory Civil and Administrative Tribunal Act (NT) be amended so the Tribunal has jurisdiction to review decisions made by Territory Families about foster and kinship carers or applicants seeking to become carers.**

## ***Lack of culturally appropriate carer assessment tools***

Territory Families currently uses the same policies and procedures for assessing Aboriginal kinship carers as it does for non-Aboriginal foster and kinship carers.<sup>315</sup> There is evidence to suggest that this may lead to Aboriginal carers not being assessed as appropriate where the assessment has not been sufficiently moderated for cultural factors. The Commission heard:

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*The assessment tools at the moment are just not culturally appropriate. They are too riskadverse, and what that's leading to is situations ... I'm also absolutely aware of where family members who are already raising children and doing a fantastic job of it, have to go through an assessment process that takes very many months before they are approved as carers.*<sup>316</sup>

The Children's Commissioner had a similar view, expressing concern about whether the assessment process for kinship carers in the Northern Territory is adequately adapted for the way of life in some communities.<sup>317</sup>

Culturally appropriate tools for assessing kinship carers have been trialled in other jurisdictions. These include the Winangay Aboriginal Kinship Care Assessment Tools, developed by Winangay Resources, an Aboriginal organisation in NSW.<sup>318</sup> They are a collaborative and visual tool for assessing kinship carers. They take a strengths-based approach to assessing Aboriginal carers using a process of 'yarning', and visual strengths and needs cards, to help develop rapport with Aboriginal carers and build on the strengths of Aboriginal families and communities in raising their children.<sup>319</sup> The Winangay tools were recently trialled and evaluated in Queensland following a recommendation by the Queensland Child Protection Commission of Inquiry. The tools were well received by kinship care assessors in Queensland, who felt that they were more culturally appropriate compared to their previous tools, that they empowered carer applicants and made it easier to identify strengths and concerns in a potential placement.<sup>320</sup>

## **Delays to kinship carer assessments**

The acknowledgement of an acting Team Leader of a Territory Families Reunification Team that there had been systemic failures and widespread delays in assessing Aboriginal kinship carers was also reflected in other submissions and evidence to the Commission.<sup>321</sup> CAALAS submitted that frequent delays by Territory Families in conducting kinship care assessments inhibited the placement of children with Aboriginal carers.<sup>322</sup> The Commission heard examples of the kinship carer assessment process taking up to 18 months.<sup>323</sup>

The reasons for delays are varied and will often be outside the control of Territory Families. Issues may include practical difficulties in communicating with potential carers living in remote communities, obtaining documents and information associated with the application process, and road and weather conditions. It is easy to foresee that such delays may result in children remaining in placements away from family and community for long periods as they await an outcome of a kinship assessment.<sup>324</sup>

The potential damage caused by delays in kinship assessments is illustrated by the experience of DS. Her baby granddaughter was placed with a foster carer in Darwin while Territory Families considered possible kinship carers. DS travelled from her remote community to visit her granddaughter in care but felt that she unsettled the baby, who had bonded with the foster carer in the months she had been away from her family. She said 'probably she was a bit scared of me

because I was speaking another language'.<sup>325</sup> The longer a child, particularly a young child, is away from their family, the more unfamiliar the family may become to the child.

Territory Families described the ongoing process of identifying prospective kinship carers, noting that kinship carers who are not available when a child enters care may become a potential carer later.<sup>326</sup> However, the Commission also heard that it is important that children are placed in kinship care as soon as possible after entering out of home care. The acting Chief Executive Officer of NPY Women's Council told the Commission that the longer a child remains in a non-Aboriginal placement, the more likely it is that a point will be reached where it becomes more appropriate for the child to remain in a stable placement than move to kinship care:

*'More often than not we see that once children have been in a placement for a number of years, the answer is to say, well, that's it, we will leave it now because the child's happy there.'*<sup>327</sup>

## Findings

**Training in understanding Aboriginal kinship systems and culturally appropriate kinship care is not adequate for the purpose of kinship care placements and must be significantly improved.**

**Too few Aboriginal children in out of home care in the Northern Territory are placed with kinship carers.**

### Recommendation 33.8

**Territory Families consult with Aboriginal organisations to:**

- improve content and the delivery of specific training to Territory Families staff members undertaking kinship care assessments, and
- amend and streamline kinship care assessment forms and processes to ensure that the best interests of the child are considered, consistent with a fully informed assessment of acceptable and unacceptable risks to the child.

**Northern Territory Government undertake the following improvements to its systems to develop quality foster and kinship care:**

- properly resource the kinship care assessment unit to ensure the timely assessment of prospective kinship carers, and
- cease using any type of placement or placement arrangement that does not:
  - require a formalised and signed agreement or court order
  - offer carers financial support for the costs of caring for a child
  - require a care plan for a child, including a documented reunification plan, where applicable, and
  - involve case management of a child that is in accordance with the Act.



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## RELIANCE ON PURCHASED HOME-BASED CARE

As noted earlier, the approach to addressing the diminished capacity of foster and kinship care has been to invest in using a purchased form of home-based care. This alternative model of care has contributed to barriers to the adequate implementation of the Aboriginal and Torres Strait Islander Child Placement Principle.

Purchased home-based care provides care is similar to foster care, whereby the child lives with the carer's family in their home. As described in more detail below, Territory Families appoints a commercial contractor to source purchased home-based care providers. They are paid more than carers under other models, and Territory Families has less oversight of their training, assessment and performance.

There was a significant increase in the number of children placed in purchased home-based care between 2006 and 2016.<sup>328</sup> At 30 June 2006, less than 1% of children in out of home care were in purchased home-based care in the Northern Territory.<sup>329</sup> By 30 June 2016, this figure had risen to 32% of children in out of home care,<sup>330</sup> with more children placed in purchased home-based care than in either foster or kinship care.<sup>331</sup>

The Commission believes that this vast increase in the use of purchased home-based care is detrimental to building capacity in foster and kinship care, as inequitable rates of payment may reinforce the belief that Territory Families does not respect, value or appropriately support foster and kinship carers. This may mean that potential foster and kinship carers are even less inclined to take on these roles.

The Commission also believes that the current model of purchased home-based care used by Territory Families to be unsustainable and irresponsible. Ultimately, it is driven by convenience, often driven by crisis mode, irrespective of cost, unduly limiting the resources available for use elsewhere in the out of home care sector.

### The high price of relying on purchased home-based care

The increasing reliance on purchased home-based care placements for children in the Northern Territory is very expensive.

The Northern Territory Government provided the Commission with the cost of out of home care and the number of children in care during the 2015–16 financial year. Based on this information, the Commission calculated that the average cost per child for the various out of home care services per annum varies significantly. Figure 33.7 shows the costs.<sup>332</sup>

Figure 33.7: Average cost per child per annum by care type (2015–16).<sup>333</sup>

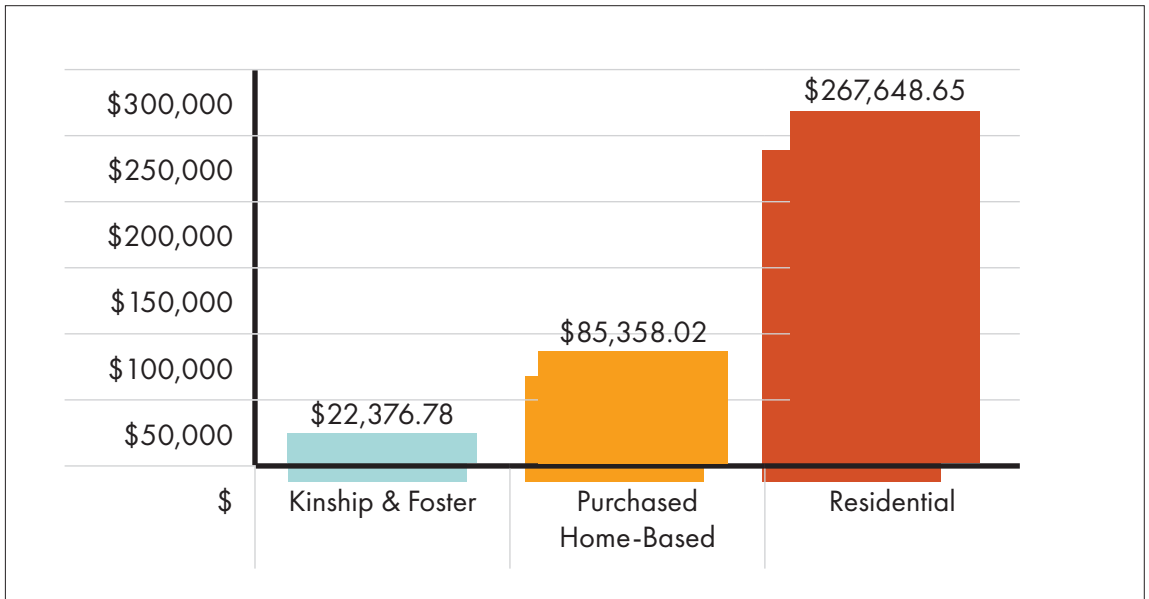
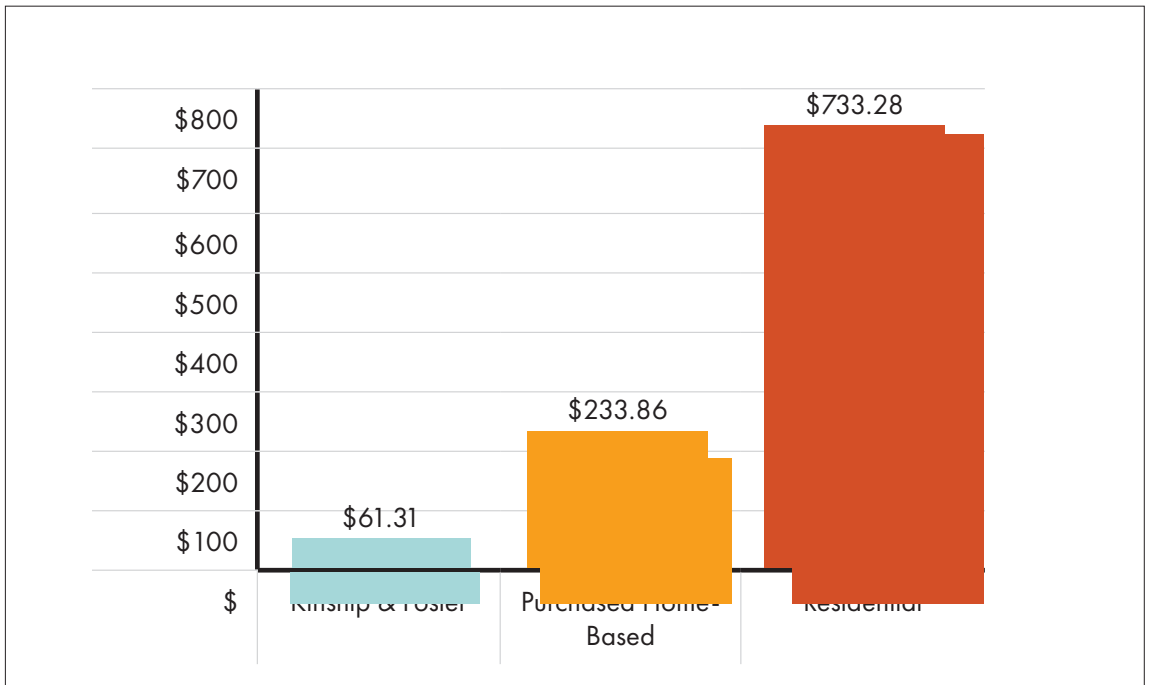


Figure 33.8 shows the daily average cost per child for the financial year 2015–16 for the various out of home care services.<sup>334</sup>

Figure 33.8: Average cost per child per night by care type 2015-16.<sup>335</sup>



The underlying data for Figure 33.7 and Figure 33.8 is contained in Table 33.4 below:

**Table 33.4: Average cost per child per annum and night by care type 2015–16.**<sup>336</sup>

|                             | Expenditure per annum | Number of Children | Cost per Child per annum | Cost per Child per night |
|-----------------------------|-----------------------|--------------------|--------------------------|--------------------------|
| <b>Kinship &amp; Foster</b> | \$10,987,000.00       | 491                | \$22,376.78              | \$61.31                  |
| <b>Purchased Home-Based</b> | \$27,656,000.00       | 324                | \$85,358.02              | \$233.86                 |
| <b>Residential</b>          | \$29,709,000.00       | 111                | \$267,648.65             | \$733.28                 |

The Commission notes that the data for the number of children was recorded on 30 June 2016.<sup>337</sup> Territory Families informed the Commission of a number of shortcomings with its approach to capturing statistical data.<sup>338</sup>

### **Cost per out of home care service**

There are significant differences in expenditure on the various out of home care services. The Northern Territory Government provided the Commission with the amounts paid to each contracted out of home care service provider for the financial years from 2012–13 to 2015–16. Table 33.5 and table 33.6 show these costs. The expenditure on foster and kinship care continued to be the lowest throughout the 2012–16 period. However, spending on purchased home-based care has doubled since 2012.<sup>339</sup>

Table 33.5 sets out the expenditure for out of home care funding, as provided by the Northern Territory Government:

**Table 33.5: Northern Territory Government spending on out of home care funding in 2012–16.**<sup>340</sup>

|                      | 2012 - 13    | 2013 - 14    | 2014 - 15    | 2015 - 16    |
|----------------------|--------------|--------------|--------------|--------------|
| Kinship & Foster     | \$3,370,00   | \$8,791,000  | \$10,461,000 | \$10,987,000 |
| Purchased Home-Based | \$13,205,000 | \$1,435,000  | \$21,272,000 | \$27,656,000 |
| Residential          | \$2,172,400  | \$19,388,00  | \$27,898,000 | \$29,709,000 |
| Total                | \$18,747,400 | \$29,614,000 | \$59,631,000 | \$68,352,000 |

From 2012 to 2016, residential care accounted for the lowest number of children in out of home care (see Table 33.2 and Figure 33.4). The number of children in foster and kinship care was consistent from 2014 to 2016.<sup>341</sup> There has been a significant increase in the number of children in purchased home-based care placements.<sup>342</sup>

Foster and kinship carers are currently provided with a standard weekly payment to cover the costs of a child’s basic needs and everyday expenses. This payment is made according to the child’s age.<sup>343</sup> The Commission heard that, unlike the allowances paid to foster and kinship carers, Territory Families negotiates the costs of purchased home-based care through a process of competitive bidding.<sup>344</sup> As such, purchased home-based carers can be paid exponentially more than foster and kinship carers.

In addition to the age-related standard payment, foster and kinship carers are also paid *special needs loadings* to cover the costs of children with particularly complex needs.<sup>345</sup> These are based on the Complexity Tool, a validated assessment tool<sup>346</sup> for assessing the placement needs of a child. The tool measures the complexity of a child’s behavioural and special needs in areas such as substance abuse, sexualised behaviours, mental health and physical disability.<sup>347</sup> Based on these measures, a child is given a complexity rating, ranging from Level 1 – standard care to Level 4 – extreme care,<sup>348</sup> which informs the appropriate payment required to support the foster and kinship care placement. Carers in remote areas may receive an additional loading shows the weekly payments for foster and kinship carers in the 2017–18 financial year.

**Table 33.6 : Age-related weekly payments and loadings for carers in 2017–18.**<sup>349</sup>

| Child Age        | 0 - 5    | 6 - 9    | 10 - 13  | 14 - 17  |
|------------------|----------|----------|----------|----------|
| Level 1          | \$233.02 | \$249.37 | \$293.63 | \$363.55 |
| Level 1 - Remote | \$256.40 | \$274.39 | \$323.01 | \$399.95 |
| Level 2          | \$361.27 | \$386.62 | \$455.18 | \$563.58 |
| Level 2 - Remote | \$384.54 | \$411.54 | \$484.56 | \$599.88 |
| Level 3          | \$489.42 | \$523.77 | \$616.64 | \$763.51 |
| Level 3 - Remote | \$512.69 | \$548.69 | \$646.01 | \$799.82 |
| Level 4          | \$617.57 | \$660.91 | \$778.20 | \$963.43 |
| Level 4 - Remote | \$650.88 | \$685.83 | \$807.57 | \$999.83 |

A foster carer noted that the allowance currently provided to foster and kinship carers meant they often had to work full time and balance care-giving with other commitments, which was very difficult with children who had high needs and behavioural issues.<sup>350</sup>

In contrast, a Team Leader with Territory Families noted that many purchased home-based carers ran their homes like businesses:

*‘The commercial carers have a quota; for example; “I can care for five children”, so regrettably, we get people running care homes as a business. They may say “I can’t manage this child” and demand to have the child sent to respite, but then expect another child during their absence to fill their quota in order to get maximum payment.’<sup>351</sup>*

## Different process of engagement

The Commission understands that the Northern Territory is the only Australian jurisdiction where it is possible for long-day childcare providers, such as family day carers, to be automatically eligible to care for children under the guardianship of the government.<sup>352</sup>

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The evidence before the Commission establishes that the engagement of purchased home-based care providers usually occurs in the following way:

- The Placement Unit of Territory Families emails a placement request form to two or three umbrella providers of purchased home-based care, inviting them to submit quotes within two hours. The form contains some details about the child to be placed.
- The providers of purchased home-based care will respond with quotes for the placement.
- The Placement Unit accepts the quote from the successful provider, although there may be no choice due to constraints such as urgency.<sup>353</sup>
- The provider is responsible for determining the appropriate carer for the child from their list of educators/carers and Territory Families is made aware of the identity of the carer.<sup>354</sup>

Children in out of home care have the right to a care environment that addresses their individual needs and promotes their best interests,<sup>355</sup> and it is the responsibility of Territory Families to identify such placements. By using providers of family day care services as contractors, Territory Families is effectively outsourcing this responsibility.

## Procurement of purchased home-based care services

The Acting Executive Director of Out of Home Care for Territory Families maintained that Territory Families has a legal relationship via these quotes and acceptances with the umbrella providers, that is, with the businesses which employ or contract the family day carer, but documents revealed that the legal relationship can occasionally be directly with the care provider.<sup>356</sup> For example, documents show that Alice Springs Family Day Care requires that the care provider issues quotes in response to placement requests. Territory Families accepts these quotes, creating a legal relationship with the actual care provider, and not with the umbrella provider, Alice Springs Family Day Care. This creates doubt and inconsistency as to what oversight, training and standards are being applied to the actual care provider and by whom.

The Acting Executive Director told the Commission that she thought end-care providers would pay commissions to umbrella providers, but was unaware of the amounts of any commissions. Information provided to the Commission indicates that Kentish Lifelong Learning & Care Incorporated, the largest provider of purchased home-based care in the Northern Territory, has for the last seven years charged a commission of approximately 21%.

The Acting Executive Director told the Commission that purchased home-based care providers can determine their own price:

*Family day carers can call their own price, and whilst they might have some guidance against the national structures, it is up to the individuals.<sup>357</sup>*

She said that Territory Families will 'pay what's demanded' if desperate for a placement for a child.<sup>358</sup>

## Payment for a purchased home-based carer

The Commission examined quotes for a purchased home-based carer and calculated the approximate amount charged for caring for four children over a 31-day period.

The children were different ages, but all were aged below 7.

For the youngest child, the carer charged an hourly rate of:

- \$10.50 for weekday core hours
- \$15 for weekday out of core hours, and
- \$16 for public holidays.

The quote for a 154-day placement was \$44,912.75 – approximately \$9,040 per month.

For the second-youngest child, the carer charged an hourly rate of:

- \$10 for weekday core hours
- \$15 for weekday out of core hours, and
- \$16 for public holidays.

The quote for a 31-day placement was \$9,107.75.

For the third-youngest child, the carer charged an hourly rate of:

- \$10 for weekday core hours
- \$14 for weekday out of core hours, and
- \$16 for public holidays.

The quote for a 123-day placement was \$36,454 – approximately \$9,187 per month.

For the eldest child, the carer had an hourly rate of:

- \$10.50 for weekday core hours
- \$15 for weekday out of core hours, and
- \$16 for public holidays.

The quote for a 92-day placement was \$28,100.50 – approximately \$9,468 per month. Over a one-month period, the purchased home-based carer received approximately \$36,802.

The Central Australian Aboriginal Congress told the Commission of concerns that ‘*professional foster carers*’, or family day carers, may be paid up to \$1,200 per week per child, far higher than the standard weekly rate received by Aboriginal kinship carers and general foster carers.<sup>359</sup> The above figures more than illustrate that observation.

The Commission was provided information about the payments made for purchased home-based care to the service provider companies in the 2015–16 financial year.<sup>360</sup>

**Table 33.7: Payments made for purchased home-based care in 2015–16.**<sup>361</sup>

| Purchased Home Based Care Provider                       | 2015-16             |
|--|---------------------|
| Alice Springs Family Day Care Inc                        | \$51,225            |
| Alice Springs Youth Accommodation & Support Services Inc | \$296,178           |
| Individual Carer T/A The Playstation                     | \$211,944           |
| Chelsea's Disability & Family Care Agency                | \$722,581           |
| Churches of Christ Care                                  | \$143,161           |
| Individual Carer   | \$179,137           |
| Individual Carer   | \$123,285           |
| Individual Carer   | \$42,394            |
| Individual Carer   | \$36,925            |
| Edith's Family Day Care                                  | \$148,829           |
| Individual Carer   | \$115,915           |
| Individual Carer   | \$74,964            |
| Hayes Family Day Care                                    | \$27,275            |
| J.D Childcare  | \$256,272           |
| Jo Duncan Child Care                                     | \$88,488            |
| Individual Carer   | \$201,003           |
| Kentish Lifelong Learning And Care Inc                   | \$12,653,937        |
| Individual Carer   | \$69,238            |
| Little Feet Family Day Care                              | \$73,872            |
| Individual Carer   | \$32,387            |
| Mili's Family Day Care                                   | \$84,997            |
| Individual Carer   | \$67,171            |
| North Coast Children's Home Inc                          | \$575,061           |
| NT Friendship & Support Inc                              | \$1,038,541         |
| Individual Carer   | \$140,382           |
| Individual Carer   | \$23,576            |
| Individual Carer   | \$172,539           |
| Individual Carer   | \$63,645            |
| Territory Child Care Group Inc                           | \$9,907,555         |
| Other Purchased Home Care Providers                      | \$33,250            |
| <b>Total</b>   | <b>\$27,655,718</b> |

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## Less oversight by Territory Families of carer training, assessment and performance

Territory Families provided evidence to the Commission that it requires purchased home-based carers to comply with the requirements for accreditation for long-day care or family day care. Both services are covered by the National Quality Framework, which operates under an applied law system, comprised of the *Education and Care Services National Law Act 2010* (Cth) and the *Education and Care Services National Regulations*.

The applied law system sets a national standard for children's education and care across Australia, with some variations in provisions in each jurisdiction. The Northern Territory passed the *Education and Care Services (National Uniform Legislation) Act (NT)* (*NT Education and Care Services Act*) to conform to the *Education and Care Services National Law Act* (Cth). Section 4 of the *NT Education and Care Services Act* specifies that *the Education and Care Services National Law set out in the Appendix of the NT Education and Care Services Act 'applies as a law of this jurisdiction'*.<sup>362</sup>

According to Territory Families policy, purchased home-based carers are subject to the requirements for long-day childcare providers under the *NT Education and Care Services Act*.<sup>363</sup> Purchased home-based carers must have completed or be enrolled in an approved Certificate III level education and care qualification.<sup>364</sup> The qualification is administered under the *Education and Care Services Act* and *Regulations* and is intended to provide people who work in early childhood education with skills and knowledge in a range of fundamental areas, which include:

- understanding and implementing the approved learning frameworks
- supporting each child's wellbeing, learning and developmental needs
- delivering services in a nurturing and supportive environment, and
- understanding health and safety requirements for children.<sup>365</sup>

The Commission understands that Territory Families relies on the regulatory body or the purchased home-based care provider to train carers and monitor the quality of the placements.<sup>366</sup>

The Northern Territory Government agency Quality Education and Care NT is the regulatory authority responsible for administering the *Education and Care Services National Law*, pursuant to the *Education and Care Services (National Uniform Legislation) Act (NT)*.<sup>367</sup> As such, Quality Education and Care NT has the power to approve, suspend or cancel service approval of an 'education and care service' for family day care providers.<sup>368</sup> Section 5 of the *Education and Care Services National Law*, incorporated as the appendix of the *NT Education and Care Services Act*, states the following:

*'education and care service' means any service providing or intended to provide education and care on a regular basis to children under 13 years of age other than: (f) care provided under a child protection law of a participating jurisdiction.*

Section 8 of the *NT Education and Care Services Act* specifies that '*child protection law*' means the *Care and Protection of Children Act*.<sup>369</sup> As a result, care of children in the child protection system clearly falls outside the definition of an education and care service.<sup>370</sup>



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The Second Reading Speech for the *Education and Care Services (National Uniform Legislation) Bill* (NT) stated that:

*There are a small number of services that fall out of scope of this law; namely home-based care, occasional care, mobile services, and budget-based funded services.*<sup>371</sup>

The definition of education and care service expressly limits the age of children covered under the *NT Education and Care Services Act* to 13 years old. The Commission has evidence that Territory Families uses purchased home-based care for children aged up to 17.<sup>372</sup> Therefore, even if purchased home-based care was covered under the *NT Education and Care Services Act*, purchased homebased care services provided to young people aged 13–17 would not be covered by this legislation.

It is deeply troubling that this legislation is explicitly cited and used by Territory Families to legitimise the purchased home-based care model in the Northern Territory, but specifically excludes care provided under child protection laws and care provided to young people aged 13–17. Steps must be taken to address this issue.

The Commission understands that Quality Education and Care NT undertakes oversight functions in relation to long-day care and family day care providers, which include:

- monitoring
- compliance
- conducting assessments and quality rating visits, and
- conducting incident and complaint investigations.<sup>373</sup>

Quality Education and Care NT also monitors whether carers have completed or are enrolled in an approved Certificate III level education and care qualification. The Commission understands that the agency or an approved provider of a family day care service must undertake an assessment of each residence and approved venue at least annually.<sup>374</sup> The Commission understands that Quality Education and Care NT also has the discretion to reassess at any time.<sup>375</sup>

The Commission heard that Territory Families:

- does not take part in screening carers as the organisations providing purchased homebased care are responsible for screening,<sup>376</sup> and
- does not have responsibility for registering or deregistering purchased home-based carers.<sup>377</sup>

The Acting Executive Director of Out of Home Care for Territory Families explained that, under section 84 of the *Care and Protection of Children Act*, a case manager may enter a purchased home-based care house pursuant to the ‘usual triggers’ required to enter any house in the Northern Territory. She noted that she had never exercised that power with a purchased homebased care house.<sup>378</sup> At some time in 2017, Territory Families negotiated a voluntary inspection arrangement with the umbrella providers of purchased home-based care.<sup>379</sup>

In the absence of any real assessment process by Territory Families, it appears that the department cannot guarantee that carers are suited to meet the needs of the children in their care. This includes

whether or not an Aboriginal child is being placed with Aboriginal carers, in accordance with the Aboriginal Child Placement Principle.

Despite the issues described above, the Acting Executive Director told the Commission that she was confident that children in purchased home-based care were receiving quality care, but conceded that she may *'miss the odd one'*.<sup>380</sup>

The Commission believes that using purchased home-based care placements as it currently occurs directly contradicts placement decision-making that is in the best interests of children, by shifting the focus to need and convenience, irrespective of the cost. This is concerning for the following reasons:

- Territory Families has shifted its statutory obligations onto businesses, with accreditations that were not intended for continuous care, employing carers who have not been assessed and are not overseen by the department. In so doing, Territory Families is unaware of whether the care being provided is in the best interests of a child and potentially exposes the child to unacceptable risks, and, effectively abdicates its guardianship role.
- Territory Families' extraordinary level of spending indicates a lack of control over and regulation of the procurement process, and it must affect expenditure on other programs.
- The parallel of businesses charging commercial rates in competition with foster carers providing care based on an allowance and their own generosity is inequitable. It also poses a strong disincentive when recruiting and retaining foster and kinship carers.

The Commission recommends the phasing out of purchased home-based care of the present kind. This could occur over a period sufficient to allow the recruitment of more kinship and other carers discussed below.

### **Recommendation 33.9**

**The Northern Territory Government phase out current model of purchased home-based care over a 24 month period.**

## **SUPPORTING THE NEEDS OF CHILDREN AND YOUNG PEOPLE IN RESIDENTIAL ENVIRONMENTS**

*'No-one actually cares about you emotionally. You're a case file, you're just a number. I felt like I wasn't a person in welfare.'*

Personal story of AH<sup>381</sup>

As not all children can be placed in home-based care, Territory Families operates and funds other providers to run residential care services and facilities.<sup>382</sup> These services and facilities include general residential care, individualised residential care and supported disability care. Territory Families' *Continuum of Out-of-Home Care* provides an overview of each care type, describing types of residential care as 'home-like' and 'therapeutic'.<sup>383</sup> However, these descriptions are in stark contrast to the evidence provided to the Commission by former children who had been placed in residential care.

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The Commission reviewed Territory Families' files for several young people who were placed in residential care.<sup>384</sup> These young people or a family member gave evidence before the Commission. In some of the cases, Territory Families' files said residential care may be unsuitable for the child but that alternative options were limited.<sup>385</sup> The children's experiences in residential care were characterised by frequent absconding, substance abuse, offending and other high-risk behaviours, often in the company of other children in residential care. Placement staff struggled to manage their behaviours and, in many cases, would call the police.<sup>386</sup> The children were often disengaged from support services, education and pro-social influences, and dislocated from family, culture and community. At times, they would stay out on the streets all night or abscond from placement for weeks or more.<sup>387</sup> CL recalled that she ended up running away as 'no-one was stopping me, or caring where I was going or paying attention to me'.<sup>388</sup>

AH told the Commission that she did not support the use of residential care as a long-term placement option:

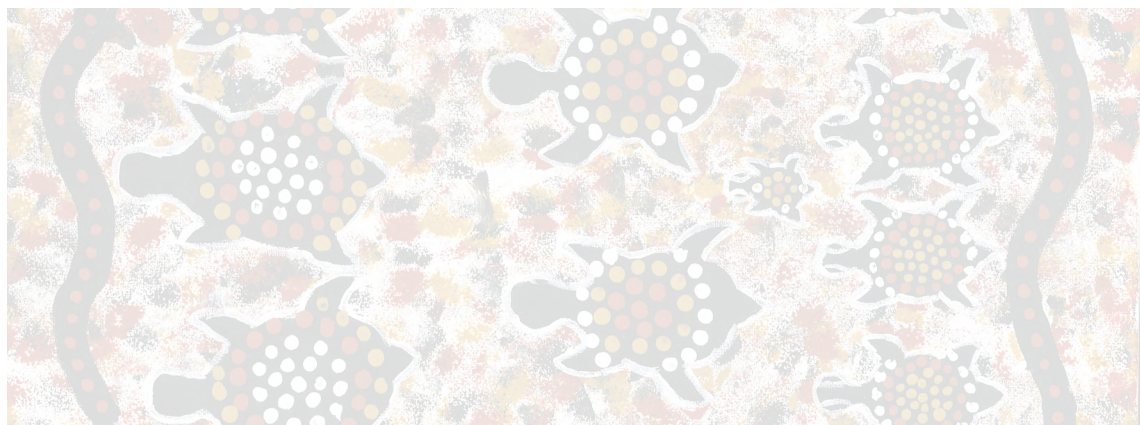
*I believe that every child deserves a family, so my views on residential care is [...] there shouldn't even be residential care. But if there really has to be, I reckon it should be for emergency placements, because you've got so many different carers that are going back and forth, with rotating shifts, in residential care.*<sup>389</sup>

DB said 'the residential houses were better than family homes for me. I felt less trapped and suffocated. I didn't have to worry about being the odd one out'.<sup>390</sup>

Residential care facilities in the Northern Territory are operated by a mix of non-government agencies and Territory Families. There were 103 Aboriginal children and young people placed in residential care in the Northern Territory at 30 June 2016,<sup>391</sup> representing 90% of the residential care cohort. Despite this, Tangentyere Council Incorporated is the only Aboriginal organisation providing residential care services in the Northern Territory. It has a maximum capacity of six beds.

## The cost of residential care

The Commission heard about the costs of residential care and the profits received by service providers. A former manager of Safe Pathways was shown documents which establish that Safe Pathways charged \$77,000 a month to run a four-bedroom residential house, which she managed.<sup>392</sup>



Territory Families provided the Commission with the information contained in Table 33.8, which outlines spending on residential care in the 2015–16 financial year.<sup>393</sup>

**Table 33.8: Territory Families spending on residential care in 2015–16.<sup>394</sup>**

| Residential care providers                                       | 2015-16             |
|--|---------------------|
| Anglicare NT   | \$5,556,146         |
| Community Staffing Solutions Australia Pty Ltd                   | \$5,924,573         |
| Industry Education Networking Pty Ltd (trading as Safe Pathways) | \$5,948,094         |
| Life without Barriers  | \$7,144,844         |
| Lifestyle Solutions (Aust) Ltd                                   | \$3,774,195         |
| Tangentyere Council Inc  | \$1,361,493         |
| <b>Total</b>   | <b>\$29,709,345</b> |

The Children’s Commissioner told the Commission that residential care was frequently offered in poorly maintained environments, with staff members who do not have sufficient training and support.<sup>395</sup> This is particularly concerning, as research has found that stability and predictability are very important for children and young people in residential care.

A study commissioned by the Royal Commission into Institutional Responses to Child Sexual Abuse asked children what safety meant for them in the context of residential care facilities. It found that it was important for children that they felt they knew what was going to happen, and knew their peers and how to manage their behaviour. Due to the chaotic nature of residential care, many children and young people felt it was ‘unsafe’.<sup>396</sup>

The Acting Executive Director of Out of Home Care for Territory Families told the Commission that the department receives a high number of complaints from children in residential care.<sup>397</sup> This is consistent with evidence received by the Commission that indicates that 90% of the 1,588 reportable incidents submitted to Territory Families between July and December 2016 came from residential care facilities.<sup>398</sup> Incidents reported included alleged or actual physical or sexual assault of a child in care or a carer’s behaviour or conduct posing a risk to the safety or wellbeing of a child.<sup>399</sup>

[DC] was placed with [a residential care provider], however he has been under the influence of other young people within that residence, has absconded with them, has experimented with alcohol (not done this before), sourced petrol and aerosol cans, and placed himself at high risk of harm, as well as being a target for bullying by the other young people who were older than [DC].<sup>400</sup> DCF [Department of Children and Families, now Territory Families] determined a lack of supervision was occurring for [DC], he was at risk of harm, there was minimal structure and consistency of any school attendance or mental health follow ups, and this placement was not suitable or in his best interests.<sup>401</sup>

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Others told the Commission of the potential benefits of residential care, suggesting that it offers improved support for children with complex behaviours and for those who may not wish to be placed in a family environment.<sup>402</sup> Some recent child protection inquiries have accepted the growing view that residential care placements should not just provide housing for children, but must also provide therapeutic benefit.<sup>403</sup> The Commission recognises that there is likely to be a place for therapeutic models of residential care, to provide services for children with specific needs, including children with disabilities or highly complex behavioural needs.

It was submitted to the Commission that all out of home care services in the Northern Territory must provide trauma-informed environments and therapeutic supports tailored to the needs of children.<sup>404</sup> APO NT recommended in its submission that kinship carers, foster carers and residential carers receive training, supervision and support to provide a trauma-informed, therapeutic approach which supports a young person's personal and social development.<sup>405</sup>

A literature review on the issue has suggested that the key elements of a therapeutic model of residential care should include:

- a clearly articulated philosophy of care
- prioritisation of children with complex needs who are able to benefit from the trauma-informed therapeutic approach
- a child-focused program structure
- trauma-based orientation to program design
- individualised therapeutic plans based on best available evidence
- participation of young people in shaping their care
- engagement with a young person's family, community and culture, and
- an evaluation framework.<sup>406</sup>

Territory Families has engaged the Australian Childhood Foundation to develop a model of therapeutic residential care for children in the Northern Territory. The Commission understands that the foundation is currently implementing a therapeutic residential care service in Alice Springs.<sup>407</sup> Its suitability as a model of therapeutic residential care will need to be reviewed with the above elements in mind.

### **Recommendation 33.10**

**The Northern Territory Government use residential care only as a therapeutic placement option for children with complex behavioural needs or disabilities, in accordance with therapeutic care criteria.**

## **Supported independent living**

As part of Territory Families' *Continuum of Out-of-Home Care*, an alternative to residential care is supported independent living.<sup>408</sup> This means the young person, who is still under the care of the Minister, lives independently, maintaining primary responsibility for their own safety, and day-to-day care and living arrangements.<sup>409</sup> This option is appropriate only for a young person with personal and social maturity.<sup>410</sup> Only one young person was identified as living independently in the Northern Territory in April 2017.<sup>411</sup>

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## PROFESSIONAL FOSTER CARE

In response to the increasingly complex needs of children requiring out of home care, and to drive improvements to home-based care, other jurisdictions have established a range of professional foster care models.<sup>412</sup> Professional foster care has been defined as:

*[H]ome-based care; targeted at children and young people not able to be placed in more traditional forms of home-based care; providing intensive care integrated with specialist support services; receiving a salary commensurate with level of skill; and participating in ongoing competency based training.*<sup>413</sup>

Foster care is traditionally characterised as volunteer carers providing care in their own homes. The state or territory reimburses carers to offset the costs of caring for a child.<sup>414</sup> Professional foster care is considered to be different to volunteer models of foster care as, while carers still care for children in their own homes, they require some form of training or a qualification and receive a salary commensurate with their level of skill.<sup>415</sup> The Commission considers that a professional stream of foster carers would be attractive to those with backgrounds in, for example, social work, education, occupational and other therapies, and psychologists who, by virtue of their training and experience, would be more appropriate carers for children and young people with complex needs who might otherwise be placed in residential care.

The Senate Committee inquiry into out of home care recommended that the Council of Australian Governments implement a nationally consistent, best practice model of professional foster care.<sup>416</sup> The Committee noted that one of the key advantages to a professional foster care model would be to provide homebased care for children with complex needs who would otherwise be placed in residential care.<sup>417</sup>

A Territory Families internal review into foster care considered the movement to professionalisation of the foster carer system as undesirable in the short term.<sup>418</sup> The reasons cited for this were consistent with nationally identified barriers to professional foster care and included:

- significant implications for foster carers interacting with the tax system<sup>419</sup>
- continuing difficulties recruiting and retaining foster carers
- difficulties associated with foster carers becoming subcontractors
- significant costs for the care system.<sup>420</sup>

However, there is force in the observation that those issues have already arisen as a result of the manner and degree of Territory Families use of purchased home-based care as well as the very high cost of residential care.

The professional stream would not compete with usual foster and kinship carers as the children and young people to be cared for by them would not, because of their complex needs, be placed in the usual way. The costs, as occurs at present, would be by special loading for complexity and could include a loading for qualifications.

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In the context of considering any new professional foster care stream, the current foster and kinship care stream should also be reviewed. This review should consider:

- the appropriateness of the current allowances for foster and kinship carers
- the support currently offered to foster and kinship carers
- the accreditation and assessment process for foster and kinship carers, and
- the steps that should be taken to allow for professional development of foster and kinship carers.

### **Recommendation 33.11**

**The Northern Territory Government develop and establish a professional stream of foster care, to respond to the targeted therapeutic needs of children, and to care for children with complex needs.**

## **FUNDING AND OPERATION OF THE OUT OF HOME CARE SECTOR**

The funding and operation of out of home care distinguishes the Northern Territory from many other states and territories. All foster and kinship care placements are provided by Territory Families, which directly provides and oversees the recruitment, assessment, registration and support of foster and kinship carers.<sup>421</sup>

Between 2010 and 2017, Territory Families also engaged numerous non-government service providers to deliver out of home care services, including purchased home-based care and residential care. These services were engaged through grant and tender agreements, many of which date back as far as 2010, but have been regularly extended.<sup>422</sup>

Territory Families does not currently have a specific accreditation framework for out of home care service providers, including for organisations providing residential care and purchased home-based care placements.<sup>423</sup> The Commission heard that Territory Families' procurement process includes complying with obligations to ensure that providers are scrutinised as able to meet the needs of children in their care.<sup>424</sup> Under current contract arrangements, general residential care providers are required to report on these obligations by providing a number of financial and performance reports.<sup>425</sup>

Deloitte Touche Tohmatsu completed a review of Territory Families' out of home care procurement strategies on 24 November 2016. The review found:

- that almost half (48%) of the department's expenditure on out of home care services was provided without having a formal agreement in place
- that the department was not clearly defining out of home care service specifications and expectations
- that previous procurement (grant) processes did not encourage the development of service provider capacity and competition in the market, and
- the department currently retains excessive risk and does not have the ability to effectively monitor service provider performance.<sup>426</sup>

The review acknowledged that Territory Families had recently established competitive procurement as a core principle, but that the *'lack of clearly defined outcomes and outputs still result in a situation where value for money cannot be assured'*. It recommended fundamental changes to current procurement strategies, including clearly defining the outcomes required from service providers.<sup>427</sup> The review concluded that the Northern Territory Government's out of home care procurement strategy had resulted in the use of short-term measures that were *'very costly'*, *'often not actually suitable for the child'* and *'tend to continue as long-term solutions for the child due to a lack of suitable, available long-term placement services'*.<sup>428</sup>

Those findings have particular relevance in circumstances where Territory Families is planning to extend that procurement strategy until it outsources out of home care service provision to the non-government sector, which it plans to do within seven years.<sup>429</sup> As part of the strategy, it will establish an out of home care accreditation system, and outsource services through contractual and funding arrangements.<sup>430</sup> Such a process must be carefully planned and designed before it is implemented, to avoid repeating the costly and unsuitable placements which have compromised the best interests of children in out of home care.

The 2010 BOI report discussed in detail the potential advantages and challenges of outsourcing some out of home care functions to non-government and private organisations.<sup>431</sup> Since the BOI report, considerable experience has been gained elsewhere in Australia in transitioning out of home care to the non-government sector.

In 2011, after the Special Commission of Inquiry into Child Protection Services in NSW, known as the *'Wood Inquiry'*, New South Wales announced the transfer of services to the non-government sector, believing that it would considerably improve the outcomes for children.<sup>432</sup> At the time of the transition, workers in non-government organisations had lower casework ratios in comparison to those working for the statutory child protection organisation. They were also perceived to have better links to the community.<sup>433</sup> A recent inquiry carried out by the New South Wales Legislative Council cited evidence showing it is unclear whether the transition had improved outcomes for children at all. The inquiry noted that the government had been unclear about the desired outcomes of the transition.<sup>434</sup> Currently, as the Commission understands it, the Northern Territory Government strategy for the transition includes, among other things:

- capacity-building for Aboriginal organisations
- auditing the provision of services by out of home care providers, and
- increasing the involvement of extended families in trying to identify optimal out of home care placements.<sup>435</sup>

The Commission also heard that in 2017, the strategy will include:

- auditing the out of home care sector
- consulting with the sector and the community to define the scope and outcomes of out of home care services
- researching and designing an out of home care accreditation scheme, and
- introducing flexibility when renewing contracts so that providers can transition as new elements are added to the scheme.<sup>436</sup>



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The evidence seemed to anticipate that transitioning out of home care to the non-government sector would improve service provision:

*I think that's where it's important that we acknowledge we're moving to the outsourcing of out of home care and the mechanisms that will occur through that process in trying to bring about accreditation, greater oversight, consistent pricing, quality of service, Aboriginal-led organisations. So, I think – I think there is recognition that things can definitely be improved.<sup>437</sup>*

For-profit organisations already provide some out of home care services in the current model and they will be considered as potential service providers in the future.<sup>438</sup> Concerns were raised about the need to ensure that Aboriginal-controlled organisations would be able to participate in the process to become service providers. The Chief Executive Officer of Danila Dilba Health Service, told the Commission:

*'... not only Danila Dilba, but other Aboriginal medical services, and other Aboriginal organisations across the Territory, are extremely well placed to provide a lot of the services that are currently being contracted to non-Indigenous service providers.'<sup>439</sup>*

These issues highlight several important considerations for the Northern Territory Government when planning the transition of out of home care services to the non-government sector so as to ensure the current failures are not carried over into the new scheme – but on a larger scale. They include:

- determining which types of non-government organisations will be able to provide suitable out of home care service provision functions
- ensuring that commercial enterprises and non-profit organisations are subject to the same standards and criteria, and neither is unjustly advantaged in the procurement process. The department should focus on the sustainable delivery of an appropriate standard of care to children
- determining safeguards to ensure Aboriginal organisations are not disadvantaged during tendering and procurement processes
- developing oversight and inspection mechanisms to ensure service providers uniformly comply with appropriate standards of care, and
- identifying clear and measurable outcomes for the transition that allow the Northern Territory Government to review and measure the suitability of outsourcing services on an ongoing basis.

Planning the transition of out of home care service provision must therefore coincide with the development of an accreditation framework and procurement strategy that addresses the findings of Deloitte Touche Tohmatsu's review. Rather than merely transferring the current challenges and deficiencies in out of home care to the non-government sector, the Northern Territory Government must explicitly address how to remedy these failings under the new outsourcing model. This should include identifying the needs of children in out of home care and designing a service response specific to the needs and demographics of children in the Northern Territory.

While establishing robust and effective care arrangements for the children in its care, it is vital that the Northern Territory Government develop a quality assurance framework for out of home care services comparable to that of the Department of Family and Community Services in New South Wales. Importantly, such a framework must identify and measure specific wellbeing outcomes for children

in out of home care. The framework should be used in decision-making and care planning for each child in care.<sup>440</sup>

Notwithstanding the kinds of safeguards referred to above, the Commission has concerns about any transition of out of home care to the non-government sector. The Commission sees it as a core function of government to provide care for children whom the state has removed from their families – a function which should not be outsourced or, in effect, abrogated.

### **Recommendation 33.12**

**The Northern Territory Government reconsider outsourcing out of home care services to the non-government sector. If it proceeds to do so, it should:**

- **identify service solutions, including placement types, that meet the specific needs of this population**
- **design an out of home care accreditation scheme that meets the specific needs of this population**
- **develop a framework for measuring the wellbeing of children in out of home care, and set clear goals and requirements for service providers, and**
- **ensure robust oversight which will include both Territory Families and the Commission for Children and Young People.**

## **SUPPORTING THE COMPLEX NEEDS OF CHILDREN IN OUT OF HOME CARE**

Placement stability is an important issue for children in care.<sup>441</sup> It affects their health and educational outcomes, as well as their emotional attachments.<sup>442</sup> Research has found that:

*People who have been in out of home care and in unstable placements have the highest risk of social exclusion as adults and are over-represented on every measure of social pathology and disadvantage.<sup>443</sup>*

The Commission heard that out of home care service provision in the Northern Territory currently fails to consider the complex needs of children in care. The system does not recognise the need to provide for the wellbeing of children. It does not provide trauma-informed and therapeutic placement options designed to address children’s complex health and educational needs, and the increasing number of children with disabilities. Addressing these issues can provide increased continuity and stability for children in care.

Former children in care who experienced many placements told very disturbing personal stories. A number of them described their experiences of placement instability. Providing stable placements for children in out of home care represents a key opportunity to address the pathways of children from child protection to involvement with the youth justice system.

## Absconding and 'self-placement'

Sometimes children are placed under an order of the Court but abscond from or leave the placement, often to return to family or kin.<sup>444</sup> In some cases, after absconding, new arrangements are made and the child might be allowed to make an independent choice about where they live.<sup>445</sup>

*'Every house they have put me in, I have run from. I think there was something like 15 different houses.'*

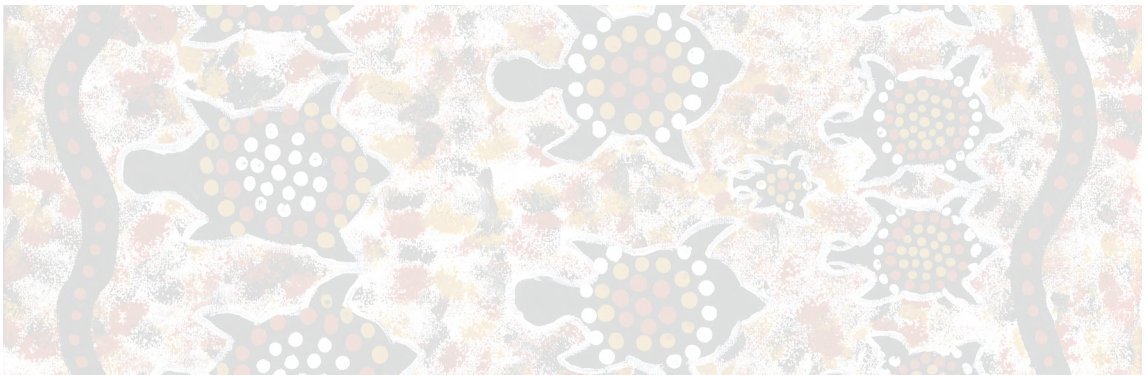
*I think I have run, because it's just human nature. You don't just get taken away from your family out of the blue and expect to adapt. It's just human. It's the normal way to want to be with family.'*

Vulnerable witness CJ<sup>446</sup>

The Commission received a Territory Families analysis of reportable incidents for July–December 2016 (see Table 33.8), which found that *'the most commonly reported concern'* related to children or young people absconding from their placement. They made up 49% of the 1,588 reportable incidents recorded during this period.<sup>447</sup>

The Executive Director of the Strategy and Policy Division for Territory Families provided a table based on monthly reports for July–December 2016, showing 551 reportable incidents in which *'the whereabouts or location of a child in care is unknown and there is a serious concern for their immediate safety and/or wellbeing'* and 233 incidents in which *'a child in care has absconded and there are no immediate concerns for their safety or wellbeing'*.<sup>448</sup>

In oral evidence, the Northern Territory Government accepted that the 551 incidents in the first category represented *'overwhelmingly the largest percentage'* of incidents falling within the *'Level 2 risk types'*, but noted that the figures on reportable incidents relating to absconding might refer to *'a very small number of individual children'*.<sup>449</sup> The number of children *'self-placing/absconding'* each quarter in 2016 ranged from 1 to 46 children.<sup>450</sup> However, these figures exclude certain categories of children such as *'children on an authority residing with their parents with or without financial support'*.<sup>451</sup>



**Table 33.8: Types of risks by level and frequency of occurrence in July–December 2016<sup>452</sup>**

| Risk Type  | Number of incidents |
|--|---------------------|
| <b>Top 5 Level 1 Risk Types</b>  |                     |
| Alleged or actual physical assault of a child in care  | 39                  |
| Child in care is suspect, charged or convicted of a criminal offence that may result in a custodial sentence                           | 20                  |
| Alleged or actual sexual assault of a child in care  | 14                  |
| The behaviour or conduct of a carer poses a risk to the safety or wellbeing of any child   | 6                   |
| Child in care, or with an open case, has attempted suicide   | 5                   |
| <b>Top 5 Level 2 Risk Types</b>  |                     |
| The whereabouts or location of a child in care is unknown and there is a serious concern for their immediate safety and/or wellbeing   | 551                 |
| Serious, threatening or aggressive behaviour towards a staff member or carer by a child in care  | 78                  |
| Child in care is suspected, charged or convicted of a criminal offence   | 76                  |
| Alleged or actual physical assault or carer by a child in care or the parent of a connected individual                                 | 32                  |
| A child in care has intentionally caused harm or injury to themselves which requires medical treatment (incl. mental health treatment) | 27                  |
| <b>Level 3 Risk Types</b>  |                     |
| A child in care has absconded and there are no immediate concerns for their safety or wellbeing  | 233                 |
| Significant property damage by a child   | 75                  |
| A child in care has been admitted to the hospital for emergency medical treatment  | 36                  |
| A child in care intends (making believable threats) to cause harm or injury to themselves  | 32                  |
| Drug paraphernalia has been located at placement   | 27                  |

During March 2017, 46 children were recorded as self-placing from out of home care placements in the Northern Territory, with their whereabouts unknown.<sup>453</sup> Again, this figure excludes certain categories of children.<sup>454</sup> A former manager of Safe Pathways advised the Commission that in her experience managing residential care units for Anglicare NT and Safe Pathways, an estimated 90% of children absconded from placement.<sup>455</sup>

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## Consequences for children who abscond or self-place

When a child absconds or self-places, they may be returning to an environment that was considered unsafe.<sup>456</sup> They may also be unsupervised and unsupported during this time.

The Commission heard examples of devastating outcomes for children who had self-placed. In one example, a foster carer described experiencing the low expectations held for children in care, stating that a caseworker said that it was *'to be expected that a 13-year-old girl would run away and not attend school'*. They described being told that *'self-placement'* was a normal outcome.<sup>457</sup> Another witness described a case in which a young person who had absconded from her residential care placement experienced sexual abuse while living away from her placement.<sup>458</sup>

The problem of absconding was also raised in individual cases before the Commission. At one point, DF, who was then aged around 12, was absconding from his residential care placement for up to four weeks.<sup>459</sup> He was taking drugs and was assaulted while living on the streets during this time.<sup>460</sup> The Department of Children and Families, now Territory Families, identified that in a two-year period in residential care, DG absconded 89 times<sup>461</sup> and suffered numerous assaults while absent from the care facility.<sup>462</sup>

A caseworker for Territory Families accepted that the number of children who abscond from residential care in Katherine is very high, putting them at risk of:

- sexual abuse
- exposure to drugs, and
- violence.<sup>463</sup>

In addition to exposure to these risks of harm, while children and young people are self-placing or absconding they may not be attending school or have access to the support services available to them while in placement.

## Responding to self-placement and absconding

Under section 85 of the *Care and Protection of Children Act*, authorised officers have the power to apprehend a child and return the child to the place they ordinarily live or to another safe place.

A former manager of Safe Pathways observed that absconding was one of the major issues she faced, and that Safe Pathways did not have the ability to detain or physically force children to stay at the residential house.<sup>464</sup> She told the Commission she was concerned that Territory Families may not be fulfilling its responsibility to children who go missing.<sup>465</sup> She observed that on many occasions, she saw children self-place with their families<sup>466</sup> – often with the knowledge of Territory Families – returning to the place Territory Families had deemed unsuitable and removed them.<sup>467</sup>

However, the Commission heard evidence that it was often difficult to prevent children from absconding or to bring them back to their placement. A former Territory Families case manager, DH, found that in some circumstances it was unsafe for carers or case managers to try to return children to placement.<sup>468</sup> In addition, on occasions, police were reluctant to assist when the child did not appear to be at risk of harm.<sup>469</sup> DH noted that other jurisdictions have legislative mechanisms to address self-placing, such as *'harbouring notices'*. These are available in Victoria to encourage members of households to ensure the safety and wellbeing of children who regularly abscond to ensure their safety and wellbeing.<sup>470</sup>

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The mother of an 11-year-old boy who absconded from residential care and was on the streets overnight told the Commission, *'If he is in my care and runs away, I go out and look for him myself'*.<sup>471</sup> Swiftly locating a child who has absconded and returning the child to the placement may communicate that someone cares about their whereabouts.<sup>472</sup>

On the other hand, forcibly returning a child to their placement may fail to address the complex factors that have influenced the child in their decision to leave. Self-placement has the potential to become a pattern of behaviour for children who are unhappy or experience instability in their care environments or who are drawn away from their placement by factors such as illicit drugs or relationships with peers or adults.<sup>473</sup> The *Child Protection Systems Royal Commission Report: The Life They Deserve* (Nyland report) described these as *'push and pull'* factors, which are often interrelated.<sup>474</sup> This was consistent with the descriptions young people provided to the Commission about their reasons for leaving their placements.<sup>475</sup>

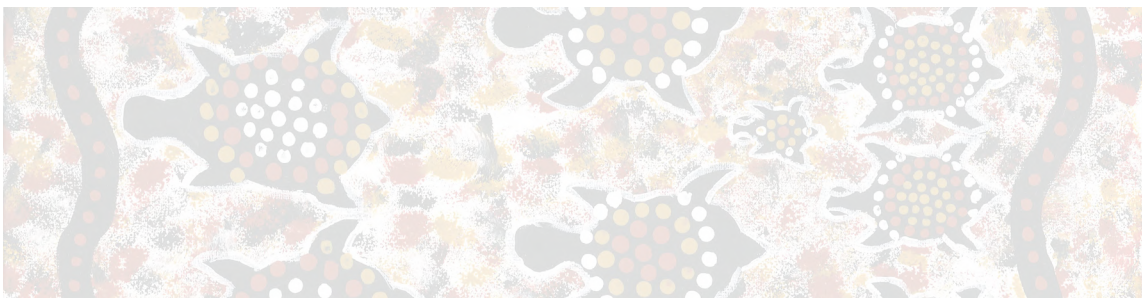
There is an obvious need to identify the underlying reasons children abscond or self-place, and to mitigate, wherever possible, the factors that may draw them away from their placement. Territory Families' analysis of reportable incidents in July–December 2016 indicates that residential care facilities provided 90% of all reportable incidents and, as noted above, absconding from placement was the most commonly reported concern, accounting for almost half of the reportable incidents.<sup>476</sup> This suggests that absconding is a particular problem in residential care facilities.

A former Territory Families Case Manager observed that in her experience, when young people do not feel at home in a residential care placement *'then it's quite common that they would try and seek that externally from the community'*, even in unsafe circumstances where *'the young people felt at least it was a loving place for them to be, which they didn't find in their placements'*.<sup>477</sup>

The Commission was told that the Territory Families Reunification Team at the Casuarina office attempts to address some of these factors when working with children who self-place:

*A big part of that is identifying what the children – the child's needs are and their reason for absconding from a placement. I think, knowing that information, we're able to support that child as much as possible to returning to the nominated placement.*<sup>478</sup>

The Commission was also told of examples where children repeatedly abscond or self-place. This may lead to a decision to reassess reunification or to consider authorising the adults the child selfplaces with as foster or kinship carers. The Acting Executive Director of Out of Home Care for Territory Families acknowledged that Territory Families should re-evaluate the orders of children who have self-placed, and consider whether there is further work that can be done with families to keep children safe in these circumstances.<sup>479</sup>



## *Lack of planning and support to manage self-placing*

The Children's Commissioner identified a lack of appropriate planning and action to address the safety of children who self-place.<sup>480</sup> She said her office had seen increasing numbers of children self-placing and then receiving limited support from Territory Families. The Commission reviewed a register of information relating to supporting children in residential care services and found that, while optional, very few children in residential care had an Absconder Plan in place.<sup>481</sup> There may also be no financial support available where children self-place. This can put financial pressure on relatives who care for the child but who do not receive assistance to do so. The Commission heard evidence that in such circumstances, Territory Families often attempts to engage a young person with a safety plan and service network, to provide access to medical and financial support.<sup>482</sup> One foster carer referred to an example where support from Territory Families was either not offered or not accepted for a child who self-placed with a relative in a remote community:

*We regularly receive frantic phone calls when this young person is hungry or needing money to pay for accommodation, or when someone has become aware that the young person has threatened to kill herself, or when she has threatened to physically harm others.*<sup>483</sup>

### **Recommendation 33.13**

**The Northern Territory Government implement a collaborative inter-agency approach between Territory Families and Northern Territory Police to manage children and young people absconding from out of home care placements.**

## **Health needs**

In accordance with Territory Families policy, a baseline assessment of the child's health is carried out at the time of entry to care. This includes taking the child to a general practitioner and other medical services to collect baseline information about their health and medical needs.<sup>484</sup>

The Commission heard specific complaints about the provision of health services to children in out of home care. However, the Executive Director of Research at the CREATE Foundation told the Commission that, based on its national surveys of children in out of home care, most children reported feeling that their health was good and they could access appropriate health services when they needed them.<sup>485</sup>

## ***Mental health needs of children in out of home care***

A foster carer provided evidence to the Commission about the difficulties of obtaining funding from the department for children with high needs and mental health issues:

*And these children are definitely victims of Government funding at the time and we've experienced that here in Central Australia, with huge cuts to student services, in education, for these kids. So, lots of the assessments we found were put off or prolonged or, if the children had experienced trauma, then there was a period they*

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wanted to wait before they would assess them. And all these things which were around trying to get funding for schooling, we did struggle with. But I think – I think there’s a battle on one hand of foster carers wanting to have the kids assessed and wanting the best outcomes for them and treating these things, and trying to support them to heal from trauma or whatever else has been happening in their lives. But [there is] a normalisation within the department of, “Well, all of the kids we deal with have these issues, so we can’t fund everyone, because we would have to fund everyone.” Whereas our request was always, “Well, that’s because it’s not normal and these kids are suffering.”<sup>486</sup>

A Team Leader for Territory Families outlined some of the difficulties that her team encountered as a result of the lack of resourcing. She specified that they included:

*... placements that did not meet the needs of the young people, limited access to adequate mental health services tailored to young people, an education system that did not support young people that have challenging behaviours, a dearth of support programs for youth and, particularly, a lack of programs or activities that really excite, challenge or motivate young people.*<sup>487</sup>

The Commission heard that the mental health needs of children in out of home care can go underdiagnosed or unaddressed. For example, the Chief Executive Officer of Anglicare NT told the Commission:

*One of the major challenges for children/young people in care is access to appropriate and timely mental health assessments and specialist counselling services. There is often a significant time lag from when an assessment is requested and when it is received.*<sup>488</sup>

The Central Australian Aboriginal Family Legal Unit reiterated the importance of ensuring children have timely access to mental health services, acknowledging that support and counselling services should be prioritised for children in out of home.<sup>489</sup>

## **Children with disabilities**

At 30 June 2016, there were 112 children with a disability in out of home care in the Northern Territory.<sup>490</sup> Of these children, 44% had an intellectual or learning disability and 37% had a physical disability. In 2015–16, 72 children with disability who were in care were on a long-term order.<sup>491</sup>

The Commission heard that it is possible that the number of children with disabilities who are on a care or protection order is underestimated. The BOI report recorded that 13% of children in out of home care had some kind of either physical or intellectual disability.<sup>492</sup> Dr Howard Bath, the former Children’s Commissioner for the Northern Territory, believes this figure is an underestimate, reflecting problems in data collection, and that the figure is probably around 40%.<sup>493</sup>

Territory Families policy provides for the complexities of case management and support for children with diagnosed disabilities who are in out of home care. Providing suitable care for these children brings additional challenges to interagency collaboration, as they may often require support from multiple government and non-government service providers.<sup>494</sup>



APO NT pointed out in its submission that timely assessments must be undertaken to diagnose disabilities when risks or vulnerabilities to young people emerge. It said individualised support services should be provided to address the complex needs of young people with disabilities.<sup>495</sup>

Children with FASD who enter the child protection system are likely to require complex care. In her evidence to the Commission, a former departmental officer noted that change and instability are particularly difficult for those children. She recommended specialist services be developed to provide expert services for these children and that carers receive training and support to manage their care.<sup>496</sup>

Notably, for children with a disability who are in out of home care, the National Disability Insurance Scheme will be responsible for providing supports specific to their needs, including for developmental delay. These supports would be in addition to the needs of children of similar ages in similar out of home care arrangements.<sup>497</sup>

The scheme fully recognises the diversity of out of home care arrangements and the level of reasonable and necessary supports are to reflect the circumstances of the individual child.<sup>498</sup> The scheme is being progressively rolled out across the Northern Territory. It is currently available in the Barkly, Katherine, East Arnhem, West Arnhem, Roper Gulf, Tiwi Islands, Victoria-Daly and West Daly regions. From 1 July 2018, the scheme will begin to be available in Darwin and Central Australia.<sup>499</sup>

### **Recommendation 33.14**

**Territory Families standardise screening for these children for FASD when entering out of home care.**

## **Substance abuse and children in care**

Substance abuse is an issue for some children and young people taken into care.<sup>500</sup> The Commission heard that some children and young people placed in out of home care had been exposed to substance abuse in their homes or had themselves developed substance abuse dependency.<sup>501</sup> A number of the children whose stories the Commission heard had a history of volatile substance abuse. For some, their substance abuse problems escalated once they were placed in residential care.<sup>502</sup> For others it may have begun in care.<sup>503</sup>

The mother of vulnerable witness DC told the Commission that after DC was placed in residential care, *'he went totally out of control. It was from this point I feel I lost him'*.<sup>504</sup> The Department of Children and Families, now Territory Families, records note that during his time in care, DC's *'behaviours escalated into a cycle of sniffing and breaking the law'*.<sup>505</sup>

The Commission observed that volatile substance abuse by children and young people in out of home care was often associated with other high-risk or offending behaviours and absconding from placement.<sup>506</sup> Volatile substance abuse also contributed to further disengagement from education and support services.<sup>507</sup>

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As discussed generally in Chapter 3 (Context and challenges), alcohol, drugs and volatile substances are often used as a way of dealing with difficulties such as unresolved trauma. DG said she engaged in volatile substance abuse *'to make me feel no pain'* and *'forget about welfare and forget everything'*.<sup>508</sup> Other children were influenced by their peers.<sup>509</sup>

## **Challenges for families and carers**

In some cases, substance abuse by children and young people puts them at risk of going into care or returning to care.<sup>510</sup> Families and carers need support to address substance abuse and associated challenging behaviours.

This need for support is evident in the experiences of mothers DE and DD. DE struggled to manage the behaviours of her son DF when he was coming down off drugs and he was placed in residential care, where his poor behaviour continued to escalate.<sup>511</sup> DD sought support from Territory Families for her son DC, who was engaging in volatile substance abuse and other high-risk behaviours. At one point, Territory Families offered DD a parenting course, but it focused on looking after babies when she needed guidance on parenting a pre-teen with ADHD and a substance abuse problem.<sup>512</sup> DD told the Commission that Territory Families *'need to really sit down and listen to families and help them from when behavioural problems first start'*.<sup>513</sup> Early intervention in the form of additional support for families to cope with substance abuse among children and young people may prevent some children and young people from entering care.

Many children and young people in care have complex needs and require experienced and skilled carers. Substance abuse and its effect on the behaviours of children and young people in out of home care poses particular challenges for carers in both residential care and foster care. These challenges include managing aggressive or heightened responses from an intoxicated child or young person.

Carers seeking to discourage substance abuse also have to contend with the influence of other children in care. For example, DF told the Commission that other children at his residential care placement were a *'bad influence'* on him.<sup>514</sup> DG also engaged in sniffing with other children from her residential care placement.<sup>515</sup>

The Commission has not identified a specific policy addressing the management of substance abuse by children and young people in out of home care, although more general policies are relevant.<sup>516</sup> In particular, the policy on out of home care placements provides that *'the child or young person should be matched with carers who have the capacity to meet their needs'*.<sup>517</sup> Without appropriate policies and procedures, as well as support and training, it would be difficult for a carer to provide adequate care to a child or young person in out of home care dealing with substance abuse problems.

## **Availability of rehabilitation services**

Children and young people in out of home care who are struggling with substance abuse problems need access to rehabilitation services and programs that are culturally safe and appropriate to their needs.

Some successful rehabilitation programs have been developed in the Northern Territory, such as the Mt Theo Outstation Program run by the Warlpiri Youth Development Aboriginal Corporation. Some children and young people whose experience in care was investigated by the Commission made progress in addressing substance abuse problems in residential rehabilitation programs.<sup>518</sup> However, rehabilitation programs were not available to all the children and young people who needed them.<sup>519</sup>

Some of the rehabilitation programs and services that were available were not able to cater to children and young people in out of home care who had complex needs. For example, DG was deemed unable to participate in one volatile substance abuse program due to her cognitive impairment.<sup>520</sup> Given the prevalence of FASD in the Northern Territory, discussed in Chapter 3 (Context and challenges), there is a clear need for rehabilitation and counselling services that target children and young people with cognitive impairments.

The Commission heard a recurring theme during evidence of highly vulnerable children and young people in out of home care being unwilling to engage with support services, such as rehabilitation programs, and absconding from rehabilitation or from placement.<sup>521</sup> For example, CK only obtained the intensive intervention she needed to address her substance abuse while in youth detention.<sup>522</sup> In other cases, repeated attempts were made to engage a child in counselling. However, the records the Commission reviewed showed little evidence of consideration of why a child was reluctant to do so, or any review of other strategies to address this reluctance or the child's substance abuse.<sup>523</sup>

### **Recommendation 33.15**

**Territory Families improve access for children and young people in out of home care to effective rehabilitation and counselling services including the prevention and treatment of substance abuse.**

## **Issues experienced in education**

Many concerns were raised to the Commission about the education of children in out of home care, including low attendance, limited interest in attending school or lack of support.

A sample of weekly reports provided by a residential care service provider for a 28-day period in 2017 captured the school attendance of 28 children under the service provider's care.<sup>524</sup> Four children had 100% attendance, 16 had no access to education, with 11 not enrolled in school and five not attending a single day of school. This sample indicates that a number of children in residential care may not be receiving adequate access to education or are disengaged from the education system.

Placement type may impact a child's experience at school, with children in residential care more likely to experience suspension than children in home-based placements.<sup>525</sup> The Commission was told that it was common for children in residential care to be taken off the roll and stated that reentry depended on whether a caseworker had time to make an appointment with the school.<sup>526</sup>

The Commission heard that there is a role for alternative models of schooling to support the educational needs of children in out of home care. For example, in his statement to the Commission, the Chief Executive Officer of Anglicare NT said:

*'It is clear that there is a need for the funding of alternative schooling and learning models to engage the many young people who are significantly disconnected from the current educational systems.'*<sup>527</sup>

### **Recommendation 33.16**

#### **Territory Families:**

- **review and simplify the process for approving educational enrolments for children in out of home care, and**
- **introduce a standardised form for a child subject to a protection order, allocating responsibility for ensuring enrolment approval within set time frames.**

### **Recommendation 33.17**

**Where a child is placed on a protection order but a parent retains guardianship, the Northern Territory Government enable carers to make a range of day-to-day decisions for the wellbeing of a child in their care, if necessary by legislative amendment.**

## **SUPPORTING CARERS TO MANAGE COMPLEX NEEDS**

The importance of children receiving continuity and stability of care makes it vital that carers are adequately supported to manage the increasingly complex needs of children. Providing early support for placements that are at risk of breakdown represents an opportunity to improve continuity and stability for children in care.

A foster carer told the Commission that they did not feel they shared a good working relationship with the department.<sup>528</sup> The Children's Commissioner also told the Commission that foster carers nearly always report feeling inadequately supported and poorly treated by Territory Families.<sup>529</sup> The 2010 BOI report recommended that the Northern Territory Government consider treating foster and kinship carers as partners, rather than service providers.<sup>530</sup> The concerns raised with the Commission suggest that some foster and kinship carers continue to feel that they are not valued partners in raising children under the guardianship of the Chief Executive Officer. The role of foster carers needs to be better recognised and acknowledged by Territory Families.

### **Advocacy**

Foster Carers' Association NT is an independent not-for-profit organisation that provides advocacy and support services for foster and kinship carers in the Northern Territory.<sup>531</sup> It is funded by the Northern Territory Government. In May 2017, the association, in consultation with Territory Families, launched a charter of rights to recognise the work of foster and kinship carers.<sup>532</sup> The charter sets out eight rights for these carers, with a view to celebrating their role and improving their circumstances, as well as the wellbeing of the children in their care.

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The launch of the charter of rights coincided with a series of workshops to be run across the Northern Territory, during which carers and Territory Families staff can talk about how government agencies can improve support for carers.

The Chief Executive Officer of Foster Carers' Association NT highlighted that feedback from foster carers indicated that they were worried about raising concerns with Territory Families because there appeared to be no transparent complaints mechanisms or formalised impartial review processes for decisions made by the department.<sup>533</sup> Carers have expressed concerns about raising issues because of fear of reprisals, such as children being removed from their care.<sup>534</sup> However, the Chief Executive Officer added that *'we have found that we can assure foster carers that there won't be any repercussions lodging a complaint'*.<sup>535</sup> Such fear impedes information-sharing between foster carers and Territory Families.<sup>536</sup> The association said that it often has to advocate on behalf of carers so their concerns are heard and considered.<sup>537</sup> It is the Commission's view that Territory Families should consider how it can improve communication with carers to support a better understanding of roles and responsibilities in the child protection system and particularly how processes affect carers. Territory Families should ensure there are regular mechanisms by which carers are afforded an opportunity to exchange views and experiences and raise issues with Territory Families that relate to the experience of being a carer.

Furthermore, unless foster carers have access to independent review mechanisms and a transparent complaints process, the inability to resolve concerns will inhibit the recruitment and retention of foster carers in the Northern Territory. The Commission has addressed this issue through the earlier recommendation to provide an independent review mechanism through the Northern Territory Civil and Administrative Tribunal.

### **Recommendation 33.18**

**Territory Families, in partnership with Foster Carers' Association NT, establish regular forums to provide carers an opportunity to raise issues with Territory Families that relate to the experience of being a carer.**

## **Training**

Training is required for all prospective carers and comprises six modules that focus on behaviour management, including understanding harm and trauma, standards and the charter of rights for children in out of home care, Aboriginal culture and cultural responsiveness, risk management, safety and protective strategies.<sup>538</sup>

Foster carers said they found it difficult to attend training during business or school hours:<sup>539</sup>

*The ongoing training now offered by the department is generally scheduled during the day (8.30am – 3.30pm) and we find it hard to get there with work commitments.*<sup>540</sup>

One foster carer said that, overall, the training was a positive experience, but it may not have covered all the issues that arise when caring for children. These range from broader issues such as trauma and brain development to more practical matters such as getting Medicare cards for children in care.<sup>541</sup>

The level of support provided to kinship carers should also be frequently reviewed to ensure it is adequate. Informants to a national comparison of carer screening, assessment and training processes commissioned by the Royal Commission into Institutional Responses to Child Sexual Abuse reported that:

- particularly where kinship carers are supported by the government agency, not enough attention is given to supporting their needs
- the resources dedicated to supporting kinship carers appeared to differ from those for foster carers, and
- the needs of children in kinship care could be as significant, if not more significant, as those of children in foster care, meaning the needs of kinship carers could be greater than those of foster carers.<sup>542</sup>

The Chief Executive Officer of Foster Carers' Association NT told the Commission that foster and kinship carers may require specific training to manage particularly complex behaviours, including those relating to FASD.<sup>543</sup> The Commission heard that Territory Families does not currently offer comprehensive training for carers living in remote locations.<sup>544</sup> This means that Territory Families relies on Carer Assessment and Support Teams and Case Managers rely on to provide those carers with information relevant to their roles and responsibilities.<sup>545</sup>

### **Recommendation 33.19**

**Territory Families provide support to foster and kinship carers, including through implementation of training targeting specific populations in out of home care. This training should be accessible to all foster and kinship carers, including:**

- those in remote communities, and
- those who cannot attend training during business hours.

## **Respite**

Respite care plays a critical role in reducing stress on long-term carers and contributing to the sustainability of existing long-term care arrangements.<sup>546</sup> The Commission has heard that it is particularly useful for caregivers of children with high needs to be able to have short respite periods.<sup>547</sup>

Territory Families has advised that regular respite care is included in children's care plans. Respite care can also be used when a primary carer has an emergency.<sup>548</sup> However, the Commission heard concerns about the respite available or provided to primary carers. For example, one foster carer noted that they would request respite from Territory Families and not receive a response. The lack of response and uncertainty did not make the children in their care feel secure and valued, and made temporary changes in carer circumstances more traumatic for the children and the foster carer than they needed to be.<sup>549</sup>

Another foster carer found that the respite care Territory Families provided was poor and unreliable. They often had to deal with repercussions, such as poor supervision and care, loss of clothing and medicines, poor behaviour by the children after the placement and lice infections.<sup>550</sup> In contrast, another foster carer was positive about the respite care Territory Families provided and stated that the carers were 'really great'.<sup>551</sup>

## Recommendation 33.20

**Territory Families ensure that quality respite care is available to foster and kinship carers.**

### Use of informal placement arrangements

The Commission heard concerns about the continued use of informal care arrangements, raising concerns about the lack of financial and practical support for family members providing this type of care for children.

'Family way placement' is a colloquial term used in the Northern Territory to describe the practice of having a child stay with another family member, arranged via an unwritten and informal agreement. The arrangement would be made either as an alternative to an order or other agreement, or when a temporary agreement or short-term order expires.<sup>552</sup> Such placements differ from kinship care placements, as they are not formalised under the *Care and Protection of Children Act*.<sup>553</sup> In his evidence to the Commission, a Division Manager from Tangentyere Council described this as a form of kinship care:

*'There are a lot of what's called informal kinship carers who are not supported at all at present. It's not recognised truly as a placement type, but these people are really doing it tough and work along the traditional lines, raising children in a fantastic way.'*<sup>554</sup>

The 2010 BOI report identified a number of concerns associated with family way placements. These concerns included:

- the lack of a formal agreement with parents on what actions are required in order for children to be returned home<sup>555</sup>
- the lack of proper assessment compared to the way foster placements are assessed,<sup>556</sup>
- informed consent not being obtained<sup>557</sup>
- the lack of monitoring of the risk to children as no case management is being provided,<sup>558</sup> and
- no financial support being provided to the carers as part of the 'family way' placement.<sup>559</sup>

The Division Manager from Tangentyere Council also noted that in addition to the lack of financial support for informal kinship carers, there are other levels of support not provided, including training and the ability to access group settings to share experiences.<sup>560</sup>

In the Northern Territory Government's 2012 *Child Protection Reform: Progress Report, Volume 2*, the government stated that the policy of the Department of Children and Families, now Territory Families, 'does not endorse the involvement of staff in family way' placements.<sup>561</sup>

The Deputy Chief Executive Officer of Territory Families told the Commission that the department does not currently use family way placements or any other informal placement arrangements.<sup>562</sup>

Where an informal arrangement is used, it is formalised through a voluntary agreement under section 46 of the Act, also known as a temporary placement arrangement.<sup>563</sup>

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In her evidence to the Commission, the Children’s Commissioner noted that family way placements were still being used as an alternative to applying to a court for a protection order.<sup>564</sup>

The Children’s Commissioner’s 2015–16 annual report identified that during the financial year, 32 temporary placement arrangements were entered into for 25 children.<sup>565</sup> Of these temporary placement arrangements, 12% had not been signed off by parents or an appropriate delegate, and a further 38% could not be found on file.<sup>566</sup>

Unless there is explicit parental consent or a formal agreement, temporary placement arrangements do not differ from informal placement arrangements, such as family way placements. Territory Families should investigate the extent of their use and remedy any informal placement arrangements.

## SUPPORTING THE NEEDS OF CHILDREN IN CARE INTO ADULTHOOD

*‘There was a time where I turned 18 and they came, they bring me a laptop as a gift, and she explained to me, she said that “We would support you for another year” and – yeah, like, I think that’s all pretty much she said. Like, I don’t know – she didn’t explain, like, what kind of support she could give me or they could give me or whatever.’*

Vulnerable witness CJ<sup>567</sup>

The complex needs of children in out of home care continue as they reach adulthood. The transition from out of home care is significant. It has been discussed by the United Nations Committee on the Rights of the Child,<sup>568</sup> the 2015 Senate Community Affairs References Committee<sup>569</sup> and the 2016 Nyland report. Foster carers emphasised the importance of planning for leaving care, particularly age and developmentally appropriate planning, and for providing ongoing support for young people who leave out of home care.<sup>570</sup> It has been on the agenda of the National Framework for Protecting Australia’s Children 2009–2020 since its inception.<sup>571</sup>

The Nyland report states:

*Major challenges persist for young people leaving care ... Young people leaving care represent one of society’s most vulnerable and socially excluded groups. By comparison to the general population, care leavers are more likely to suffer disadvantages in several key areas as a consequence of their out of home care experience.<sup>572</sup>*

The Commission has received evidence that inadequate provision is made for young people leaving out of home care, which can seriously affect their transition to adult life and future outcomes.<sup>573</sup> The Commission has identified two areas of particular concern: the provision of housing and the length of time for which support is provided.



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## The framework for planning and ongoing support

There is a legal and policy framework for providing support for those leaving out of home care within which effective planning should occur and support and services be made available to those leaving care.

In the Northern Territory, a child protection order expires when a child turns 18.<sup>574</sup> Section 71 of the *Care and Protection of Children Act* requires the Chief Executive Officer to modify a care plan if a child is about to leave the Chief Executive Officer's care. The modified plan must identify the needs of the child and outline measures to be taken to assist the child in meeting those needs.<sup>575</sup> Section 86 of the Act requires the Chief Executive Officer to provide the leaving child with appropriate services and permits the provision of financial assistance for specific purposes.

Territory Families has developed policies and guidelines to assist its staff to plan for a young person leaving care, in a manner consistent with Standard 13 of the National Standards.<sup>576</sup> The guidelines provide that the leaving care plan should be developed collaboratively, with *'the young person, their caseworker, their carer/s, family, partner agencies and people they consider important in their life'*.<sup>577</sup> They also clearly articulate that the young person and planning participants must be given a copy of the leaving care plan.<sup>578</sup>

More specific guidelines apply to young persons with a disability.<sup>579</sup> As at 30 June 2016, there were 112 children and young people with disability in out of home care.<sup>580</sup> Of these, 44% had an intellectual or learning disability and 37% had a physical disability. In 2015–16, 72 children and young people with disability were on long-term orders.<sup>581</sup>

Services are provided for implementing the leaving care plan, including:

- the 'Moving On' support program for young people aged 15–25 who are in the process of leaving or have left out of home care
- the Transition to Independent Living Allowance, and
- leaving out of home care support through the CREATE Foundation.

If implemented and followed, the framework sets a solid foundation for supporting young people as they leave care.

Anglicare NT provides training relating to the Transition to Independent Living Allowance and to leaving care plans. The Children's Commissioner recommends that this training continue, especially given the high turnover of staff at Territory Families.<sup>582</sup>

## Planning for leaving care

Decision-making and care planning are fundamental features when a child lives in the care of the state. They are critical in adapting to the reality that the care of a child is an ongoing and dynamic process, consisting of ever-changing and developing needs. Insufficient planning can have an immediate emotional impact on the young person leaving care. DG recalled that before she left care she was *'very scared'* and *'didn't know what [she] was doing'* and worried that she and her child would be homeless.<sup>583</sup>

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In far too many cases, leaving care plans were not developed, and where plans existed they were often inadequate. Since 2012–13, the Children’s Commissioner has conducted an annual review of the files of 25% of all young people in out of home care aged 15–17. In 2012–13, 83% of these files had no leaving care plan;<sup>584</sup> in 2013–14, 60% had no leaving care plan;<sup>585</sup> in 2014–15, 58% had no leaving care plan;<sup>586</sup> and in 2015–16, 73% had no leaving care plan.<sup>587</sup>

In the ordinary course, a Territory Families referral to the Moving On program must be accompanied by a leaving care plan.<sup>588</sup> Out of the number of ongoing support events provided by Moving On in 2015–16, only 66% of those events included had a leaving care plan.<sup>589</sup> In this context, the Children’s Commissioner emphasised that Territory Families ‘needs to continue to ensure that all young people transitioning out of care have adequate leaving care plans in place.’<sup>590</sup>

Similarly, a young person must have a leaving care plan to qualify for the Transition to Independent Living Allowance.<sup>591</sup> Only one file reviewed by the Children’s Commissioner in 2015–16 showed that Territory Families had made the young person aware of the allowance.<sup>592</sup>

In her 2015–16 annual report, the Children’s Commissioner reported on her review of the files of 25% (37) of all children in out of home care aged 15–17.<sup>593</sup> Her purpose was to examine whether they had leaving care plans that met the requirements of Territory Families policy. She found that:

- 73% (27) lacked a specific leaving care plan<sup>594</sup>
- two of the 10 files with leaving care plans were for 17-year-olds who had not been given appropriate accommodation arrangements and had not been made aware of the Transition to Independent Living Allowance<sup>595</sup>
- only 10% (four) were participating in any transition process.<sup>596</sup>

The Children’s Commissioner has previously reported that:

*In the [Northern Territory] the small numbers of young people leaving care allow for coordinated and holistic support for effective transition to independent living, particularly intensive transition support to 17 year olds. In 2015–16 however, this is not occurring.*

In 2015–16, there continued to be significantly low numbers of young people with leaving care plans or who had participated in the process. It is concerning that 73% of young people aged over 15 did not have specific leaving care plans. Of particular concern, 82% of the 15-year-olds in the sample had no specific care planning, even though it is clear under the National Standards and Territory Families policy that planning needs to begin for young people in care who are aged 15.<sup>597</sup> The Children’s Commissioner said further in her statement dated 29 May 2017:

*The low number of children leaving care with a Leaving Care Plan can be primarily attributed to the lack of capacity in Territories Families to engage with children entitled to a Leaving Care Plan. A secondary factor is the change in the mix of children who are in care. There are an increasing number of children in care who are older (15–18 years), who have been in care long-term and whom also have complex needs. It takes considerable skill and time to develop a Leaving Care Plan. For some of these children it would be very difficult to have them sit down and engage in the preparation of a written document in any context. These are the very children most in need of specific*

*Leaving Care Plans, but they tend to be the least likely to have them developed. It is possible to develop plans with these children, but it takes an appropriately skilled caseworker who has a manageable load. Ideally it would be done by a caseworker who has the time and continuity to be able to develop rapport with the child.*<sup>598</sup>

The Children’s Commissioner, as well as the Territory Families’ Chief Executive Officer and Acting General Manager of Operations, acknowledged that the lack of planning for the transition of children leaving care in the Northern Territory was concerning.<sup>599</sup> The Acting General Manager agreed that young people were leaving the care of Territory Families without a leaving care plan, in breach of Territory Families’ own guidelines. She stated that care plans ‘may’ outline actions relating to leaving care, and accepted this was an area where Territory Families needed to do a ‘much better job’.<sup>600</sup> The Chief Executive Officer agreed and said the failure was an indication of the ‘workload of caseworkers’.<sup>601</sup>

The Chief Executive Officer of Anglicare NT indicated to the Commission that every six months Territory Families’ Strategy and Policy section provides Anglicare NT with the number of young people aged 15–18 in out of home care across all Territory Families offices, to assist with forwardplanning and demand assessment. Table 33.9 shows the most recent figures.

**Table 33.9: Young people aged 15–18 in out of home care across all Territory Families offices at 15 December 2016.**<sup>602</sup>

|          | CAT North Office - Investigation and Assessment | Casuarina Office - Strengthening Families and Reunification | Palmerston Office - Long Term Care | Amhem Office | Big Rivers (Katherine Office) | Arafura (Northern Remote Office) | Barkly (TC) Office | Alice Springs Office - Strengthening Families/Long Term Care | Total |
|----------|---|---|------------------------------------|--------------|-------------------------------|----------------------------------|--------------------|--|-------|
| F 15 yrs | 0   | 5   | 14                                 | 3            | 4                             | 7                                | 1                  | 5  | 39    |
| F 16 yrs | 0   | 0   | 15                                 | 0            | 6                             | 2                                | 0                  | 5  | 28    |
| F 17yrs  | 0   | 3   | 6                                  | 1            | 2                             | 2                                | 1                  | 13   | 28    |
| F 18yrs  | 0   | 0   | 0                                  | 0            | 1                             | 0                                | 0                  | 2  | 3     |
| M 15yrs  | 0   | 4   | 12                                 | 0            | 3                             | 3                                | 1                  | 4  | 27    |
| M 16yrs  | 0   | 1   | 11                                 | 0            | 3                             | 2                                | 2                  | 9  | 28    |
| M 17yrs  | 0   | 0   | 18                                 | 0            | 3                             | 0                                | 0                  | 5  | 26    |
| M 18yrs  | 0   | 0   | 0                                  | 0            | 0                             | 0                                | 0                  | 43   | 0     |
| Total:   | 0   | 13  | 76                                 | 4            | 22                            | 16                               | 5                  | 0  | 179   |

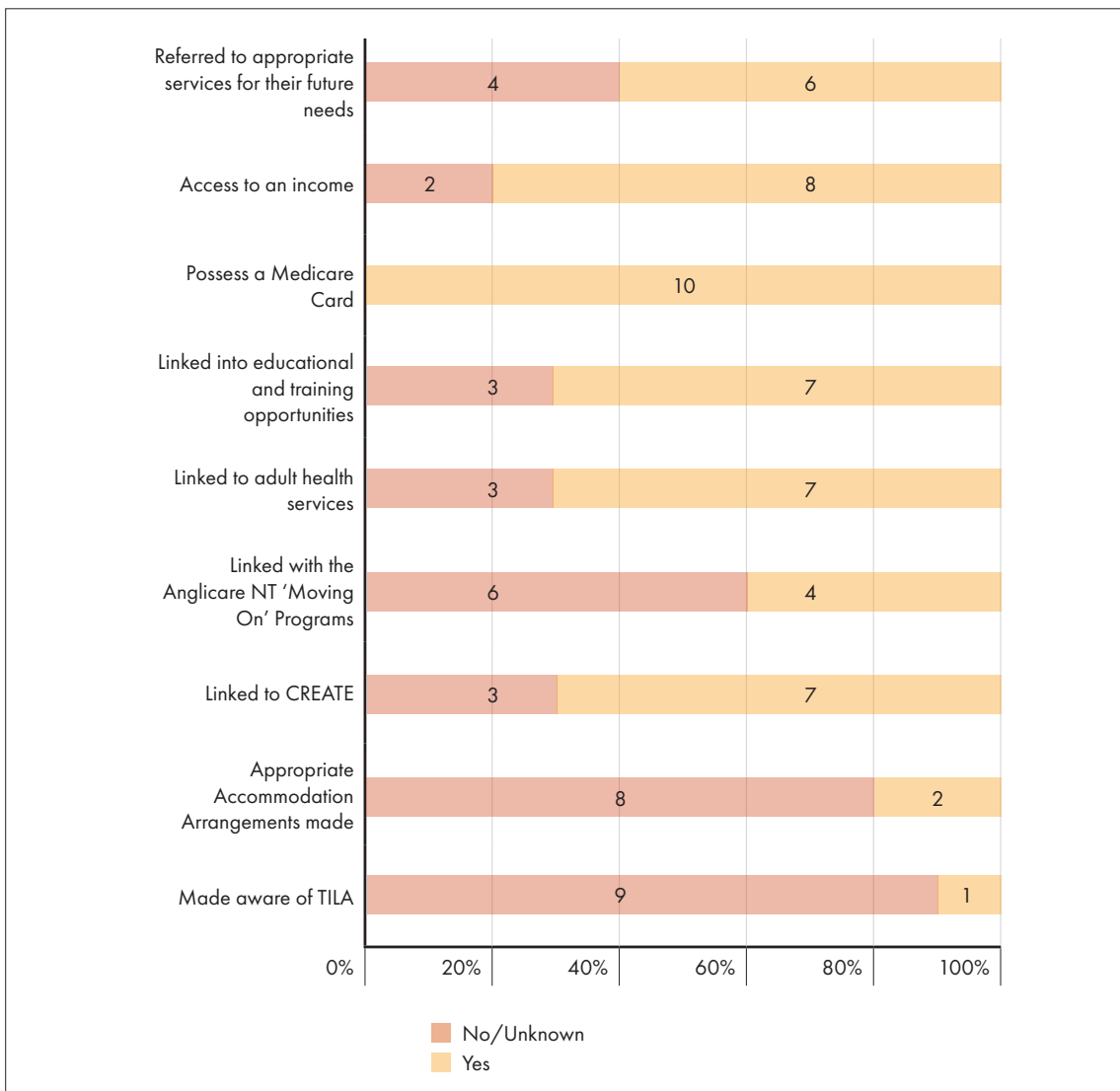
### Recommendation 33.21

**Territory Families ensure that all young people between aged 15 and 18 have leaving care plans in compliance with section 71 of the *Care and Protection of Children Act* (NT).**

## Services provided for implementing leaving care plans

In her 2016 annual report, the Children’s Commissioner reported on the extent to which the plans she reviewed linked children to resources and services for transition. Figure 33.9 shows the table she provided.<sup>603</sup>

**Figure 33.9:** Number of young people linked to resources and services for transition, at 30 June 2016.<sup>604</sup>



The table suggests there are particular concerns relating to accommodation arrangements, poor connections to the Anglicare NT Moving On program and lack of awareness of the Transition to Independent Living Allowance.

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The Commission consistently heard that young people needed more support. In their submission, NAAJA said:

*[NAAJA] acknowledge some support is available to young people leaving the care of the department through Anglicare’s “Moving On” program, but [NAAJA] consider[s] a more robust case management service is needed which includes accommodation and support workers to assist with life skills development, training and education, etc.<sup>605</sup>*

APO NT told the Commission:

*While [APO NT] accept Territory Families will no longer have statutory care and protection obligations, young people leaving care should be provided with support to help them with their transitional needs and ensure social risks are identified and addressed. This should include supported accommodation and case management service provision.<sup>606</sup>*

The CREATE Foundation also agreed. It said that a well-resourced adult, such as a caseworker is required to ensure young people are able to access services.<sup>607</sup>

In the Northern Territory, services are provided through Moving on, Transition to Independent Living Allowance and the CREATE Foundation. However, connecting young people to these services is not consistently achievable.<sup>608</sup>

## Support services for leaving care

### ‘Moving On’ Program

Moving On<sup>609</sup> seeks to assist young people by providing links to other social services and a brokerage service to fund support services. Territory Families can refer young people to the program, but referrals also come from other sources. The Children’s Commissioner monitors this program and includes her findings in her Annual Report.

The most common reasons for seeking support from the Moving On Program include transitioning from out of home care, and experiencing accommodation and financial difficulties.<sup>610</sup> Often, young people do not present with one reason but a combination of reasons.<sup>611</sup>

The Children’s Commissioner noted in her 2015–16 annual report that of the 37 leaving care files she reviewed, 40% had been linked with Anglicare’s Moving On program.<sup>612</sup>

### Transition to Independent Living Allowance

Anglicare NT also administers the Transition to Independent Living Allowance in the Northern Territory. The Commonwealth Government provides an allowance of up to \$1,500 to help young people leaving out of home care with the cost of goods and services relating to moving out of care.<sup>613</sup>

Nationally, 1,389 young people were supported by the Transition to Independent Living Allowance in 2015–16. In the Northern Territory, Anglicare reported that 33 young people received the allowance in the 2015 calendar year<sup>614</sup> and 29 received it in the 2016 calendar year.<sup>615</sup>

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## CREATE Foundation and the 'Go Your Own Way' kit

The 'Go Your Own Way' kit provides young people with a checklist of areas to cover when developing their leaving care plan. The CREATE Foundation reports that the kit incorporates the best of existing transition materials and additional resources based on feedback from previous care leavers.<sup>616</sup> Territory Families provides funding to the CREATE Foundation to:

- provide engagement opportunities for young people in out of home care, including connection activities, CREATE Your Future workshops and the Speak Up program
- produce and distribute the Go Your Own Way kits to assist young people transitioning from care, and
- provide information and collaborate with other organisations to support improvements in out of home care services and care.<sup>617</sup>

The operation of the Go Your Own Way program in the Northern Territory was stifled by bureaucratic barriers. It was planned that 52 young people exiting out of home care in 2015 would have 12 months to work on the program with their caseworkers.<sup>618</sup> However, the CREATE Foundation had difficulty accessing the contact details of the young people to send out the kits. Most jurisdictions, including the Northern Territory, were not prepared to disclose contact information because of privacy considerations.<sup>619</sup> In the Northern Territory, an independent distribution centre posted the kits to the young people. The CREATE Foundation then anticipated telephoning the young people to confirm they had received the kit and to encourage them to use it. Contact details were again problematic. The Northern Territory allowed staff from the CREATE Foundation to telephone the young people from government offices, but few could be contacted. This was apparently due either to phone numbers being disconnected or making calls in business hours when most young people were at school.<sup>620</sup>

Privacy issues need to be addressed sensibly. One method would be for Territory Families to reach an administrative arrangement with the CREATE Foundation to send relevant material to children and young people in out of home care. This is consistent with Recommendation 165 of the Nyland report.<sup>621</sup>

## Housing and homelessness

Accommodation has been identified as a primary issue affecting young people leaving out of home care. One study has shown that two-thirds of homeless young people had been in out of home care.<sup>622</sup> Young people exiting the care of Territory Families need to be able to access and pay for stable accommodation – an obvious and fundamental support.<sup>623</sup> However, of the 10 files the Children's Commissioner reviewed, eight did not have appropriate accommodation arrangements.<sup>624</sup> The Children's Commissioner reported in her 2015–16 annual report:

*Availability of accommodation services continues to be a critical concern with young people, adding to the increasing numbers of homeless people. Most of the referral and brokerage services provided by Moving On relate to this issue. Government services need to ensure appropriate public housing options and support is available to these young people.*<sup>625</sup>

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In its January–June 2016 Performance Report to the Department of Children and Families, now Territory Families, Anglicare NT reported its concern at the increasing drift of young people from care to homelessness services. It emphasised the need to develop accommodation options for these young people.<sup>626</sup>

In its submission to the Commission, the Australian arm of the United Nations Children’s Fund (UNICEF Australia) called for the Northern Territory Government to develop a strategy to identify effective, secure housing models for young people experiencing, or at risk of, homelessness, with particular focus on young people in or transitioning from the out of home care system.<sup>627</sup>

The Commission heard other evidence of the short supply of safe, stable, permanent housing for young people in the Northern Territory.<sup>628</sup>

*‘No-one from FACS [Family and Community Services] came to see me ... about a transition plan. FACS did not help me find a house or a job or to do any other programs. They should help us, because at 18 we are still young. No-one helped me find a house or a job.’*

Vulnerable witness CK<sup>629</sup>

The Deputy Chief Executive Officer of the Department of Housing and Community Development gave evidence that the department *‘does not provide or fund any services that are directly targeted at children or adults involved with the child protection system’*. However, the department does provide and fund a number of services that provide housing and homelessness support for young people and families with young children.<sup>630</sup>

The Deputy Chief Executive Officer informed the Commission that he understood anecdotally that some of these services are provided to *‘young people exiting the child protection system or young people who are in the child protection system, but who have left their placement’*.<sup>631</sup>

The challenges of providing housing and homelessness services in remote settings were outlined to the Commission. These include recruiting and retaining qualified and experienced staff; contractor delays and the higher cost of repairs and maintenance; providing accommodation for staff; and the cost of service delivery in remote areas.<sup>632</sup> The Commission also heard that clients at risk of homelessness often experience a range of issues, including mental health problems, substance misuse, financial difficulties and domestic violence. In addition, services located in remote areas are limited by their capacity and the range of other support services available to accept referrals.<sup>633</sup>

The Commission believes the Northern Territory Government needs to develop a centralised service which provides housing referrals and ensures housing placements are available for young people exiting care.

### **Recommendation 33.22**

**The Department of Housing and Community Development and Territory Families jointly develop a new accommodation service model which meets the specific needs of young people leaving out of home care to live independently. The service be responsible for finding and securing acceptable accommodation for all young people who have left the Chief Executive Officer's care and be available to those young people until they are 25 years old, consistent with section 68 of the *Care and Protection of Children Act (NT)*.**

## **Transition to adulthood**

The transition from adolescence to adulthood is well understood to be a critical time when most young people require support. In the Northern Territory, young people leave out of home care based on chronological age rather than developmental readiness.

Young people leaving out of home care aged 18 are in the developmental stage known as 'emerging adulthood'. Research indicates that this is an important developmental stage in terms of cognitive, emotional and behavioural maturity, with late adolescence being a significant period for brain activity and growth, and directly affecting behavioural and emotional development.<sup>634</sup>

Recent work by the Australian Institute of Family Studies suggests that young adults are remaining at home and relying on the emotional, practical and financial support of parents for longer periods than previous generations.<sup>635</sup> Most young people transitioning from out of home care do not have this type of emotional, practical and financial support available to them.

In this context, young people leaving out of home care on turning 18 are doubly disadvantaged: forced into independence without adequate social and financial supports, combined with not being developmentally ready to live independently.<sup>636</sup> Dr Joseph McDowall has said:

*The age of 18 is when many life changes are occurring for young people; adding another at this stage requiring them to leave where they have been living would seem an unnecessary negative experience.*<sup>637</sup>

The report by the Senate Committee inquiry into out of home care indicated that it received numerous submissions suggesting that transitioning from out of home care aged 18 was inappropriate for most young people, particularly those who had experienced trauma, abuse and neglect.<sup>638</sup> The Senate Committee's 2015 report recommended that young people continue to receive ongoing post-care support until age 21.<sup>639</sup>

The Nyland report recommended that the South Australian Government:

*Amend the Children's Protection Act 1993 to require the Minister to provide or arrange assistance to care leavers aged between 18 and 25 years. Assistance should specifically include the provision of information about services and resources; financial and other support to obtain housing, education, training and employment; and access to legal advice and health care.*<sup>640</sup>



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In its submission to the Commission, UNICEF Australia recommended that the Northern Territory Government implement mandatory support and transition plans for all children exiting out of home care until they turn 25.<sup>641</sup> NAAJA supported this view, arguing that Territory Families should be obliged to provide a further level of assistance and support.<sup>642</sup> Specifically, NAAJA stated:

*Territory Families do not provide adequate support to young people in their care after they turn 18. Whilst care and protection orders end when a young person turns 18, [NAAJA] consider Territory Families should still be obliged to provide a level of assistance and support. Obviously, 18 years old is a very young age for someone to go it alone, especially given the dysfunction and disadvantage they have experienced as children and young people. As in other jurisdictions in Australia and internationally, young people leaving care should be provided with support to help them with their transitional needs and ensure social risks are identified and addressed.*<sup>643</sup>

Dr Joseph McDowall also told the Commission that services to children and young people leaving out of home care should operate on an opt-out basis instead of the current opt-in model.<sup>644</sup> He argued that the opt-in model was inappropriate for young people because the onus was on them to seek help, which was often contrary to their motivation to be independent regardless of their functional capacity.<sup>645</sup>

The *Care and Protection of Children Act* provides clear and mandatory direction to Territory Families, and sets a high standard, as to the responsibilities owed to children who have left the care of the Chief Executive Officer. Section 86(2) requires the Chief Executive Officer to ensure a person who has left the care of the Chief Executive Officer is provided with child-related services until they are 25 years of age. Child related-services is defined in the Act as including social services relating to care or support of the person, medical and health-related services and counselling as well as information and advice services. The use of 'may' in section 86(3) does not qualify this duty, or the necessity for Territory Families to provide the service if needed, it serves only to clarify the types of support the Chief Executive Officer can provide.

It is the Commission's view that Territory Families must expressly inform a child leaving care that the Chief Executive Officer is bound by law to provide child-related services to the person who is leaving care until they reach the age of 25. The information provided to the person leaving care should also give comprehensive detail as to what those services encompass and how they can be accessed. The evidence before the Commission suggests this is not an issue that requires law or policy reform, but changes in Territory Families practice and funding to ensure those legal and policy obligations are being consistently met.

## Finding

**Despite the express provisions in Territory legislation, policy and guidelines, Territory Families has not appropriately planned for or managed the interests of many young people leaving out of home care.**

### **Recommendation 33.23**

#### **Territory Families:**

- ensure that children leaving the care of the Chief Executive Officer are fully informed of the obligation of the Chief Executive Officer to provide child-related services until the individual turns 25 years of age. The information provided to children leaving care to include specific information as to what services are available to the child and how they can be accessed.
- implement a follow up procedure in which a caseworker, or other entity to whom the Chief Executive Officer delegates responsibility, contacts a person who has left the care of the Chief Executive Officer every six months until the individual turns 21 to provide updated information as to what services are available and how they can be accessed pursuant to section 86 of the *Care and Protection of Children Act* (NT). The communication must occur, to the extent practicable, both orally and in writing.

## **Data collection and research**

There is no data available on what happens after young people leave care, including how many continue to live in their kinship care or foster care arrangement, return to live with their family of origin, begin living independently or indeed have no settled home. Given this lack of data, there is limited understanding of the experiences of young people leaving care today. The Commission considers this information to be critical for informing policy and practice. Without such data, it is not possible to know what is being done well in relation to young people leaving care and what needs to change or improve.

Currently, the Australian Institute of Family Studies is conducting ‘*Beyond 18*’, a longitudinal study in Victoria that focuses on the experiences of young people leaving the care system. The study seeks to understand better how young people leaving care are doing in terms of finding secure accommodation, finding employment and/or undertaking further education, building a supportive social network and accessing support services.<sup>646</sup> The Commission considers it valuable for the Northern Territory Government to undertake a similar longitudinal study that takes into account the particular needs of Aboriginal young people and those who are living in or have come from remote areas.

### **Recommendation 33.24**

**The Northern Territory Government develop an evaluation plan about the process of leaving care for young people turning 18.**

As part of the work of the National Framework for Protecting Australia’s Children 2009–2020, the ‘Out of Home Care Children and Young People’s Survey’ is conducted across all Australian states and territories to measure whether the National Standards for Out-of-Home Care are being met. In 2015, the Northern Territory contributed to the national dataset in areas relating to how children and young people perceive help provided in the fields of education, finances, health, life skills, social

and family relationships, identity and culture, accommodation and legal services.<sup>647</sup> However, the Northern Territory sample size was small, which made it difficult to make generalised findings.<sup>648</sup> Most young people who participated indicated they were receiving the help they needed in most areas, other than identity and culture.

Dr Joseph McDowall told the Commission about research he had conducted with young people preparing to leave care. He said that a quarter of them indicated that they had no concerns at all about leaving care. However, he stated:

*When you drill down into that though you find that they don't have any concerns because they don't understand the implications of what's going to be involved in leaving care, because they haven't been informed. They haven't spoken to anyone about the problems or what the issues might be that they confront.<sup>649</sup>*

### **Recommendation 33.25**

**The Northern Territory Government continue working with the Australian Institute of Health and Welfare to develop a dataset to report on outcomes for children transitioning from out of home care up to age 25. Indicators should include:**

- **connection to family and/or carers**
- **education and employment**
- **housing, and**
- **health, including mental health.**

## **THE NEED TO IMPROVE OUT OF HOME CARE**

The Commission is struck by the disjuncture between the Northern Territory legislation, principles and policies relating to the out of home care system and the reality of that system. This has been reinforced by the many personal stories the Commission has heard from people who have experienced the system firsthand. These include those who have been in care, carers, caseworkers and departmental officers. In their evidence to the Commission, they have clearly articulated the need to change the out of home care system for the benefit of children and their families.

For the Commission, there is no doubt that the out of home care system is under great pressure. That stress is exemplified by the fact that two-thirds of the child protection budget is set aside for out of home care, with increased spending on purchased home-based care, a form of care largely unregulated by Territory Families.

An increasing number of Aboriginal children are in out of home care and, despite the Aboriginal Child Placement Principle being developed more than 30 years ago, much more needs to be done to ensure these children are given the opportunity to stay connected to their family, culture and community. To maintain these connections, it is vital that Aboriginal children, families and communities can participate in decisions affecting them.

Almost every person who was in out of home care as a child who gave evidence to the Commission

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said their experiences were difficult or dismal, and that their time in care exacerbated the issues in their lives that had led to them being placed in care. The Northern Territory Government must listen to the voices of these children and ensure that the system in which it invests so heavily actually supports the needs of children and their families.

The Commission also found there was a clear failure to identify and sustain both kinship and foster carers in the Northern Territory. The Commission believes that carers are fundamental in ensuring the protection and wellbeing of children in the out of home care system. The Northern Territory Government must ensure that it responds to the needs of carers and gives them sufficient, effective and timely support.

Unfortunately, decisions made to try to respond to the pressures on the out of home care system have largely exacerbated existing problems in the system. It is in this context that the Commission has very serious concerns about transferring out of home care to the nongovernment sector. It is the Commission's view that the Northern Territory Government should continue providing care for children removed from their families. Should the Northern Territory Government proceed with transitioning the system to the non-government sector, it must ensure the current problems do not carry over to a new service provision structure. Intensive consultation with stakeholders is required to ensure the proposed transition and service provision structure do not compromise the best interests of children in out of home care.

The Commission acknowledges that the Northern Territory Government has initiated a number of reforms relating to child protection, including out of home care. In his evidence to the Commission, the Chief Executive Officer of Territory Families acknowledged that the reforms would be complex to implement, would take time and require a coordinated and sustained effort focusing on whole-of-government responses. Nevertheless, the Chief Executive Officer acknowledged that reforms were essential for providing better outcomes for children in the Northern Territory.<sup>650</sup> The Commission stresses that to ensure improved outcomes for children, these reforms must be underpinned by a comprehensive understanding of the needs of children and their families, and must seek to support these needs.

## ENDNOTES

- <sup>1</sup> Exh.005.002, Convention of the Rights of the Child, 1989, tendered 11 October 2016, arts 5, 9, 18, 19, 20.
- <sup>2</sup> Australian Institute for Health and Welfare, 2017, *Child Protection Australia 2015-2016*, Australian Institute of Health and Welfare: Canberra, p. 47.
- <sup>3</sup> Submission, Aboriginal Peak Organisations Northern Territory, 31 July 2017, p. 24. This was reinforced in the submission made by Danila Dilba Health Service. See Submission, Danila Dilba Health Service, August 2017, p. 31.
- <sup>4</sup> Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, para. 269.
- <sup>5</sup> Australian Institute of Health and Welfare, 2016, Permanency planning in child protection, *Child Welfare series no. 64*, Cat. no. CWS 58, Australian Institute of Health and Welfare: Canberra, p. 2.
- <sup>6</sup> The Senate Community Affairs References Committee, August 2015, Out of home Care Report, Senate Printing Unit: Canberra, ss. 2.5-2.8.
- <sup>7</sup> Exh.024.026, Child Protection Systems Royal Commission, 2016, *The life they deserve*, Volume 1, 2016, tendered 13 October 2017, p. vii; Exh.13.001, Board of Inquiry Report – Growing them strong together, Promoting the Safety and Wellbeing of the Northern Territory’s Children’ – Summary Report, 18 October 2010, tendered 12 October 2016, p. 37.
- <sup>8</sup> Exh.680.002, Annexure ST-1 to Statement of Sven Thormann, 4 January 2017, Table 15. The Commission received two statements which gave differing accounts of the number of children in out of home care at 30 June 2017 (Exh.680.001, Statement of Sven Thormann, 4 January 2017, tendered 30 June 2017 (1,020 children), cf. Exh.613.000, Statement of Kim Charles, 12 May 2017, tendered 28 June 2017 (1,032 children)). The Commission sought clarification for the discrepancy and for which was accurate. The Northern Territory Government confirmed that the numbers of Mr Thormann should be preferred and that the reason for the discrepancy was that the figures had been prepared using slightly different methodologies used in the collection of the data.
- <sup>9</sup> Productivity Commission, 2017, Report on Government Services, Productivity Commission: Canberra, table 16A.17.
- <sup>10</sup> Exh.613.000, Statement of Kim Charles, 12 May 2017, tendered 28 June 2017, para. 18.
- <sup>11</sup> These concerns are highlighted throughout this chapter. In particular, see discussion of foster and kinship carers in ‘Building the capacity of foster and kinship care’, discussion of purchased home based care in ‘Reliance on purchased home based care’, discussion of care planning in ‘Decision making based on the needs of children’ and Decision making that supports connection to family and culture’, discussion of residential care in ‘Supporting the needs of children and young people in residential environments’ and discussion of supporting children with complex needs in ‘Supporting the complex needs of children in out of home care’.
- <sup>12</sup> Exh.013.001, Board of Inquiry Report – *Growing them strong together, Promoting the Safety and Wellbeing of the Northern Territory’s Children – Summary Report*, 18 October 2010, tendered 12 October 2016, Recommendation 47.
- <sup>13</sup> *Care and Protection of Children Act (NT)*, div 7.
- <sup>14</sup> *Care and Protection of Children Act (NT)*, div 4, sub-div 1.
- <sup>15</sup> *Care and Protection of Children Act (NT)*, div 4, sub-div 3.
- <sup>16</sup> *Care and Protection of Children Act (NT)*, div 4, sub-div 3.
- <sup>17</sup> Exh.680.002, Annexure ST-1 to Statement of Sven Thormann, 4 January 2017, tendered 30 June 2017, Table 10b.
- <sup>18</sup> Exh.680.002, Annexure ST-1 to Statement of Sven Thormann, 4 January 2017, Table 15.
- <sup>19</sup> Productivity Commission, 2017, Report on Government Services, Productivity Commission: Canberra, table 16A.17.
- <sup>20</sup> Based on data from Exh.680.002, Annexure ST-1 to Statement of Sven Thormann, Annexure ST-1, 4 January 2017, tendered 30 June 2017, Chart 15A.
- <sup>21</sup> Tilbury, C, 2009, ‘A “stock and flow” analysis of Australian child protection data’, *Communities, Children and Families Australia*, Vol. 4, No. 2, p. 10.
- <sup>22</sup> Australian Institute of Health and Welfare, 2016, *Child protection Australia 2015-16*, Australian Institute of Health and Welfare, Table 5.5; Australian Institute of Health and Welfare, 2011, *Child protection Australia 2010-11*, Australian Institute of Health and Welfare, Table 5.5.
- <sup>23</sup> Exh.656.001, Statement of Jeanette Kerr, 9 May 2017, tendered 30 May 2017, para. 111.
- <sup>24</sup> Exh.656.001, Statement of Jeanette Kerr, 9 May 2017, tendered 30 June 2017, para. 111.
- <sup>25</sup> Exh.1153.001, Notice to Produce N609/17 to Chief Executive Officer of Territory Families, 16 August 2017, tendered 3 November 2017.
- <sup>26</sup> Submission, Northern Australian Aboriginal Justice Agency, August 2017, p. 71.
- <sup>27</sup> Exh.656.001, Statement of Jeanette Kerr, 9 May 2017, tendered 30 June 2017, para. 111.
- <sup>28</sup> Exh.682.001, Statement of Sven Thormann, 20 June 2017, tendered 30 June 2017, paras 8-11.
- <sup>29</sup> Exh.682.001, Statement of Sven Thormann, 20 June 2017, tendered 30 June 2017, paras 7-8.
- <sup>30</sup> Exh.515.150, Agenda Paper – Executive Leadership Group Meeting 05052017.pdf, 26 May 2017, tendered 19 June 2017, p. 7.
- <sup>31</sup> Exh.515.150, Agenda Paper – Executive Leadership Group Meeting 05052017.pdf, 26 May 2017, tendered 19 June 2017, p. 7.
- <sup>32</sup> Productivity Commission, 2017, Report on Government Services, Productivity Commission: Canberra, Table 16A.25.
- <sup>33</sup> Productivity Commission, 2017, Report on Government Services, Productivity Commission: Canberra, Table 16A.25.
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- <sup>35</sup> Productivity Commission, 2017, Report on Government Services, Productivity Commission: Canberra, table 16A.17.
- <sup>36</sup> Based on Exh.680.002, Annexure ST-1 to Statement of Sven Thormann, 4 January 2017, tendered 30 June 2017, Table 16.

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- <sup>163</sup> Exh.515.051, CPPM 160315 Emergency Carer Assessment and Approval Procedure, 13 March 2015, tendered 30 June 2017.
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- <sup>171</sup> Exh.575.000, Statement of Toni Eyles, 19 May 2017, tendered 23 June 2017, para. 30; Community meeting, Darwin (Territory Families caseworkers meeting), 23 June 2017; Community meeting by videoconference (Territory Families workers in Alice Springs, Nhulunbuy and Katherine), 21 June 2017.
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- <sup>204</sup> Exh.659.001, Statement of Adrienne Boucher, 11 May 2017, tendered 30 June 2017, para. 28.9.
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- <sup>206</sup> Exh.575.000, Statement of Toni Eyles, 19 May 2017, tendered 23 June 2017, para. 37.
- <sup>207</sup> Exh.659.001, Statement of Adrienne Boucher, 11 May 2017, tendered 30 June 2017, para. 36.
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- 4908: lines 27-37.
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- 218 Transcript, Liza Balmer, 29 May 2017, p. 4050: lines 1-7.
- 219 Exh.469.279, Northern Territory Government, Territory Families, Reunification Procedure, June 2015, tendered 30 May 2017, p. 4.
- 220 Exh.656.001, Statement of Kirsten Schinkel, 19 May 2017, tendered 30 May 2017, para. 25.2.4.
- 221 Exh.656.001, Statement of Kirsten Schinkel, 19 May 2017, tendered 30 May 2017, tendered 30 May 2017, para. 25.2.4.
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- 225 Exh.515.031, Procedure: Preventative Family Care Payments, 9 March 2015, tendered 30 June 2017, p. 1.
- 226 Exh.515.031, Procedure: Preventative Family Care Payments, 9 March 2015, tendered 30 June 2017, p. 1.
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- 228 Exh.656.001, Statement of Kirsten Schinkel, 19 May 2017, tendered 30 May 2017, paras 37, 39; Transcript, Kirsten Schinkel, 30 May 2017, p. 4098: lines 15-19.
- 229 Transcript, Kirsten Schinkel, 30 May 2017, p. 4098: lines 5-19.
- 230 Closed Court Transcript, Foster Care Panel, 30 May 2017, p. 20: line 47 – p. 21: line 5.
- 231 Exh.653.000, Statement of DF, 21 June 2017, tendered 30 June 2017, para. 20.
- 232 Exh.476.000, Statement of Marnie Couch, 18 May 2017, tendered 31 May 2017, para. 23(c).
- 233 Exh.656.001, Statement of Jeanette Kerr, 9 May 2017, tendered 30 June 2017, para. 120.
- 234 Exh.476.000, Statement of Marnie Couch, 18 May 2017, tendered 31 May 2017, para. 23(c); Exh.656.001, Statement of Jeanette Kerr, 9 May 2017, tendered 30 June 2017, para. 132.
- 235 Exh.656.001, Statement of Jeanette Kerr, 9 May 2017, tendered 30 June 2017, para. 132.
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- 237 Exh.656.001, Statement of Jeanette Kerr, 9 May 2017, tendered 30 June 2017, para. 129.
- 238 Exh.662.001, Statement of Luke Twyford, 10 May 2017, tendered 30 June 2017, para. 24.
- 239 Exh.662.016, Annexure LT-48 to Statement of Luke Twyford, 10 May 2017, tendered 30 June 2017, p. 13.
- 240 Exh.662.016, Annexure LT-48 to Statement of Luke Twyford, 10 May 2017, tendered 30 June 2017, p. 4.
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- 243 Exh.662.016, Annexure LT-48 to Statement of Luke Twyford, 10 May 2017, tendered 30 June 2017, p. 13.
- 244 Exh.662.016, Annexure LT-48 to Statement of Luke Twyford, 10 May 2017, tendered 30 June 2017, p. 13.
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- 253 Closed Court Transcript, 30 June 2017, p. 20: line 41-44.
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- 255 Exh.541.000, Statement of Peter Fletcher, 11 May 2017, tendered 21 June 2017, para. 27.
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- 259 Personal Story AH, p. 25 (see Voices document published by the Commission)
- 260 Transcript, Bronwyn Thompson, 23 June 2017, p. 4901: lines 33-37.
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- 264 Exh.520.000, Statement of Colleen Gwynne, 29 May 2017, tendered 19 June 2017, paras 10-11.
- 265 Exh.339.000, Statement of Jeanette Kerr, 27 March 2017, tendered 8 May 2017, para. 53.
- 266 Transcript, Colleen Gwynne, 19 June 2017, p. 4481: lines 38-40.
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- 268 Closed court Transcript, AI, 21 June 2017, p. 20: line 15-20.
- 269 Exh.546, DG Case Study Tender Bundle, Tab 163, tendered 22 June 2017, p. 2.
- 270 Exh.1157.001, DCF Policy: Placements, 13 May 2015, tendered 3 November 2017.
- 271 Exh.1157.001, DCF Policy: Placements, 13 May 2015, tendered 3 November 2017.
- 272 Exh.013.001, Board of Inquiry Report – *Growing them strong together, Promoting the Safety and Wellbeing of the Northern Territory's Children – Summary Report*, 18 October 2010, tendered 12 October 2016, p. 42.
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- 280 Exh.459.000, Statement of John Burton, 22 May 2017, tendered 29 May 2017, para. 47.
- 281 Transcript, Kirsten Schinkel, 30 May 2017, p. 4110: line 30; Transcript, Christine Fejo-King, 21 June 2017, p. 4664: line 9; Transcript, Andrew Walder, 29 May 2017, p. 4044: lines 30-35; Exh.520.000, Statement of Colleen Gwynne, 29 May 2017, tendered 19 June 2017, paras 69-70.
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- 283 Exh.519.000, Statement Sarah Huddlestone, 7 May 2017, tendered 19 June 2017, para. 26.10.
- 284 Exh.523.000, Statement of Tracey Hancock, 25 May 2017, tendered 19 June 2017, para. 11.
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- 292 Exh.571.000, Statement of Ann Owen, 23 May 2017, tendered 23 June 2017, para. 66.
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- 300 Transcript, Marnie Couch, 31 May 2017, p. 4164: line 38- p. 4165: line 2.
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- 323 Exh.458.001, Statement of Liza Balmer, 22 May 2017, tendered 29 May 2017.
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- 326 Exh.476.000, Statement of Marnie Couch, 18 May 2017, tendered 31 May 2017, para. 87.
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- 328 Exh.680.002, Annexure ST-1 annexed to the Statement of Sven Thormann, 4 January 2017, tendered 30 June 2017, Table 15.
- 329 Exh.680.002, Annexure ST-1 annexed to the Statement of Sven Thormann, 4 January 2017, tendered 30 June 2017, Table 15.
- 330 Exh.680.002, Annexure ST-1 annexed to the Statement of Sven Thormann, 4 January 2017, tendered 30 June 2017, Table 15.
- 331 Exh.680.002, Annexure ST-1 annexed to the Statement of Sven Thormann, 4 January 2017, tendered 30 June 2017, Table 15.
- 332 Based on and subject to the same limitation as Exh.648.000, OOH Data, undated, tendered 30 June 2017; amounts were recalculated based on a data correction from the Northern Territory Government (Exh.1149.001, Letter from the Northern Territory Government re Kim Charles' Statement, 29 September 2017, tendered 3 November 2017).
- 333 See Table 33.4 for underlying data.
- 334 Based on and subject to the same limitation as Exh.648.000, OOH Data, undated, tendered 30 June 2017; amounts were recalculated based on a data correction from the Northern Territory Government (Exh.1149.001, Letter from the Northern Territory Government re Kim Charles' Statement, 29 September 2017, tendered 3 November 2017).
- 335 See Table 33.4 for underlying data.
- 336 The Total Expenditure (per annum) is data taken from the corrected Statement of Kim Charles (Exh.613.000, Statement of Kim Charles, 12 May 2017, tendered 28 June 2017; Exh.1149.001, Letter from the Northern Territory Government re Kim Charles' Statement, 29 September 2017, tendered 3 November 2017), the number of Children is taken from the Annexure-1 of the Statement of Sven Thormann (Exh.680.002, Annexure ST-1 to Statement of Sven Thormann, 4 January 2017, Table 15). The Commission notes that the Northern Territory Government corrected an inaccuracy in Table 5 in Kim Charles' statement (see Exh.1149.001, Letter from the Northern Territory Government re Kim Charles' Statement, 29 September 2017, tendered 3 November 2017).
- 337 Exh.613.000, Statement of Kim Charles, 12 May 2017, tendered 28 June 2017; Exh.680.002, Annexure ST-1 to Statement of Sven Thormann, 4 January 2017, Table 15.
- 338 The graph is based on the figures for the number of children in care, provided by Sven Thormann in Exh.680.002, Annexure ST-1 to Statement of Sven Thormann, 4 January 2017, Table 15, and the monetary amount provided by Kim Charles in Exh.613.000, Statement of Kim Charles, 12 May 2017, tendered 28 June 2017, para. 23, Table 5. These figures were provided using the same methodology by which they report to the Report on Government Services (ROGS), whereby ROGS requires the various jurisdictions to divide the total annual expenditure by the number of children in care at 30 June. Territory Families noted that while this is a basic calculation, it provides an annual figure across the different Australian jurisdictions that can be used for measuring and comparing jurisdictions. Territory Families noted a number of issues with this approach, including: (1) Expenditure: different jurisdictions include different expenditure items in their record of total annual expenditure as there is no standardised counting formula. The Northern Territory informed the Commission that it takes a broad approach when undertaking these calculations and attributes all costs, including management, back office support costs (such as staffing costs, rent and utilities); and (2) Number of Children: the number of children in care is calculated on the day of 30 June of each year. Territory Families highlighted that this does not provide a true reflection of how many children may be in care during that year and potentially could misrepresent the true amount per child.
- 339 Exh.613.000, Statement of Kim Charles, 12 May 2017, tendered 28 June 2017, para. 23, Table 5.
- 340 Exh.613.000, Statement of Kim Charles, 12 May 2017, tendered 28 June 2017, para. 23, Table 5.
- 341 Exh.680.002, Annexure ST-1 to Statement of Sven Thormann, 4 January 2017, Table 15.
- 342 Exh.680.002, Annexure ST-1 to Statement of Sven Thormann, 4 January 2017, Table 15.

- <sup>343</sup> Exh.553.092, Annexure BT-92 to Statement of Bronwyn Thompson, DCF Procedure: Child Maintenance Payments, 9 June 2017, tendered 22 June 2017, p. 1.
- <sup>344</sup> Transcript, Marnie Couch, 22 June 2017, p. 4822: line 10.
- <sup>345</sup> Exh.553.092, Annexure BT-92 to Statement of Bronwyn Thompson, DCF Procedure: Child Maintenance Payments, 9 June 2017, tendered 22 June 2017, p. 2.
- <sup>346</sup> Exh.553.092, Annexure BT-92 to Statement of Bronwyn Thompson, DCF Procedure: Child Maintenance Payments, 9 June 2017, tendered 22 June 2017, p. 2.
- <sup>347</sup> Exh.553.092, Annexure BT-92 to Statement of Bronwyn Thompson, DCF Procedure: Child Maintenance Payments, 9 June 2017, tendered 22 June 2017, p. 2.
- <sup>348</sup> Exh.553.092, Annexure BT-92 to Statement of Bronwyn Thompson, DCF Procedure: Child Maintenance Payments, 9 June 2017, tendered 22 June 2017, p. 2.
- <sup>349</sup> Carer Community, 19 September 2017, 'Current Payment Rates', Carer Community website, viewed on 1 October 2017, <[www.carercommunity.nt.gov.au/GuideForCarers/FinanceAndEntitlements/Pages/Current-Payment-Rates.aspx](http://www.carercommunity.nt.gov.au/GuideForCarers/FinanceAndEntitlements/Pages/Current-Payment-Rates.aspx)>.
- <sup>350</sup> Closed Court Transcript, CD, CG, CH, CI, 30 May 2017, p. 12: lines 14-16, 20-22, p. 20: lines 17-25.
- <sup>351</sup> Exh.658.001, Statement of Elizabeth Johnson, 11 May 2017, tendered 30 June 2017, para. 50.
- <sup>352</sup> Exh.476.000, Statement of Marnie Couch, 18 May 2017, tendered 31 May 2017, para. 45.
- <sup>353</sup> Transcript, Marnie Couch, 22 June 2017, p. 4814: line 35 – p. 4815: line 15.
- <sup>354</sup> Transcript, Marnie Couch, 22 June 2017, p. 4823: lines 17-38.
- <sup>355</sup> Exh.024.018, National Standards for Out of Home Care – Final Report, July 2010, tendered 13 October 2016.
- <sup>356</sup> Transcript, Marnie Couch, 22 June 2017, p. 4823: lines 35-38; see further Exh.551.000, Out of Home Care Tender Bundle (Index), 22 June 2017.
- <sup>357</sup> Transcript, Evidence of Marnie Couch, 22 June 2017, p. 4822: lines 15-18.
- <sup>358</sup> Transcript, Evidence of Marnie Couch, 22 June 2017, p. 4832: lines 19-36.
- <sup>359</sup> Submission, Central Australian Aboriginal Congress, 1 November 2016, p. 16.
- <sup>360</sup> Exh.1149.001, Letter from the Northern Territory Government re Kim Charles' Statement, 29 September 2017, tendered 3 November 2017; see also Annexure KC-2 of Kim Charles Statement, undated, tendered 22 June 2017.
- <sup>361</sup> The Commission notes that the amount provided by the Northern Territory Government in Exh.552.000, Annexure KC-2 of Kim Charles Statement, undated, tendered 22 June 2017 was \$21,272,222. However, the Northern Territory Government informed the Commission that this figure should be \$27,655,000 (see Transcript, Marnie Couch, 22 June 2017, p. 4863: lines 17-46; Exh.613.000, Statement of Kim Charles, 12 May 2017, tendered 28 June 2017, para. 23, Table 5). The Northern Territory Government later re-corrected that amount to \$27,655,718 (Exh.1149.001, Letter from the Northern Territory Government re Kim Charles' Statement, 29 September 2017, tendered 3 November 2017). The Commission understands this figure still to an inaccurate sum of the line items by around \$10.
- <sup>362</sup> *Education and Care Services (National Uniform Legislation) Act 2011* (NT).
- <sup>363</sup> Exh.476.000, Statement of Marnie Couch, 18 May 2017, tendered 31 March 2017, para. 45.
- <sup>364</sup> *Education and Care Services National Regulations 2010* (Cth), reg 127.
- <sup>365</sup> Australian Careers College, 2015, 'Certificate III in Early Childhood Education and Care', Australian Careers College website, viewed 1 October 2017, <<http://www.accollege.edu.au/certificate-iii-in-early-childhood-education-and-care/>>.
- <sup>366</sup> Transcript, Marnie Couch, 31 May 2017, p. 4182: lines 34-36.
- <sup>367</sup> Exh.551.021, Letter to Andrew Floro from SFNT, 14 June 2017, p. 2.
- <sup>368</sup> See for example Parts 2 and 3 of the *Education and Care Services (National Uniform Legislation) Act 2011* (NT).
- <sup>369</sup> *Education and Care Services (National Uniform Legislation) Act 2011* (NT), s 8.
- <sup>370</sup> *Care and Protection of Children Act 2005* (NT), ss. 67, 78.
- <sup>371</sup> Second Reading Speech, *Education and Care Services (National Uniform Legislation) Bill 2011* (NT).
- <sup>372</sup> Exh.551.036, June 2017 Home visit, 16 June 2017, tendered 22 June 2017, p. 0011.
- <sup>373</sup> Northern Territory Department of Education, 19 September 2017, 'Quality Education and Care in the NT', Department of Education website, viewed 1 October 2017, <<https://education.nt.gov.au/education/committees,-regulators-and-advisory-groups/quality-education-and-care-nt>>.
- <sup>374</sup> *Education and Care Services (National Uniform Legislation) Act 2011* (NT), Appendix, s 167; *Education and Care Services National Regulations 2010* (Cth), reg. 116.
- <sup>375</sup> *Education and Care Services (National Uniform Legislation) Act 2011* (NT), Appendix, ss. 138-140; *Education and Care Services National Regulations 2010* (Cth), regs 66 -67.
- <sup>376</sup> Exh.476.000, Statement of Marnie Couch, 18 May 2017, para. 45.
- <sup>377</sup> Transcript, Marnie Couch, 22 June 2017, p. 4825: lines 37-38.
- <sup>378</sup> Transcript, Marnie Couch, 22 June 2017, p. 4825: lines 19-21.
- <sup>379</sup> Transcript, Marnie Couch, 22 June 2017, p. 4823. lines 40-45.
- <sup>380</sup> Transcript, Marnie Couch, 22 June 2017, p. 4813: lines 43-44.
- <sup>381</sup> Transcript of Interview with AH, date unknown, p. 2.
- <sup>382</sup> Exh.618.000, DCF 2015-16 Annual Report, 2016, tendered 28 June 2017, pp. 30-31.

- 383 Exh.469.343, *Continuum of Out-of-Home Care*, 1 May 2015, tendered 2 June 2017, p. 2.
- 384 See the narratives relating to DB; DG; DE and DF; DK and DL; DC and DD in Chapter 29 (Child protection experiences).
- 385 See the narratives relating to DE and DF; DD and DC; and DG in Chapter 29 (Child protection experiences).
- 386 See the narratives relating to DB and DG in Chapter 29 (Child protection experiences).
- 387 See the narratives relating to DE and DF; DD and DC; and DG in Chapter 29 (Child protection experiences).
- 388 Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, para. 40. See the narrative relating to CM, CL and DA in Chapter 29 (Child protection experiences).
- 389 Personal story, AH, 29 May 2017.
- 390 In foster care, 'even if the family was nice', DB had 'always felt like the odd one out' because they 'weren't the family I grew up with'. Exh.577.000, Statement of DB, 9 June 2017, tendered 26 June 2017, paras 36, 42.
- 391 Productivity Commission, 2017, Report on Government Services, Productivity Commission: Canberra, Table 16A.18.
- 392 Transcript, Tracey Hancock, 20 June 2017 p. 4529; Exh.525.001, Invoice from Safe Pathways to Territory Families – Darwin, 28 February 2017, tendered 20 June 2017; Exh.525.001, Invoice from Safe Pathways to Territory Families – Darwin, 28 February 2017, tendered 2 June 2017.
- 393 Exh.552.000, Annexure KC-2 of Kim Charles Statement, undated, tendered 22 June 2017; Exh.1149.001, Letter from the Northern Territory Government re Kim Charles' Statement, 29 September 2017, tendered 3 November 2017.
- 394 Exh.552.000, Annexure KC-2 of Kim Charles Statement, undated, tendered 22 June 2017; Exh.1149.001, Letter from the Northern Territory Government re Kim Charles' Statement, 29 September 2017, tendered 3 November 2017.
- 395 Exh.520.000, Statement Colleen Gwynne, 29 May 2017, tendered 19 June 2017, para. 74
- 396 Moore, T et al., 2016, Safe and sound: Exploring the safety of young people in residential care, Institute of Child Protection Studies: Australian Catholic University, p. 8.
- 397 Transcript, Marnie Couch, 22 June 2017, p. 4826: line 44.
- 398 Exh.492.012, Annexure LW-12 to Statement of Leonie Warburton, 12 May 2017, tendered 2 June 2017, p. 1.
- 399 Exh.492.012, Annexure LW-12 to Statement of Leonie Warburton, 12 May 2017, tendered 2 June 2017, p. 2.
- 400 Exh.685.000, DD tender bundle, Tab 7, 25 March 2015, tendered 30 June 2017.
- 401 Exh.685.000, DD tender bundle, Tab 7, 25 March 2015, tendered 30 June 2017.
- 402 Community Meeting, Darwin, (Residential Care Workers), 23 June 2017.
- 403 Queensland Child Protection Commission of Inquiry, 2013, Discussion Paper, Queensland Government, p. 132.
- 404 Submission, Danila Dilba Health Service, 16 August 2017, p. 55.
- 405 Submission, Aboriginal Peak Organisations Northern Territory, 31 July 2017, p. 201.
- 406 McLean, S, Price-Robertson, R & Robinson, E, 2011 'Therapeutic residential care in Australia: Taking stock and looking forward', Australian Institute of Family Studies, pp. 13-16.
- 407 Transcript, Jeanette Kerr, 8 December 2016, p. 490: lines 16-17.
- 408 Exh.469.343, *Continuum of Out-of-Home Care*, 1 May 2015, tendered 2 June 2017, p. 3.
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- 416 The Senate Community Affairs References Committee, August 2015, Out of home Care Report, Senate Printing Unit: Canberra, Recommendation 38.
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- 419 Acil Allen Consulting, 2013, 'Professional Foster Care: Barriers, Opportunities & Options', Acil Allen Consulting, Melbourne, p. vi.
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- 421 Exh.476.000, Statement of Marnie Couch, 18 May 2017, tendered 31 May 2017, paras 10, 22, 93.
- 422 Exh.476.000, Statement of Marnie Couch, 18 May 2017, tendered 31 May 2017, paras 24-25, 36-37.
- 423 Exh.476.000, Statement of Marnie Couch, 18 May 2017, tendered 31 May 2017, para. 17.
- 424 Exh.476.000, Statement of Marnie Couch, 18 May 2017, tendered 31 May 2017, para. 18.
- 425 Exh.476.000, Statement of Marnie Couch, 18 May 2017, tendered 31 May 2017, para. 68.
- 426 Exh.661.014, Annexure LT-31 to Statement of Luke Twyford, 5 May 2017, Report of Deloitte Touche Tohmatsu, tendered 30 June 2017, pp. 4-6.
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- 428 Exh.661.014, Annexure LT-31 to Statement of Luke Twyford, 5 May 2017, Report of Deloitte Touche Tohmatsu, tendered 30 June 2017, p. 4.

- <sup>429</sup> Exh.661.001, Statement of Luke Twyford, 5 May 2017, tendered 30 June 2017, para. 60.
- <sup>430</sup> Exh.661.001, Statement of Luke Twyford, 5 May 2017, tendered 30 June 2017, paras 62b-c.
- <sup>431</sup> Exh.14.001, Board of Inquiry Report – *Growing them strong together, Promoting the Safety and Wellbeing of the Northern Territory’s Children – Volume 1*, 18 October 2010, tendered 12 October 2016, pp. 374-377.
- <sup>432</sup> NSW Parliament Legislative Council, 2017, General Purpose Standing Committee No. 2. Report; no. 46, NSW Parliament Legislative Council: Sydney, p. 89.
- <sup>433</sup> NSW Parliament Legislative Council, 2017, General Purpose Standing Committee No. 2. Report; no. 46, NSW Parliament Legislative Council, Sydney, pp. 89-90.
- <sup>434</sup> NSW Parliament Legislative Council, 2017, General Purpose Standing Committee No. 2. Report; no. 46, NSW Parliament Legislative Council, Sydney, p. 90.
- <sup>435</sup> Exh.661.001, Statement of Luke Twyford, 5 May 2017, tendered 30 June 2017, para. 61.
- <sup>436</sup> Exh.661.001, Statement of Luke Twyford, 5 May 2017, tendered 30 June 2017, para. 69.
- <sup>437</sup> Transcript, Marnie Couch, 22 June 2017, p. 4828: line 8-12.
- <sup>438</sup> Transcript, Ken Davies, 30 June 2017, p. 5414: lines 35-44.
- <sup>439</sup> Transcript, Olga Havnen, 22 June 2017, p. 4758, lines 5-8.
- <sup>440</sup> NSW Parliament Legislative Council, 2017, General Purpose Standing Committee No. 2. Report; no. 46, NSW Parliament Legislative Council, Sydney, pp. 91-92.
- <sup>441</sup> Exh.658.001, Statement of Elizabeth Johnson, 11 May 2017, tendered 30 June 2017, paras 49-50.
- <sup>442</sup> Submission, Create Foundation, January 2017, pp. 8-9.
- <sup>443</sup> Jackson, S and Cameron, C, 2012, *Leaving Care: Looking ahead and aiming higher*, Children and Youth Services Review, 34, pp. 1107-1114.
- <sup>444</sup> Transcript, Colleen Gwynne, 12 October 2016, p. 131: lines 16-20.
- <sup>445</sup> Transcript, Marnie Couch, 31 May 2017, p. 4150: lines 14-15.
- <sup>446</sup> Exh.474.000, Statement of CJ, 24 May 2017, tendered 31 May 2017, paras 20-21.
- <sup>447</sup> Exh.662.026, Annexure LT-58 to Statement of Luke Twyford, 10 May 2017, tendered 30 June 2017, p. 1.
- <sup>448</sup> Exh.662.026, Annexure LT-58 to Statement of Luke Twyford, 10 May 2017, tendered 30 June 2017, pp. 2-3.
- <sup>449</sup> Transcript, Marie Couch, 31 May 2017, p. 4153: lines 45-46.
- <sup>450</sup> The quarterly figure for the number of ‘children self placing absconding’ is 2 in January–March, 1 in April–June and 46 in both July–September and October–December 2016; Exh.1177.000, ‘Territory Families Monthly Performance Report December 2016’, tendered 3 November 2017, p. 2.
- <sup>451</sup> Exh.1177.000, ‘Territory Families Monthly Performance Report December 2016’, tendered 3 November 2017, p. 2, note 12.
- <sup>452</sup> Based on the data in Exh.662.026, Annexure LT-58 to Statement of Luke Twyford, 10 May 2017, tendered 30 June 2017, pp. 2-3.
- <sup>453</sup> Exh.662.021, Annexure LT-53 to Statement of Luke Twyford, 10 May 2017, tendered 30 June 2017, p. 6.
- <sup>454</sup> The figure ‘excludes children where the Work Unit has been recorded on CCIS as Out of Home Care’ and ‘[o]nly counts children with POC ID 993 & 24 and excludes children on authority residing with their parents with or without financial support’. Exh.662.021, Annexure LT-53 to Statement of Luke Twyford, 10 May 2017, tendered 30 June 2017, p. 5, notes 2 and 13.
- <sup>455</sup> Transcript, Tracey Hancock, 19 June 2017, p. 4510: lines 10-15.
- <sup>456</sup> Transcript, Colleen Gwynne, 12 October 2016, p. 131: lines 20-22.
- <sup>457</sup> Exh.467.000, Statement of CI, 22 May 2017, tendered 30 May 2017, para. 18.
- <sup>458</sup> Exh.523.000, Statement of Tracey Hancock, 25 May 2017, tendered 19 June 2017, para. 16.
- <sup>459</sup> Exh.1109.000, Tab 9 to DE and DF Tender Bundle, Child in Care Planning Meeting, tendered 1 November 2017, p. 2; See the narrative relating to DE and DF in Chapter 29 (Child protection experiences).
- <sup>460</sup> Closed court Transcript, DE, 20 June 2017, p. 9: line 45; Exh.524.000, Statement of DE, 28 April 2017, tendered 20 June 2017, paras 32-36, 45.
- <sup>461</sup> Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, pp. 24-25. See the narrative relating to DG in Chapter 29 (Child protection experiences).
- <sup>462</sup> Exh.546.217, DG Case Study Tender Bundle, Tab 217, tendered 22 June 2017, p. 13.
- <sup>463</sup> Transcript, Peter Fletcher, 21 June 2017, p. 4740: line 31 – p. 4741: line 2.
- <sup>464</sup> Exh.523.000, Statement of Tracey Hancock, 25 May 2017, tendered 19 June 2017, para. 13.
- <sup>465</sup> Transcript, Tracey Hancock, 19 June 2017, p. 4513: line 30-32.
- <sup>466</sup> Exh.523.000, Statement of Tracey Hancock, 25 May 2017, tendered 19 June 2017, paras 26-27.
- <sup>467</sup> Transcript, Tracey Hancock, 19 June 2017, p. 4512: line 45 – p. 4513: line 3.
- <sup>468</sup> Exh.951.000, DG Case Study Tender Bundle, Tab 15, tendered 27 October 2017, p. 205.
- <sup>469</sup> Closed Court Transcript, DH, 22 June 2017, p. 13: lines 29-30.
- <sup>470</sup> Exh.547.000, Statement of DH, 15 June 2017, tendered 22 June 2017, paras 66, 68.
- <sup>471</sup> Exh.536.000, Statement of DD, 11 June 2017, tendered 21 June 2017, para. 50.
- <sup>472</sup> Closed Court Transcript, DH, 22 June 2017, p. 13: lines 39-43.
- <sup>473</sup> Exh.024.026, Child Protection Systems Royal Commission, 2016, *The life they deserve*, Volume 1, tendered 13 October 2017, p.

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- <sup>474</sup> Exh.024.026, Child Protection Systems Royal Commission, 2016, *The life they deserve*, Volume 1, tendered 13 October 2017, p. 260.
- <sup>475</sup> See for example, Exh.653.000, Statement of DF, 21 June 2017, tendered 30 June 2017, paras 38, 60; Exh.478.000, Statement of CK, 29 May 2017, tendered 1 June 2017, paras 18-20; Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, paras 96-103; Exh.577.000, Statement of DB, 9 June 2017, tendered 26 June 2017, paras 28-29, 33-34; Exh.486.000, Statement of CL, 26 May 2017, tendered 2 June 2017, para. 40.
- <sup>476</sup> Exh.662.026, Annexure LT-58 to Statement of Luke Twyford, 10 May 2017, tendered 30 June 2017, p. 1.
- <sup>477</sup> Closed Court Transcript, DH, 22 June 2017, p. 13: lines 19-26.
- <sup>478</sup> Transcript, Kirsten Schinkel, 30 May 2017, p. 4100: lines 24-28.
- <sup>479</sup> Transcript, Marnie Couch, 31 May 2017, p. 4151: lines 23-27.
- <sup>480</sup> Exh.520.000, Statement of Colleen Gwynne, 29 May 2017, tendered on 19 June 2017, paras 13-14.
- <sup>481</sup> Register of Information provided and Meetings Held to Support Young People in Residential Care Services.
- <sup>482</sup> Exh.553.000, Statement of Bronwyn Thompson, 9 June 2017, [256] – [258].
- <sup>483</sup> Exh.464.000, Statement of CD, 18 May 2017, tendered 30 May 2017, para. 40.
- <sup>484</sup> Exh.553.000, Statement of Bronwyn Thompson, 20 June 2017, tendered 22 June 2017, para. 283a.
- <sup>485</sup> Transcript, Dr Joseph McDowall, 23 June 2017, p. 4929: lines 35-38.
- <sup>486</sup> Closed Court Transcript, CD, CG, CH, CI (Foster Care Panel), 30 May 2017, p. 11: lines 28-41.
- <sup>487</sup> Exh.658.001, Statement of Elizabeth Johnson, 11 May 2017, tendered 30 June 2017, para. 43.
- <sup>488</sup> Exh.675.001, Statement of David Pugh, 7 June 2017, tendered 30 June 2017, p. 15.
- <sup>489</sup> Submission, Central Australian Aboriginal Family Legal Unit, 28 October 2016, p. 2.
- <sup>490</sup> Disability types include intellectual/learning, sensory/speech, physical diverse – see Exh.495.000, Children’s Commissioner Northern Territory Annual Report 2015-2016, tendered 2 June 2017, p. 61. The Commission notes there is a discrepancy in the number of children with disabilities listed in Exh.495.000, p. 60.
- <sup>491</sup> Exh.495.000, Children’s Commissioner Northern Territory Annual Report 2015-2016, tendered 2 June 2017, p. 60.
- <sup>492</sup> Exh.014.001, Board of Inquiry Report – *Growing them strong together, Promoting the Safety and Wellbeing of the Northern Territory’s Children – Volume 1*, 18 October 2010, tendered 12 October 2016, p. 367.
- <sup>493</sup> Transcript, Dr Howard Bath, 31 May 2017, p. 4220: lines 20-26.
- <sup>494</sup> Exh.553.000, Statement of Bronwyn Thompson, 20 June 2017, tendered 22 June 2017, para. 283b.
- <sup>495</sup> Submission, Aboriginal Peak Organisations Northern Territory, 31 July 2017, p. 84.
- <sup>496</sup> Submission to the Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander Community, Prue Walker, *Opportunities to Reduce Alcohol Related Harms for Children and Vulnerable Families in Aboriginal Communities in the Northern Territory*, date unknown, p. 7.
- <sup>497</sup> National Disability Insurance Scheme (Supports for Participants) Rules 2013 (Cth), r 7.11.
- <sup>498</sup> National Disability Insurance Scheme (Supports for Participants) Rules 2013 (Cth), r 7.11.
- <sup>499</sup> National Disability Insurance Scheme, *NDIS in the Northern Territory*, National Disability Insurance Agency, 2017, viewed 22 September 2017, <<https://www.ndis.gov.au/about-us/our-sites/NT.html>>.
- <sup>500</sup> See the narratives relating to DG; DB; CK; DK and DL; DD and DC; and CM, CL and DA in Chapter 29 (Child protection experiences).
- <sup>501</sup> See the narratives relating to DG; DK and DL; DE and DF; DC and DD in Chapter 29 (Child protection experiences).
- <sup>502</sup> See the narratives relating to DG; CK; DK and DL; and DE and DF in Chapter 29 (Child protection experiences).
- <sup>503</sup> See the narratives relating to DG; DK and DL; DE and DF; and CM, CL and DA in Chapter 29 (Child protection experiences).
- <sup>504</sup> Exh.536.000, Statement of DD, 11 June 2017, tendered 21 June 2017, para. 44.
- <sup>505</sup> Exh.685.000, Tab 33 to Bundle of documents DD, Progress notes, Various dates, tendered 30 June 2017, pp. 55-57. See further the narrative relating to DD and DC in Chapter 29 (Child protection experiences).
- <sup>506</sup> See the narratives relating to DG; CK; DK and DL; DE and DF; and DD and DC in Chapter 29 (Child protection experiences).
- <sup>507</sup> See the narratives relating to DG; CK; DD and DC; and DE and DF in Chapter 29 (Child protection experiences).
- <sup>508</sup> Exh.544.000, Statement of DG, 7 June 2017, tendered 22 June 2017, paras 98, 103. See the narrative relating to DG in Chapter 29 (Child protection experiences).
- <sup>509</sup> See the narratives relating to DE and DF; DK and DL; and CM, CL and DA in Chapter 29 (Child protection experiences).
- <sup>510</sup> See the narratives relating to DE and DK; and DD and DC in Chapter 29 (Child protection experiences).
- <sup>511</sup> Exh.524.000, Statement of DE, 28 April 2017, tendered 20 June 2017, para. 44; See the narrative relating to DE and DF in Chapter 29 (Child protection experiences).
- <sup>512</sup> Exh.536.000, Statement of DD, 11 June 2017, tendered 21 June 2017, para. 32. See the narrative relating to DD and DC in Chapter 29 (Child protection experiences).
- <sup>513</sup> Exh.536.000, Statement of DD, 11 June 2017, tendered 21 June 2017, para. 157.
- <sup>514</sup> Exh.653.000, Statement of DF, 21 June 2017, tendered 30 June 2017, para. 40. See the narrative relating to DE and DF in Chapter 29 (Child protection experiences).
- <sup>515</sup> See the narrative relating to DG in Chapter 29 (Child protection experiences).



- <sup>516</sup> Such as the Territory Families policy on Concerns about the Safety of Children in Care. Exh.515.050, CPPM 160315 Concerns about the Safety of Children in Care, 13 March 2015, tendered 30 June 2017.
- <sup>517</sup> Exh.515.130, Placements Policy, 12 April 2017, tendered 30 June 2017, p. 1.
- <sup>518</sup> See the narrative relating to DK and DL in Chapter 29 (Child protection experiences). DD and DC had some positive outcomes when both stayed at a residential rehab program. See the narrative relating to DD and DC in Chapter 29.
- <sup>519</sup> See the narrative relating to DK and DL in Chapter 29 (Child protection experiences).
- <sup>520</sup> Exh.546.225, DG Case Study Tender Bundle, Tab 225, tendered 22 June 2017, p. 6. See the narrative relating to DG in Chapter 29 (Child protection experiences).
- <sup>521</sup> See the narratives relating to DG; CK; DE and DF; DD and DC in Chapter 29 (Child protection experiences).
- <sup>522</sup> See the narrative relating to CK in Chapter 29 (Child protection experiences).
- <sup>523</sup> See the narratives relating to DG; and DE and DF in Chapter 29 (Child protection experiences).
- <sup>524</sup> Exh.906.001, 8AS1 WPR-AS-[REDACTED].FGH week ending 7 May 2017, 7 May 2017, tendered 24 October 2017; Exh.907.001, 8AS2 WPR-AS-[REDACTED].FGH week ending 14 May 2017, 14 May 2017, tendered 24 October 2017; Exh.908.001, 8AS3 WPR-AS-[REDACTED].FGH week ending 21 May 2017, 21 May 2017, tendered 24 October 2017; Exh.909.001, 8AS4 WPR-AS-[REDACTED].FGH week ending 28 May 2017, 28 May 2017, tendered 24 October 2017; Exh.910.001, 8D1 WPR-DWN-Depot week ending 7th May 2017, 7 May 2017, tendered 24 October 2017; Exh.911.001, 8D10 WPR-DWN-Park week ending 28th May 2017, 28 May 2017, tendered 24 October 2017; Exh.912.001, 8D2 WPR-DWN-Depot week ending 14th May 2017, 14 May 2017, tendered 24 October 2017; Exh.913.001, 8D3 WPR-DWN-Depot week ending 21st May 2017, 21 May 2017, tendered 24 October 2017; Exh.914.001, 8D4 WPR-DWN-Depot week ending 28th May 2017, 28 May 2017, tendered 24 October 2017; Exh.915.001, 8D7 WPR-DWN-Park week ending 7th May 2017, 7 May 2017, tendered 24 October 2017; Exh.916.001, 8D8 WPR-DWN-Park week ending 14th May 2017, 14 May 2017, tendered 24 October 2017; Exh.917.001, 8D9 WPR-DWN-Park week ending 21th May 2017, 21 May 2017, tendered 24 October 2017; Exh.918.001, 8K1 WPR-KTH-KACS Week ending 07 May 2017, 7 May 2017, tendered 24 October 2017; Exh.919.001, 8K10 WPR-KTH-FGH week ending 28 May 2017, 28 May 2017, tendered 24 October 2017; Exh.920.001, 8K2 WPR-KTH-KACS week ending 14 May 2017, 14 May 2017, tendered 24 October 2017; Exh.921.001, 8K3 WPR-KTH-KACS week ending 21 May 2017, 21 May 2017, tendered 24 October 2017; Exh.922.001, 8K4 WPR-KTH-KACS week ending 28 May 2017, 28 May 2017, tendered 24 October 2017; Exh.923.001, 8K7 WPR-KTH-FGH week ending 07 May 2017, 7 May 2017, tendered 24 October 2017; Exh.924.001, 8K8 WPR-KTH-FGH Week ending 14 May 2017, 14 May 2017, tendered 24 October 2017; Exh.925.001, 8K9 WPR-KTH-FGH week ending 21 May 2017, 21 May 2017, 24 October 2017.
- <sup>525</sup> Exh.572.002, Annexure JM-2 to Statement of Joseph McDowall, 25 May 2017, tendered 23 June 2017, p. 61. It is noted that a low number of responses from the Northern Territory in compiling this data meant a limited sample and a correspondingly low confidence interval.
- <sup>526</sup> Transcript, Tracey Hancock, 20 June 2017, p. 4538: lines 21-27.
- <sup>527</sup> Exh.675.001, Statement of David Pugh, 7 June 2017, tendered 30 June 2017, p. 14.
- <sup>528</sup> Exh.464.000, Statement of CD, 18 May 2017, tendered 30 May 2017, paras 27-28.
- <sup>529</sup> Exh.520.000, Statement of Colleen Gwynne, 29 May 2017, tendered on 19 June 2017, paras 72-73.
- <sup>530</sup> Exh.14.001, Board of Inquiry Report – *Growing them strong together, Promoting the Safety and Wellbeing of the Northern Territory's Children – Volume 1*, 18 October 2010, tendered 12 October 2016, p. 353.
- <sup>531</sup> Exh.571.000, Statement of Ann Owen, 23 May 2017, tendered 23 June 2017, para. 15.
- <sup>532</sup> Exh.553.000, Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, para. 129.
- <sup>533</sup> Exh.571.000, Statement of Ann Owen, 23 May 2017, tendered 23 June 2017, para. 74.
- <sup>534</sup> Transcript, Ann Owen, 23 June 2017, p. 4940: lines 42-44.
- <sup>535</sup> Transcript, Ann Owen, 23 June 2017, p. 4940: lines 45.
- <sup>536</sup> Exh.571.000, Statement of Ann Owen, 23 May 2017, tendered 23 June 2017, para. 32.
- <sup>537</sup> Exh.571.000, Statement of Ann Owen, 23 May 2017, tendered 23 June 2017, paras 75-78.
- <sup>538</sup> Exh.476.000, Statement of Marnie Couch, 18 May 2017, tendered 31 May 2017, paras 56-57.
- <sup>539</sup> Closed Court Transcript, CD, CG, CH, CI (Foster Care Panel) 30 May 2017, p. 12: lines 20-22.
- <sup>540</sup> Exh.464.000, Statement of CD, 18 May 2017, tendered 30 May 2017, para. 10.
- <sup>541</sup> Exh.464.000, Statement of CD, 18 May 2017, tendered 30 May 2017, para. 9.
- <sup>542</sup> Benton, M, Pigott R, Price, M, Shepherdson, P & Winkworth, G, 2017, A national comparison of carer screening, assessment, selection, training and support in foster, kinship and residential care, Royal Commission into Institutional Responses to Child Sexual Abuse: Sydney.
- <sup>543</sup> Transcript, Ann Owen, 23 June 2017, p. 4928, lines 36-41.
- <sup>544</sup> Exh.476.000, Statement of Marnie Couch, 18 May 2017, tendered 31 May 2017, para. 60.
- <sup>545</sup> Exh.476.000, Statement of Marnie Couch, 18 May 2017, tendered 31 May 2017, para. 60.
- <sup>546</sup> Exh.024.026, Child Protection Systems Royal Commission, 2016, *The life they deserve*, Child Protection Systems Royal Commission, 2016, tendered 13 October 2016, p. 279.
- <sup>547</sup> Exh.536.000, Statement of DD, 11 June 2017, tendered 21 June 2017, para. 134.
- <sup>548</sup> Exh.476.000, Statement of Marnie Couch, 18 May 2017, tendered 31 May 2017, para. 49.
- <sup>549</sup> Exh.465.001, Statement of CH, 19 May 2017, tendered 30 May 2017, para. 44.

- 550 Exh.467.000, Statement of CI, 22 May 2017, tendered 30 May 2017, para. 20.
- 551 Transcript, CG, 30 May 2017, p21: lines 35-47.
- 552 Exh.520.000, Statement of Colleen Gwynne, 29 May 2017, tendered 19 June 2017, para. 38.
- 553 NTCOSS, Submission to Senate Inquiry into Out of Home Care, 'Children Living in Out of Home Care', p. 18.
- 554 Transcript, Andrew Walder, 29 May 2017, p. 4044: lines 20-24.
- 555 Exh.013.001, Board of Inquiry Report – *Growing them strong together, Promoting the Safety and Wellbeing of the Northern Territory's Children – Summary Report*, 18 October 2010, tendered 12 October 2016, p. 46.
- 556 Exh.014.002, Board of Inquiry Report – *Growing them strong together, Promoting the Safety and Wellbeing of the Northern Territory's Children – Volume 2*, 18 October 2010, tendered 12 October 2016, p. 403.
- 557 Exh.014.002, Board of Inquiry Report – *Growing them strong together, Promoting the Safety and Wellbeing of the Northern Territory's Children – Volume 2*, 18 October 2010, tendered 12 October 2016, p. 403.
- 558 Exh.013.001, Board of Inquiry Report – *Growing them strong together, Promoting the Safety and Wellbeing of the Northern Territory's Children – Summary Report*, 18 October 2010, tendered 12 October 2016, p. 46.
- 559 Exh.014.001, Board of Inquiry Report – *Growing them strong together, Promoting the Safety and Wellbeing of the Northern Territory's Children – Volume 1*, 18 October 2010, tendered 12 October 2016, p. 348.
- 560 Transcript, Andrew Walder, 29 May 2017, p. 4044: line 25.
- 561 Exh.469.332, Board of Inquiry Progress Report, Vol 2, 16 May 2017, tendered 2 June 2017, p. 7.
- 562 Exh.702.001, Statement Jeanette Kerr, 23 June 2017, tendered 10 July 2017, para. 7.
- 563 Exh.702.001, Statement Jeanette Kerr, 23 June 2017, tendered 10 July 2017, para. 13.
- 564 Exh.520.000, Statement of Colleen Gwynne, 29 May 2017, tendered 19 June 2017, para. 45.
- 565 Exh.495.000, Children's Commission Northern Territory Annual Report 2015-16, 2016, tendered 2 June 2017, p. 73.
- 566 Exh.495.000, Children's Commission Northern Territory Annual Report 2015-16, 2016, tendered 2 June 2017, p. 73.
- 567 Closed Court Transcript, CJ, 31 May 2017, p. 16: lines 15-19.
- 568 In its 2012 Concluding Observations on Australia, the UN Committee on the Rights of the Child indicated its concern about the inadequate preparation provided to children leaving care when they turn 18 years. (Committee on the Rights of the Child, 12 August 2012, Concluding Remarks on Australia (CRC/C/AUS/CO/4), United Nations: New York, p. 12).
- 569 The 2015 Senate Community Affairs References Committee inquiry into out of home care reported that one of the most significant gaps in current service provision for young people was the transition from out of home care at age 18 (The Senate Community Affairs References Committee, August 2015, Out of home Care Report, Senate Printing Unit: Canberra, p. 103).
- 570 Closed Court Transcript, CD, CG, CI and CH (Foster Carer Panel), 30 May 2017, p. 9: lines 4-12, p. 16: line 40 – p. 18: line 43.
- 571 Exh.590.000, Annexure RB-2 to Statement of Roslyn Baxter, 'Protecting Children is Everyone's Business: National Framework for Protection Australia's Children 2009-2020, 2009, tendered 26 June 2017; Department of Human Services, 'Third three-year action plan, 2015-2018 - Driving Change: Intervening Early', Australian Government: Canberra, p. 10.
- 572 Exh.024.026, Child Protection Systems Royal Commission, 2016, *The life they deserve*, Child Protection Systems Royal Commission, 2016, tendered 13 October 2016, p. 14.
- 573 Closed Court Transcript, CD, CG, CI and CH (Foster Carer Panel), 30 May 2017, p. 9: lines 4-12.
- 574 *Care and Protection of Children Act (NT)*, s 132(2).
- 575 *Care and Protection of Children Act (NT)*, s 71(3).
- 576 Exh.469.298, Territory Families, Guideline: Leaving Care Planning, 5 October 2016, tendered 2 June 2017, p. 2; Department of Families, Housing, Community Services and Indigenous Affairs, July 2011, An Outline of National Standards for Out of Home Care: A Priority Project under the National Framework for Protecting Australia's Children 2009 – 2020, Australian Government: Canberra, p. 14.
- 577 Exh.469.298, Territory Families, Guideline: Leaving Care Planning, 5 October 2016, tendered 2 June 2017, p. 2.
- 578 Exh.469.298, Territory Families, Guideline: Leaving Care Planning, 5 October 2016, tendered 2 June 2017, p. 6.
- 579 With respect to young people with a physical disability and/or impaired decision-making capacity, Territory Families *Guideline: Leaving Care Planning* states that where a previous referral has not been made for disability services and support with the Office of Disabilities, a referral must be made to the Office of Disabilities when leaving care planning begins at age 15. It also indicates that where a young person is assessed as requiring an adult guardian to protect their interests after they leave care, the Public Guardian must be consulted and an application for an Adult Guardianship Order should be made to the Northern Territory Civil and Administrative Tribunal when the young person turns 17. The order has no effect until the young person turns 18 years. (Exh.469.298, Territory Families, Guideline: Leaving Care Planning, 5 October 2016, tendered 2 June 2017, pp. 3-4).
- 580 Exh.495.000, Office of the Children's Commissioner Northern Territory Annual Report 2015-16, 31 October, tendered 2 June 2017, p. 61; The Commission notes the discrepancy between the numbers given on pages 60 and 61 for the number of children in out of home care with disability (112 per p. 60, and 111 per p. 61).
- 581 Exh.495.000, Office of the Children's Commissioner Northern Territory Annual Report 2015-16, 31 October 2016, tendered 2 June 2017, p. 60.
- 582 Exh.495.000, Office of the Children's Commissioner Northern Territory Annual Report 2015-16, 31 October 2016, tendered 2 June 2017, p. 100.
- 583 Closed court Transcript, DG, 22 June 2017, p. 7: lines: 24-25.

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LEGISLATION AND  
LEGAL PROCESS



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# LEGISLATION AND LEGAL PROCESS

## INTRODUCTION

Child protection legislation across all Australian states and territories is consistent in formulation of the paramount principle to be invoked before the State intervenes as being that intervention is in the best interests of the child. The statutory mechanisms and expression by which the principle is applied differ between jurisdictions, but the essential features remain a statement of the situations in which statutory protection of children becomes necessary and a clear framework for the scope and criteria of the powers that may be exercised by the executive and judiciary as agents of the state.

This domestic legislation has incorporated within it the principles set out in the *United Nations Convention on the Rights of the Child (CRC)*, to which Australia is a signatory. Particular articles of the Convention are reflected in the *Care and Protection of Children Act (NT)*, including the child's rights to express their views,<sup>1</sup> that parents have the primary responsibility for the upbringing of their child,<sup>2</sup> and the periodic review of the placement and treatment of a child who is in care.<sup>3</sup>

The objects and principles of the *Care and Protection of Children Act* are consistent with ensuring the protection and wellbeing of children. However, some of the current sections of the *Care and Protection of Children Act* are either insufficiently particular in the criteria and preconditions that must be met before a child protection order can be made or can be improved to assist in ensuring a clear and consistent framework for decision-making and court procedures. In addition, the mechanisms for mediation and dispute resolution in the *Care and Protection of Children Act* are not in force or largely unused. It is difficult to conceive of many other areas of law in which avoiding contested litigation is as crucial. The Northern Territory Local Court has issued a Practice Direction to fill that void when litigation is commenced.<sup>4</sup>



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## LEGISLATIVE FRAMEWORK – THE CARE AND PROTECTION OF CHILDREN ACT (NT)

The *Care and Protection of Children Act* was passed following the Akelyernemane Meke Mekarle “Little Children are Sacred”: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (Little Children are Sacred report). It was the result of a commitment by the government of the time to reform the legislative framework for the protection of children in the Northern Territory and bring it into line with models in other Australian jurisdictions.<sup>5</sup> The objects of the *Care and Protection of Children Act* are:

- to promote the wellbeing of children, including protecting them from harm and exploitation and to maximise opportunities for them to reach their full potential
- to help families to achieve these things, and
- to ensure that those with responsibilities for children have regard to those objects.<sup>6</sup>

In order to achieve these objects, the *Care and Protection of Children Act* provides the following:

- safeguards for the wellbeing of children, including reporting requirements in relation to children at risk of harm or exploitation, powers of the Ministers and others to take certain actions, and powers of the Court to make orders (Chapter 2 of the *Care and Protection of Children Act*)
- the prevention of harm and exploitation of children, including screening for child-related employment, restrictions on child-related employment, and prevention of child deaths (Chapter 3 of the *Care and Protection of Children Act*), and
- a framework for sharing information about children (Chapter 5 of the *Care and Protection of Children Act*).

The *Care and Protection of Children Act* gives power to the Chief Executive Officer of the department, exercising, in effect, the parental role of the State, to act to protect children without proceedings being commenced in a court. This might occur, for example, if the Chief Executive Officer makes a temporary placement arrangement for a child living with the child’s parents to safeguard the wellbeing of the child, or there is an urgent need to take a child into provisional protection.<sup>7</sup>

The *Care and Protection of Children Act* creates a specific jurisdiction and court process for the determination and oversight of child protection proceedings. Chapter 2 establishes a family matters jurisdiction in the Local Court<sup>8</sup> and imposes a number of requirements on the jurisdiction.

The Court is not bound by the rules of evidence, and proceedings are to be conducted ‘with as little formality and legal technicality as the circumstances permit’.<sup>9</sup> The need for the proceedings to reflect the exigencies of child protection litigation and limit, as far as possible, any effect on the child, is reflected in the requirement that proceedings be ‘conducted as expeditiously as possible’ and in the power conferred on the Court to appoint a legal representative for the child.<sup>10</sup>

The Court must take steps to ensure that each party understands the proceedings,<sup>11</sup> may adjourn the proceedings to allow a party to obtain representation,<sup>12</sup> and may order parents to attend a proceeding.<sup>13</sup> The Northern Territory Local Court issued a comprehensive Practice Direction on 1 July 2015 ‘to provide for clear practice and procedure to ensure the fair, effective, expeditious and efficient conduct of proceedings’ regarding the care and protection of children.<sup>14</sup>

Child protection matters are heard in the Local Court in Darwin, Katherine, Alice Springs and Tennant Creek. While each of those has a specific list day to deal with procedural matters, urgent applications

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and contested hearings can be listed on any day the Court sits.<sup>15</sup> This means that children and adult matters may be listed on the same day. The nature of the Court and the advantages of this jurisdiction being placed within a specialist Children’s Court are addressed in Chapter 25 (The path into detention).

The legislation also confers wide-ranging statutory power upon the Chief Executive Officer of Territory Families and delegates. The intrusive and sensitive nature of those powers is readily apparent; they include the capacity to enter a private home with or without notice,<sup>16</sup> to remove children from their families and place them elsewhere, to obtain and share personal and private information such as medical records and criminal histories<sup>17</sup> and restrain or search a child.<sup>18</sup>

Power must be exercised in accordance with the underlying principles of the *Care and Protection of Children Act*, for example:

- The Northern Territory Government has responsibility for promoting and safeguarding the wellbeing of children and supporting families (section 7).
- Families assume primary responsibility for the child’s care, upbringing and development; although a child may be removed from the family if there is no other reasonable way to safeguard his or her wellbeing (section 8).
- Children should be able to participate insofar as possible in all decisions regarding them, and have their views and wishes taken into account (section 11).<sup>19</sup>
- The kinship group, representative organisation or community of an Aboriginal child should be able to participate in decisions involving him or her, and Aboriginal children should be placed in close proximity to their family and community (section 12).

## OVERVIEW OF THE STATUTORY SCHEME

The ambit of the statutory child protection system and the powers of the executive to supervise and protect children are delimited by a series of definitions provided in the *Care and Protection of Children Act*. The concepts of ‘harm’,<sup>20</sup> ‘child is in need of protection’<sup>21</sup> and ‘protection order’<sup>22</sup> are the criteria upon which the jurisdiction and powers of the Chief Executive Officer and the courts are conditioned, while the ‘wellbeing of the child’ is the guiding focus for action. This includes the child’s physical, psychological and emotional wellbeing.<sup>23</sup>

Chapter 2 of the *Care and Protection of Children Act* grants powers primarily to the Chief Executive Officer of Territory Families, instead of the Minister. The Chief Executive Officer has various investigative powers under the *Care and Protection of Children Act* to be exercised for the benefit of children (sections 32 and 33). Police may also request information about a child’s wellbeing from a large range of individuals, who must comply with that request (section 34). The Chief Executive Officer and police may each initiate an investigation to determine whether a child is in need of protection (sections 35 and 36). Investigating officers must then be granted access to the child and information about the child, and may do so without informing the child’s parents (sections 37 and 38).

The second important feature of Chapter 2 is to make provision for children who are in the Chief Executive Officer’s care. A child will be in the Chief Executive Officer’s care if they are under a temporary placement arrangement or in provisional protection, or are under the daily care and control of the Chief Executive Officer under an order of the Court (section 67). The Chief Executive Officer must prepare a care plan for each such child to ensure the best interests of each child have been identified and are being met (section 70). When a child comes into the care of the Chief Executive Officer, they must enter into a placement arrangement (section 77). These arrangements may be with a parent, another family member or an individual approved by the Chief Executive Officer (section 78).

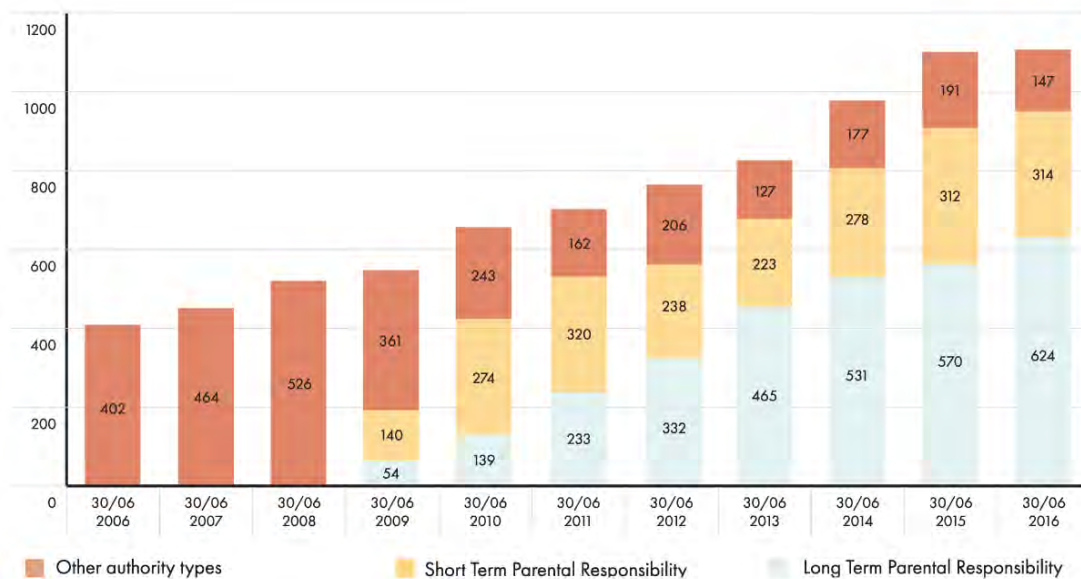
Child protection officers have the power to monitor the wellbeing of a child who is in the Chief Executive Officer's care (section 83A), including by entering and inspecting the place where the child ordinarily resides (section 84). Where there are reasonable grounds to believe that a child in the Chief Executive Officer's care has suffered, or is likely to suffer harm or exploitation while in care, the Chief Executive Officer may initiate an investigation into the suspected or potential harm or exploitation that has occurred or is suspected (section 84A). The rights of children who are in the Chief Executive Officer's care are upheld by the *Charter of Rights for Children in Care in the Northern Territory* (section 68A). This is discussed further in Chapter 37 (Child protection oversight).

The *Care and Protection of Children Act* also sets out the powers of the Court to make a range of protection orders for the benefit of a child. The types of protection orders available in the Northern Territory including the following:

- **Provisional protection orders:** Used when the investigation and assessment team believe that a child is in immediate need of protection, this order grants daily care and control of the child or young person to the Chief Executive Officer. The child must be returned to their primary caregiver or an application made for a temporary protection order within 72 hours. Parental responsibility for the child or young person remains with their parents.
- **Temporary protection orders:** These are used when there is sufficient information to warrant a court order to secure the safety of the child during the assessment process, for up to 14 days. Parental responsibility for the child or young person remains with their parents.
- **Short-term protection orders:** These transfer parental responsibility to the Chief Executive Officer or other specified person for up to two years. Short-term protection orders are intended to be used where the goal is for the child to be reunified with their parent or caregiver.
- **Long-term protection orders:** These transfer parental responsibility to the Chief Executive Officer or other specified person for longer than two years and up until a child or young person turns 18. Long-term protection orders are intended to be used where it is considered that reunification is not going to be possible for the child or young person.
- **Supervision direction orders:** These direct a parent or other person to do, or refrain from doing, specified things directly related to the protection of the child and permits the Chief Executive Officer to supervise the protection of the child in relation to specific matters.



**Figure 34.1: Number of children on protection orders at 30 June, 2006-2016**



Source: Exh.680.002, Annexure ST - 1 to Statement of Sven Thormann, 4 January 2017, tendered 30 June 2018, table 10b.

## THE STATUTORY THRESHOLD – WHEN IS A CHILD IN NEED OF CARE AND PROTECTION

Many of the Chief Executive Officer’s powers in the *Care and Protection of Children Act* and the jurisdiction conferred on a court making a child protection order are predicated upon an initial definitional threshold.<sup>24</sup> The statutory threshold for the jurisdiction of the courts to make one of the orders described above is the point when a child becomes in need of care and protection. The phrase ‘care and protection’ is not defined in the *Care and Protection of Children Act*. The words carry their ordinary meaning.<sup>25</sup>

Whether a child is in ‘need of care and protection’ is set out in section 20 of the *Care and Protection of Children Act*, which prescribes four disjunctive situations. A child is in need of care and protection if:

- a. the child has suffered or is likely to suffer harm or exploitation because of an act or omission of a parent of the child; or
- b. the child is abandoned and no family member of the child is willing and able to care for the child; or
- c. the parents of the child are dead or unable or unwilling to care for the child and no other family member of the child is able and willing to do so; or
- d. the child is not under the control of any person and is engaged in conduct that causes or is likely to cause harm to the child or other persons.

The first situation is conditional on there being harm or exploitation because of an act or omission of a parent. Courts in the Northern Territory have affirmed<sup>26</sup> the distinction between paragraph (a) and paragraphs (b) and (c) in that there is no additional qualification in relation to the unavailability of

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other family members. If the Court is satisfied on the balance of probabilities<sup>27</sup> that an act or omission of a parent of the child has caused or is likely to cause the child to suffer harm or exploitation, that is sufficient for a finding that a child is in 'need of care and protection' even where another family member may be able and willing to care for the child.

## 'Parent' or 'family member'

The need for care or protection is dependent upon the acts or omissions of parents and family members or their availability to care for a child. The *Care and Protection of Children Act* defines these terms broadly in sections 17 and 19. A 'parent' in the context of an Aboriginal child 'includes a person who is regarded as a parent of the child under Aboriginal customary law or Aboriginal tradition'.<sup>28</sup>

'Family of child' is defined in section 19 to include relatives<sup>29</sup> and the members of the extended family of the child in accordance with 'any customary law or tradition applicable to the child' or 'any contemporary custom or practice'.<sup>30</sup>

The Commission has received evidence that in practice it may be difficult to reach family members in remote communities,<sup>31</sup> or that persons who may fit the description of 'family member' may not be known to the Court or the parties until a late stage in the child protection proceedings. These practical difficulties can cause considerable delays in the legal process.<sup>32</sup>

## 'Harm' and 'exploitation'

'Harm to child' and 'exploitation of child' are defined in sections 15 and 16 of the *Care and Protection Act* and describe what is generally referred to as child abuse or neglect.

### Section 15 Harm to child

1. Harm to a child is any significant detrimental effect caused by any act, omission or circumstance on:
  - a. the physical, psychological or emotional wellbeing of the child; or
  - b. the physical, psychological or emotional development of the child.
2. Without limiting subsection (1), harm can be caused by the following:
  - a. physical, psychological or emotional abuse or neglect of the child;
  - b. sexual abuse or other exploitation of the child;
  - c. exposure of the child to physical violence.

#### Example

*A child witnessing violence between the child's parents at home.*

## Section 16 Exploitation of child

1. Exploitation of a child includes sexual and any other forms of exploitation of the child.
2. Without limiting subsection (1), sexual exploitation of a child includes:
  - a. sexual abuse of the child; and
  - b. involving the child as a participant or spectator in any of the following:
    - i. an act of a sexual nature;
    - ii. prostitution;
    - iii. a pornographic performance.

These definitions govern the scope of many of the administrative and legal processes set out in the *Care and Protection of Children Act* and are the gateway into the tertiary response component of the child protection system. The nuance in how the definitions are phrased and interpreted is critical. Other jurisdictions in Australia have approached this threshold test by expressing it in terms of 'risk' or 'likelihood'.<sup>33</sup> The threshold in the *Care and Protection of Children Act* is a variation of the latter. The closest equivalent is Queensland, where harm is assessed in terms of 'unacceptable risk', but is defined in the relevant legislation as 'any detrimental effect of a significant nature'.<sup>34</sup>

Although the definitional approach taken by the *Care and Protection of Children Act* is unique among the Australian jurisdictions, its effect is comparable and serves the required purpose. Where that statutory definition is met, the focus should be on an adequate and proportional statutory response that ensures, for instance, a directive order rather than a parental responsibility order is made where appropriate. It is in this area that the language used in the statute, in the view of the Commission, would benefit from amendment.

## THE CRITERIA BY WHICH A PROTECTION ORDER IS MADE

The discretion and responsibility conferred upon the Court to make the appropriate order in the best interests of the child involve a complex exercise and it is one upon which reasonable minds may well differ. The criteria and preconditions of a protection order ought to be as specific and comprehensive as practicable to ensure consistency in judicial decision-making. Problems can arise through the use of the general term 'best means' in sections 121 and 129 of the *Care and Protection of Children Act*.

Section 129 of the *Care and Protection of Children Act* provides that:

### Section 129 When Court must make order

The Court must make the protection order if the Court is satisfied:

- a. the child:
  - i. is in need of protection; or
  - ii. would be in need of protection but for the fact that the child is currently in the CEO's care, and
- b. the order is the best means of safeguarding the wellbeing of the child.

## Section 130 Court to consider certain matters

(1) In making the decision, the Court must consider:

- a. any matters arising from a mediation conference for the child; and
- b. the wishes of the following:
  - i. the child;
  - ii. a parent of the child;
  - iii. a person proposed to be given daily care and control of, or parental responsibility for, the child under the order;
  - iv. any other person considered by the Court to have a direct and significant interest in the wellbeing of the child; and
- c. if the CEO proposes that daily care and control of, or parental responsibility for, the child be given to a person (including, for example, the CEO):
  - i. any report or recommendation given to the Court by the CEO about the proposal; and
  - ii. whether there is another person who is better suited to be given daily care and control of, or parental responsibility for, the child; and
  - iii. the needs of the child for long-term stability and security; and
- d. any other matters the Court considers relevant.

The process by which an application for a protection order comes before a court commences when the Chief Executive Officer or delegate forms the reasonable belief that a child is in need of protection. The Chief Executive Officer may take the child into provisional protection but for no more than 72 hours.<sup>35</sup> If no other order is in force upon the expiry of that period, the child must be returned to a parent or other responsible person.

If the Chief Executive Officer wishes to extend the period of provisional protection they must apply to the Court for an order to that effect.<sup>36</sup> This is the juncture at which the administrative power of the executive becomes contingent upon the exercise of judicial power in the form of child protection orders.

An application for a protection order may be made if the Chief Executive Officer reasonably believes that the child is in need of care and protection and the proposed order is the best means to safeguard the wellbeing of the child (section 121). The Commission received evidence that the directions sought and made tend to be limited to short-term or long-term parental responsibility directions granting parental responsibility to the Chief Executive Officer for 12 months, two years or until the child is 18 years of age. There is scope in the *Care and Protection of Children Act* to seek a less absolute order including a direction to give the Chief Executive Officer supervision in respect of specific matters, for example school attendance (see Figure 34.1 above).<sup>37</sup>

The criteria governing when the Court may make a child protection order are specified at sections 129 and 130 of the *Care and Protection of Children Act* and are triggered if the Court is satisfied that the child is in need of protection.

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These criteria lack some of the specific guidance present in cognate statutes in other Australian jurisdictions. In particular, it does not require the Court to consider:

- the least intrusive means by which the protection of the child can be achieved
- the case work and support that has been provided to the child and their family by Territory Families before the child protection application was made, or
- the views of a relevant Aboriginal organisation as to the best interests of a child if the child is Aboriginal.

## **Victoria – Children, Youth and Families Act 2005 (Vic)**

In Victoria, section 275 of the *Children, Youth and Families Act* gives the Court discretion to make one of the following orders:

- a. *an order requiring a person to give an undertaking;*
- b. *a family preservation order;*
- c. *a family reunification order;*
- d. *a care by Secretary order; or*
- e. *a long-term order.*

The Victorian legislation is restrictive to the extent that the Court must not make a child protection order unless it is satisfied *'that all reasonable steps have been taken by the government agency to provide the services that are necessary in the best interests of the child'* (section 276).<sup>38</sup>

## **New South Wales – Children and Young Persons (Care and Protection) Act 1998 (NSW)**

In New South Wales, one of the explicit principles for the administration of the child protection legislation is that:

*in deciding what action it is necessary to take (whether by legal or administrative process) in order to protect a child or young person from harm, the course to be followed must be the least intrusive intervention in the life of the child or young person and his or her family that is consistent with the paramount concern to protect the child or young person from harm and promote the child's or young person's development.*<sup>39</sup>

## **Queensland – Child Protection Act 1999 (Qld)**

In Queensland a court may only make a child protection order if the Court is satisfied that *'the protection sought to be achieved by the order is unlikely to be achieved ... on less intrusive terms'* (section 59(1)(e)).

The 2012 inquiry into the child protection system in Queensland recommended an amendment to the legislation that *'before granting a child protection order, the Children's Court must be satisfied that the department has taken all reasonable steps to provide support services to the child and family'*. The rationale behind the recommendation was to augment the statutory priority of keeping children with their family wherever that was consistent with their safety.<sup>40</sup> It would also have the important derivative effect of ensuring the Court is fully informed of the relevant evidence about what has, or has not, been done by the statutory agency in terms of working with the family at the time of their application for a child protection order.



## 'Best means'

The term 'best means' in sections 121 and 129 of the *Care and Protection of Children Act* offers little guidance and can lead to inconsistency in application. The complex, protean and often contradictory needs and interests of a developing child are difficult to evaluate and reconcile. Ascribing only the descriptor of 'best' to the means by which the wellbeing of child is to be ensured through a child protection order is an inadequate yardstick for the courts to work with. Consistent with the principle that the family of a child has the primary responsibility for their care, the intervention of government into the lives of that family must be limited to the minimum degree required to protect the child. As is the case in New South Wales and Queensland, the *Care and Protection of Children Act* could usefully include a specific criterion that requires any protection order made to be the least intrusive order possible, consonant with the protection and wellbeing of the child.<sup>41</sup>

In addition, the *Care and Protection of Children Act* ought to expressly ensure that all reasonable and practicable efforts are made by Territory Families to support and assist a family before the decision is made to seek a child protection order. A protection order should be the option of last resort where the severity of the risk of harm or the exhaustion of reasonable supports means such an order is necessary. Placing these conditions in the *Care and Protection of Children Act* before an order can be made may reflect what happens in practice but ensures consistency and certainty.

### **Recommendation 34.1**

**Amend sections 121 and 129 of the *Care and Protection of Children Act (NT)* so that the term 'the best means' is replaced with a requirement that the most appropriate order be made, but that it be the least intrusive order which can be made in the circumstances.**

### **Recommendation 34.2**

**Amend section 129 of the *Care and Protection of Children Act (NT)* to provide that the court must not make a protection order unless it has considered, and rejected as being contrary to the best interests of the child, an order allowing the child to remain in the care of their parent.**

### **Recommendation 34.3**

**Amend section 130 of the *Care and Protection of Children Act (NT)* as section 130(1)(cc) to the following effect: 'In making the decision, the Court must consider if all reasonable steps have been taken by the government agency to provide the services that are necessary in addressing any risks of harm to the child'.**

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## EVIDENCE TO PROVE A 'CHILD IS IN NEED OF CARE AND PROTECTION'

Section 93(2) of the *Care and Protection of Children Act* states that the 'Court is not bound by the rules of evidence'. While it is appropriate that proceedings under the *Care and Protection of Children Act* should not be hindered by undue formality, the Commission has been told that in the experience of one long-time legal practitioner, the nature and quality of evidence used can make it difficult for parents to meet the case against them.<sup>42</sup> Evidence to establish a 'need for care and protection' can be hearsay, or statements so broad that it can be difficult to make a meaningful response.<sup>43</sup> The Commission has heard that:

*having sub-optimal evidence results in parents losing faith in the system, see judgements/decisions/orders as unfair, instead of justified, thus discouraging parents to take action to fix the problems with their parenting. As the majority of matters never proceed to trial the evidence is ultimately not tested and findings of fact are not made. A history builds up and often these historical, untested facts, are relied upon for subsequent orders.<sup>44</sup>*

Heavy workloads and difficulties in contacting families and communities experienced by the legal representatives for the child/families can have a serious impact on the quality of responsive evidence. This makes the task of the court difficult. The Commission had the benefit of hearing from a number of lawyers who practise in the child protection jurisdiction in the Northern Territory. This was not, of course, the kind of in-depth investigation which would allow general comments or findings but was sufficient to identify areas which would benefit from reform. Many of these are discussed elsewhere in the report, for example the development of Family Support Centres in remote communities and family group conferencing.

The Local Court Practice Direction No. 1 of 2015 sets out in detail that evidence to be placed before the Court must be in written form, which will usually consist of affidavits with exhibits of, for example, care notes, chronologies, expert reports and a care plan for the child. Responsive material appropriately narrowing the issues is to be filed in a timely way. If the matter proceeds to a trial, the Practice Direction makes provision for video and other means for participation from places distant from the location where the Court is sitting.

### Expert reports

Expert reports can be an important avenue through which the courts can inform themselves of relevant empirical evidence and expert opinion as to the prospects of the child and their family. The *Care and Protection of Children Act* contemplates such a need and states that the Court may order a report to be prepared about the wellbeing of a child.<sup>45</sup> The order may specify who is to prepare the report, what matters are to be addressed and persons who must give information for the report. However, the efficacy of such a provision turns on the practical availability of appropriately qualified experts.

Properly informed, reliable and independent expert opinion must be reasonably accessible if the child's best interests are to be addressed through the decision-making of the Court. The Commission has heard evidence that competent and independent experts can be difficult to access through a combination of their limited number in the Northern Territory, conflicts of interest and the remote location of some families.<sup>46</sup> Having such a limited pool of resources can also lead to a diminution in the quality and cultural appropriateness of the reports.<sup>47</sup>

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The process of assessments and reporting can be an invasive process for parents and children. Many reports require various types of interviews, written and oral testing and observations of parents during family contact. Procuring these reports can cause significant delays through drafting and negotiating the terms of reference between the parties, especially if the choice of expert rests with Territory Families.<sup>48</sup> Finding a suitable expert and rescheduling when parents or children miss appointments can also cause delay.

The situation is compounded if a parent or separate representative wishes to get their own responsive report. It is costly to challenge expert reports commissioned by Territory Families and it has been reported by legal aid organisations that there is rarely sufficient funding available to do so.<sup>49</sup>

There are also logistical difficulties that can have serious consequences for families undertaking assessments that are subsequently used in child protection litigation, particularly for those living in remote communities. For those families, the experts may not travel to observe the parents and children interacting in a familiar environment or, if they do travel, may have only a very short time in which to complete their assessments.<sup>50</sup> Conversely, where the parents or child travel to an assessment, it can often be conducted in an artificial or stressful environment.<sup>51</sup>

The managing lawyer of the Care and Protection section of the Solicitor for the Northern Territory has noted that there is on average a three-month minimum wait for a parenting capacity report, which may prolong proceedings before the Court.<sup>52</sup> One of the causes of delay is the lengthy administrative processes within Territory Families for approving expert reports, which often cost in the vicinity of \$10,000 to \$16,000.<sup>53</sup>

### **Recommendation 34.4**

**Territory Families resource audio-visual facilities so that a wider range of experts, both within the Northern Territory and in other states, can be engaged to assist the Court.**

### **Recommendation 34.5**

**The Department of the Attorney-General and Justice establish and resource a panel of court-appointed experts, including from outside the Northern Territory, from whom the court may seek a report pursuant to section 149 of the *Care and Protection of Children Act (NT)*.**

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## Aboriginal children

Part 1.3 articulates the principles to inform the operation of the *Care and Protection of Children Act* which must, as far as practicable, be upheld by those exercising a power or performing a function under it. They include the principles to be applied when the child is an Aboriginal child,<sup>54</sup> and provide that:

- kinship groups, representative organisations and communities of Aboriginal people have a major role, through self-determination, in promoting the wellbeing of Aboriginal children
- those entities '*nominated by an Aboriginal child's family should be able to participate in the making of a decision*' about the child
- an Aboriginal child should where practicable be placed according to an order of priority, namely:
  - a member of the child's family
  - an Aboriginal person in the child's community in accordance with community practice
  - another Aboriginal person
  - a person who is not Aboriginal but in the Chief Executive Officer's opinion is able to promote the child's connection to culture and family (if possible), and
- the child should be placed in close proximity to the child's family and community, if possible.

## Approaches in other jurisdictions

As outlined in Chapter 31 (Engagement in child protection), a number of other Australian states and territories have developed specific processes to facilitate the participation of Aboriginal organisations in child protection decisions. Victoria, New South Wales, Queensland and South Australia all have such schemes in their child protection legislation, although the nature and extent of the involvement of the organisations varies between jurisdictions.

Victoria, for example, has legislative provisions to enable an organisation to be declared an '*Aboriginal agency*'.<sup>55</sup> In relation to the role of an Aboriginal agency, the *Children, Youth and Families Act* requires that:

- consideration must be given to the principle that a decision in relation to the placement of an Aboriginal child should involve a meeting convened by an Aboriginal convenor that has been approved by an Aboriginal agency (section 12(b));
- the Court must not make a permanent care order in respect of an Aboriginal child to place an Aboriginal child solely with a non-Aboriginal person unless it has received a report from an Aboriginal agency that recommends the making of the order (section 323(2)(a)); and
- the child protection authority may authorise an officer of the Aboriginal agency to perform specified functions under the *Children, Youth and Families Act* on behalf of the authority in relation to an Aboriginal child (section 18). Notably, this means that once a protection order for an Aboriginal child has been made, an Aboriginal agency may be authorised to take on responsibility for the child's case management and case plan.<sup>56</sup>

An example of an Aboriginal agency operating in Victoria is the Victorian Aboriginal Child Care Agency (VACCA). The VACCA provides a number of critical services to Aboriginal children and families needing early intervention assistance or placement supports, as well as other related programs. For further discussion of the role of the VACCA, see Chapter 31 (Engagement in child protection).

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The Queensland child protection legislation, the *Child Protection Act*, incorporates specific requirements that, where a child is Aboriginal, an Aboriginal organisation which is a 'recognised entity' is entitled to participate in relevant decision-making processes with respect to that child. The role for recognised entities as contemplated by the statute is extensive. The Aboriginal organisation is to be included, expressly consulted, and their views taken into proper account across a range of decisions. The legislation requires that:

- when a Chief Executive Officer or their delegate is making a significant decision in relation to an Aboriginal child, they must give an opportunity to the recognised entity for the child to participate in the decision-making process (section 6(1)). Examples of significant decisions include decisions made in the course of investigating an allegation of harm and decisions about placing a child in care (section 6(7))
- if the Children's Court exercises a power under the *Child Protection Act* in relation to an Aboriginal child, the Court must have regard to the recognised entity's views, about the child and about Aboriginal tradition and Island custom relating to the child (section 6(4))
- a recognised entity may attend a court-ordered conference for an Aboriginal child (section 70(4))
- the Chief Executive must ensure a recognised entity for a child is given the opportunity to participate in the process for making a decision about where or with whom an Aboriginal child will live (section 83(2)), and
- a recognised entity for a child must be given a reasonable opportunity to attend and participate in a family group meeting (section 51L(1)(f)) and participate in the review and preparation of a revised case plan for an Aboriginal child (section 51W(1)(f)).

The roles of the recognised entity in Queensland also extend well beyond the court process and into the decision-making of the statutory agency. The Queensland Government's *Practice resource: Working with the recognised entity* states that the roles of the recognised entity include:

- participating in planning, decision-making and information provision during the intake phase of child protection intervention, including providing information via a pre-notification check, participating in decision-making about recording a notification or subsequently participating in the decision-making about downgrading a notification
- participating in investigation and assessment, including participating in the investigation and assessment planning process, undertaking joint visits with departmental staff and participating in decision-making about the investigation and assessment outcome
- participating in planning for, and decision-making about, applications to the Children's Court for child protection orders, and
- providing cultural advice in relation to decision-making and planning for family contact, reunification and transition from care.<sup>57</sup>

The Chief Executive's functions include consulting with recognised entities about the administration of the *Child Protection Act* in relation to Aboriginal children (section 7(1)(o)).

In Queensland, recognised entities are members of the Suspected Child Abuse Neglect (SCAN) system (section 159K), whose members include Queensland Health, Queensland Police Service and the Department of Education and Training and Employment.<sup>58</sup> The purpose of the SCAN system is to enable a coordinated, multi-agency response to children where statutory intervention is required to assess and meet their protection needs. This is achieved by information sharing between members

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of the SCAN system, planning and coordination of actions and undertaking a culturally responsive assessment of a child's protection needs.

## Recognised entities in the Northern Territory

In Chapter 43 (Implementing reform), the Commission recommends the establishment of Family Support Centres to facilitate the early intervention and support for children and families at risk of future engagement with the child protection system.

To enhance and give structure and particular status to these organisations, the Commission considers that the Northern Territory implement a scheme that mandates these and other suitably experienced and capable organisations to be heard in the child protection decision-making process. This participation would occur at all stages and include being able to access information on a child who is supported by the organisation. The Commission is recommending that the general provision of section 12(2) of the *Care and Protection of Children Act*, which gives a permissive role to 'a kinship group, representative organisation or community of Aboriginal people' to participate in decision-making involving a child, be replaced by a formal process to enable and facilitate this involvement more directly and completely.

This would include the Chief Executive Officer declaring particular organisations to be 'recognised entities' with the right to participate under the legislation. Only organisations which met relevant criteria could be approved, particularly with respect to their capacity and experience with Aboriginal children, families, carers and communities. The Chief Executive Officer would be required to keep a list of organisations declared as recognised entities.

The legislation should set out the specific ways in which recognised entities could participate in the child protection legal process, including where the participation of a recognised entity is required prior to a decision being made.

The Commission will be recommending that the *Care and Protection of Children Act* provide for the recognised entity to have an entitlement to participate in each of the following:

- In child protection proceedings, to inform the Court of its view of what is in the best interests of the child based on its work and/or contact with a child's family and relevant cultural knowledge and understanding
- court-ordered conferences relating to a child, and
- Mediation conferences under section 49 of the *Care and Protection of Children Act* or family group conferences, with the Convenor having the power to invite the recognised entity to the mediation pursuant to section 49(6).

For further information on these recommendations see Chapter 43 (Implementing reform).

The *Care and Protection of Children Act* should also provide that when a court exercises its power to make a child protection order under the *Care and Protection of Children Act* in relation to a child, it must have regard to any views expressed by a recognised entity.

In the Commission's view, given the number of Aboriginal children in the child protection system in the Northern Territory, the involvement of Aboriginal organisations in child protection decision-making at all stages of the process is crucial.

The Commission notes the approach adopted by the Queensland Department of Communities, Child

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Safety and Disability Services, where recognised entities are encouraged to be involved in decision-making by the agency in relation to intake, assessment and investigation, as well as when a child has been removed from their family.

However, the Commission believes the accountability and liability for such decisions should remain within a government entity, which will usually be the courts for more lasting decisions, but may be a Minister or Chief Executive Officer in interim or investigative circumstances. While the Commission is of the view that recognised entities as proposed should be heard in relation to child protection matters, the Commission is reluctant to recommend the introduction of a process whereby recognised entities would make a decision about removing a child from their home, the status of a child or the placement of a child even if the child is to remain with the parents or existing carer, the removal of a child from his or her home and, in some cases, the status of a child. These are decisions for which the State ought to be accountable. In making those decisions it may and ought to be in possession of the most relevant facts, and in most cases involving Aboriginal children, a recognised entity would be best placed to provide them at each level of decision-making.

Whatever the scope of their role, recognised entities would need to have the necessary personnel, capacity and resources to be heard in relevant decision-making processes under the *Care and Protection of Children Act*. The Commission considers that the presence of organisations with appropriately trained staff and a clear and publicly defined role in the statutory process will enhance the child protection decision-making process for Northern Territory children. Recognised entities would be able to provide important service and advice functions to the courts, the government and families.

In practical terms, it is the Commission's view that a variety of organisations could become recognised entities in different geographic areas to ensure full coverage of communities. In Chapter 38 (Early support) the Commission outlines the creation and role of Child and Family Support Centres. One of the functions of these centres would be as recognised entities that can participate in the decision-making processes by courts and the Chief Executive Officer under the statute. However, to ensure flexibility and accessibility, an organisation need not be a Child and Family Support Centre in order to be declared a recognised entity.

The Commission suggests that once there are a number of established and well-resourced recognised entities operating in the Northern Territory, the government should review their role in the child protection process. This review should involve consultation with the Northern Territory community, including Aboriginal organisations, on whether the approach taken in Victoria where recognised entities are able to take responsibility for case management and case planning could operate effectively in the Northern Territory context.

### **Recommendation 34.6**

**The *Care and Protection of Children Act (NT)* be amended to:**

- **include a definition for the term 'recognised entity', which shall be any organisation approved by the Chief Executive Officer of Territory Families, as qualified and meeting relevant criteria, and able to participate and advise in child protection matters under the *Care and Protection of Children Act (NT)*, and**
- **confer an entitlement on recognised entities to be heard in relation to a proceeding about a child.**

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## APPROACHES TO ENHANCED PARTICIPATION BY FAMILIES

### Mediation and family group conferencing

Mediation and family group conferences in child protection are widely accepted as beneficial. The reasons for ensuring a properly supported and structured mediation mechanism are obvious. Where successful, mediation and similar processes in legal proceedings may avoid the need for parents to give evidence and be cross-examined, prevent child protection workers from having to repeat their evidence on the failings of parents, and reduce the stress absorbed either directly or indirectly by the child.

The mediation and case conference options available in child protection proceedings in the Northern Territory are:

- **Section 127 of the *Care and Protection of Children Act*:** Court-ordered mediation where the parties are directed by the Court to address specific issues, including the circumstances giving rise to the application and the best means of safeguarding the wellbeing of the child.
- **Local Court Practice Direction No. 1 of 2015:** The Court may direct the parties to participate in a case conference to identify the matters in dispute and attempt to resolve them. The case conferences do not involve an independent mediator or any set procedure.
- **Section 49 of the *Care and Protection of Children Act*:** A mediation conference, arranged and convened at the discretion of Territory Families, subject to the parents being willing to participate outside the court processes.

### Section 127 court-ordered mediation conference

After an application for a care and protection order has been filed, section 127 of the *Care and Protection of Children Act* provides that the Court has the power to order a mediation conference before deciding an application for a protection order. The mediation can be convened for the purposes specified by the Court and may include establishing the circumstances giving rise to the application, reviewing an arrangement that has been made for the care of the child or agreeing on the best means of safeguarding the wellbeing of the child.

Section 127 of the *Care and Protection of Children Act* has never commenced.<sup>59</sup> It is disappointing that such an important provision has not come into force. There is presently no funding for other mediation conferencing.<sup>60</sup> The success of court-ordered family group conferencing and mediation elsewhere ought to have encouraged the Northern Territory Government to initiate its implementation.

Section 128(2) of the *Care and Protection of Children Act* provides that the Court may make any order for an agreement arising from a mediation conference. It might be assumed that this is a reference to a section 127 court-ordered mediation. The managing lawyer for the Care and Protection team of the Solicitor for the Northern Territory said that this was not currently in practice because there is no funding to support court-ordered mediation conferencing. She said '*Courts, Territory Families, the non-government agencies and the legal aid bodies need to be better resourced to pursue this option*'.<sup>61</sup> But there is presently no legislative base for it.



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## Section 49 mediation conference

Chapter 2 Part 2.1 Division 6, which comprises sections 48 and 49, came into force four years after the *Care and Protection of Children Act* was passed in August 2010. Section 49 of the *Care and Protection of Children Act* gives the Chief Executive Officer the power to arrange for a mediation conference to be convened for a child if concerns have been raised about the wellbeing of the child, the Chief Executive Officer reasonably believes the conference may address those concerns, and the parents of the child are willing to participate in the conference. A mediation conference can be convened whether or not the Chief Executive Officer has already taken action for the child, including court proceedings.<sup>62</sup>

The object of section 49 mediations is to ensure that, as far as possible, the wellbeing of the child is safeguarded through agreements between the parents of the child and other interested parties.<sup>63</sup> The *Care and Protection of Children (Mediation Conferences) Regulations* (NT) control the procedural aspects of convening section 49 mediations.

The section 49 mediation process seems to envisage a process known as ‘family group conferencing’ in other jurisdictions, which generally involves a meeting where the immediate and extended family of a child and relevant professionals discuss the concerns they have for that child or young person, and together make decisions in the best interests of that child.<sup>64</sup>

A legal practitioner working in the child protection system said she had never seen section 49 of the Act used by Territory Families.<sup>65</sup> The current Chief Executive Officer of Territory Families gave evidence to the Commission that he had never exercised his power under section 49, nor had any proposal to do so been presented to him.<sup>66</sup> Another practitioner told the Commission that Territory Families arranged some mediations under section 49 between 2010 and 2011, during a family group conferencing pilot program in Alice Springs. Since 2012 when funding for that program ceased, Territory Families has not sought formal mediations.<sup>67</sup> The outcomes of this pilot were favourable and are discussed in Chapter 31 (Engagement in child protection).

It is a fundamental deficiency in child protection proceedings in the Northern Territory that there is no established and formal avenue of dispute resolution with the goal of avoiding the delay, cost and distress of adversarial litigation.<sup>68</sup>

## Practice Direction case conferences

Case conferences were introduced by Court Practice Direction in 2015.<sup>69</sup> They were intended as a mechanism by which the Court could direct parties to meet, with legal representatives included, with a view to narrowing the issues in dispute.<sup>70</sup>

A legal practitioner working in the child protection system told the Commission that case conferences are ordered in most matters, and usually take place after the filing of response material and before the listing of the matter for trial. She stated that case conferences are usually attended by parents, caseworkers, the separate representative (if appointed), support staff (such as social workers) and lawyers. There is no convenor, and the conference is usually led by a solicitor for Territory Families or the separate representative.<sup>71</sup> The Commission was told that the format and structure of case conferences vary greatly, with different levels of effectiveness and productivity. Although there was support for the use of case conferences, it was noted that they are not a substitute for sections 127 and 49 mediations.<sup>72</sup> As in any form of dispute resolution, the utility of the conference may often be limited where there is no one who is independent to lead the meeting and mediate between the parties and no effective set procedure for the parties to work through.

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## Family group conferencing

Family group conferencing can be used within and outside the court process. Within the court process, section 49 mediations provide a base for family group conferences.

Section 49 and the Care and Protection of Children (Mediation Conferences) Regulations (NT) could provide the framework for family group conferencing. They provide:

- for the appointment of a convenor, who must be approved by the parents of the child and have qualifications or experience as a mediator (section 49(5); rule 11)
- that the convenor must be provided with various details about the child, their family and the purpose for which the conference is to be convened. That information must include the contact details of any person whom the Chief Executive Officer or parent considers should be invited to the conference (section 49(6); rule 4)<sup>73</sup>
- where mediation conferences involve Aboriginal children, particular attention should be given to section 12(2) of the *Care and Protection of Children Act*, which stipulates that particular people should be able to participate in decision-making about an Aboriginal child (rule 5)
- the convenor may arrange for a person who has a similar cultural, ethnic or religious background to the child to assist the convenor in preparing for or conducting the conference (rule 5)
- the conduct of the mediation conference should allow each participant the opportunity to present their views and raise concerns, and to also discuss matters in private (rule 8(2)), and
- if an agreement is reached about the best means of safeguarding the wellbeing of the child, that the participants make and sign a written record (rule 8(3)).

The evidence before the Commission suggests that the section 49 mediation process could be effectively used for family group conferencing, although further consideration needs to be given to the role and nature of independent convenors.<sup>74</sup>

The benefit of an independent convenor was emphasised by the Acting Chief Executive Officer of the NPY Women's Council:

*'I think that's the critical component of the model is having that independent person who can navigate, not only between the Department and the family, but also sometimes within the family as well. You may have different members of the family who want different things.'*<sup>75</sup>

It is important, where the proceeding concerns an Aboriginal child, that the convenor be an Aboriginal person with local knowledge, context and history of families.<sup>76</sup> Judge Becroft, the New Zealand Children's Commissioner, told the Commission that independent facilitators, who have been an important part of the success of family group conferencing in the Maori community, are usually from the community and engage with families and communities to ensure appropriate participation and 'buy in' for the conferences.<sup>77</sup>

The Northern Territory Government proposes a comprehensive review of the *Care and Protection of Children Act* and the *Youth Justice Act* (NT). Pending the significant changes which will likely follow, the Commission is of the view that the processes envisaged be activated and facilitated by bringing section 127 into force, making some amendments to it and section 49 and ensuring an appropriate level of funding to support the training of convenors and participation of all necessary parties.

### **Recommendation 34.7**

Section 127 of the *Care and Protection of Children Act* (NT) be amended to delete the reference to 'mediation' and insert 'family group'. The section then be gazetted as coming into force as soon as practicable. The *Care and Protection of Children (Mediation Conferences) Regulations* be amended to reference 'family group conferences' for 'mediation conferences'.

### **Recommendation 34.8**

Regulations be developed to provide for family group conferences, setting out who must and who may attend and how the conference may be facilitated.

### **Recommendation 34.9**

Amend:

- a. section 49 of the *Care and Protection of Children Act* (NT) so that a mediation conference must be arranged by the Chief Executive Officer if requested by a parent, the separate representative for a child or a recognised entity.
- b. section 49(5) of the *Care and Protection of Children Act* (NT) to specify that the Chief Executive Officer may not appoint an employee of Territory Families to be the convenor of a mediation conference.

### **Recommendation 34.10**

Section 129 of the *Care and Protection of Children Act* (NT) be amended to provide that a protection order directing short or long-term parental responsibility to a specified person cannot be made unless a family group conference has been held in the previous six months.

## **Legal practice in the child protection jurisdiction of the Northern Territory**

It is stating the obvious to observe that the process of litigation occurs in a child protection system that operates over a large geographical area. This impacts on almost every facet of the practicalities of legal practice, from getting instructions, appearing in proceedings, participating in mediation, accessing interpreters and receiving adequate funding.

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The Commission heard of practical difficulties, including:

- The cost of travel is often beyond clients: *'A return trip to Katherine from this client's community would cost in the order of \$560 (\$280 per adult). This is around an entire fortnight's worth of Newstart Allowance for one adult.'*<sup>78</sup> However, it is noted that Territory Families fund travel and accommodation for parents to attend court.<sup>79</sup>
- Remoteness makes it difficult to undertake many of the basic tasks necessary in modern legal practice. There is limited access to the technology necessary to conduct legal practice and the time required to post documents often exceeds court timeframes.<sup>80</sup> Taking instructions and settling documents by telephone is not ideal because important non-verbal cues are absent and people are often not comfortable discussing highly sensitive matters over the telephone.<sup>81</sup> Settling court documents can be problematic, particularly where an interpreter is necessary to swear or affirm the same document.<sup>82</sup>

The Commission heard that these challenges can have serious consequences. Bringing family members and caseworkers together for mediation sessions happens less frequently than it should, noting that this will not always be attributable to remoteness. At the Judges Roundtable, the view was expressed that even when the Court is on circuit, obtaining the presence of family at a child protection hearing is difficult. In Alice Springs, only a small proportion of parents ever attend court.<sup>83</sup> The Commission heard evidence that as a result, final orders are made in litigation in which a parent may not have had a meaningful opportunity to participate.<sup>84</sup> This may be due to many factors, including the urgency of the initial situation and slow funding approvals for legal representation.

## Representation of parents

The Commission heard that grants of legal aid are available once proceedings, such as for a temporary protection order, are commenced.<sup>85</sup> This means that parents only come to see a lawyer and get advice at the point of removal, by which stage the child may well have been placed a long way from their home.<sup>86</sup>

The Commission heard that earlier referrals could achieve positive outcomes because lawyers could:

- explain the system to parents to make sure it is understood at the outset
- explore with the family appropriate 'backup plans' that might be implemented in order to keep the child in community, or with other family, if Territory Families forms the view that the child must be removed
- participate in meetings between Territory Families and the family to ensure that messages have been appropriately delivered, and the cultural context has been considered, to avoid any misunderstandings, and
- build a relationship with the family before the point of removal to achieve a faster resolution of any future court proceedings.<sup>87</sup>

The challenge of remoteness, and for those appearing via audio-visual link from prison, means those people have little or no access to duty lawyer services. Where people live in remote communities and have limited financial capacity, sometimes they are not able to access these services through court attendance.<sup>88</sup>

Nevertheless, there must be some caution exercised in accessing legal representation early. While early referral to a solicitor has obvious benefits, in some circumstances it will mean that a

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child becomes caught up in the legal system from an earlier stage. The view was expressed to the Commission that the children's involvement in the legal system should be as minimal as possible.<sup>89</sup> However, it is the view of the Commission that appropriately managed early referral of parents to a lawyer or legal aid service for initial advice is an important factor in an effective litigation process.<sup>90</sup> It may also have an additional benefit in directing the parents to support services, which may address the reason for the application by the Chief Executive Officer.

## Representation for children

As part of the procedural aspects of Chapter 2 of the *Care and Protection of Children Act*, the Court has the discretion to appoint a legal practitioner as a representative for the child.<sup>91</sup> The 'separate representative' may either act on the instructions or in the best interests of the child depending on the maturity and understanding of the child, with 10 years presumptively setting the boundary. In acting as the separate representative, a legal practitioner must take all reasonable steps actively and professionally to represent the child as if engaged by the child. That appointment may be revoked by the Court if they fail to perform those duties.<sup>92</sup>

The *Care and Protection of Children Act* comprehensively addresses the role and purpose of the separate representative. There is a clear and important need for children to be contacted by their representative as early as possible in the litigation process to ensure that their capacity can be properly assessed and a meaningful relationship and communication can be established. The Court is required to have specific regard to the wishes of the child before making a child protection order.<sup>93</sup> Ensuring those wishes are understood and effectively conveyed satisfies that criteria, but also carries considerable significance for the child. The Local Court Practice Direction No 1 of 2015 requires the legal representative for the child to file and serve a statement of the child's views and wishes, if the proceedings are contested, at least two days before a case conference.

The evidence before the Commission indicates that although the power to appoint a separate representative is reposed in the courts, the actual selection of the separate representative is at the discretion of the Legal Services Co-ordination section of the Solicitor for the Northern Territory.<sup>94</sup> The separate representative is effectively chosen by a government department from a panel of lawyers who have had to submit a tender to the Solicitor for the Northern Territory in order to be placed on the panel.<sup>95</sup> There is a risk of a potential perception of a conflict of interest that might compromise the independence of the advocate for the child. It is a reasonable expectation that the independent representative for a child should have no direct legal or financial connection to an opposite party in the proceeding.

## Access to interpreters

The Commission heard evidence from a lawyer who practises in the child protection jurisdiction that:

*'[w]hile removal of a child is sometimes necessary, it must be acknowledged that removal itself can cause a form of trauma both to the children and the parents. In this context, it is critical to ensure that families have the right to hear the allegations, safety plans and any proposal to remove the child, and respond to these, in the language they are best able to express themselves in.'*<sup>96</sup>

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An Aboriginal Liaison Support Officer has noted that interpreters play an important role in communicating this information in a culturally appropriate way and helping people to receive the information in a supported way.<sup>97</sup> It is self-evident that the nature and content of some of the discussions around child protection concerns, even where removal is not an issue, can be very distressing.

The misunderstandings that can occur when interpreters are not used was starkly illustrated by the example reported to the Commission of a pregnant woman who had short-term protection orders made in relation to two of her children. Fundamental and damaging misunderstandings can occur when interpreters are not used.<sup>98</sup>

The Commission heard that there is often confusion for parents and families about what started the child protection process, what the law says, including abstract principles such as the best interests of the child, what the Court must decide, if the child is 'in need of protection', whether the parents or families have access to the child during the order and what happens at the end of the order.<sup>99</sup>

It also follows that where communication is hindered by the absence of an interpreter, then the opportunity for any meaningful dispute resolution or mediation is also compromised. The inability to have trained interpreters available in the early stages of the litigation process to allow discussion between the parties as to best interests of the child is a serious limitation.

Legal practitioners who work in child protection litigation told the Commission that there are not enough qualified and well-trained interpreters available.<sup>100</sup> Interpreters are not always employed full time, which limits when an interpreter can attend a Territory Families office to assist a parent or other responsible person.<sup>101</sup> For some languages or language groups, there are only one or two interpreters in the Northern Territory and conflicts of interest may arise when those persons know or are related to the parents or child.<sup>102</sup> It is acknowledged that the Northern Territory Government's Aboriginal Interpreter Service may experience challenges in recruiting appropriate interpreters, but the capacity to provide properly trained interpreters to Territory Families, the courts and children and their families must be increased. During its visits to many communities, the Commission became aware of the need for interpreters to facilitate effective communication where a common first language is not shared.

Some interpreters have minimal understanding of the child protection jurisdiction.<sup>103</sup> Others have insufficient English language skills to interpret correctly, particularly in complex and technical legal matters.<sup>104</sup> Many Aboriginal languages may not have an easy word-for-word translation for legal concepts used in the legislation and legal process.<sup>105</sup> These types of issues exacerbate the communication difficulties and hinder parents' and family members' understanding of, and ability to participate in, the child protection process.<sup>106</sup> The Commission agrees with the views expressed by those working in the system that interpreters in the child protection area need to receive more intensive and specific training.<sup>107</sup> Increased formal training on the legislative framework and legal process followed in child protection proceedings, including the legal concepts and jargon used, and in English language skills where necessary, is critical to ensure that families can participate fully in the litigation, that expert assessments and interviews can be conducted fairly and that the Court is assisted by the best primary evidence available.<sup>108</sup>

*'And so there weren't any interpreters there when she was doing that test?---No. The whole process is no interpreter so my mum could understand.'*

*And what – you know, how does your mum – how is your mum's English? Is it good?---Sometimes she understand and sometime, hard English, she can't understand. So every time when welfare used to come up there and the psychological test so I used to interpret to her.<sup>109</sup>*

This psychological assessment was used, with other material, in the decision to remove the children from the mother's care.<sup>110</sup> Although the caseworker knew the family and believed the mother could understand English sufficiently, the family lived in a community where English was not the first language. It demonstrates that it is important to give the best opportunity to respond by using an interpreter.

Evidence the Commission received also indicates that the use of interpreters is not uniform.<sup>111</sup> Territory Families has a number of policies around engaging and using interpreters.<sup>112</sup> However, legal practitioners told the Commission that Territory Families caseworkers may not appreciate that where a parent or other Aboriginal person speaks conversational English, they still may need an interpreter to understand and provide a full response to questions or comments where the subject matter is stressful or based on complex concepts.<sup>113</sup> One practitioner stated:

*'Focusing on the family's "competence" in English, particularly if assessed on the basis of conversational English, is apt to provide a misleading outcome. The focus of considering whether an interpreter is required needs to be situation-specific – that is, can the family understand and articulate core concepts of the child protection jurisdiction? This is particularly important for intangible concepts that are not easily understood by Aboriginal English speakers, and not easily interpreted into Aboriginal languages.'<sup>114</sup>*

### **Recommendation 34.11**

**Territory Families ensure access to Aboriginal interpreters as required.**

### **Recommendation 34.12**

**Territory Families ensure that their data management system formally records the languages spoken by families and their proficiency in English so that incoming and subsequent caseworkers have advance notice as to whether an interpreter is required.**

### Recommendation 34.13

**Amend section 140 of the *Care and Protection of Children Act* (NT) to remove the words ‘other than a temporary protection order’, allowing an appeal to be made to the Supreme Court following the grant of a temporary protection order.**

## Lack of procedural fairness in temporary protection order proceedings

Legal practitioners in the Northern Territory raised concerns about a lack of procedural fairness in temporary protection order applications, particularly for parents and families. Once a temporary protection order is granted, the order gives daily care and control of the child to the Chief Executive Officer while the order is in force, which is 14 days, except in specified circumstances.<sup>115</sup>

The application can be made in any way the Court considers reasonable in the circumstances, including by telephone, fax or other electronic means.<sup>116</sup> The Court may also grant the application in the absence of the parents of the child.<sup>117</sup> The Commission heard that, in practice, the application proceeds on a ‘Form 7E’ under rules 7.13 and 7.14 of the *Local Court (Civil Jurisdiction) Rules* (NT), relating to originating applications with no respondent.<sup>118</sup>

As soon as practicable *after* the order is made, the Chief Executive Officer must give a copy of the order to each parent, and inform the child about the order and explain its effect.<sup>119</sup> The Chief Executive Officer may give a copy of the order to a parent by personally serving the copy on the parent. However, if the Chief Executive Officer considers that impracticable, the order may be left at, or sent to, the parent’s last known address.<sup>120</sup> The legislation does not describe what factors Territory Families staff (acting on behalf of the Chief Executive Officer) must consider in deciding that personal service is impracticable. The Commission has heard that such a service provision leads to a ‘lack of checks and balances that are used in other jurisdictions to ensure that interested parties are made aware of proceedings against them’.<sup>121</sup>

There is no right to appeal a decision about a temporary protection order application.<sup>122</sup> In effect, this process deprives parents and carers of ‘*any say in the application*’.<sup>123</sup> This is compounded by Territory Families’ policy that states ‘*it is generally not required to serve a Temporary Protection Order application and accompanying affidavit on the parents*’, although the policy does state the caseworker is to notify the parents of the intention to seek the order and advise the date of the hearing.<sup>124</sup> If there is an application to extend a temporary protection order, the Local Court Practice Direction No. 1 of 2015 sets out what material is to be filed, noting that under the *Care and Protection of Children Act*, it must not be served on any other person.

## Ex parte applications

As there is no statutory obligation for Territory Families to notify parents of an application for a temporary protection order until after the application is made, temporary protection order applications are often made on an *ex parte* basis.<sup>125</sup>



The managing lawyer of the Care and Protection section of the Solicitor for the Northern Territory told the Commission that either a lawyer or a Territory Families team leader may appear at the application, depending on the location of the application. Applications in Katherine are usually attended by Territory Families.<sup>126</sup>

Concerns were raised that where Territory Families staff members, rather than solicitors with an ethical duty to the court, appear at the application, there is no clear and professionally binding obligation for all relevant evidence, both for and against the application, to be presented to the court.<sup>127</sup> The risk arises that the court may be provided with an incomplete account of the relevant circumstances and make an order accordingly.<sup>128</sup> Courts are experienced in the obligations of a party seeking an order against the interests of an absent party, and will be astute to question the person appearing very closely both on the filed material and what is not before the court. The Commission heard that even where parents are given prior notice of a temporary protection order application, it may be difficult for them to seek legal advice or obtain representation in temporary protection order proceedings.<sup>129</sup> That is because:

- the notice given is often very short and given without an interpreter,<sup>130</sup> and
- where legal advice is able to be given, it is usually limited by time pressures and/or by funding constraints.<sup>131</sup>

### **Recommendation 34.14**

**Amend section 104 of the *Care and Protection of Children Act* (NT) to require the Chief Executive Officer to take reasonable steps, commensurate to the urgency of the application, to provide notice of the application to the parents of the child.**

### **Recommendation 34.15**

**Amend section 106 of the *Care and Protection of Children Act* (NT) to include the requirement that at the time the order is given to a parent of the child, the length and effect of the order, the right of appeal and information about how to appeal must be appropriately explained to the parent in their preferred language.**

### **Recommendation 34.16**

**Amend section 106 of the *Care and Protection of Children Act* (NT) to provide that where a decision is made to remove the child under a temporary protection order, a Family Support Centre must be informed about the removal of the child as soon as practicable after the decision is made, for referral to or to act as the recognised entity. This amendment to come into force when Family Support Centres have been established.**

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## Northern Territory legislative reform

The Commission is recommending major reform of both the child protection and youth justice legislation. The Commission is also recommending the establishment of a single specialist court for children and young people covering child protection and youth justice. These reforms will be progressed through consultation across government, the non-government sector and the community.<sup>132</sup>

The Commission has framed its recommendations in this chapter so that the measures recommended can be adopted and introduced immediately as amendments to the current *Care and Protection of Children Act*, pending the preparation and enactment of new legislation covering both areas.

## ENDNOTES

- <sup>1</sup> Exh.005.002, Convention on the Rights of the Child, tendered 11 October 2016, art 12; *Care and Protection of Children Act* (NT) ss 10, 130 and 143B.
- <sup>2</sup> Exh.005.002, Convention on the Rights of the Child, tendered 11 October 2016, Article 18; s. 8 of the *Care and Protection of Children Act* (NT).
- <sup>3</sup> Exh.005.002, Convention on the Rights of the Child, tendered 11 October 2016, Article 25; s. 70 of the *Care and Protection of Children Act* (NT).
- <sup>4</sup> Northern Territory Local Court, Practice Direction No 1 of 2015, 1 July 2015.
- <sup>5</sup> Second reading speech of the *Care and Protection of Children Bill* 2007.
- <sup>6</sup> *Care and Protection of Children Act* (NT) s 4.
- <sup>7</sup> *Care and Protection of Children Act* (NT) ss 46 and 50.
- <sup>8</sup> *Care and Protection of Children Act* (NT) s 89.
- <sup>9</sup> *Care and Protection of Children Act* (NT) s 93.
- <sup>10</sup> *Care and Protection of Children Act* (NT) ss 96, 143A.
- <sup>11</sup> *Care and Protection of Children Act* (NT) s 98.
- <sup>12</sup> *Care and Protection of Children Act* (NT) s 101.
- <sup>13</sup> *Care and Protection of Children Act* (NT) s 100.
- <sup>14</sup> Northern Territory Local Court, Practice Direction No 1 of 2015, 1 July 2015.
- <sup>15</sup> Exh.660.001, Statement of Gabrielle Brown, 3 May 2017, tendered 30 June 2017, para 54.
- <sup>16</sup> *Care and Protection of Children Act* (NT) s 84.
- <sup>17</sup> *Care and Protection of Children Act* (NT) s 34.
- <sup>18</sup> *Care and Protection of Children Act* (NT) ss 59, 60.
- <sup>19</sup> The Northern Territory Local Court Practice Direction 1 of 2015 is to the effect that where a child is represented the legal representative must file a statement of the child's wishes as soon as possible after they are appointed and if the application for an order about the child is contested and a care conference is directed this must be done at least 2 working days before the conference
- <sup>20</sup> *Care and Protection of Children Act* (NT) s 15.
- <sup>21</sup> *Care and Protection of Children Act* (NT) s 20.
- <sup>22</sup> *Care and Protection of Children Act* (NT) s 123.
- <sup>23</sup> *Care and Protection of Children Act* (NT) s 14.
- <sup>24</sup> Excluding a number of the investigative powers set out under Chapter 2 of the *Care and Protection of Children Act* (NT).
- <sup>25</sup> The Macquarie Dictionary (5th ed.) defines 'care' (noun) as: serious attention; solicitude; heed; caution; protection; and charge. The Macquarie Dictionary (5th ed.) defines 'protection' (noun) as: preservation from injury or harm.
- <sup>26</sup> Chief Executive Officer Department of Children And Families v MGM [2012] NTSC 69 per Kelly J at [27].
- <sup>27</sup> *Care and Protection of Children Act* (NT) s 95.
- <sup>28</sup> *Care and Protection of Children Act* (NT) s 17(2).
- <sup>29</sup> 'Relatives of child' is further defined at s 18 to include the nuclear family, grandparents, aunts or uncles, cousins and persons related by 'customary law or tradition applicable to the child'.
- <sup>30</sup> *Care and Protection of Children Act* (NT) s 19(b)(i),(ii).
- <sup>31</sup> Exh.660.001, Statement of Gabrielle Brown, 3 May 2017, tendered 30 July 2017, para 73.13; Exh.678.001, Statement of Brianna Bell, 26 May 2017, para 45.c.
- <sup>32</sup> Exh.660.001, Statement of Gabrielle Brown, 3 May 2017, tendered 30 July 2017, para 40. See also CAALAS Care and Protection Submissions, 26 July 2017 at 6.30 et seq, and the NAAJA Care and Protection Submissions, 6 September 2017 at 4.4.
- <sup>33</sup> *Children and Young People Act* 2008 (ACT); *Children and Young Persons (Care and Protection) Act* 1998 (NSW); *Child Protection Act* 1999 (Qld); *Children, Young Persons and their Families Act* 1997 (Tas); *Children and Community Services Act* 2004 (WA).
- <sup>34</sup> *Care and Protection of Children Act* 1999 (Qld) ss 9, 10.
- <sup>35</sup> *Care and Protection of Children Act* (NT) s 53.
- <sup>36</sup> *Care and Protection of Children Act* (NT) s 14.
- <sup>37</sup> Exh.677.001, Statement of Anneleise Hey, 1 June 2017, para 81; *Care and Protection of Children Act* 2007 (NT) s 123(1)(a)(ii). The Commission did not undertake any audit of orders made in the Local Court to ascertain if this was more widespread than this practitioner's view noting, however, that she was a member of a panel of very experienced practitioners who did not demur from that opinion in her statement.
- <sup>38</sup> *Children, Youth and Families Act* 2005 (Vic), Section 276(2), provides:
  - (2) The Court must not make a protection order that has the effect of removing a child from the care of the child's parent unless—
    - (a) the Court has considered and rejected as being contrary to the best interests of the child, an order allowing the child to remain in the care of the child's parent; and
    - (b) the Court is satisfied by a statement contained in a disposition report in accordance with section 558(c) that all reasonable steps have been taken by the Secretary to provide the services necessary to enable the child to remain in the care of the child's parent; and
    - (c) the Court considers that the making of the order is in the best interests of the child.
  - (3) The fact that the child does not have adequate accommodation is not by itself a sufficient reason for the making of an order referred to in subsection (2).
- <sup>39</sup> *Children and Young Persons (Care and Protection) Act* 1998, s 9(2)(c).
- <sup>40</sup> Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, June 2013,

p. 486 and recommendation 13.20.

<sup>41</sup> See also Care and Protection Submissions, NAAJA, 6 September 2017, 4.3.2.

<sup>42</sup> Exh.676.001, Statement of Maurice Sgarbossa, 1 June 2017, tendered 30 June 2017, para 78.

<sup>43</sup> Exh.676.001, Statement of Maurice Sgarbossa, 1 June 2017, tendered 30 June 2017, para 79.8.

<sup>44</sup> Exh.676.001, Statement of Maurice Sgarbossa, 1 June 2017, tendered 30 June 2017, paras 79.11–79.12.

<sup>45</sup> *Care and Protection of Children Act* (NT) s 149.

<sup>46</sup> Care and Protection Submissions, CAALAS, 26 July 2017 at 6.47–6.49.

<sup>47</sup> See also Care and Protection Submissions, NAAJA, 6 September 2017 at 4.7.1.

<sup>48</sup> Exh.677.001, Statement of Anneleise Hey, 1 June 2017, tendered 30 June 2017, paras 68–71.

<sup>49</sup> Exh.667.001, Statement of Mathew Thomas Fawkner, 11 May 2017, tendered 30 June 2017, para 28; Exh.678.001, Statement of Brianna Lee Bell, 26 May 2017, tendered 30 June 2017, para 203.

<sup>50</sup> Exh.677.001, Statement of Anneleise Hey, 1 June 2017, tendered 30 June 2017, para 74.8.

<sup>51</sup> Exh.689.001, Statement of Anneleise Hey, 1 June 2017, tendered 30 June 2017, para 74.8.

<sup>52</sup> Exh.660.001, Statement of Gabrielle Brown, 3 May 2017, tendered 30 June 2017, para 73.10.

<sup>53</sup> See Legal Processes Meeting, Transcript, p. 14 (Gabrielle Brown).

<sup>54</sup> *Care and Protection of Children Act* (NT) s 12.

<sup>55</sup> *Children, Youth and Families Act 2005* (Vic) s 6.

<sup>56</sup> State Government of Victoria, Department of Health and Human Services, 2017, *Aboriginal children in Aboriginal care program* <<https://dhhs.vic.gov.au/publications/aboriginal-children-aboriginal-care-program>> (accessed 1 November 2017)..

<sup>57</sup> Queensland Department of Communities, Child Safety and Disability Services, 2013, *Practice Resource: working with the recognised entity*, p. 3.

<sup>58</sup> Queensland, Department of Communities, Child Safety and Disability Services, 2017, *Suspected Child Abuse and Neglect (SCAN) Team System* <<https://www.communities.qld.gov.au/childsafety/partners/our-government-partners/suspected-child-abuse-neglect-scan-team-system>> (accessed 1 November 2017).

<sup>59</sup> Endnotes to *Care and Protection of Children Act* (NT); see also Exh.868.001, Statement of Gabrielle Brown, 26 June 2017, tendered 24 October 2017, para 8.3.1.

<sup>60</sup> Exh.660.001, Statement of Gabrielle Brown, 3 May 2017, tendered 30 June 2017, para 73.11; Exh.667.001, Statement of Matthew Fawkner, 11 May 2017, tendered 30 June 2017, para 32.

<sup>61</sup> Exh.660.001, Statement of Gabrielle Brown, 3 May 2017, tendered 30 June 2017, para 73.11.

<sup>62</sup> *Care and Protection of Children Act* (NT) s 49(2).

<sup>63</sup> *Care and Protection of Children Act* (NT) s 48.

<sup>64</sup> For example, *Child Protection Act 1999* (Qld).

<sup>65</sup> Exh.678.001, Statement of Brianna Bell, 26 May 2017, tendered 30 June 2017, para 78.

<sup>66</sup> Transcript, Ken Davies, 30 June 2017, p. 5415, lines 26–28.

<sup>67</sup> Exh.868.000, Statement of Gabrielle Brown, 26 June 2017, tendered 24 October 2017, para 8.2.1.

<sup>68</sup> See also CAALAS Care and Protection Submissions, 26 July 2017, paras 6.13 and 6.18.

<sup>69</sup> Northern Territory Local Court, Practice Direction No 1 of 2015, 1 July 2015.

<sup>70</sup> Exh.677.001, Statement of Anneliese Hey, 1 June 2017, tendered 30 June 2017, para 58.

<sup>71</sup> Exh.677.001, Statement of Anneliese Hey, 1 June 2017, tendered 30 June 2017, paras 59–60.

<sup>72</sup> Exh.677.001, Statement of Anneliese Hey, 1 June 2017, tendered 30 June 2017, paras 61–63.

<sup>73</sup> Professor Larissa Behrendt told the Commission that a best practice model of family group conferencing needs to engage not just the immediate and extended family but also the broader community as well: Transcript, Larissa Behrendt, 29 May 2017, p. 4005. lines 38–45.

<sup>74</sup> See also NAAJA Care and Protection Submissions, 6 September 2017, para 4.2.1.

<sup>75</sup> Transcript, Liza Balmer, 29 May 2017, p. 4032: lines 17–20.

<sup>76</sup> Transcript, Liza Balmer, 29 May 2017, p. 4033: lines 33–37.

<sup>77</sup> Transcript, Judge Andrew Becroft, 30 June 2017, p. 5394: lines 40–47, p. 5395: lines 4–9; p. 5397: lines 40–45.

<sup>78</sup> Exh.678.001, Statement of Brianna Bell, 26 May 2017, paras 45 and 112.

<sup>79</sup> Exh. 533.040, Annexure BT-040 to Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, p. 4.

<sup>80</sup> Exh.676.001, Statement of Maurice Sgarbossa, 1 June 2017, para 38.

<sup>81</sup> Exh.678.001, Statement of Brianna Bell, 26 May 2017, para 187.

<sup>82</sup> Exh.676.001, Statement of Maurice Sgarbossa, 1 June 2017, tendered 30 June 2017, para 37.

<sup>83</sup> Exh.676.001, Statement of Maurice Sgarbossa, 1 June 2017, tendered 30 June 2017, para 20.

<sup>84</sup> Exh.676.001, Statement of Maurice Sgarbossa, 1 June 2017, tendered 30 June 2017, para 41.

<sup>85</sup> Exh.676.001, Statement of Maurice Sgarbossa, 1 June 2017, tendered 30 June 2017, para 12.

<sup>86</sup> Exh.678.001, Statement of Brianna Bell, 26 May 2017, tendered 30 June 2017, para 50.

<sup>87</sup> Exh.678.001, Statement of Brianna Bell, 26 May 2017, tendered 30 June 2017, para 51.

<sup>88</sup> Exh.676.001, Statement of Maurice Sgarbossa, 1 June 2017, tendered 30 June 2017, paras 19 and 26.

<sup>89</sup> Transcript, Legal Processes Meeting, 21 June 2017, p. 18.

<sup>90</sup> See also Care and Protection Submissions, NAAJA, 6 September 2017 at 4.5.1.

<sup>91</sup> *Care and Protection of Children Act* (NT) s 143A.

- <sup>92</sup> *Care and Protection of Children Act* (NT) s 14C, 143D.
- <sup>93</sup> *Care and Protection of Children Act* (NT) s 130(1)(b)(i).
- <sup>94</sup> Exh.660.001, Statement of Gabrielle Brown, 3 May 2017, tendered 30 June 2017, para 31.
- <sup>95</sup> Exh.660.001, Statement of Gabrielle Brown, 3 May 2017, tendered 30 June 2017, para 31.
- <sup>96</sup> Exh.678.001, Statement of Brianna Bell, 26 May 2017, tendered 30 June 2017, para 36.
- <sup>97</sup> Exh.671.001, Statement of Maxine Carlton, 24 May 2017, tendered 30 June 2017, para 24.
- <sup>98</sup> Transcript, Legal Processes Meeting, 21 June 2017, p. 13: lines 19-24, p. 26: lines 5-7.
- <sup>99</sup> Exh.681.001, Statement of Philippa Martin, 15 June 2017, tendered 30 June 2017, para 98.
- <sup>100</sup> For instance, Exh.671.001, Statement of Maxine Carlton, 24 May 2017, tendered 30 June 2017, para 24; Exh.678.001, Statement of Brianna Bell, 26 May 2017, tendered 30 June 2017, paras 27-28; Exh.681.001, Statement of Philippa Martin, 15 June 2017, tendered 30 June 2017, para. 87; Exh.676.001, Statement of Maurice Sgarbossa, 1 June 2017, tendered 30 June 2017, para 43.1.
- <sup>101</sup> Exh.671.001, Statement of Maxine Carlton, 24 May 2017, tendered 30 June 2017, para 24.
- <sup>102</sup> Exh.676.001, Statement of Maurice Sgarbossa, 1 June 2017, tendered 30 June 2017, para 43.2.
- <sup>103</sup> Exh.676.001, Statement of Maurice Sgarbossa, 1 June 2017, tendered 30 June 2017, para 43.1.
- <sup>104</sup> Exh.671.001, Statement of Maxine Carlton, 24 May 2017, tendered 30 June 2017, para 25.
- <sup>105</sup> Transcript, Legal Processes Meeting, 21 June 2017, p. 12 (Maxine Carlton and Philippa Martin).
- <sup>106</sup> Exh.681.001, Statement of Philippa Martin, 15 June 2017, tendered 30 June 2017, para 87.
- <sup>107</sup> Exh.671.001, Statement of Maxine Carlton, 24 May 2017, tendered 30 June 2017, para 25; Exh.681.001, Statement of Philippa Martin, 15 June 2017, tendered 30 June 2017, para 87.
- <sup>108</sup> See also *Care and Protection Submissions*, NAAJA, 6 September 2017, para 4.6.2.
- <sup>109</sup> Closed Court Transcript, DJ, 28 June 2017, p. 12: lines 14-20.
- <sup>110</sup> Exh.623.001, Statement of DJ, 15 June 2017, tendered 28 June 2017, para 106.
- <sup>111</sup> Exh.681.001, Statement of Philippa Martin, 15 June 2017, tendered 30 June 2017, para 88.
- <sup>112</sup> Exh.553.000, Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, paras 113-123.
- <sup>113</sup> Exh.681.001, Statement of Philippa Martin, 15 June 2017, tendered 30 June 2017, para 89. A similar concern was expressed by Ms Brianna Bell: Exh.678.001, Statement of Brianna Bell, 26 May 2017, tendered 30 June 2017, para 27.
- <sup>114</sup> Exh.678.001, Statement of Brianna Bell, 26 May 2017, tendered 30 June 2017, para 32.
- <sup>115</sup> *Care and Protection of Children Act* (NT) s 107.
- <sup>116</sup> *Care and Protection of Children Act* (NT) s 104(1).
- <sup>117</sup> *Care and Protection of Children Act* (NT) s 105(5).
- <sup>118</sup> Exh.676.001, Statement of Maurice Sgarbossa, 1 June 2017, tendered 30 June 2017, paras 44 and 51.
- <sup>119</sup> *Care and Protection of Children Act* (NT) s 106(1).
- <sup>120</sup> *Care and Protection of Children Act* (NT) s 106(2).
- <sup>121</sup> Exh.676.001, Statement of Maurice Sgarbossa, 1 June 2017, tendered 30 June 2017, para. 57, where Mr Sgarbossa's comments were made in the context of the service of applications for temporary orders under s 124 of the *Care and Protection of Children Act* (NT).
- <sup>122</sup> *Care and Protection of Children Act* (NT) s 140(1).
- <sup>123</sup> Exh.676.001, Statement of Maurice Sgarbossa, 1 June 2017, tendered 30 June 2017, para. 44.
- <sup>124</sup> Exh.553.038, Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, p. 1.
- <sup>125</sup> Exh.678.001, Statement of Brianna Bell, 26 May 2017, tendered 30 June 2017, para. 105.
- <sup>126</sup> Exh.660.001, Statement of Gabrielle Brown, 3 May 2017, tendered 30 June 2017, para. 18.
- <sup>127</sup> Territory Families guidelines do suggest that evidence to support the grounds for the application must be given in a balanced manner: Exh.553.040, Annexure 40 to Statement of Bronwyn Thompson, 9 June 2017, tendered 22 June 2017, p. 2.
- <sup>128</sup> Exh.678.001, Statement of Brianna Bell, 26 May 2017, tendered 30 June 2017, paras 105-107, noting that Territory Families staff are not bound by the same ethical obligations which apply to lawyers in *ex parte* applications.
- <sup>129</sup> Exh.676.001, Statement of Maurice Sgarbossa, 11 June 2017, tendered 30 June 2017, para. 48.
- <sup>130</sup> Exh.676.001, Statement of Maurice Sgarbossa, 11 June 2017, tendered 30 June 2017, para. 48.
- <sup>131</sup> Exh.676.001, Statement of Maurice Sgarbossa, 11 June 2017, tendered 30 June 2017, para. 49; Exh.678.001, Statement of Brianna Bell, 26 May 2017, tendered 30 June 2017, paras 121-125. See also Exh.660.001, Statement of Gabrielle Brown, 3 May 2017, tendered 30 June 2017, para. 73.6.
- <sup>132</sup> Exh.815.001, Northern Territory Government, June 2017, *Progress and challenges in child protection and youth justice: Communique to stakeholders*, 26 October 2017, p. 3.

