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REPORT OF THE

**ROYAL  
COMMISSION  
AND BOARD  
OF INQUIRY**

INTO THE PROTECTION  
AND DETENTION OF  
CHILDREN IN THE  
NORTHERN TERRITORY

**VOLUME 4**

40

A COMMISSION FOR  
CHILDREN AND YOUNG  
PEOPLE



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# A COMMISSION FOR CHILDREN AND YOUNG PEOPLE

## INTRODUCTION

Independent external oversight is an important mechanism to foster community confidence in the exercising of power by public officials. An integral element of safeguarding that community confidence is the implementation of checks and balances to ensure that any power exercised is confined to that provided for in legislation, that there is accountability for the exercising of the power, and liability for any consequences of the misuse of power.

Both the youth justice and the child protection legislation in the Northern Territory give government the legal capacity to exercise coercive power over children and young people, removing them from their families, homes or communities, or holding them in custody.

As this report demonstrates from its examination of the child protection system, the problems facing children can arise very early in their lives, before their first engagement with the child protection or youth detention systems. Too many children in the Northern Territory are born into and raised in living conditions that contribute to unacceptably high risks of them ending up in either system. The Commission has recommended a fundamental shift in the focus of the child protection system towards prevention and family support. This will provide help to children and their families from an early stage to improve their life chances and minimise the risks of them being the subject of child protection or youth justice interventions.

In that context, the Commission has considered whether there is a broader role that a child-focused body could play in the Northern Territory, beyond the Children's Commissioner's current functions,

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which are limited to ‘vulnerable children’ including children in care, on bail, in detention or with some disability.<sup>1</sup> While these children are seen as vulnerable and currently subject to oversight by the Children’s Commissioner, in fact many more children in the Northern Territory may be equally vulnerable, although they have not yet become involved with either system. The view put to the Commission that the extent of neglect could be much higher than previously thought reinforces the need to ensure children outside the child protection and detention systems are not left behind.

The Commission considers that any agency exercising an oversight function is ideally placed to also take on an advocacy function for all children in the Northern Territory, not just those who are ‘vulnerable’ or have entered one of the statutory systems.

## Principles of oversight

The design of any oversight body has to be informed by the functions assigned to it and the context in which it is to operate. To be as effective as possible, an oversight body should be:

- established in legislation
- given clear functions and jurisdiction, so the limits of what it is able to do are known to all participants in the system
- legally and functionally independent of government and the entities that it is overseeing
- equipped with an adequate range of powers to undertake those functions
- empowered to obtain information
- empowered to undertake investigations, including investigations on its own initiative
- expert in the subject matter it is reviewing, so that its views are respected and it has the capacity to recommend specific solutions to problems
- well known, accessible, responsive to and trusted by the community whose interests it is charged with protecting
- competent to receive and manage complaints and handle them efficiently and effectively, and
- adequately resourced and staffed.

A key element in the effectiveness of an oversight body is its independence. It must be independent structurally and be seen to be independent by the community. It must be transparent in all its activities and must report directly to parliament.

Oversight is most effective where agencies have a culture that welcomes oversight and monitoring and see external oversight as an opportunity to improve operations and reduce risk.

## Components of oversight

An oversight body can have a range of different functions and powers. The oversight role can comprise a number of different elements:

- **Complaints:** receive and investigate complaints
- **Inspection:** inspect any place or facility
- **Monitoring:** operational compliance with respective legislation
- **Review:** systems operations, including internal oversight mechanisms

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- **Audit:** assessing compliance with existing policies, procedures and directions
  - **Recommendation:** recommend actions to address findings of the above functions
  - **Reporting:** to parliament, government and the community on the outcomes of these oversight functions and operations
  - **Education and awareness:** ensuring that all those who may be affected by acts, omissions and decisions of an entity under the jurisdiction of the oversight body know their rights, and understand their entitlements to make complaints, and
  - **Engagement:** with government, community and all who work and operate within the sector being overseen to exchange information on emerging and known issues, and to work together to improve outcomes.

Some oversight bodies have additional functions, such as a dedicated research function, including undertaking or commissioning research work, or being responsible for data collection and statistical analysis.<sup>2</sup>

## Specific issues for oversight in the Northern Territory

A number of factors make oversight of the youth justice and child protection systems in the Northern Territory particularly challenging.

An oversight body for children and young people cannot rely solely on complaints as its primary source of information because:

- young people are less likely than adults to use, or be able to use if very young, formal complaint mechanisms
- Aboriginal people in remote areas are particularly less likely to use formal complaint mechanisms
- formal complaint mechanisms usually take weeks or months to reach a conclusion, and fail to provide an immediate result as sought particularly by children,<sup>3</sup> and
- language and literacy may also be an impediment to making complaints.

Children and adults from non-English speaking backgrounds or who do not speak English at all, together with those who have poor literacy, do not have access to email or telephone, or who distrust government authority figures are all less likely to lodge a complaint.

The youth justice and child protection systems in the Northern Territory are disproportionately populated by Aboriginal young people from disadvantaged backgrounds. Those young people and their families are likely to fall into several of the above groups. This is compounded by a strong and pervasive distrust of government, or any extension of government, particularly about child welfare.

These factors, taken together, mean that the body responsible for overseeing the youth justice and child protection systems in the Northern Territory will need to be actively engaging with children and young people, families, communities and organisations, rather than relying on a complaints process.



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## OVERSIGHT BODIES IN THE NORTHERN TERRITORY

There are a number of bodies that have oversight of children and young people in the Northern Territory.

In addition to the internal oversight mechanisms, the external oversight mechanisms for youth justice include the Children's Commissioner, the Ombudsman, Official Visitors and Northern Territory Police.

In care and protection, in addition to the internal oversight mechanisms,<sup>4</sup> the external oversight mechanisms include the Children's Commissioner, the Ombudsman, the Coroner and the Child Deaths Review Committee, as discussed in Chapter 37 (Child protection oversight).

Any overlap in jurisdiction should be avoided as it may create confusion for children and young people about where to direct their complaints or concerns, making it less likely that children and young people will engage with oversight bodies.<sup>5</sup> It will also tend to dilute the force of the oversight if it is fragmented across more than one body.

### THE CHILDREN'S COMMISSIONER

The Children's Commissioner is the current external oversight body for both detention and child protection with the functions and powers as set out in the *Children's Commissioner Act (NT)*. Detailed discussions of how the office of the Children's Commissioner has performed its functions in its two areas of responsibility appear in Chapter 22 (Detention system oversight) for the youth detention system, and in Chapter 37 (Child protection oversight) for the care and protection system.

While the Children's Commissioner accepts complaints from vulnerable children in both systems and has a monitoring role in relation to child protection, she does not currently have equivalent monitoring powers in relation to the *Youth Justice Act (NT)*.

### Limitations in the current Office of the Children's Commissioner

There is a clear need for an independent oversight body working to protect the interests of vulnerable children in the detention and child protection systems in the Northern Territory. The Children's Commissioner's comprehensive annual reports addressing both the detention and the care and protection systems shed light on many problems in both systems and informed the Commission's work.

A number of limitations have been identified in the structure, capacity and functions of the current Office of the Children's Commissioner, which need re-examination to improve oversight capacities. These include the scope of the role, the functions, the powers, the size of the office, and the resources provided. The Commission is also of the view that an effective oversight body should have expansive legislated functions. The current functions provided to the Children's Commissioner under the *Children's Commissioner Act* are relatively narrow compared to other jurisdictions.<sup>6</sup> The Commission considers that a new oversight body should be established that addresses these limitations.

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## Calls for reform

Both the former and present Children's Commissioners have called for changes to the oversight system. Dr Howard Bath, Commissioner from July 2008 to March 2015,<sup>7</sup> urged the Commission to:

- consider the creation of a strengthened Children's Commissioner, with responsibility for monitoring the treatment of children in detention centres in an active way rather than in response to complaints, including the power to access any area of detention and to speak with detainees without needing to seek the prior consent.<sup>8</sup>
- closely examine how children are entering the child protection and youth detention systems and ameliorate the factors that cause them to be placed in situations of risk,<sup>9</sup> and
- identify a process not only for recommendations to be made about improvements, but for them to be adopted in a durable way.<sup>10</sup>

Current Children's Commissioner, Colleen Gwynne, sought:

- a mechanism by which qualified and experienced persons reporting to an independent statutory body, such as the Children's Commissioner, could actively undertake ongoing oversight, rather than just responding to complaints,<sup>11</sup> and
- the Children's Commissioner to be given the power to have unfettered access to vulnerable children.<sup>12</sup>

However, Dr Bath and Ms Gwynne both cautioned the Commission against unnecessarily multiplying the number of oversight bodies in a small jurisdiction like the Northern Territory.<sup>13</sup> Ms Gwynne observed that too many layers of oversight might 'bog down' the responsible department in reporting, rather than performing its functions, or overwhelm young people with the number of bodies that speak to them about oversight issues.<sup>14</sup> The Deputy Chief Executive Officer of Territory Families, also expressed her concern that too many oversight bodies may affect Territory Families' 'core business' because it can create quite a 'bureaucracy just to respond to their processes'.<sup>15</sup>

The Commission agrees that while there may be circumstances in which additional oversight is required, there should be one body holding appropriate powers and resources with ultimate responsibility for oversight of children and young people. The Commission believes that a Commission for Children and Young People would be best placed to fulfil this function, as discussed further below.

## A NEW COMMISSION FOR CHILDREN AND YOUNG PEOPLE

The Commission considers that there is a compelling need for a strong, independent oversight agency with responsibility for children in the Northern Territory with a broader jurisdiction than that conferred by the *Children's Commissioner Act*.

## Other states and territories

Every jurisdiction in Australia now has an oversight body relating to children. Oversight bodies, however, differ considerably across the different states and territories.

Some Australian jurisdictions also have a Guardian, with functions such as oversight and responsibilities in relation to children in care.<sup>16</sup>

**Table 40.1: External oversight bodies for children and young people in Australia**

JURISDICTION	STATUTORY BODY	ENABLING ACT
<b>National</b>	The National Children’s Commissioner	<i>Australian Human Rights Commission Act (Cth) 1986</i>
	The Office of the Children’s e-Safety Commissioner	<i>Enhancing Online Safety for Children Act (Cth) 2015</i>
<b>Australian Capital Territory</b>	The Children and Young People Commissioner	<i>Human Rights Commission Act 2005 (ACT)</i>
<b>New South Wales</b>	The Advocate for Children and Young People	<i>Advocate for Children and Young People Act 2014 (NSW)</i>
	The Children’s Guardian	<i>Children and Young Persons (Care and Protection Act 1998) (NSW)</i>
<b>Queensland</b>	The Family and Child Commission, overseen by two Commissioners	<i>Family and Child Commission Act 2014 (Qld)</i>
	The Office of the Public Guardian	<i>Public Guardian Act 2014 (Qld)</i>
<b>South Australia</b>	The Children’s Commissioner The Guardian for Children and Young People	<i>Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA)</i>
<b>Tasmania</b>	The Commissioner for Children	<i>Children, Young Persons and Their Families Act 1997 (Tas)</i>
<b>Victoria</b>	The Commissioner for Children and Young People	<i>Commission for Children and Young People Act 2012 (Vic)</i>
	The Commissioner for Aboriginal Children and Young People	
<b>Western Australia</b>	The Commissioner for Children and Young People	<i>Commissioner for Children and Young People Act 2006 (WA)</i>

Unlike in the Northern Territory, the other relevant oversight bodies tend to have a broader jurisdiction that caters to all children rather than just ‘vulnerable’ children.<sup>17</sup> However, most Children’s Commissioners do not have an individual complaints resolution and investigatory function, and the Australian Capital Territory and the Northern Territory are the only Children’s Commissioners that do.

The Children’s Commissioners in most Australian jurisdictions have the primary function of advocacy and promotion of children’s rights. The Northern Territory is one of the only jurisdictions where the Children’s Commissioner does not have a specific advocacy role.

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The Commission considered the option of a Guardian for vulnerable children and young people in the Northern Territory. However, given the small jurisdiction, the number of vulnerable children and the undesirability of creating multiple oversight bodies, the Commission is of the view that an additional body should not be created and the Commission for Children and Young People should carry out those roles.

## Need for expanded jurisdiction

The Children’s Commissioner presently has jurisdiction over ‘vulnerable’ children as defined in the *Children’s Commissioner Act*. The Commission’s functions and powers are all defined by reference to this concept.

A ‘vulnerable child’ is:

- a child who has been dealt with under chapter 2 of the *Care and Protection of Children Act* (NT) such as a child who is in the care of the Chief Executive Officer
- a child or young person who has been arrested or is in detention, on bail or subject to an order under the *Youth Justice Act*
- a child who has a current order under the *Volatile Substance Abuse Prevention Act* (NT)
- a child with a mental illness or who is mentally disturbed
- a child who has a disability
- a child who sought or is seeking child-related services,<sup>18</sup> or for whom a family member of the child has sought or is seeking child-related services, for any of the following:
  - the prevention of harm to, or exploitation of, the child
  - the protection of the child
  - care or support of the child,<sup>19</sup> or
  - a person described by regulation.

A vulnerable child includes a young person who has left care as defined in section 68 of the *Care and Protection of Children Act*.

The definition of ‘child-related services’ in section 13 of the *Care and Protection of Children Act* is broad and includes children and young people for whom early intervention services have been sought by a family member in relation to the prevention of harm, protection, care or support of the child. The jurisdiction does not capture children who may be neglected, but for whom no child-related services have been sought.

Giving an oversight body powers only with respect to vulnerable children segments the population of children and narrows the oversight responsibility to specific categories of children. It leaves the body without effective oversight over the status of children generally in the Northern Territory. The evidence before the Commission suggests that there can be a thin line separating those children who have entered the detention or child protection systems and those who are at risk of doing so.

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The Commission believes that to be effective, an oversight body would need a role that focuses on both groups of children. It would also consider the interests of all children and factors which might prevent them from entering the detention and child protection systems. Other considerations support this view, including:

- the extent and number of children and young people in the Northern Territory who require early intervention
- the need for the government to focus on early intervention services in the child protection and youth detention systems
- the need to understand the outcomes of failures to provide children with early intervention services which would have been beneficial, and
- the recommendations of this report, which, if adopted, would contribute to a significant increase in the provision of early intervention and diversion services.

An oversight jurisdiction for a Commission for Children and Young People which applies to all children would be consistent with the approach taken in South Australia,<sup>20</sup> Queensland,<sup>21</sup> Tasmania,<sup>22</sup> Western Australia<sup>23</sup> and New Zealand.<sup>24</sup> While the bodies in these jurisdictions differ in structure, the common element is an obligation to act as independent and expert advocates for the interests of all children and young people.

Importantly, having a narrow definition of ‘vulnerable children’ does not allow for the statutory advocacy of issues about children and young people in the Northern Territory. The functions of the National Children’s Commissioner provide some guidance in establishing the advocacy function. These include:

- advocating nationally for the rights and interests of children and young people, including all children and young people up to 18 years of age
- promoting children’s participation in decisions that affect them
- providing national leadership and coordination on children’s rights issues
- promoting awareness of, and respect for, the rights of children and young people in Australia
- undertaking research about children’s rights, and
- looking at laws, policies and programs to ensure they protect and uphold the rights of children and young people.<sup>25</sup>

Children and young people in the Northern Territory are entitled to expect the same level of oversight.

This is consistent with human rights principles.

The *United Nations Convention on the Rights of the Child* (CRC) sets out the basic rights such as:

- *‘the best interests of the child shall be a primary consideration’<sup>26</sup>*
- *‘the child shall ... be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child’<sup>27</sup>*
- *‘... to protect the child from all forms of physical or mental violence, injury or abuse,*

*neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child*<sup>28</sup>

- *'... the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health',*<sup>29</sup> and
- *'... the right of the child to education.'*<sup>30</sup>

## THE ROLE OF THE NEW COMMISSION FOR CHILDREN AND YOUNG PEOPLE

The Commission acknowledges the significant workload that a Commission for Children and Young People, as envisaged, would be required to undertake. The Commission recommends that a Commission for Children and Young People consist of two Commissioners, a Principal Commissioner and another Commissioner, one of whom must be an Aboriginal person. The Commission is of the view that the high numbers of children and young people involved in the detention and care and protection systems, the broadening of the jurisdiction and the need to address the position of children in the Northern Territory provides sufficient work for two senior people and justifies having two Commissioners.

The division of work between the two Commissioners should be determined by the Commissioners in the way they consider most appropriate.

Both Commissioners will have to demonstrate a high level of cultural competence in engaging with Aboriginal children, families and communities in the Northern Territory.

### Independence

It is important that the Commission for Children and Young People is both legally and operationally independent, and not subject to the direction or control of the minister or parliament. The Commission notes that at present the Children's Commissioner is legally independent in relation to the way the functions of the Children's Commissioner are performed and the order of priority given to investigations, except as otherwise provided by any other law of the Territory.<sup>31</sup>

The Commission views unfettered independence to be essential for an external oversight body. The Commission recommends that the enabling legislation contain no exceptions to the independence of the Commission for Children and Young People.

The enabling legislation should have an analogous provision to section 7(2) of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA)* which specifies the *'Commissioner is independent of direction or control by the Crown or any Minister or officer of the Crown'*.<sup>32</sup>

# FUNCTIONS OF THE COMMISSION FOR CHILDREN AND YOUNG PEOPLE

The Commission proposes that the Children and Young People’s Commission should have the following statutory functions:

**Table 40.2: Proposed functions of Commission for Children and Young People**

Functions	Scope
<b>Consultation</b>	All children Parents Carers Relevant peak bodies Service providers Relevant experts Government agencies including police Other states and territories
<b>Review and monitor legislation</b>	<i>Care and Protection of Children Act</i> <i>Youth Justice Act</i>
<b>Complaints</b>	Children and young people: <ul style="list-style-type: none"> <li>• in care</li> <li>• in detention</li> <li>• who are at risk of entering care or detention, or</li> <li>• who have had interactions with police</li> </ul>
<b>Investigations/inquiries</b>	Investigations/inquiries in relation to any systemic issue concerning children or young people  Individual investigations/inquiries only in relation to: <ul style="list-style-type: none"> <li>• children and young people in care</li> <li>• children and young people in detention, or</li> <li>• children and young people who are at risk of entering the care or detention system</li> </ul>
<b>Monitor internal complaint handling</b>	Monitor complaint handling by Territory Families in relation to: <ul style="list-style-type: none"> <li>• children and young people in care</li> <li>• children and young people in detention</li> <li>• any complaints about harm in care</li> </ul>
<b>Inspection</b>	Unfettered access to inspect: <ul style="list-style-type: none"> <li>• detention centres</li> <li>• residential facilities</li> <li>• places that are required to be OPCAT compliant</li> </ul> Access to any other place where children who are in the child protection system reside when a serious complaint is raised

Functions	Scope
<b>Monitoring</b>	The implementation of any inquiry recommendations Own recommendations
<b>Advocacy</b>	Advocacy in relation to all children and young people Advocacy in relation to any issue relating to children and young people
<b>Administering</b>	Official Visitors Program
<b>Advice</b>	Direct advice to the Minister responsible for children and young people in care and youth detention
<b>Research</b>	Undertake and commission research about issues relevant to children and young people Data collection
<b>Reporting</b>	Minister/Parliament Territory Families
<b>Community education</b>	Community education to the general public about issues concerning children and young people Community education to children and young people generally Community education for children and young people in care or in detention

Presently the Children’s Commissioner has no power to investigate complaints from children concerning the police service. They are within the functions of the Northern Territory Ombudsman. The Commission recommends that this power should be transferred to the Commission for Children and Young People. This avoids the fragmentation of oversight mentioned above and allows a practical relationship to be developed as police play an important role in both systems being the highest number of reporters in child protection and the first contact with the youth justice system.

## Consultation

The Commission for Children and Young People should consult widely with stakeholders, including children and young people, service providers, parents, carers, families, government agencies, relevant peak bodies and other states and territories. Broad consultation is important to ensure that the Commission for Children and Young People adequately addresses the issues faced by children and young people in the Northern Territory.

The Aboriginal community is a key stakeholder for the Commission for Children and Young People because of the number of Aboriginal children in the Northern Territory youth justice and child protection systems. An increase in staffing and a move to a two-member Commission will provide greater capacity for the Commissioners and staff members to meet with community organisations and representatives to understand their concerns and discuss solutions.



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The Children’s Commission will engage with Aboriginal communities and provide a channel for their voices to be heard in the operation, reform and outcomes of the youth justice and child protection systems.

## Advocacy

The Commission for Children and Young People will act as a prominent and public advocate for children in the Northern Territory, especially in relation to government policy and priority setting.

## Reviewing and monitoring legislation

The Children’s Commissioner is responsible for monitoring the administration of the *Care and Protection of Children Act*, and for carrying out a review of the operation and effectiveness of that Act at least every three years.<sup>33</sup> These functions should be included in those of the Commission for Children and Young People.

The Children’s Commissioner does not presently have any responsibility for monitoring the administration of the *Youth Justice Act*. A broad but relatively undefined, under-resourced and under-utilised role is presently assigned to the Youth Justice Advisory Committee.<sup>34</sup> This responsibility should be transferred to the Commission for Children and Young People, together with an obligation to review the effectiveness of the *Youth Justice Act* every three years.

The Commission considers that the Youth Justice Advisory Committee should still be retained to provide policy advice to the Northern Territory Government and have a role similar to the Early Childhood Expert Reference Panel,<sup>35</sup> which provides expert advice to the Northern Territory Government.<sup>36</sup> The Commission for Children and Young People could provide secretariat assistance to the Youth Justice Advisory Committee but it could equally be supported the same way as the Early Childhood Expert Reference Panel.

The Commission for Children and Young People, with its expanded powers and responsibilities, full-time professional staff and statutory independence, is likely to be in a better position to collect information and consider the effectiveness and administration of legislation than the Youth Justice Advisory Committee.

## Monitoring implementation of recommendations

As discussed in Chapter 43 (Implementing reform) the Commission for Children and Young People should also have lead responsibility for the external monitoring of the Northern Territory Government’s implementation of recommendations from this report. The Commission should table a report to Parliament each year on the progress of this implementation, separately from the Commission for Children and Young People’s annual report. To support this role the Commission should establish an implementation monitoring committee.

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## Complaints

The Commission for Children and Young People should continue to be able to receive and investigate complaints from vulnerable children and young people about:

- a service provider's failure to provide services to a vulnerable child that they were reasonably expected to provide, and
- required services provided to a vulnerable child that failed to meet the standard that was reasonably expected.<sup>37</sup>

The Commission for Children and Young People must ensure that children and young people are able to make complaints to it, know how to make complaints and have the means to make complaints.

## Investigations

The Commission for Children and Young People should have the power, as the Children's Commissioner does now, to undertake investigations or inquiries into complaints concerning individual children or young people, and any systemic issues concerning children or young people.

Upon receiving a complaint in relation to an individual child or young person, the Commission for Children and Young People should have the ability to:

- undertake preliminary investigations into the complaint
- refer the complaint to mediation or conciliation, a power that the Children's Commissioner does not currently have
- refer the complaint to the relevant government agency or Minister, and
- decide to conduct an investigation or inquiry into the complaint.

The Commission for Children and Young People should also have the ability to undertake investigations and inquiries into systemic issues that relate to children and young people and have appropriate powers to enable a thorough and effective inquiry.

Upon completion of the inquiry or investigation, the Commission for Children and Young People should have the ability to:

- recommend actions to service providers
- make recommendations to state authorities across portfolios
- provide a report to parliament which must be tabled within six sitting days after being received, and
- publish the report and recommendations, if considered appropriate.

## Monitoring internal complaints handling processes

The Commission for Children and Young People should also have the ability to monitor the internal complaint-handling processes within the relevant Departments. It should also be able to acquire information about complaints received concerning children and young people, as well as how complaints have been handled, including actions undertaken in response to those complaints.

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## Inspection

The Commission for Children and Young People should monitor and inspect all institutional settings where children and young people are routinely accommodated, or where children are involuntarily detained. Such places include detention centres, police cells, residential facilities, secure bail accommodation, and diversion programs that require significant overnight stays away from home.

The new Act should provide the Commission for Children and Young People with free and unfettered access to a child, or a place where children are involuntarily held, or where children or young people are routinely accommodated in an institutional setting, without requiring prior notice. It should be an offence to hinder the Commission for Children and Young People from exercising that power.

The Commission for Children and Young People should also have the power to be able to inspect any place that a child or young person in the child protection system resides, on receipt of a complaint raising serious issues of possible risk to the child. This would include residences where children or young people are on placements in purchased home-based care, kinship care or foster care. This is similar to the power given to authorised officers under the *Care and Protection of Children Act*.<sup>38</sup>

The Commission for Children and Young People should provide a report to the responsible minister setting out findings from its inspections and identifying any issues with each facility, together with recommendations if appropriate. This report must be tabled in parliament within six sitting days after the minister receives the report.

This additional inspection function will provide the Commission for Children and Young People with functions that are compatible with the Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT) requirements, as discussed below.

## OPCAT monitoring

The Commission understands that the intention of the Commonwealth Government is that multiple bodies from federal, state and territory governments will be responsible for inspections and the Commission thinks that the Commission for Children and Young People could be the natural body to undertake the inspection of places of detention that house children and young people for the purposes of Australia's implementation of the OPCAT.<sup>39</sup>

As discussed in Chapter 22 (Detention system oversight), OPCAT requires a two-tier monitoring system of visits by complementary and independent expert bodies at the international and national level.

At the International level, the United Nations Sub-committee on the Prevention of Torture, an independent body comprised of experts from countries that are party to OPCAT, will be able to enter any place of detention within Australia.

At the domestic level, Australia will be required to establish a National Preventative Mechanism (NPM). This body will oversee and monitor all places of detention within Australia. New Zealand adopted a model that designated five existing institutions as its NPM. With the Human Rights

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Commission as the coordinating body, the New Zealand NPM also includes the Office of the Ombudsman, the Independent Policy Conduct Authority, the Office of the Children's Commissioner and the Inspector of Service Penal Establishments of the Office of the Judge Advocate General of the Armed Forces.<sup>40</sup>

The Commission is aware that it has been recommended that the Commonwealth Ombudsman should be the National coordinating body for OPCAT inspections. The Commission understands that the Ombudsman intends to have a collegiate approach between itself and other oversight bodies.<sup>41</sup> The Commission thinks that such a role would also be appropriate for the Commission for Children and Young People, working in collaboration with the Commonwealth Ombudsman, in relation to children in custody in the Northern Territory.

The Commission is of the view that the Commission for Children and Young People should have legislative functions that are compatible with the requirements of an NPM body set out in Part IV, articles 18 to 23, of the OPCAT. An NPM must have the following elements:

- functional independence and independent personnel
- experts with required capabilities and professional knowledge, gender balance and adequate representation of ethnic and minority groups in the country
- necessary resources for functioning
- a mandate to undertake regular preventive visits
- the power to make recommendations
- authorities must examine recommendations and enter into dialogue with the NPM on implementation
- power to submit proposals and observations concerning existing or proposed legislation
- access to information concerning the number of people detained and places of detention
- access to information on treatment and conditions of people in detention
- access to places of detention
- the right to conduct private interviews with detained people and others
- liberty to choose places visited and people interviewed
- appropriate privileges and immunities (there must be no sanctions for communicating with the NPM)
- confidential information should be privileged, and
- annual reporting requirements to the state.

## Research

The Commission for Children and Young People should also have the capacity to conduct or commission research. The Children's Commissioner told the Commission that ideally her office would encompass a more active early intervention role, with a research element incorporated. The Commissioner said that currently there is not enough known about gaps in the service delivery and having a research function would allow the Children's Commissioner to provide more evidence-based advice.<sup>42</sup> Research undertaken by the Commission for Children and Young People would supplement the work of the proposed new specialist research body the Commission is recommending.

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## Advice

The Commission for Children and Young People should have the function of providing advice to the minister about the rights, development and wellbeing of children and young people at a systemic level.

## Reporting

Section 43 of the *Children's Commissioner Act* requires the Children's Commissioner to report to the minister each year after the end of the financial year but before 31 October. The *Children's Commissioner Act* specifies that the report must be 'on the operation of this Act during that year', but otherwise does not prescribe the content of the report.

The enabling legislation for the Commission for Children and Young People should have a similar provision. However, the new section should specify the matters that the report must address and should include at a minimum:

- the work done by the Commission in that year, including complaint handling and any investigations undertaken
- the progress in the implementation of past Commission recommendations
- the work done by Official Visitors and their reports
- any suggested amendments to legislation
- a report on its monitoring of the *Care and Protection of Children Act* and the *Youth Justice Act* (or any new legislation which may emerge), and
- any other appropriate matter.

## Community education

The expanded jurisdiction of the Commission for Children and Young People will also enable it to extend its community education programs and more actively engage with the community, including children and young people, to increase the public understanding of:

- the operation of the youth justice and child protection systems
- the public's responsibilities under the relevant legislation, particularly mandatory reporting
- the rights of children and families in these systems
- the role of the Commission for Children and Young People, and
- what members of the public can do if they are concerned about the operation of these systems.

The community education program should be delivered to all major communities in the Northern Territory. This means that it will need to be translated into many languages and be available through various forms of communications.

## Official Visitors Programs

The Official Visitors Program presently provided for in sections 169 to 172 of the *Youth Justice Act* should continue but operate in a more structured way and be independent of the executive. Under

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the present arrangements official visitors are appointed by the minister and report to the minister. The Commission recommends that the Official Visitor Program be located in and managed by the Commission for Children and Young People. It should establish selection criteria, appoint and nominate periods of appointment, conduct training and stipulate the number of visits, how reports are made and be responsible for rosters and payment of allowances. Reports from Official Visitors should be made to the Commission for Children and Young People. A summary of those reports should be included in the Commission's report to the parliament and may be given to the minister.

## Elders Visiting Program

The present Elders Visiting Program operating in youth detention centres while valuable has been unable to establish a "pool" of men and women readily available to visit young detainees particularly from the young person's community. Marius Puruntatameri, the chair of the Elders Visiting Program, said that there were many calls on Elders and recourse to senior members of a community would likely be as successful.<sup>43</sup> The Commission is of the view that this program would best be managed by communities who could nominate one or more Elders or senior members who could be trained for the role which, in addition to youth detention facilities, would include out of home care residential facilities. A peak Aboriginal body such as Aboriginal Peak Organisations Northern Territory (APO NT) could be responsible as a central repository for co-ordinating the service, delivering training and ensuring regular visits by Elders and senior men and women.

## POWERS OF THE COMMISSION FOR CHILDREN AND YOUNG PEOPLE

While the Commission for Children and Young People should be given broad powers to perform its functions, the current Commissioner already has extensive powers under section 10(2) of the *Children's Commissioner Act*, including the power to require the production of a document or the attendance of a person to give evidence and provide answers.

The Commission for Children and Young People should also assume particular powers of the Northern Territory Ombudsman, including the power to perform its functions of inquiry and investigation to the same standard as that of a Board of Inquiry established under the *Inquiries Act* (NT). This would provide the Commission for Children and Young People with the power to:

- enter and search a building or a place without a warrant (in certain circumstances)<sup>44</sup>
- require inspection or seizure of documents or items that are related to the inquiry<sup>45</sup>
- require a person, by summons, to attend to give evidence or produce documents,<sup>46</sup> and
- require a person to answer questions.<sup>47</sup>

When undertaking an investigation or inquiry, the Commission for Children and Young People should also be able to require that certain documents that may otherwise be subject to a legal professional privilege claim, be produced, if it is in the public interest to do so. An analogous provision can be found in section 117(2) of the *Ombudsman Act* (NT).

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The Commission should have the power to make recommendations and reports about investigations or inquiries. This information should be able to be provided to service providers, the minister, other ministers and departments across portfolios and, where appropriate, to the public.

The Commission for Children and Young People should also have an equivalent provision to section 33 of the *Children's Commissioner Act*, requiring it to provide a report to the minister after inquiries are completed, to be tabled in parliament within six sitting days.<sup>48</sup> The Commission should also be able to publish its reports or recommendations publicly, if it is in the public interest to do so.

When undertaking its monitoring function in relation to compliance with recommendations, the Commission for Children and Young People should have the power to require a report from the relevant department or state authority outlining the:

- actions that have been undertaken by the department or state authority in response to the recommendations
- proposed actions, and
- reasons for not complying with certain recommendations.

If the Commission for Children and Young People is dissatisfied with the response, it should be able to ask the minister to table in parliament, within six sitting days, the request of the Commission for Children and Young People and response of the department or authority.

## Staffing

The current Children's Commissioner was frank about the limitations that the Children's Commissioner works under at present. As noted in Chapter 37 (Child protection oversight) and Chapter 22 (Detention system oversight) she told the Commission that her office does not presently have the budget, staff and resources it needs to carry out all of her statutory functions.<sup>49</sup> This means that decisions have to be made about which functions to prioritise, which recently has meant a shift in resources away from investigating complaints towards education and communication.<sup>50</sup>

The Children's Commission is presently staffed by eight people, including the Commissioner. As the Commission for Children and Young People will have a number of significant additional functions, it will require a significantly larger staff to fulfil its statutory functions.

The Commission suggests that the Commission for Children and Young People will need to be funded for two Commissioners and 20 to 25 staff members.

The composition of the workforce is likely to include those with the capabilities to:

- conduct formal inspections
- handle complaints
- administer the Official Visitor Program and Elders Visiting Program
- undertake systemic monitoring
- perform the roles of community education and engagement

- train and support staff members, and
- have report writing competence.

All staff members would need a high level of cultural competence in engaging with Aboriginal people in the Northern Territory. The Commission recommends that a significant proportion of the staff be Aboriginal.

## Independent review in five years

The proposals in this chapter would introduce significant changes to the nature and structure of the Children's Commissioners, with an expansion of functions and powers. The Northern Territory community is entitled to expect those changes to produce benefits and to be assured that the oversight body is itself subject to scrutiny to ensure it is using its resources and powers appropriately.

The enabling legislation for the Commission for Children and Young People should prescribe that five years after the legislation comes into force there will be an independent review of the operation of the Commission for Children and Young People. That review should consider whether:

- the Commission for Children and Young People is fulfilling its functions
- whether the Commission for Children and Young People has sufficient resources
- whether the Commission for Children and Young People is making appropriate use of its resources, and
- whether the organisational structure is appropriate.

## ALTERNATIVE MODELS

In coming to the conclusion that a new Commission for Children and Young People would be the appropriate oversight model, the Commission considered a number of different approaches that might be taken to enhance the current oversight functions. Two alternative models considered, an Inspector of Custodial Services and an Aboriginal Children's Commissioner, are discussed in this section. The Commission acknowledges that other jurisdictions have established these bodies to provide oversight of children and young people but found that these models were less appropriate for the Northern Territory.

### Inspector of Custodial Services

The Western Australian Inspectorate of Custodial Services was the first strong and independent oversight body of its type in Australia with responsibility for custodial institutions.<sup>51</sup> Similar models have since been adopted in New South Wales and Tasmania. The Australian Capital Territory, Queensland and South Australia have been considering introducing similar bodies.<sup>52</sup>

The Western Australian Inspectorate is an independent statutory body that reports to parliament.<sup>53</sup> It has responsibility for juvenile detention facilities, adult prisons, prisoner and detainee transport and court custody centres.<sup>54</sup> Its main functions are inspecting places of custody and conducting reviews of thematic issues.<sup>55</sup> The Inspector has a statutory entitlement of access to custodial places, people in



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custody, people whose work is associated with custodial facilities and related documents.<sup>56</sup> The Inspector is required to report to parliament on his inspection of each place of detention or custody at least every three years, but in practice more frequent inspections are conducted of facilities seen as higher risk.<sup>57</sup> Inspections can be unannounced, but are normally announced and planned months in advance, and may take eight days to complete onsite.<sup>58</sup>

Professor Neil Morgan, the present Western Australian Inspector, Office of the Inspectorate of Custodial Services, told the Commission that:

*'One of the most important benefits of Office of the Inspectorate of Custodial Services (OICS) is simply that we exist. It is known that external inspectors will routinely visit facilities, and may do so with little or no notice. Prison administrators and staff, like anyone, will be more conscious of their decision making and behaviour if they know they will be scrutinised by an external third party.'*<sup>59</sup>

Professor Morgan acknowledged that his Inspectorate is not able to prevent every incident of poor conduct, or prevent all systemic failings. But it can predict risk and hold the system accountable for avoidable failings. Ultimately like all oversight bodies its efficacy also depends on the culture and responsiveness of government.<sup>60</sup>

A recent report to Northern Territory Correctional Services titled *A Safer Northern Territory through Correctional Interventions: Report of the review of the Northern Territory Department of Correctional Services*, prepared by Keith Hamburger and his team in July 2016, recommended the introduction of an Inspector of Custodial Services based on the Western Australian model.<sup>61</sup>

The Northern Territory Government said in response that any new inspectorate audit function should be built into the office of the Children's Commissioner or a similar body, and should not be combined with an adult inspectorate.<sup>62</sup> The Commission supports this view. The needs of children are distinctly different from those of adult prisoners and there is a risk that if subject to one oversight body the needs of adult prisoners would dominate due to their numbers.

While the Commission sees advantages in the model of an Inspectorate of Custodial Services, on balance the model is not optimal as an oversight mechanism for the Northern Territory youth justice system. The principal reasons are:

- the desirability of separating the oversight as well as the operation of the youth justice system from the adult system. Although an Inspectorate covering both juvenile custodial facilities and adult facilities would be more cost effective, young people in detention do have distinct developmental and protection needs. Where adult and youth systems are combined there is a risk that young people are treated simply as small adults, or are given less attention because of their smaller numbers
- the Inspectorate model is appropriate for detention but less so for child protection, where oversight is less focused on inspections
- given the connection between the detention system and the child protection system, see Chapter 35 (The crossover of care and detention), and the fact that each system raises issues relating to the treatment of vulnerable children, there are benefits in having a single body to

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provide oversight for both systems as the Children’s Commissioner currently does, drawing upon expertise in relation to vulnerable children in both roles, and

- an Inspectorate providing oversight for youth detention facilities alone, without child protection, would have a narrow and limited role, yet require the establishment of a new statutory agency, with a second agency being required to provide child protection oversight. In a small jurisdiction like the Northern Territory, it is desirable to avoid creating too many different independent oversight bodies.

The Commission has recommended in this chapter that some of the features of such an office of Inspectorate of Custodial Services be introduced in the Northern Territory through the Commission for Children and Young People but not the office itself.

## Aboriginal Children’s Commissioner

The Commission also received a number of submissions calling for the introduction of a Northern Territory Aboriginal Children’s Commissioner. The Central Australian Aboriginal Legal Aid Service (CAALAS) called for a Commissioner for Aboriginal Children and Young People, with broad jurisdiction over all Aboriginal children and young people up to the age of 25.<sup>63</sup> The North Australian Aboriginal Justice Agency (NAAJA) advocated for the creation of two Commissioners for Aboriginal Children and Young people, to provide *‘an Aboriginal-centric view at a high level, support for the Aboriginal community sector and ability to engage with the Aboriginal community more generally’*.<sup>64</sup>

Ms Ah Chee, the Chief Executive Officer of Congress, Mr Walder, a Manager at Tangentyere Council Aboriginal Corporation, and Ms Balmer, the Acting Chief Executive Officer of the Ngaanyatjarra, Pitjantjatjara, Yankunytjatjara Women’s Council also told the Commission that an Aboriginal Children’s Commissioner with investigative powers was needed to bringing about a *‘broader approach to early childhood development’*.<sup>65</sup>

The Commission heard evidence from Andrew Jackamos, the inaugural Commissioner for Aboriginal Children and Young People in Victoria. Together with a ‘Principal Commissioner’, Mr Jackamos is one of two Commissioners forming the Commission for Children and Young People in Victoria.<sup>66</sup> Mr Jackamos’ office is unique in Australia. No other State or Territory has a dedicated Commissioner appointed with a specific focus on Aboriginal children.<sup>67</sup>

Mr Jackamos explained that the focus of his role is:

*‘advocating for and overseeing the provision of state government services to Aboriginal children, particularly the most vulnerable in areas of child protection and youth justice.’*<sup>68</sup>

Mr Jackamos outlined a number of benefits that his role provides, including:

- having an Aboriginal person in the role who has the background and personal experience to understand, identify with and relate to Aboriginal people who engage with the Commission and child protection services. That person’s knowledge of the Aboriginal community, community infrastructure, clans and family trees is essential for credibility and acceptance by Aboriginal

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communities across Victoria

- providing an Aboriginal-centric service that understands, hears and promotes the particular needs of Aboriginal children, and
- the ability to engage directly with the Aboriginal community, so that they understand their rights, and know where to direct their concerns.<sup>69</sup>

There is a clear need in the Northern Territory for a much greater focus on engagement with the Aboriginal community on issues relating to vulnerable children. On balance, however, the Commission does not recommend the introduction of an Aboriginal Children's Commissioner in the Northern Territory. Taking the evidence and submissions as a whole, the main reasons given for the introduction of such a Commissioner were:

- the need to focus on the particular needs of Aboriginal children and families
- the need for a senior statutory officer with the standing and cultural competence to communicate effectively with Aboriginal communities, and
- the need for a much greater focus on prevention and early intervention, not just crisis management.

The Commission accepts that these needs must be addressed, but it does not consider that this should be done by creating a new statutory position of an Aboriginal Children's Commissioner. The needs could be equally fulfilled by ensuring that at least one Aboriginal person is, as Mr Jackamos is, a member of the relevant oversight body.

The Commission sees the position in the Northern Territory as very different to that in Victoria. In the Northern Territory the great majority of children who are the subject of child protection notifications, living in out of home care, or being held in youth detention centres are Aboriginal. In those circumstances it would be anomalous to create a specialist position dedicated to the interests of the majority of children, within a broader body dedicated to the interests of all vulnerable children.

If an Aboriginal Children's Commissioner were established, to operate in addition to the Children's Commissioner, the role of the Children's Commissioner would be greatly reduced given how few vulnerable non-Aboriginal children are in detention or child protection. If the Office of the Children's Commissioner were to be replaced by the Aboriginal Children's Commissioner, it leaves the question of who provides oversight for non-Aboriginal children.

The fact that Aboriginal children are so grossly overrepresented in these systems, and have been for many years, does suggest a systemic failure by the Northern Territory Government and community to take account of their needs. A significantly increased focus on preventing these children from entering these systems is needed.

While an Aboriginal Children's Commissioner might assist with this task, on balance the Commission considers it would be preferable not to split the roles of oversight for Aboriginal and non-Indigenous children, but to instead have an office dedicated to all children, which includes a strong focus on the needs of Aboriginal children. The Commission considers that an appropriate way to meet the concerns expressed about focus, cultural competence and communication with Aboriginal people, is to ensure that at least one of the two Commissioners in the oversight body is an Aboriginal person.

### **Recommendation 40.1**

The *Children’s Commissioner Act (NT)* be repealed and legislation passed establishing a Commission for Children and Young People, with jurisdiction for all children and young people in the Northern Territory.

### **Recommendation 40.2**

The Commission for Children and Young People be provided with the resources and staff to ensure it can conduct its expanded functions, with two Commissioners, one of whom will be an Aboriginal person, and a minimum staffing level of 20 full-time equivalent employees.

### **Recommendation 40.3**

The Commission for Children and Young People be provided with the following functions, in addition to those already contained within section 10 of the *Children’s Commissioner Act (NT)*:

- to consult with various stakeholders, including Ministers, Territory authorities, other bodies, including non-government bodies, all children, young people, their families and carers
- to promote and advocate for the rights and interests of all children and young people in the Northern Territory
- to advise, and make recommendations to Ministers, Territory authorities and other bodies (including non-government bodies) on matters related to the rights, development and wellbeing of children and young people
- to deal with complaints about:
  - a. a service provider’s failure to provide services to a vulnerable child that they were reasonably expected to provide
  - b. required services provided to a vulnerable child that failed to meet the standard that was reasonably expected, and
  - c. any complaints made by children or young people in relation to police
- to undertake inquiries in relation to:
  - a. any systemic issue concerning children or young people, and
  - b. the treatment of a vulnerable child or young person in care or detention or at risk of entering detention or care
- to monitor Territory Families’ internal complaint handling in relation to:
  - a. children and young people in care
  - b. children and young people in detention, and
  - c. any complaints about harm in care

- to inspect:
  - a. detention centres, residential facilities and any places that are required to be OPCAT compliant, and
  - b. any other place where a child who is in the child protection system resides, if a complaint of serious harm is raised
- to monitor the implementation of any recommendations made by a relevant inquiry
- to establish and monitor the Official Visitors Program
- to monitor the administration of the *Youth Justice Act (NT)* and the *Care and Protection of Children Act (NT)* and conduct a review of the operation and effectiveness of the Acts at least once every three years
- to undertake and commission research in relation to issues relevant to children and young people and provide a data collection function
- to report to the Minister/Parliament, and
- to provide community education to children and young people generally, with a particular focus on children and young people in care and education.

### Recommendation 40.4

The Commission for Children and Young People be provided with functions that are compatible with the requirements of a National Preventative Mechanism as set out in OPCAT.

### Recommendation 40.5

The Commission for Children and Young People should, in addition to the current powers of the Children's Commissioner contained within section 10(2) of the *Children's Commissioner Act (NT)*, be provided with the following powers:

- to inspect a place where children are involuntarily held or routinely accommodated in an institutional setting, without prior notice
- a broader power to undertake inquiries at their own initiative
- to inspect any place where a child or young person who is involved with the child protection system resides if a complaint raising a serious risk of harm to the child is received
- when undertaking an investigation to be able to access information on:
  - a. children and young people in the child protection and/or the youth justice systems, and
  - b. facilities where children and young people are held

- to be able to access documents while undertaking an investigation or inquiry, which otherwise may be subject to a legal professional privilege claim, and
- to require relevant departments or Territory authorities to provide reports in relation to compliance with recommendations, and the ability to have the response tabled in Parliament if the Commission for Children and Young People is dissatisfied with the response.

### **Recommendation 40.6**

Upon completion of the inquiry or investigation, the Commission for Children and Young People can:

- recommend actions to service providers
- make recommendations to Territory authorities across portfolios
- provide a report to Parliament which must be tabled within six sitting days after being received, and
- publish the report and recommendations, if considered appropriate.

### **Recommendation 40.7**

New legislation include a section analogous to section 43 of the *Children's Commissioner Act (NT)*, requiring the Commission for Children and Young People to produce an annual report, and specify the matters that the report must address.

There be an external review of the operation of the Commission for Children and Young People five years after the establishment of the Commission, examining whether the Commission:

- is fulfilling its functions
- has sufficient resources
- is making appropriate use of its resources, and
- has an organisational structure that is appropriate.

## ENDNOTES

- <sup>1</sup> Children's Commissioner Act 2013 (NT), s 7.
- <sup>2</sup> Transcript, Neil Morgan, 27 June 2017, p. 5126: lines 14-17.
- <sup>3</sup> Exh.608.000, Statement of Neil Morgan, 29 May 2017, tendered 27 June 2017, para. 26.
- <sup>4</sup> Exh.492.000, Statement of Leonie Wharburton, 12 May 2017, tendered 2 June 2017, paras 12 - 14.
- <sup>5</sup> Transcript, Megan Mitchell, 11 October 2016, p. 41: lines 21 -26.
- <sup>6</sup> Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA); Family and Child Commission Act 2014 (QLD); Commissioner for Children and Young People Act 2016 (Tas); Commissioner for Children and Young People Act 2006 (WA); Children's Commissioner Act 2003 (NZ).
- <sup>7</sup> Exh.011.011, Statement of Dr Howard Bath, 5 October 2016, tendered 12 October 2016, para 5.
- <sup>8</sup> Exh.011.011, Statement of Dr Howard Bath, 5 October 2016, tendered 12 October 2016, para 99(k); Transcript, Dr Howard Bath, 12 October 2016, p.114: lines 12-23.
- <sup>9</sup> Exh.011.011, Statement of Dr Howard Bath, 5 October 2016, tendered 12 October 2016, para 100(a).
- <sup>10</sup> Exh.011.011, Statement of Dr Howard Bath, 5 October 2016, tendered 12 October 2016, para 100(b).
- <sup>11</sup> Exh.016.001, Statement of Colleen Gwynne, 7 October 2016, tendered on 12 October 2016, para 48; Transcript, Colleen Gwynne, 12 October 2016, p. 133: lines 1-9.
- <sup>12</sup> Transcript, Colleen Gwynne, 12 October 2016, p. 129: lines 1-11
- <sup>13</sup> Transcript, Dr Howard Bath, 12 October 2016, p. 114: lines 32-38; Transcript, Colleen Gwynne, 18 June 2017, p. 138: lines 9-30.
- <sup>14</sup> Transcript, Colleen Gwynne, 18 June 2017, p.138: lines 9-30.
- <sup>15</sup> Transcript, Jeanette Kerr, 8 December 2016, p. 502: lines 14 – 30.
- <sup>16</sup> Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA); Public Guardian Act 2014 (Qld); Advocate for Children and Young People Act 2014 (NSW).
- <sup>17</sup> Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA), s. 14(1)(a); Commissioner for Children and Young People Act 2006 (WA), s. 19(1)(a); Family and Children Commission Act 2014 (Qld), s. 9; Human Rights Commission Act 2005 (ACT), s. 19B.
- <sup>18</sup> Under section 13 of the *Care and Protection of Children Act*, 'child-related services' means services that:
  - (a) are provided to one or more of the following:
    - (i) a child (whether or not in need of protection) or young person who has left the CEO's care;
    - (ii) someone who is related to or is a family member of the child or person;
    - (iii) an organisation representing the interests of the child or person;
    - (iv) an organisation representing a community of which the child or person is a member; and
  - (b) are in the nature of social services that relate to one or more of the following:
    - (i) the prevention of harm to, or exploitation of, a child;
    - (ii) the protection of a child;
    - (iii) services for the care or support of a child and the child's family (including domestic support services);
    - (iv) a placement arrangement;
    - (v) medical or other health-related services;
    - (vi) information and advisory services;
    - (vii) counselling services;
    - (viii) advocacy services;
    - (ix) mediation services.
- <sup>19</sup> *Care and Protection of Children Act* 2005 (NT), s 7(1).
- <sup>20</sup> *Children and Young People (Oversight and Advocacy Bodies) Act* 2016 (SA).
- <sup>21</sup> *Family and Child Commission Act* 2014 (Qld).
- <sup>22</sup> *Commissioner for Children and Young People Act* 2016 (Tas).
- <sup>23</sup> *Commissioner for Children and Young People Act* 2006 (WA).
- <sup>24</sup> *Children's Commissioner Act* 2003 (NZ).
- <sup>25</sup> Australian Human Rights Commission, About Children's Rights, (undated) <<https://www.humanrights.gov.au/our-work/childrens-rights/about-childrens-rights?>> accessed 17 October 2017.
- <sup>26</sup> Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, Art 3.1.
- <sup>27</sup> Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, Art 12.2.
- <sup>28</sup> Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, Art 19.1
- <sup>29</sup> Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, Art 24.1.
- <sup>30</sup> Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, Art 28.1.
- <sup>31</sup> *Inquiries Act* (NT), s 11.
- <sup>32</sup> *Children and Young People (Oversight and Advocacy Bodies) Act* 2016 (SA).
- <sup>33</sup> *Children's Commissioner Act* 2013 (NT), ss. 10, 50.
- <sup>34</sup> *Youth Justice Act*, s 204(a).
- <sup>35</sup> Northern Territory Government Newsroom, Media Release, Nicole Manison, Minister for Children, 'Putting Territory children and families first', 21 February 2017, <<http://newsroom.nt.gov.au/mediaRelease/22864>> viewed 7 September 2017.
- <sup>36</sup> Northern Territory Government Newsroom, Media Release, Nicole Manison, Minister for Children, 'Putting Territory children and families first', 21 February 2017, <<http://newsroom.nt.gov.au/mediaRelease/22864>> viewed 7 September 2017.

- <sup>37</sup> Children’s Commissioner Act (NT), s 21.
- <sup>38</sup> Care and Protection Act (NT), s 84.
- <sup>39</sup> Australian Human Rights Commission, May 2017, ‘OPCAT in Australia – Consultation Paper’, para 32, 36 <[https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC\\_OPCAT\\_Implementation\\_Consultation\\_Paper\\_2017.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_OPCAT_Implementation_Consultation_Paper_2017.pdf)>, accessed 18 October 2017.
- <sup>40</sup> The Association for Prevention of Torture, New Zealand – OPCAT, Situation, [http://apt.ch/en/opcat\\_pages/opcat-situation-52](http://apt.ch/en/opcat_pages/opcat-situation-52).
- <sup>41</sup> Australian Human Rights Commission, May 2017, ‘OPCAT in Australia – Consultation Paper’, para 36 <[https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC\\_OPCAT\\_Implementation\\_Consultation\\_Paper\\_2017.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_OPCAT_Implementation_Consultation_Paper_2017.pdf)>; Exh.009.001, Optional Protocol to the Convention against Torture, 18 December 2002, tendered 11 October 2016.
- <sup>42</sup> Transcript, Colleen Gwynne, 19 June 2017, p. 4488: lines 12 - 16.
- <sup>43</sup> Transcript, Marius Puruntatameri, 31 March 2017, p. 2407: lines 1 – 22.
- <sup>44</sup> Inquiries Act (NT), s 8(a).
- <sup>45</sup> Inquiries Act (NT), s 8(b), (c).
- <sup>46</sup> Inquiries Act (NT), s 9.
- <sup>47</sup> Inquiries Act (NT), s 12.
- <sup>48</sup> Inquiries Act (NT), s 33.
- <sup>49</sup> Transcript, Colleen Gwynne, 19 June 2017, p. 4486: lines 24-44. The Commission has been informed that from 25 July 2017, the Children’s Commissioner delegated authority under s. 51(1) of the Children’s Commissioner Act 2013 (NT) to an Assistant Commissioner, Coordinator Complaints and Investigation and Complaints and Investigation Officer: Ex;814.001, Delegation, 26 October 2016.
- <sup>50</sup> Transcript, Colleen Gwynne, 19 June 2017, p. 4487: line 45 – p. 4488: line 16.
- <sup>51</sup> Transcript, Neil Morgan, 27 June 2017, p. 5121: lines 35-38.
- <sup>52</sup> Transcript, Neil Morgan, 27 June 2017, p. 5122: lines 8-26.
- <sup>53</sup> Exh.608.000, Statement of Neil Morgan, 29 May 2017, tendered 27 June 2017, para. 6.
- <sup>54</sup> Exh.608.000, Statement of Neil Morgan, 29 May 2017, tendered 27 June 2017, para. 7.
- <sup>55</sup> Exh.608.000, Statement of Neil Morgan, 29 May 2017, tendered 27 June 2017, para. 8.
- <sup>56</sup> Exh.608.000, Statement of Neil Morgan, 29 May 2017, tendered 27 June 2017, para. 15.
- <sup>57</sup> Exh.608.000, Statement of Neil Morgan, 29 May 2017, tendered 27 June 2017, para. 21.
- <sup>58</sup> Exh.608.000, Statement of Neil Morgan, 29 May 2017, tendered 27 June 2017, paras 23-24.
- <sup>59</sup> Exh.608.000, Statement of Neil Morgan, 29 May 2017, tendered 27 June 2017, para. 43.
- <sup>60</sup> Exh.608.000, Statement of Neil Morgan, 29 May 2017, tendered 27 June 2017, paras 46-48.
- <sup>61</sup> Exh.031.001, Annexure 1 to the Statement of Robert Keith Hamburger, Report – A Safer Northern Territory through Correctional Interventions, 31 July 2016, tendered 5 December 2016, pp. 71-72.
- <sup>62</sup> Transcript, Jeanette Kerr, 8 December 2016, p. 502: lines 1-37; Exh.034.002, Schedule A to the Statement of Jeanette Kerr, A Safer Northern Territory through Correctional Interventions, Response to Recommendations – Youth Only, 2 December 2016, tendered 6 December 2016, p. 1, row 24.
- <sup>63</sup> Submission, Central Australian Aboriginal Legal Aid Service, 26 July 2017, para 9.3; Submission, Central Australian Aboriginal Legal Aid Service, 29 May 2017, paras 22-23.
- <sup>64</sup> Submission on Care and Protection, North Australian Aboriginal Justice Agency, August 2017, pp. 13-14.
- <sup>65</sup> Transcript, Donna Ah Chee, Andrew Walder, Liza Balmer, 28 May 2016, p. 4050: line 44 – p. 4051: line 7.
- <sup>66</sup> Exh.558.000, Statement of Andrew Jackamos, 14 June 2017, tendered on 23 June 2017, paras 12-13.
- <sup>67</sup> Exh.558.000, Statement of Andrew Jackamos, 14 June 2017, tendered on 23 June 2017, paras 12-18.
- <sup>68</sup> Exh.558.000, Statement of Andrew Jackamos, 14 June 2017, tendered on 23 June 2017, paras 18.
- <sup>69</sup> Exh.558.000, Statement of Andrew Jackamos, 14 June 2017, tendered on 23 June 2017, paras 12-21.



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DATA AND  
INFORMATION -SHARING



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# DATA AND INFORMATION-SHARING

## INTRODUCTION

Collecting and analysing data<sup>1</sup> is vital to the proper functioning of government as it is a basic expectation that public policy will be, as far as possible, evidence-based. Bearing in mind the importance of empirical data to the Commission's inquiry into the child protection and youth justice systems of the Northern Territory, the Commission sought and the Northern Territory Government provided a wide range of information, including statistics and statements from a number of witnesses.

Within this context, this chapter considers important gaps in the use and analysis of data relating to the Northern Territory's child protection and youth justice systems and the limitations of the existing database systems which contribute to those gaps. Embedding evidence-driven practice in child protection and youth justice policy should build on existing efforts to better understand how the Northern Territory performs in terms of youth recidivism, the success of its youth diversion programs, and how its systems compare nationally.

## THE IMPORTANCE OF DATA

Collecting and analysing quantitative and qualitative data can provide an evidence base for developing government programs, monitoring their implementation and evaluating their effectiveness. It helps ensure successful programs are supported and unsuccessful programs are modified or abandoned. An empirical evidence base provides confidence that taxpayers' dollars are being used in a way that produces the best return for society and, particularly in the context of child protection and youth justice, for the individual child and his or her family.

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The Review of the Northern Territory Youth Justice System: Report (Carney report) observed:

*The importance of accurate, relevant and easy-to-obtain data cannot be overstated—it forms the basis of government decisions and allocations of resources. Investment of financial and staff resources are required if there is to be improved data collection.<sup>2</sup>*

The Commission heard evidence from the Victorian Commissioner for Aboriginal Children and Young People about the fundamental importance of evidence in making programs accountable and transparent:

*'I think evidence and [the] recording of decisions are – both in child protection and youth justice – are fundamental to good practice into transparency and accountability, whether it's decisions made in child protection as to specific incidents or overall systemic practice, and whether it's good or bad, you know, the record keeping is fundamental into us maintaining a good system.'<sup>3</sup>*

This was echoed by the former Executive Director of Youth Justice who told the Commission:

*'...[A]cross the [T]erritory programs, be they delivered by government agencies directly or indirectly by NGOs... must have thorough evaluation and monitoring processes in place so [the Northern Territory] can actually build a baseline set of data that demonstrates quite clearly if something is being effective or not.'<sup>4</sup>*

A former Northern Territory Attorney-General and Minister for Corrections acknowledged:

*'Records are the heart of government. That's how they measure their own successes or otherwise going forward. The maintenance of those records is a matter of policy. The oversight of those records is a matter of operational input.'<sup>5</sup>*

Other witnesses discussed the importance of collecting and analysing robust data to enable programs to be evaluated and to inform or measure the success of reforms and policy changes.<sup>6</sup> The Northern Territory Government specifically recognises the critical role of data in its *Youth Justice Framework 2015–2020*, which includes the following actions:

- reform youth diversion programs, making them accountable and achievable
- establish integrated tools and systems to strengthen communication and information sharing and more effectively manage referrals, and
- embed a monitoring and evaluation framework to accompany the Framework.<sup>7</sup>

The collection of reliable, comprehensive and comparable data that can be used effectively is essential to those aims.

The collection and analysis of data is also important for a human rights-based approach to law, policy and practice that is capable of holding governments to account. For example, the collection and analysis of key data is necessary to monitor whether governments are meeting their obligations under the *United Nations Convention on the Rights of the Child* and other human rights instruments. In its concluding observations in 2012, the United Nations Committee on the Rights of the Child recommended that Australia:

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*[S]trengthen its existing mechanisms of data collection in order to ensure that data are collected on all areas of the Convention in a way that allows for disaggregation, inter alia by children in situations that require special protection. In that light, the Committee specifically recommends that the data cover all children below the age of 18 years and pay particular attention to ethnicity, sex, disability, socio-economic status and geographic location.<sup>8</sup>*

This observation mirrored the *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, which recommended Australia:

*Renew national partnership arrangements between the Commonwealth and state jurisdictions, enhance coordination between federal- and state-level implementation and improve data collection for more effective annual monitoring of progress.<sup>9</sup>*

## DATABASE LIMITATIONS

Throughout its inquiry, the Commission heard evidence about the systems which capture relevant data in the child protection and youth justice systems in the Northern Territory, including:

- **The Integrated Offender Management System (IOMS) and its predecessor the Integrated Justice Information System (IJIS):** both of these are held within the Northern Territory Department of the Attorney-General and Justice and contain criminal justice information, including the number of youth apprehensions and young people in detention.<sup>10</sup>
- **The Community Care Information System (CCIS):** a client management system held within Territory Families that records child protection notifications and other information.<sup>11</sup>
- **The Police Real Time Online Management System (PROMIS):** a recordkeeping system used by Northern Territory Police, including by the Youth Diversion Unit, that holds individual files and records on young people who have participated in youth diversion, but not a database from which statistics can easily be extracted.<sup>12</sup>
- **The Primary Care Information System (PCIS):** an electronic medical records database held within the Northern Territory Department of Health that contains primary healthcare records for individuals who access services, including remote health services and services provided in prisons and youth detention centres, from various service providers within the Department.<sup>13</sup>

There were cases where the Northern Territory Government could not produce information the Commission requested in the required form and within the time available, because compiling them required individual files to be manually reviewed.<sup>14</sup> For example, the number of children in care who had been provided with contraceptive implants or the number of children who had failed to complete a youth diversion program.

The Acting General Manager of Youth Justice in Territory Families told the Commission that *'there are a lot of young people, in [her] experience, that have had contact with broader child protection system, then go on to youth detention'*.<sup>15</sup> However, because the CCIS and IOMS systems *'don't talk to each other'*, data that may be available on each system cannot be linked by a relevant cross-identifier.<sup>16</sup> As a result, the Northern Territory Government did not hold, and could not easily

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produce, comprehensive statistics concerning children in care who have also entered detention and instead provided data to the Commission to conduct its own analysis.

The Commission separately requested data showing each person charged with a child sexual offence during the relevant period, including: the age, gender, residence, Indigenous status and other details of the alleged offender; the date of the charge; the nature and location of the offence; the relationship between the offender and victim; and the same data breakdown for each arrest of a person. The Northern Territory Government could not produce this in a single dataset as the data existed on two databases: IJIS held charge and conviction details and PROMIS held victim and incident details. These databases could not be directly linked to produce the requested data because IJIS identifies cases by offender and does not match the relevant PROMIS record, which reports by victim.<sup>17</sup>

There was evidence that improving systems, and sharing information between them, could also assist in service delivery. For example, a General Manager of the Top End Health Service within the Northern Territory Department of Health considered that access to child protection information stored in CCIS would be 'incredibly useful' for health staff delivering services to young people in detention. She agreed that privacy issues could be managed if such information were shared across departments.<sup>18</sup> Specifically, the General Manager explained that access to demographic information and details of the relevant case manager for a young person would ensure that information about identified issues could be appropriately shared.<sup>19</sup>

The Commission accepts that there is an inherent system cost in including data fields which can be extracted for statistical analysis, relating to data entry, training and system design, among other things.<sup>20</sup> The Commission also accepts that bespoke statistical analysis typically requires an element of manual review, as data collected for a particular purpose or requirement may be ill-suited for another purpose, particularly if that requirement or purpose has not been identified previously. The Commission also accepts that the timeframes in which to generate statistics for the Commission were sometimes limited.<sup>21</sup>

However, the Northern Territory Government has been on notice for a number of years that it needed to improve its data collection and analysis. For example, in 2011 the Carney report recommended improved data collection, interpretation, analysis and dissemination, including the need for Territory-wide and nationally consistent systems and measurement indicators. Centralised systems for data collection and reporting across agencies and stakeholders were essential to those recommendations.<sup>22</sup>

The Northern Territory Government gave evidence that some investment to improve systems is on the horizon. The Senior Program and Policy Officer for Youth Services within the Northern Territory Police gave evidence that the Northern Territory Police is developing a proposal to replace PROMIS, and that the Northern Territory Government had allocated \$45 million to the project. The Commission understands that the objective is to develop more user-friendly data and allow information-sharing among agencies, to ensure a more effective use of youth-related data in the future.<sup>23</sup>

## INFORMATION-SHARING

The Northern Territory Government is also focused on improved data-sharing practices.<sup>24</sup> Territory Families has developed a business case to put in place a 'data brokerage system' that facilitates information-sharing between agencies at an operational level. This is designed to facilitate efforts between agencies to support vulnerable families in accessing appropriate services.<sup>25</sup>

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As part of current reform activities, Territory Families is also replacing the current client case management record-keeping system, to improve integration with other agencies.<sup>26</sup> Territory Families acknowledged that their current case management system is outdated and does not provide the required functionality.<sup>27</sup>

This follows previous reforms which clarified privacy concerns associated with information sharing. At the time of the *Growing them strong, together – Promoting the Safety and Wellbeing of the Northern Territory’s Children – Report of the Board of Inquiry into the Children Protection System in the Northern Territory* (BOI report), the interaction between the *Care and Protection of Children Act* (NT), the *Information Act* (NT) and the *Privacy Act 1988* (Cth) created confusion for employees dealing with information sharing.<sup>28</sup> The BOI report recommended that legislation and policies which acted as a barrier to information-sharing be amended.<sup>29</sup> In response to these recommendations, an external reference group comprising representatives from government and non-government organisations was established. It found that there was a general lack of understanding of what information could be shared and with whom, and a poor understanding of roles and responsibilities.<sup>30</sup> Funding was committed for training on information-sharing and the development of memorandums of understanding, protocols and guidelines on information-sharing.<sup>31</sup>

In 2012, amendments to the *Care and Protection of Children Act* were introduced to improve information-sharing between service providers and agencies, including to clarify that the safety and wellbeing of the child is paramount and to enable certain organisations and individuals to be recognised as information-sharing authorities.<sup>32</sup> As required by the legislation,<sup>33</sup> a number of implementation tools, including administrative guidelines, training and a designated website where documents could be downloaded were designed.<sup>34</sup>

As a result, the *Care and Protection of Children Act* encourages the sharing of information. It provides that to ensure the safety and wellbeing of children, particular persons and bodies with responsibilities for children can request or give information about the child.<sup>35</sup> The list of ‘information sharing authorities’ is broad and includes registered foster carers, police officers, school principals and registered teachers, people employed by non-government organisations providing a service to children, case managers in the youth justice system and public servants acting under Northern Territory law providing a service to children.<sup>36</sup> To achieve this purpose, the underlying principle is that rules around confidentiality and privacy should not prevent the sharing of information to ensure the safety and wellbeing of children.<sup>37</sup> The Act protects people who give information under this regime.<sup>38</sup> These provisions have effect despite the operation of any law of the Northern Territory that prohibits or restricts the disclosure of information.<sup>39</sup>

## KEY GAPS IN DATA USE AND ANALYSIS

More can be done to address some of the limitations in existing database systems, which currently restrict the Northern Territory Government’s ability to use existing data held on separate systems in a meaningful and efficient way.

Some key examples of gaps in the use and analysis of data in the Northern Territory, which the Commission encountered in its work, are described below.

### The provision of nationally consistent data

In its submission to the Commission, the Australian Institute of Health and Welfare (AIHW) noted



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that it routinely analyses data on key indices in youth justice and child protection using two national datasets that it collects from each state and territory:

- the Child Protection National Minimum Data Set (CP NMDS), which compiles individual files according to nationally agreed definitions and technical specifications. It includes data relating to: notifications, investigations and substantiations; care and protection orders; and out-of-home, foster, relative and kinship care,<sup>40</sup> and
- the Juvenile Justice National Minimum Data Set (JJ NMDS), which includes information on characteristics of, and indices relating to, young people under youth justice supervision.<sup>41</sup>

The AIHW said that the quality and coverage of data in its child protection data collection was 'good', noting that its data was widely viewed as an 'authoritative source'.<sup>42</sup>

The AIHW submission was not evidence before the Commission and its assertions have not been tested. However, the JJ NMDS was addressed generally in the evidence before the Commission, including in witness statements and AIHW reports that were tendered into evidence.<sup>43</sup> The Commission regards those reports as reliable and notes that they are used for many purposes in informing policy.

The Deputy Director of the Criminal Justice Research and Statistics Unit at the Northern Territory Department of the Attorney-General and Justice gave evidence to the Commission that the Northern Territory supplied information in most categories of the JJ NMDS. However, due to additional requirements imposed by the AIHW, certain database system changes, and resourcing constraints, the Northern Territory did not comply with the AIHW's requirements in respect of the specific form in which that information was to be provided. The Northern Territory Government estimated that it would take on average one person three months to be able to comply with the AIHW requirements.<sup>44</sup>

The AIHW echoed this in its submission, stating that while the Northern Territory provided non-standard data to assist with national reporting, it did not provide data compliant with the national data standards (required for inclusion in the JJ NMDS).<sup>45</sup> Western Australia is the only other jurisdiction in this position and was working to provide compliant data for 2015–16.<sup>46</sup>

In 2011, the Carney report stated:

*The Juvenile Justice National Minimum Dataset is a national data collection centre under the auspices of the Australian Institute of Health and Welfare, established in 2004. It contains information on all young people from 2000–01 who were supervised by Australian juvenile justice agencies, both in the community and in detention.*

*Relevant data specific to the Territory's youth justice needs would assist to identify the complexity of individual, community and regional motivations and behaviours for youth justice trends, counter historical data gaps and develop a comprehensive Territory-specific body of research to establish longitudinal and regional comparisons.*

*While the Review notes that the establishment of national and intra-jurisdictional data standards is an ongoing policy reform agenda, comprising various intergovernmental working groups and advisory bodies, there is more that the Northern Territory Government can do to expedite its participation in this reform agenda and, importantly, to get its own house in order.<sup>47</sup>*

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The Commission accepts the Northern Territory Government's submission that its non-compliance with the JJ NMDS requirements to date is due principally to a lack of resources rather than data. However, this issue has been raised since 2011 and evidence suggests that the Northern Territory was able to provide JJ NMDS data for the years 2000-01 to 2007-08.<sup>48</sup>

The Commission endorses the comments from the Carney report above. Providing this data would deliver a dividend in that a comprehensive Territory-specific body of research could be developed by the AIHW as part of its ongoing work. It would also ensure that the Northern Territory's performance on key indices could be measured against other states and territories, which is central to developing and improving programs and ensuring accountability and transparency.

### **Recommendation 41.1**

**The Northern Territory Government develop a plan, in consultation with the Australian Institute of Health and Welfare, to work progressively towards complying with the Juvenile Justice National Minimum Data Set requirements within a reasonable time but not more than two years from the date of this report.**

## **Statistics on youth recidivism**

Recidivism statistics are a very useful measure of the effectiveness of government intervention in youth justice. Without reliable measurements of recidivism, government has little empirical evidence on which to assess the effectiveness of its policies and programs.

Recidivism statistics generally measure whether a person reoffends within a fixed window of time running from their date of release.<sup>49</sup> Although adult recidivism is routinely measured, there is no consistent definition of youth recidivism which is routinely reported against.<sup>50</sup>

However, in 2015, the AIHW used JJ NMDS data to produce a report measuring the number of young people returning to sentenced youth justice supervision within six and 12 months of release. Sentenced youth justice supervision means either supervised community-based sentences (such as probation) or a sentence of detention.<sup>51</sup> The AIHW recognised the limitations of its statistics, including that the JJ NMDS did not contain offence dates.<sup>52</sup> This required that the 'time to return' be measured to the start of the next supervised sentence, which introduced a risk of including 'pseudo-recidivism', where the second sentence actually relates to an offence committed before the first sentence.<sup>53</sup> Nevertheless, the report provided some useful statistics on the percentage of young people who returned to supervised youth justice supervision, including breakdowns by gender and Indigenous status. The Northern Territory was not included in the analyses because it did not provide JJ NMDS data.<sup>54</sup>

This is significant, as the AIHW noted:

*Youth justice departments are responsible for providing young people serving supervised sentences with services designed to reduce the frequency and seriousness of any future offending. The rate of return to sentenced supervision is an indicator of the*

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*effectiveness of these services, although factors beyond the control of these departments will also have an impact on levels of reoffending and return to sentenced supervision.<sup>55</sup>*

The Director of the Criminal Justice Research and Statistics Unit within the Department of Attorney-General and Justice accepted that recidivism figures ‘are a critical whole-of-government social indicator’ and that although many of the problems that contribute to offending and reoffending may be outside the purview of the justice system, nonetheless such indicators ‘must be measured by the justice system’.<sup>56</sup>

In respect of youth recidivism statistics in the Northern Territory, the Carney report stated:

*Some evidence on recidivism rates was provided by Northern Territory Police ..., linking recidivism with participation in youth justice conferences...; however, this information was program specific. [Court Support and Independent Offices] advises systems are in place to track youth recidivism in the courts, though currently this information is not routinely collated or reported. The Review was unable to access this information in the limited timeframes available.*

*The Review is not aware of a central database or mechanism for tracking recidivists across the various streams of the criminal justice system in the Territory. This should be improved.<sup>57</sup>*

The approach to tracking recidivism in the Northern Territory has not materially changed since the Carney report. The Northern Territory Government told the Commission that it did not produce youth recidivism statistics because:

- historically, they had not been collected at a national level
- there are no nationally agreed definitions for youth recidivism, and
- compiling and analysing the data would be resource-intensive and the relevant unit in the Northern Territory Department of Attorney-General and Justice does not have those resources.<sup>58</sup>

The Northern Territory Government did produce data on the number of periods of custody commenced by youths by receiving institution, financial year, gender, Indigenous status and age, although this data was not an analysis of recidivism.<sup>59</sup>

By way of contrast, the Northern Territory Australian Aboriginal Justice Agency (NAAJA) must report biannually on recidivism rates in respect of its Throughcare Program to comply with its funding obligations. NAAJA has recidivism statistics for its relatively modest number of youth specific cases files opened since 2010.<sup>60</sup> The Manager of NAAJA’s Throughcare Program told the Commission:

*‘Our reporting requirements notwithstanding, NAAJA Throughcare has an interest in collecting rich statistical data to help us evaluate the program and identify particular areas of focus. We have never received funding to develop a specific data base for throughcare and, as a result have over time been adapting NAAJA’s Client Management System to capture the data required by [the Department of Prime Minister and Cabinet].’<sup>61</sup>*

The Commission accepts that recidivism statistics are not the only measure of whether a youth justice

program is effective, and that qualitative assessments will still be required. However, this information is an important measure and such statistics would boost the ability of the Northern Territory Government to make robust evidence-based decisions about how it spends government funds in youth justice programs. It may be that no Australian jurisdiction regularly produces youth recidivism statistics, or that there are resourcing or definitional issues that must be overcome. However, the Commission considers there would be a net benefit in developing a nationally consistent framework for the regular collection and publication of youth recidivism statistics to help inform future investment in youth justice programs.

### **Recommendation 41.2**

**The Northern Territory Government establish systems necessary to enable it to produce youth recidivism statistics for all its major programs and publish that data on an annual basis.**

### **Recommendation 41.3**

**The Commonwealth Government commission the Australian Institute of Health and Welfare to:**

- **develop a nationally agreed definition or definitions for the collection of youth recidivism statistics**
- **collect and publish statistics on youth recidivism from around Australia, and**
- **provide technical support to states and territories to assist their collection of data under the agreed definition.**

## **Statistics on youth diversion programs**

The youth diversion regime under the *Youth Justice Act* (NT) involves referring young people who meet the criteria in sections 39 or 64 of that Act. Once a referral has been made and suitability for diversion has been determined, the young person may participate in various programs, such as counselling or alcohol and drugs programs, and/or community service as part of their overall diversion plan.<sup>62</sup>

The Northern Territory Government provided the Commission with some statistics on youth diversion. However, it was unable to provide the maximum number of referrals that a youth diversion program was able to or did accept, though it was aware that most providers were under-resourced and had more referrals than they could service.<sup>63</sup> The Commission was told that data on the number of young people who successfully completed individual diversion programs was not readily available.<sup>64</sup> Statistics were available for the number of verbal and written notices issued, and family or victim/offender conferences held. However the only readily available data on referrals to programs was for drug diversion, with no data for counselling or other programs.<sup>65</sup> There is no available data on the average period for which young people were required to attend a diversion program.<sup>66</sup>

As a result, the Northern Territory Government cannot readily say how many young people have been referred to a youth diversion program, how many were refused due to a lack of services, and how long those who were accepted stayed in the program. The Deputy Chief Executive Officer of Territory Families described the diversion data as 'inadequate' and agreed it was an area for improvement.<sup>67</sup>

## Recommendation 41.4

**The Northern Territory Government develop a plan to collect readily accessible data and produce comprehensive statistics on the number of young people referred to diversion programs and the outcomes of those referrals.**

### Reunification statistics

As set out in Chapter 33 (Children in out of home care), the Northern Territory Government does not maintain a dataset of the number of young people removed from their families and taken into care, and who are subsequently returned to the family from which they were removed. Reunification information is recorded on each child's casefile but is not available in aggregate. Instead, a proxy is used that can identify how many children or young people are returned to a family member but not necessarily the family unit from which they were taken.<sup>68</sup>

The Northern Territory Government also does not maintain an aggregate dataset on the number of young people who left out of home care and then subsequently returned.

In a submission to the Commission, the Secretariat of National Aboriginal and Islander Child Care (SNAICC) identified statistics on out of home care and familial reunification as a gap in available information:

*Currently, across all jurisdictions, there is no publicly available data to describe the rate at which Aboriginal and Torres Strait Islander children are reunified with their families and the length of time they spend in out-of-home care before reunification occurs. Data from the most recent Report on Government Services include the number of children exiting out-of-home care and length of time prior to exit during a financial year by Indigenous status. However, the data is not disaggregated by child age and exit type; therefore children exiting care do not necessarily represent children reunified. The Productivity Commission recognises this data gap, identifying "safe return home" as an indicator to be developed for future reporting.<sup>69</sup>*

### Linking data from different systems

The available information suggests – and the Northern Territory Government accepts – that there is a high degree of overlap between the youth justice and child protection systems.<sup>70</sup> However, the Northern Territory Government does not hold aggregate datasets on the number of children in out of home care who have also been in detention. In addition, CCIS, IOMS and IJIS do not interact in a way that allows data to be exchanged so it can only be linked manually.<sup>71</sup> As a result, there is a real risk that those working in the youth detention system may have no knowledge of a young person's history in the child protection system, and a young person's child protection case manager would not necessarily know if the young person had been in trouble while in youth detention. The Acting General Manager Youth Justice at Territory Families commented that the data collected about children who are in both systems through the CCIS was entered manually and therefore 'quite flawed'.<sup>72</sup> She agreed 'absolutely' that there was a need to improve this area of data collection and that it would help managers assess the effectiveness of any proposed interventions.<sup>73</sup>

Dr Katherine McFarlane, a Senior Lecturer at Charles Sturt University, told the Commission that

there is a general lack of understanding about the connection between care and the criminal justice system across Australia, and that research on out of home care status in the criminal justice system is particularly lacking.<sup>74</sup> This is not a criticism of the Northern Territory, but it could lead the way in ensuring its systems allow for the identification of out of home care status where relevant.

### **Recommendation 41.5**

**The Northern Territory Government develop compatibility between the child protection and youth justice data systems for the efficient exchange of information.**

## **Pregnancies of children and young people in care**

The Commission sought documents from the Northern Territory Government showing:

- the total number, ages and locations of girls who had been in care and had become pregnant, given birth or been given contraceptive implants, and
- the total number, ages and locations of boys who had been responsible for a pregnancy.

This material was not readily available to the Northern Territory Government with the most comparable source of information being a 'reportable incident' dataset maintained by Territory Families that only captured information from 2012 onwards. Prior to this, records were not kept in a way that could be aggregated. Further, the dataset included minimal information on boys who have fathered a child or been responsible for a pregnancy, and whether other forms of contraception – for example, the oral contraceptive pill – have been used by children in the care of the Chief Executive Officer. Collating the information requested would require a manual review of each child in care's file and this was not possible within the timeframe requested.

The Commission accepts that data on incidents of pregnancy and contraception is recorded on each girl's or young woman's file. However, the Commission considers that these are fundamental measures of health and welfare for children and young people in care, and that it would be useful and, indeed, possibly material to agencies' work if data was compiled in summary fashion and reviewed by the relevant agencies on a regular basis to assist in directing departmental policy and responses.

## **EMBEDDING EVIDENCE-DRIVEN PRACTICE**

The youth justice and child protection systems are areas of public policy where high-quality data is particularly important. They are expensive and involve significant government intrusion into citizens' lives. Inappropriate measures can have a significant impact on the lives of young people and their families.

The Commission heard several examples of interstate and overseas programs that illustrate the way strategic uses of data can inform good decision-making:

- In the Maranguka Justice Reinvestment Project in Bourke, New South Wales, data indicating a spike in crime during school holidays led the community to implement programs that engaged young people and their families, such as pop-up cinemas and extended local swimming pool hours.<sup>75</sup>

- In Cowra, New South Wales, data was used to calculate the cost of incarceration associated with particular types of offences to engage the Cowra community to consider alternative reinvestment in programs supporting housing, education, mental health services and employment skill development.<sup>76</sup> Data assisted in making the case that investing in measures that help prevent offending was a better use of funds than incarcerating offenders.
- Improvements in how the Ohio Department of Youth Services juvenile correctional agencies collected data was a key driver in reforming the state’s youth justice system. The leaders of the reform process persuaded staff members to reduce the use of isolation as a punishment, by presenting them with objective data to show that isolation caused rather than prevented incidents of misbehaviour and violence.<sup>77</sup>

Work by the Menzies School of Health on the Northern Territory’s child protection system also demonstrates an impressive use of data, based on data assembled for a National Health and Medical Research Council Data Linkage Partnership Project.<sup>78</sup> The Menzies School’s Professor Sven Silburn presented preliminary results of this work to the Commission, based on work he had done with the support of funding from Territory Families. This project is broad in scope, examining the circumstances of all Northern Territory–born children who turned 10 between 2010 and 2014. It has produced a number of preliminary findings with significant public policy implications. The major findings are discussed in detail in Chapter 30 (The child protection landscape), but include the following:

- half of all Northern Territory-born Aboriginal children have at least one notification for a child protection concern by the age of 10 which, in public health terms, is a humanitarian crisis<sup>79</sup>
- the data suggests that Territory Families is struggling, that the current system is not sustainable and that radical change is needed,<sup>80</sup> and
- for Aboriginal children aged 10 years and younger, living in remote or very remote areas did not appear to be associated with higher levels of involvement with the child protection system than in other places in the Northern Territory.<sup>81</sup>

The data sources Professor Silburn drew on have been assembled for some years and their analysis had been planned for future years, but the analytical project was only undertaken after a request by the Commission.<sup>82</sup> Professor Silburn suggested that Territory Families:

*‘is in a position where it does have data, but I think that the department has been very handicapped by the limited analytic and information resources that are available for it to do that kind of reflexive investigation of its own data...’<sup>83</sup>*

## CONCLUSION

The limitations of the Northern Territory Government’s ability to produce statistical data in the form required and in the time available was a recurring theme in the Commission’s investigations and affected the Commission’s examination of the youth justice and child protection systems. In some instances, no criticism can be made of the Northern Territory Government for the failure to generate bespoke statistics in the time available. However, there are a number of instances where the Northern Territory Government has been on notice of constraints in its generation of data in nationally consistent forms and its production of relevant statistical analysis that would enhance its ability to make sound, evidence-based policy decisions about its youth justice systems. The provision

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of nationally consistent data for the JJ NMDS and implementing a strategy to produce some measure of youth recidivism are among these instances. More attention could be dedicated to embedding an evidence-based practice to youth justice and child protection in the Northern Territory by improving the Northern Territory's database systems and investing in additional resources to support staff in their evaluation and analysis of government-funded program outcomes.



## ENDNOTES

- <sup>1</sup> The Commission has opted to treat the term 'data' as a singular noun, recognising that the term may also be used as a plural term in other contexts.
- <sup>2</sup> Exh.096.017, Carney Review of the Northern Territory Youth Justice System, 30 September 2011, tendered 17 March 2017, p. 166.
- <sup>3</sup> Transcript, Andrew Jackomos, 23 June 2017, p. 4865: lines 33-38.
- <sup>4</sup> Transcript, Salli Cohen, 27 April 2017, p. 3112: lines 22-25.
- <sup>5</sup> Transcript, John Elferink, 24 April 2017, p. 2884: lines 7-10.
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- <sup>9</sup> United Nations Special Rapporteur on the Rights of Indigenous Peoples, 2017, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia (A/HCR/36/46/Add.2)*, United Nations Secretariat: Geneva, para. 108(c).
- <sup>10</sup> Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, para. 8.
- <sup>11</sup> Exh.680.001, Statement of Sven Thormann, 4 January 2017, tendered 30 June 2017, para. 9.
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- <sup>16</sup> Transcript, Karen Broadfoot, 2 June 2017, p. 4317: lines 4-10.
- <sup>17</sup> Meeting between Solicitor Assisting the Royal Commission and Solicitor for the Northern Territory, 28 June 2017.
- <sup>18</sup> Transcript, Dr Christine Connors, 16 March 2017, p. 1268: lines 14-25.
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- <sup>21</sup> Submission, Northern Territory Government, Response to Notice of Adverse Material 53/17, 12 October 2017, paras 24, 27, 31, 34-39.
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- <sup>23</sup> Exh.363.000, Statement of Jennie Renfree, 1 May 2017, tendered 10 May 2017, para. 12.
- <sup>24</sup> Exh.647.000, Statement of Ken Davies, 30 June 2017, tendered 30 June 2017, paras 51-53.
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- <sup>26</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, para. 34(h).
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- <sup>29</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, recommendations 113-116.
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- <sup>33</sup> *Care and Protection of Children Act* s. 293H.
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- <sup>35</sup> *Care and Protection of Children Act (NT)* s. 293A(1); *Care and Protection of Children Amendment (Information Sharing) Act 2012 (NT)* s. 8.
- <sup>36</sup> *Care and Protection of Children Act (NT)* s. 293C(1).
- <sup>37</sup> *Care and Protection of Children Act (NT)* s. 293A(2).
- <sup>38</sup> *Care and Protection of Children Act (NT)* s. 293F.
- <sup>39</sup> *Care and Protection of Children Act (NT)* s. 293J.
- <sup>40</sup> Submission, Australian Institute of Health and Welfare, 23 November 2016, p. 5.
- <sup>41</sup> Submission, Australian Institute of Health and Welfare, 23 November 2016, p. 7.
- <sup>42</sup> Submission, Australian Institute of Health and Welfare, 23 November 2016, p. 6.
- <sup>43</sup> Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, paras 14-20;
- Exh.388.001, Annexure CW-1 to Statement of Carolyn Whyte, Australian Institute of Health and Welfare, *Young People Returning to Sentenced Youth Justice Supervision 2015*, tendered 12 May 2017, p. 14; Exh.654.022, Australian Institute of Health and Welfare, *Youth Detention Population in Australia*, December 2016, tendered 21 June 2017, p. 4-5, 17-18.

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- <sup>48</sup> Exh.388.001, Annexure CW-1 to Statement of Carolyn Whyte, 2015, tendered 12 May 2017, p. 22.
- <sup>49</sup> Exh.388.000, Statement of Carolyn Whyte, 21 March 2017, tendered 12 May 2017, paras 13.
- <sup>50</sup> Exh.388.000, Statement of Carolyn Whyte, 21 March 2017, tendered 12 May 2017, paras 11(a).
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- <sup>52</sup> Exh.388.001, Annexure CW-1 to Statement of Carolyn Whyte, 2015, tendered 12 May 2017, pp. 2-3.
- <sup>53</sup> Exh.388.001, Annexure CW-1 to Statement of Carolyn Whyte, 2015, tendered 12 May 2017, p. 3.
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- <sup>55</sup> Exh.388.001, Annexure CW-1 to Statement of Carolyn Whyte, 2015, tendered 12 May 2017, p. vi.
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- <sup>58</sup> Exh.388.000, Statement of Carolyn Whyte, 21 March 2017, tendered 12 May 2017, paras 15-18.
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- <sup>60</sup> Exh.378.000, Statement of Thomas Quayle, 21 April 2017, tendered 12 May 2017, paras 30-32.
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- <sup>62</sup> Exh.363.000, Statement of Jennie Renfree, 1 May 2017, tendered 10 May 2017, paras 42, 62(c).
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- <sup>64</sup> Exh.363.000, Statement of Jennie Renfree, 1 May 2017, tendered 10 May 2017, para. 116.
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- <sup>67</sup> Transcript, Jeanette Kerr, 8 May 2017, p. 3537: lines 3-8.
- <sup>68</sup> Exh.682.001, Statement of Sven Thormann, 20 June 2017, tendered 30 June 2017, paras 7-11.
- <sup>69</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. 15.
- <sup>70</sup> Transcript, Karen Broadfoot, 2 June 2017, p. 4316: lines 18-23.
- <sup>71</sup> Exh.491.000, Statement of Karen Broadfoot, 1 June 2017, tendered 2 June 2017, paras 126-130; Transcript, Leonie Wharburton, 22 June 2017, p. 4802: lines 10-19.
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- <sup>73</sup> Transcript, Karen Broadfoot, 2 June 2017, p. 4319: lines 14-29.
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- <sup>77</sup> Exh.632.000, Precis of evidence of Dr Kelly Dedel, 15 May 2017, tendered 29 June 2017, para. 17; Transcript, Dr Kelly Dedel, 29 June 2017, p. 5289: line 30 – p. 5290: line 13; Exh.632.002, Annexure 2 to precis of evidence of Kelly Dedel, Harrell, W & Dedel, K, 2015, *The Ohio Model: A Report on the Transformational Reform of the Ohio Department of Youth Services, 2007 – 2015*, 15 May 2017, tendered 29 June 2017, pp. 17-18.
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- <sup>82</sup> Exh.510.000, Statement of Sven Silburn, 12 December 2016, tendered 19 June 2016, paras 6-8.
- <sup>83</sup> Transcript, Sven Silburn, 19 June 2017, p. 4410: lines 35-38.

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FURTHER STRUCTURAL  
AND LEGISLATIVE  
CONSIDERATIONS



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# FURTHER STRUCTURAL AND LEGISLATIVE CONSIDERATIONS

## INTRODUCTION

The Commission has recommended immediate, medium- and long-term reforms to the child protection and youth justice systems throughout this report. If implemented, they will fundamentally change these systems and deliver better outcomes for Northern Territory children and families and make the community safer. In addition to these, there are two potential areas of reform that the Northern Territory Government could explore provided they did not disrupt the delivery of the more immediate reforms outlined in the rest of this report: the administrative structural vehicle for delivering child protection and youth justice services and a single, overarching Act that consolidates provisions relating to both systems. Further details about these potential reforms are set out below.

## GOVERNMENT STRUCTURES

A number of different departments have delivered child protection and youth justice services in the Northern Territory over the past 10 years, as outlined in Table 42.1 below.

**Table 42.1: Departments that have had responsibility for child protection and youth justice in the Northern Territory, 2006-2016.**

Child protection	Youth justice
Department of Health and Community Services (2006) <sup>1</sup>	Department of Justice (2006) <sup>7</sup>
Department of Health and Families (2008) <sup>2</sup>	Department of Correctional Services (2012) <sup>8</sup>
Department of Children and Families (2011) <sup>3</sup>	Territory Families (2016) <sup>9</sup>
Office of Children and Families (Department of Education and Children’s Services) (2012) <sup>4</sup>	
Department of Children and Families (2013) <sup>5</sup>	
Territory Families (2016) <sup>6</sup>	

The Northern Territory Government undertook significant internal restructuring of the public service following the Northern Territory election in 2016.<sup>10</sup> On 12 September 2016 it created the Department of Territory Families (Territory Families) as a stand-alone agency responsible for improving services and programs to families. The new department brought together responsibility for the key policy areas relating to children and families, including youth justice, child protection, domestic violence, multicultural affairs, seniors, and women’s and men’s policy.<sup>11</sup> The position of Minister for Children was also established, with responsibility for whole-of-government children’s policy.<sup>12</sup>

In October 2017 the Northern Territory Legislative Assembly passed the Youth Justice Legislation Amendment Bill 2017, which formally separates youth justice from the adult justice system. When the bill was introduced, the Minister for Territory Families advised that:

*‘These changes reflect our priority to have child protection and youth justice under the one portfolio as we recognise that children are different to adults and need to be treated as such. Every contact a child has with youth justice system should be seen as an opportunity to get them back on track and break the cycle of crime. Connecting our services from the highest levels of government provides the tools and resources for us to better support children and families to make the positive changes.’<sup>13</sup>*

The Act had not commenced at the time of printing this report.

### Placing child protection and youth justice within a single agency

The Commission heard from individuals and organisations concerned about positioning youth justice within the same agency as child protection on the basis that each has a fundamentally different aim. Child protection focuses on working with and strengthening parents and families, whereas youth justice focuses on rehabilitating children and young people who offend and keeping the community

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safe.<sup>14</sup> In a speech in which he advocated for a separate youth justice agency, the President of the Children’s Court of Western Australia argued that with competing aims, integrating the two systems within one agency would shift attention and funding away from children and young people in the youth justice system:

*‘If youth justice does go into another agency...however well intended that other agency may be, if the resources allocated to it are stretched or reduced, then resources would likely be diverted from youth justice to the detriment of youth and also the community.’<sup>15</sup>*

Keith Hamburger told the Commission of the potential conflicts of situating youth justice within Territory Families, explaining that families might resent that the agency with responsibility for strengthening families in child protection is also responsible for detaining their children.<sup>16</sup>

The Northern Territory Government has taken a different view. In evidence to the Commission Territory Families advised that placing youth justice and child protection in the same agency allows for expertise and efficiencies to be shared across the systems.<sup>17</sup> Integrating the two functions means that policies and directives will *‘connect to one another and reflect joined up interventions and case management across systems’*<sup>18</sup> Territory Families told the Commission that the previous functional separation of the two systems did not reduce the risk that children and young people interacting with the child protection system will become involved in the youth justice system.<sup>19</sup>

## Structures for administering youth justice and child protection

The Commission also received evidence about the vehicle through which these services could be delivered.

### Statutory authority

The North Australian Aboriginal Justice Agency (NAAJA), Central Australian Aboriginal Legal Aid Service and Mr Hamburger recommended creating an independent statutory authority to deliver either youth justice services or child protection services or both.<sup>20</sup> They recommended that the authority be governed by a board with several Aboriginal members, be chaired by an Aboriginal person, be accountable to the relevant Minister and be operationally independent from the relevant government department. That government department would retain responsibility for strategic policy and overseeing the agency’s operations.

NAAJA’s proposal is modelled on the Irish Child and Family Agency, Tusla, but specifically adapted for the Northern Territory context.<sup>21</sup> Tusla was created as an independent legal entity to bring together child welfare and protection services in Ireland, which had previously been delivered across several government agencies and departments.<sup>22</sup> Tusla does not incorporate youth justice. As the agency was only established in 2014, there is limited information available on its success in addressing the problems it was established to overcome. The *“A Safer Northern Territory through Correctional Interventions” - Report of the Review of the Northern Territory Department of Correctional Services* (Hamburger report) recommended creating a statutory authority with responsibility for adult corrections and youth justice services only.<sup>23</sup> Mr Hamburger considered that creating a statutory authority was a *‘sort of structural “circuit breaker”’* of reform that was required to



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ensure significant improvements in the Northern Territory justice system.<sup>24</sup>

Proponents of a statutory authority argue that there are benefits in being governed by a board and legally separate from the government as it allows a high degree of managerial autonomy, and some degree of protection from partisan political approaches and changing policy over election cycles.<sup>25</sup> Under this model, the Minister would set the agency's overall strategic direction, but day-to-day service delivery would be a matter for the authority.<sup>26</sup> The statutory authority would be required to table reports in Parliament and respond to any parliamentary inquiries or questions, in addition to having financial and performance-based reporting obligations to the responsible Minister. By bringing relevant services together in a single agency, proponents argue that a statutory authority could address the current fragmentation and siloing of responsibilities related to youth justice and care and protection, and the subsequent lack of accountability.<sup>27</sup> All proposals noted the need to involve the Aboriginal community in establishing and delivering the statutory authority.

There are also arguments as to why a statutory authority may not be appropriate for delivering child protection and youth justice services. While greater accountability is one of the reasons put forward for establishing a statutory authority, greater operational independence could lead to less accountability in terms of performance and less responsibility for gaps in service delivery.<sup>28</sup> Independent statutory authorities do not have the same direct line of accountability as government departments, which are responsible to the government and thus to the Parliament. The Commission is also of the view that statutory powers that enable the detention and removal of children and young people from their families should only be exercised by government, not an independent agency.

A statutory authority would have to be well positioned to work collaboratively with relevant government departments, such as Health and Education, to ensure a holistic approach to youth justice and child protection. One of the current criticisms of the delivery of these services in the Northern Territory is the absence of a well-coordinated, wholeofgovernment approach that adequately considers the entirety of a child or young person's situation.<sup>29</sup> It is possible that having an independent statutory body delivering these services could compound any existing fragmentation.

Whether a body responsible for removing children should also be responsible for policies relating to the welfare of children and young people would need to be considered. The Irish model separates these responsibilities: the Department of Children and Youth Affairs has broad policy responsibility, and Tusla has an operational function. Alternatively, integrating both functions could promote a streamlined approach.

### ***Different departmental structures***

Another suggestion for structural change is a ministry or department that brings together all key services related to children and young people. This agency would be responsible for maternal and child health and development, alcohol and other drug services, mental health services, prevention and early intervention, care and protection and youth justice. This is different to the current Territory Families structure, which does not integrate all services, particularly in relation to children and young people's early health and development needs.

Danila Dilba Health Service proposed structural reform broadly modelled on New Zealand's approach. They argue that this approach would provide a single point of accountability and

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authority for administering the child protection and youth justice functions, fostering an organisational culture that prioritises children and young people.<sup>30</sup> The New Zealand Ministry for Vulnerable Children was established on 1 April 2017 and focuses on the needs of vulnerable children and young people, as well as addressing Indigenous overrepresentation in the child protection and youth justice systems.<sup>31</sup> The Ministry will provide five core services for children and young people in the areas of prevention, intensive intervention, care support, youth justice and transition support, implemented over the next five years.<sup>32</sup>

## Maintaining continuity

The Commission acknowledges that all of these proposals have merit. However, any decision to change the model for delivering youth justice and child protection services must be viewed within the broader political and policy environment, and in the context of the recent history of portfolio changes.

The Northern Territory Government has acknowledged the challenges associated with so many administrative changes and highlighted that establishing Territory Families is an opportunity to embed reform in youth justice and child protection services.<sup>33</sup>

Territory Families is already delivering a program of reforms and should be given more time to demonstrate its ability to deliver youth justice and child protection services. The experience in other jurisdictions is that major machinery-of-government changes can take several years to deliver the expected benefits. For example, the full implementation of New Zealand's Ministry for Vulnerable Children has been planned over a four- to five-year period and Ireland's move to a statutory authority was apparently phased in over three to four years.<sup>34</sup> The Northern Territory Government told the Commission that it will implement its broader reform agenda over four years,<sup>35</sup> which the Commission supports.

The Commission considers that the Northern Territory Government will have limited capacity to deliver major policy and service delivery reform if it has to undertake further structural or machinery-of-government changes simultaneously. Making further significant changes at this stage risks diverting focus from implementing the immediate and necessary changes required to deliver appropriate services to children and young people and their families.

For these reasons the Commission recommends the current structure remain in place. However, the above proposals merit further consideration and investigation in the future, which would also provide an opportunity for the government to reflect on the success of Territory Families in delivering its reform agenda.

As discussed elsewhere in this report, in the intervening period the Commission recommends a number of internal changes to the administration of youth justice and child protection, to ensure the current system operates as effectively as possible. One of the most important is an enhanced oversight mechanism through a Commission for Children and Young People, as discussed in Chapter 40 (A Commission for Children and Young People).

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## A SINGLE ACT COVERING CHILD PROTECTION AND YOUTH JUSTICE

Previous chapters have outlined failings in the child protection and youth justice systems of the Northern Territory. The legal frameworks for those systems over the relevant period were the *Care and Protection of Children Act (NT)* and the *Youth Justice Act (NT)*. The Commission has recommended immediate amendments to both of these Acts as well as more fundamental reforms to those systems in Chapter 27 (Reshaping youth justice), Chapter 28 (A new model for youth detention) and Chapter 39 (Changing the approach to child protection), to make the child protection and youth justice systems child-centric and focused on the individual needs of children and young people.

In this context, there is merit in considering whether these systems should be covered by a single Act, particularly as both systems will be better integrated with continuity of caseworkers and a specialist Children's Court to make orders relating to both.

### Crossover between the child protection and youth justice systems

As a practical matter, both systems deal with persons under the age of 18 and many children in detention are subject to care orders or have had dealings with the child protection system. This is covered in detail in Chapter 35 (The crossover of care and detention). A single Act would streamline dealings with children who have contact with both systems, and ensure a better targeted and individualised response.

### A holistic, child-centric approach

The Commission has recommended that the child protection and youth justice systems both focus on prevention and early intervention to enhance a child's wellbeing and development, to better protect them from harm, to keep families and communities together, and to ensure fewer children are subject to care orders or detained.

By consolidating the government's powers, functions and responsibilities in relation to vulnerable children, young people and families in one piece of legislation, the system can offer a consistent overarching philosophy and a flexible package of services to follow individuals through any engagement with either the child protection or youth justice system, while focusing on minimising that engagement.

### Current administrative arrangements

Since one government department has been responsible for the child protection and youth justice systems since September 2016, a single piece of legislation could assist to break down any silos within the bureaucracy, simplify the management and deployment of staff and allow for enhanced relationships with allied agencies, families and children.

A single Act would also support the creation of a new specialist Children's Court, see Chapter 27 (Reshaping youth justice) and Chapter 25 (The path into detention), as the powers and functions of

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the court would be located in a single Act and in exercising those powers the court would only have regard to a single piece of legislation.

## Precedents in other countries

In recent years, comprehensive legislative change in New Zealand saw reform of the *Children's and Young People's Well-being Act 1989* (NZ) (in Maori, the *Oranga Tamariki Act 1989* (NZ)). The *Oranga Tamariki Act* regulates New Zealand's child protection and youth justice systems and sets out the jurisdiction of the Youth Court, District Court and Family Court. Alongside this legislation, the *Vulnerable Children Act 2014* (NZ) has specific provisions for setting government priorities for vulnerable children and preparing a vulnerable children's plan, among other things. However, for the most part, the *Oranga Tamariki Act* regulates the entire system and is administered by the Ministry of Vulnerable Children, *Oranga Tamariki*.

In Scotland, the *Children and Young People (Scotland) Act 2014* (Scot) reformed the delivery of children's services. Among other things it provides for a single planning approach for children who need additional support from services; creates a single point of contact around every child or young person; ensures coordinated planning and delivery of services with a focus on outcomes; and provides a holistic and shared understanding of a child or young person's wellbeing.<sup>36</sup>

The *Children and Young People Act* also reformed the *Children's Hearings (Scotland) Act 2011* (Scot), which establishes a Children's Hearings system for children and young people who might be at risk of harm where they live, or are at risk of committing or have committed offences. Local community members are trained and sit as a member of a panel convened in private with the child, and their family if relevant, to understand their circumstances before deciding whether to apply a compulsory measure of supervision.<sup>37</sup> This might include placement in secure accommodation.<sup>38</sup>

The New Zealand and Scottish legislation both take a holistic approach to the needs of at-risk children and young people and have a coordinated approach in legislation and practice to those involved in both the child protection and youth justice systems.

## Scope of the new Act

The Commission considers any legislative review that considers the creation of a single Act should also explore incorporating provisions relating to the following, among other things:

- police powers, including the decision to arrest, police investigative procedures, charging, detention in custody and police questioning
- access to legal representation
- criminal procedure, including around disclosure of evidence
- cross-border issues
- accreditation of legal practitioners, and
- access to interpreters.

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## Reform process

Territory Families has committed to reviewing the *Care and Protection of Children Act*, the *Youth Justice Act* and the *Adoption of Children Act (NT)* in 2017–18.<sup>39</sup> This is an appropriate opportunity to consider creating a single Act. To do this, the Northern Territory Government should draw on the considerable non-government expertise available in the Northern Territory. It should establish a consultative working group to guide this legislative review, comprising representatives from government and civil society, the legal services, the health sector and both Aboriginal and non-Aboriginal communities in the Northern Territory to guide this legislative review.

The Northern Territory Government should also seek the views of children and young people who have direct experience of the child protection and youth justice systems, having been subject to care orders or detention.

Consultation should also focus on how the new legislation can be less complex, more accessible to people who use it and be enabling rather than unnecessarily prescriptive.

## Reform time frame

Legislative reform of this magnitude requires consultation and will take time. It should not be pursued to the detriment of the immediate legislative reforms that are recommended by this Commission.

### Recommendation 42.1

**The Northern Territory Government, as part of its review of the *Care and Protection of Children Act (NT)* and the *Youth Justice Act (NT)*:**

- consider whether optimal outcomes for children can best be achieved by a single Act, and
- establish a consultative working group, with input from children and young people who have direct experience of the child protection and youth justice systems, to guide this legislative review.

## ENDNOTES

- <sup>1</sup> *Administrative Arrangement Orders* (NT), 1 September 2006, p. 16.
- <sup>2</sup> Exh.469.009, Office of the Children's Commissioner, Northern Territory, Annual Report 2008-09 Children's Commissioner Northern Territory, Darwin, 30 October 2009, tendered 31 May 2017, p. 5; *Administrative Arrangement Orders* (NT), 1 July 2008, p. 6.
- <sup>3</sup> Department of Children and Families, 2011, Annual Report 2010-11, Northern Territory Government, Darwin, p. 7; *Administrative Arrangement Orders* (NT), 15 September 2011, p. 14.
- <sup>4</sup> Exh.672.001, Statement of Luke Twyford, 23 May 2017, tendered 30 June 2017, para. 15; *Administrative Arrangement Orders* (NT), 19 October 2012, p. 9.
- <sup>5</sup> Exh.672.001, Statement of Luke Twyford, 23 May 2017, tendered 30 June 2017, para. 15; *Administrative Arrangement Orders* (NT), 16 September 2013, p. 15.
- <sup>6</sup> *Administrative Arrangement Orders* (NT), 12 September 2016, p. 21.
- <sup>7</sup> Exh.321.001, Statement of John Elferink, 30 March 2017, tendered 27 April 2017, p. 2; *Administrative Arrangement Orders* (NT), 1 September 2006, pp. 5-6.
- <sup>8</sup> *Administrative Arrangement Orders* (NT), 19 October 2012, p. 14.
- <sup>9</sup> *Administrative Arrangement Orders* (NT), 12 September 2016, p. 21.
- <sup>10</sup> Chief Minister of the Northern Territory, Public Service changes to deliver stable and efficient Government [media release], Northern Territory Government, 8 September 2016, <<http://newsroom.nt.gov.au/mediaRelease/21252>>, accessed 15 September 2017.
- <sup>11</sup> *Administrative Arrangement Orders* (NT), 12 September 2016, p. 21.
- <sup>12</sup> *Administrative Arrangement Orders* (NT), 12 September 2016, p. 6.
- <sup>13</sup> Minister for Territory Families, Important step for youth justice reforms [media release], Northern Territory Government, 23 August 2017, <<http://newsroom.nt.gov.au/mediaRelease/23584>>, accessed 15 September 2017.
- <sup>14</sup> Exh.638.000, Presentation Paper by Judge D Reynolds – Options Other Than Incarceration for Youth in the Justice System, 26 April 2017, tendered 29 June 2017, pp. 14-15.
- <sup>15</sup> Exh.638.000, Presentation Paper by Judge D Reynolds – Options Other Than Incarceration for Youth in the Justice System, 26 April 2017, tendered 29 June 2017, p. 14.
- <sup>16</sup> Transcript, Keith Hamburger, 6 December 2016, p. 377: lines 1-12.
- <sup>17</sup> Exh.491.000, Statement of Karen Broadfoot, 1 June 2017, tendered 2 June 2017, para. 40.
- <sup>18</sup> Exh.491.000, Statement of Karen Broadfoot, 1 June 2017, tendered 2 June 2017, para. 17(b).
- <sup>19</sup> Exh.491.000, Statement of Karen Broadfoot, 1 June 2017, tendered 2 June 2017, paras 9-11.
- <sup>20</sup> See for example, Submission, North Australian Aboriginal Justice Agency, Detention, August 2017; Submission, North Australian Aboriginal Justice Agency, Care and Protection, August 2017; Submission, Central Australian Aboriginal Legal Aid Service, Detention, July 2017; Submission, Central Australian Aboriginal Legal Aid Service, Care and Protection, July 2017; Exh.031.001, Statement of Robert Keith Hamburger, 18 November 2016, tendered 5 December 2016.
- <sup>21</sup> Submission, North Australian Aboriginal Justice Agency, Care and Protection, August 2017, p. 3.
- <sup>22</sup> Tusla, Child and Family Agency, 2014, Annual Report 2014, p. 6.
- <sup>23</sup> Exh.031.002, Annexure 1 to the Statement of Robert Keith Hamburger, A Safer Northern Territory through Correctional Interventions, Report of the Review of the Northern Territory Department of Correctional Services, 31 July 2016, tendered 5 December 2016, p. 61.
- <sup>24</sup> Exh.031.001, Statement of Robert Keith Hamburger, 18 November 2016, tendered 5 December 2016, paras 55-56.
- <sup>25</sup> Submission, North Australian Aboriginal Justice Agency, Care and Protection, August 2017, pp. 5, 7.
- <sup>26</sup> Submission, North Australian Aboriginal Justice Agency, Care and Protection, August 2017, pp. 9, 11.
- <sup>27</sup> Submission, North Australian Aboriginal Justice Agency, Care and Protection, August 2017, pp. 3, 8.
- <sup>28</sup> Exh.650.000, Report of the Task Force on the Child and Family Support Agency, July 2012, tendered 30 June 2017, p. 15.
- <sup>29</sup> Transcript, Will MacGregor, 1 June 2017, p. 4294: lines 4-13; Transcript, Antoinette Carrol, 3 December 2016, p. 727: lines 36-45; Transcript, Sven Silburn, 19 June 2017, p. 4395: lines 21-24.
- <sup>30</sup> Submission, Danila Dilba Health Service, Detention, May 2017, pp. 25-27.
- <sup>31</sup> New Zealand Government, *Investing in New Zealand's Children and Their Families*, Ministry of Social Development [website], undated, <<http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/investing-in-children/new-childrens-agency-established.html>>, accessed 8 August 2017.
- <sup>32</sup> Office of the Minister for Social Development, 'Investing in Children Legislative Reform: Underpinning the new operating model', Cabinet Paper, New Zealand Government, Wellington; New Zealand Government, *Investing in New Zealand's Children and Their Families*, Ministry of Social Development [website], undated, <<http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/investing-in-children/new-childrens-agency-established.html>>, accessed 8 August 2017.
- <sup>33</sup> Transcript, Ken Davies, 30 June 2017, p. 5407: lines 1-9.
- <sup>34</sup> New Zealand Government, *Investing in New Zealand's Children and Their Families*, Ministry of Social Development [website], undated, <<http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/investing-in-children/new-childrens-agency-established.html>>, accessed 8 August 2017.
- <sup>35</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, para. 31.
- <sup>36</sup> Children and Young People (Scotland) Act 2014 (Scot), Explanatory Notes, p 2.
- <sup>37</sup> Children's Hearing (Scotland) Act 2011 (Scot) s 91.
- <sup>38</sup> Children's Hearing (Scotland) Act 2011 (Scot) s 83 (definition of "compulsory supervision order") and s 85 (definition of "secure accommodation authorisation").
- <sup>39</sup> Northern Territory Government, 2017, Territory Families Strategic Plan 2017-2020, Darwin.

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IMPLEMENTING REFORM





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# IMPLEMENTING REFORM

## INTRODUCTION

Implementing the Commission's recommendations will be critical to addressing the failings identified in this report. Countless times during our consultations for this inquiry, the Commission was asked what difference it would make when so many other inquiries have failed.<sup>1</sup> As Senior Counsel Assisting, Peter Callaghan SC, observed in his opening address:

*'There is a need to confront some sort of 'Inquiry mentality', in which investigation is allowed as a substitution for action, and reporting is accepted as a replacement for results.'*<sup>2</sup>

The Commission hopes that the Northern Territory and Commonwealth governments swiftly and publicly declare their support for the recommendations, identify those with the highest priority, and then take deliberate and concrete steps to implement them. To do this, the Commission proposes a comprehensive framework to guide the staged realisation of these recommendations, which builds on the structures already put in place by the Northern Territory Government.<sup>3</sup>

## EFFECTIVE IMPLEMENTATION

As outlined below, employing implementation best practice helps ensure that the desired outcomes of a particular policy or program are realised. However, to achieve the reforms proposed by the Commission in the current context, this must be accompanied by strong leadership within the bureaucracy and a commitment to evaluating progress and performance.

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## Evaluation practice

As outlined in earlier chapters, evaluating processes, services and funding helps ensure that policy and programs are delivered effectively.<sup>4</sup> Evaluation also assists in establishing a local evidence base to inform the design of and approach to policies and programs, and associated funding decisions.

Evidence should inform the development and delivery of policy and programs that underpin the administration of youth justice and child protection in the Northern Territory. Developing specific evaluation plans will be critical to successfully implementing the reforms recommended in this report. Further, embedding evaluation into policy development and policy review will be a crucial part of the Northern Territory Government's broader reform agenda.

### **Recommendation 43.1**

**Specific evaluation plans be established as a mandatory component of policy and program development, and as a means of assessing effective implementation of the Commission's recommendations.**

### **Recommendation 43.2**

**Outcomes from evaluation be used to establish a local evidence base to support the existence and funding of policies and programs.**

## Leadership and staff

Carrying out the significant reform the Commission is recommending requires strong leadership. In particular, a concerted effort by senior executives within government to refocus the vision and purpose of Territory Families is critical to improving the ethos and capacity of government to implement this change. *'[Cultural change] requires education and it requires a leader of the organisation to articulate a vision about a better way, and then bring people along on that journey ...'*<sup>5</sup>

The Northern Territory Government has explained that it will review the child protection and youth justice systems to ensure that, among other things, there is a 'capable workforce'.<sup>6</sup> This includes a workforce that is 'flexible, responsive and capable of effectively engaging with children, young people and their families, working within complex and nuanced systems and focussed on improving outcomes'.<sup>7</sup> Territory Families has indicated that it is 'working towards developing in its workforce a new mindset which focuses on early intervention and prevention strategies and cooperation with other departments'.<sup>8</sup> Its workforce strategy will focus on employing Aboriginal people and building the capacity of local Aboriginal organisations and non-government organisations, with a view to handing over some current Territory Families services.<sup>9</sup>

The Northern Territory Government should focus on attracting and retaining leaders who are committed and have the capacity to effect the organisational change required to successfully reform the child protection and youth justice systems.

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*[F]undamental change will require major organisational and cultural change and a “whole system” approach to achieve it. It will mean both “top down” and “bottom up” approaches, strong leadership and a clear articulation of the vision for the organisation that communicates clear messages about the intention of the reforms and the kinds of changes needed.<sup>10</sup>*

## IMPLEMENTATION BEST PRACTICE

Effective implementation planning is essential to driving reform, and monitoring and evaluating progress. Research conducted by the Royal Commission into Institutional Responses to Child Sexual Abuse on implementation best practice highlighted how the quality of implementation has a direct impact on the desired outcomes of any policy or practice. It also highlighted that many failed attempts to implement change have been due to problems in the implementation process.<sup>11</sup>

In considering how to implement change, it is important to understand the barriers to, and facilitators of, effective implementation.<sup>12</sup> The evaluation by the Royal Commission into Institutional Responses to Child Sexual Abuse identified that a best-practice approach to implementation includes:

- identifying the competencies and skills of individuals and organisations involved to ensure their readiness for implementing reform
- ensuring individuals are willing to engage in behavioural change
- taking a well-planned and considered approach to implementation
- recognising that implementation takes place in stages and over time
- training and support for those staff involved in the implementation
- continuous evaluation to improve the quality of the implementation process, and
- ensuring the implementation process focuses on sustainable long-term outcomes.<sup>13</sup>

Critically, and in accordance with the principles of progressive realisation, the Northern Territory and Commonwealth governments must commit to benchmarks for implementation that are specific, time-bound and verifiable. Governments must allow sufficient time for effective implementation of the recommendations of this Commission, focusing on short-, medium- and long-term targets. Further, it is neither reasonable nor feasible to expect that any long-term targets can be achieved during any single term of government. Long-term targets are achieved over a number of years or even generations.<sup>14</sup> A whole-of-government commitment to generational investment will be required to ensure any long-term targets are not forgotten or substituted by a pursuit of short or medium-term targets.

A cross-agency approach to implementation and reform must be adopted which includes planning, coordination and information-sharing and traverses all organisational levels, from the Minister to frontline workers such as Northern Territory Police. Services must be delivered in a multi-agency context and in collaboration with Aboriginal communities.<sup>15</sup>

# MONITORING

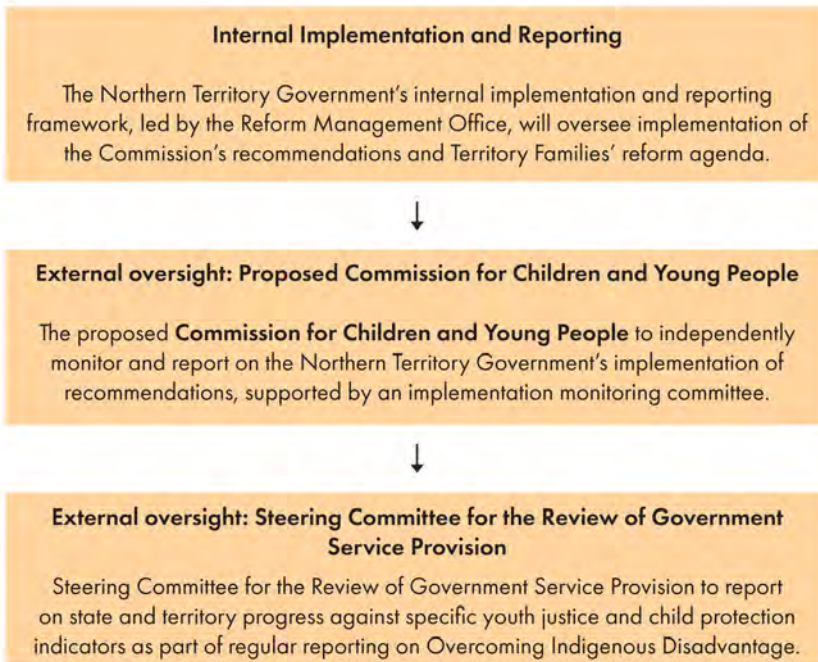
During the life of this Commission, many people have expressed frustration about how changes of government can affect whether recommendations from reviews or inquiries commissioned by a previous government are implemented, especially when funds for particular measures are withdrawn.<sup>16</sup>

One of the fundamental checks and balances on government is to ensure that decision-making and reporting of decision-making is transparent. As such, effective external monitoring is a crucial element of accountability for implementation of the recommendations.

The Commission has considered the need for external and internal monitoring around the progress of implementing these recommendations. While external monitoring ensures public accountability for implementation, internal monitoring is also necessary as it enables government to track its own progress.

The Commission supports the work of the Northern Territory Government to develop an internal monitoring arrangement to implement their broader reform agenda. The Commission proposes that this should be incorporated into a framework that includes two other mechanisms of external oversight, monitoring and reporting, as outlined in Figure 43.1 below.

**Figure 43.1: Commission’s proposed implementation framework**



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## External monitoring and reporting on recommendations

Independent monitoring and reporting on the implementation of recommendations and their intended outcomes must accompany the Northern Territory Government's internal reform and implementation agenda. This will help to hold successive governments and agencies to account for implementing the reforms.

Implementation of the recommendations from Victoria's 2016 Royal Commission into Family Violence, for example, is primarily undertaken by a Family Violence Steering Committee and a Family Violence Reform Implementation Monitor. The Steering Committee monitors the development of the family violence reform agenda and provides advice on the government-wide implementation of that Commission's recommendations.<sup>17</sup> The group includes representatives from a range of government, non-government and community organisations, community legal groups, the Victorian Commissioner for Children and Young People; and the Magistrates' Court of Victoria, among many others.<sup>18</sup> The monitor's role is to assess implementation of the recommendations and report the results to Parliament. The Victorian Governor in Council appoints the monitor as an independent officer reporting to Parliament, under the *Family Violence Reform Implementation Monitor Act 2016* (Vic).<sup>19</sup> The Victorian Government has implemented 10 of the 227 recommendations and progressed a further 212.<sup>20</sup>

The Royal Commission into Aboriginal Deaths in Custody recommended that states and territories establish independent Aboriginal Justice Advisory Committees to provide each government with advice on Aboriginal perceptions of criminal justice matters and on the implementation of the Royal Commission's recommendations.<sup>21</sup> Each state and territory established one of these committees, although the Commission understands that many were subsequently abolished or allowed to collapse.<sup>22</sup>

### ***Proposed Commission for Children and Young People***

In the Northern Territory, the Children's Commissioner currently has a legislative basis for external monitoring. Section 10(1)(e) of the *Children's Commissioner Act* (NT) provides that a function of the Children's Commissioner is to monitor the implementation of any government decision arising from inquiries undertaken by the Commissioner, and any other inquiry related to the care and protection of vulnerable children, regardless of who conducted the inquiry.<sup>23</sup>

Given this legislative responsibility, the Commission considers that the proposed Commission for Children and Young People, as discussed in Chapter 40 (A Commission for Children and Young People), should lead the external monitoring of the Northern Territory Government's implementation of this report's recommendations. It should table a report to Parliament each year, separate from its annual report, on the progress of this implementation.

To support this role, the proposed Commission should establish an implementation monitoring committee, with members from a range of government, non-government and community organisations as well as individuals in the Northern Territory, to provide views on implementation of specific recommendations.

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## Steering Committee for the Review of Government Service Provision

The Steering Committee for the Review of Government Service Provision (the Steering Committee) is an external body with an established monitoring and reporting structure that could be used to monitor the broader success of the Northern Territory's reform agenda, and progress in implementing the Commission's recommendations.

In April 2002, the Council of Australian Governments (COAG) commissioned the Steering Committee to produce a regular report against key indicators of disadvantage among Aboriginal people. The Steering Committee typically publishes this report every two to three years. The *Overcoming Indigenous Disadvantage* report measures the wellbeing of Australia's Aboriginal peoples and provides information about outcomes across strategic areas including early child development; education and training; healthy lives; economic participation; home environment; and safe, supportive communities. The report examines whether policies and programs are achieving positive outcomes for Aboriginal people.<sup>24</sup>

COAG identified two core objectives for the *Overcoming Indigenous Disadvantage* report:

- to inform Australian governments about whether policy programs and interventions are achieving improved outcomes for Aboriginal people, and
- to be meaningful to Aboriginal people.<sup>25</sup>

The report is designed to be 'a practical tool for both government agencies and Aboriginal and Torres Strait Islander people and organisations'.<sup>26</sup> It provides a high-level overview of the wellbeing of Aboriginal people, identifying areas of progress and areas where change is required.

The Steering Committee is advised by a working group comprising representatives from all Australian governments, the National Congress of Australia's First Peoples, the Australian Bureau of Statistics and the Australian Institute of Health and Welfare.<sup>27</sup> The Productivity Commission provides secretariat and research support to the Steering Committee.<sup>28</sup>

The Commission considers that the Steering Committee could assist in the broader ongoing monitoring of youth justice and child protection progress across Australia, and therefore the Northern Territory. The Steering Committee's *Overcoming Indigenous Disadvantage* reporting mandate could be expanded to include reporting on further indicators specific to youth justice and child detention.<sup>29</sup>

While the Commission considers that child protection and youth justice systems must be viewed in the context of all children and young people in the Northern Territory, the Commission also recognises the disproportionate representation of Aboriginal children and young people in these systems. For this reason, the Commission considers that the *Overcoming Indigenous Disadvantage* report, which draws upon a well-established system of reporting against specific indicators at a national level, is an appropriate external mechanism for monitoring the progress of reforms in the Northern Territory.

The Steering Committee currently reports on seven targets COAG has set for closing the gap between outcomes for Aboriginal and non-Aboriginal people.<sup>30</sup> These are high-level social and

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economic outcomes, including life expectancy, education and employment indicators. The Steering Committee also reports on a further six headline indicators it has self-selected, including education, health, child abuse and family violence, and youth detention. Together these represent high-level outcomes that are either significant as standalone indicators or are important preventive factors in addressing long-term disadvantage.<sup>31</sup>

The second layer of the reporting framework identifies strategic areas for action – policy areas where immediate action is required to improve performance against the COAG targets and headline indicators, and each of these areas has its own number of strategic change indicators.<sup>32</sup> These are grouped into areas including governance, early child development, education, health, economic participation, home environment and safe and supportive communities.

Many of these headline and strategic indicators are particularly relevant to youth detention and child protection, including imprisonment and juvenile detention, juvenile diversion, repeat offending, and substantiated child abuse and neglect. Other indicators of broader relevance include access to primary health care, antenatal care and other early health care needs, school engagement, overcrowding in housing, alcohol and substance use and harm, and Aboriginal people’s participation in decision-making.<sup>33</sup>

The Steering Committee reports on these indicators nationally. The Commission considers that data specific to youth detention and child protection for each state and territory could be extracted from these reports and used in the context of measuring progress in these areas, including measuring success in implementing the Northern Territory Government’s reform agenda.

To achieve this, the Commission considers that more indicators relating to youth justice and child protection should be developed and reported against.

### **Recommendation 43.3**

#### **The proposed Commission for Children and Young People:**

- **monitor and report on the Northern Territory Government’s implementation of the Commission’s recommendation for at least five years**
- **prepare a report annually for tabling in Parliament, and**
- **establish and chair an Implementation Monitoring Committee, with representatives from the Northern Territory and Commonwealth Governments, non-government and Aboriginal organisations, research bodies and other suitable persons, to assist in preparing the annual report on implementation.**



## Recommendation 43.4

**COAG agree to extend the mandate of the Steering Committee for the Review of Government Service Provision to report on state and territory progress against further specific youth justice and child protection indicators, as agreed by COAG, as part of its regular *Overcoming Indigenous Disadvantage* report.**

### Internal monitoring - the Implementation and Reporting Framework

Effectively implementing the Commission's recommendations, underpinned by whole-of-government coordination and meaningful engagement with communities, will be the key to achieving the outcomes this Commission seeks. Territory Families has acknowledged this:

*While Territory Families is responsible for delivering services to ensure vulnerable children and families receive the support they need, Territory Families recognises that it cannot meet those needs acting alone without the engagement of other government departments, other organisations and the wider community. A key step is that Territory Families must collaborate with other Northern Territory Government departments, the Federal Government, other organisations and the wider community to ensure services are delivered associated with education, health, employment and housing (among others).<sup>34</sup>*

Territory Families noted that to fulfil its reform agenda, there was 'a significant requirement for Northern Territory agencies to cooperate and coordinate services, including their workforce, to deliver better outcomes for Territory families'.<sup>35</sup> Territory Families has acknowledged that reform 'will require a coordinated and sustained effort' at the whole-of-government level if it is to improve outcomes for children and young people and their families.<sup>36</sup>

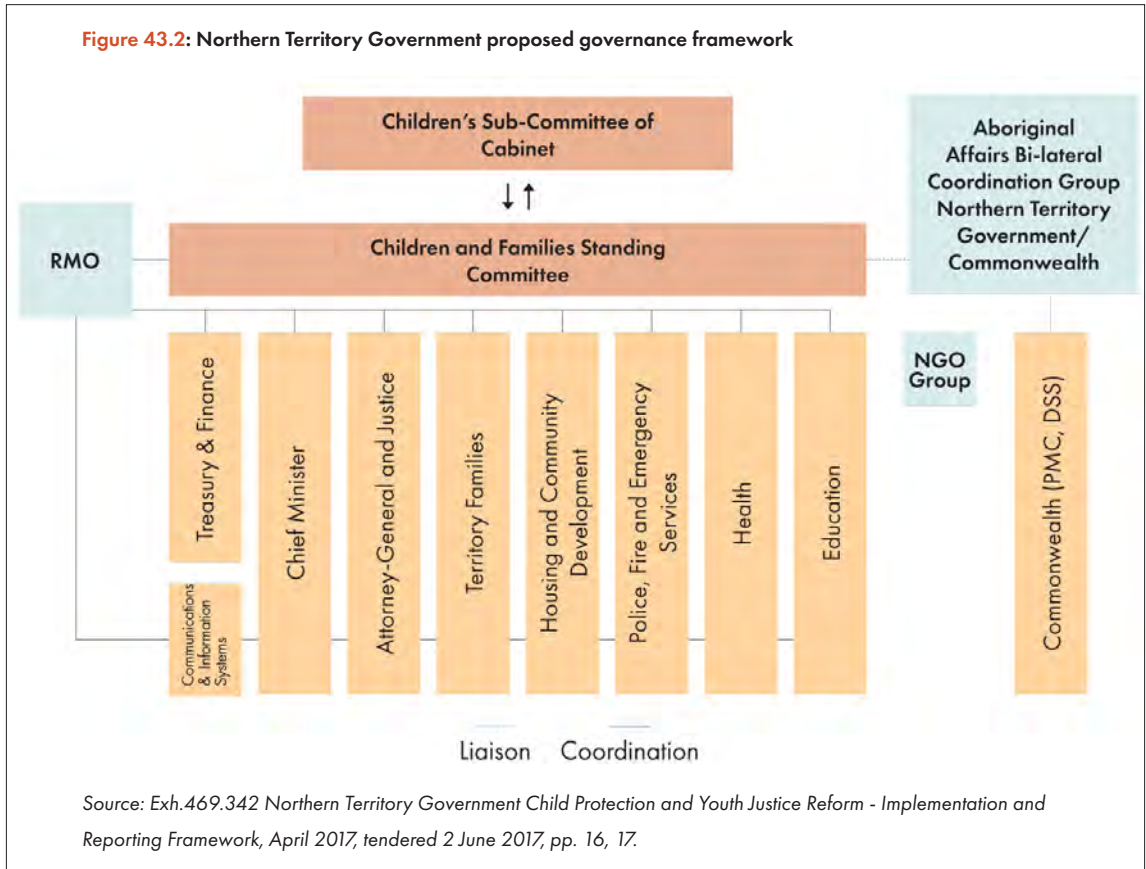
In November 2016 Territory Families and the Department of the Chief Minister developed a high-level Reform Direction for child protection and youth justice. It sets out the principles and means for achieving specific reforms and details how the child protection and youth justice systems will interact and operate once reforms have been implemented.<sup>37</sup>

The Northern Territory Government has also taken significant steps to develop a framework to drive implementation of the Reform Direction and the recommendations proposed by the Commission. This framework is designed to facilitate the whole-of-government liaison necessary to pursue long-term strategies that support vulnerable families and children. It links all relevant Northern Territory Government agencies and, to an extent, facilitates liaison with the Commonwealth and non-government sector.<sup>38</sup>

The Northern Territory Government has endorsed an Implementation and Reporting Framework (IRF) to guide the implementation of reforms to the child protection and youth justice systems. It provides methods for planning and managing the scope and dependencies between and within priority programs and projects; governing the programs and facilitating leadership decision-making so the focus continues to be on enabling the greatest benefit for communities; engaging stakeholders to

ensure program and project success; and ensuring succinct reporting of progress against the plan, risks and issues, and outcomes achieved.<sup>39</sup>

To support this, the Northern Territory Government has established a governance framework as depicted in Figure 43.2 below.<sup>40</sup>



## Reform Management Office

The Commission understands that the Reform Management Office (RMO) will be at the centre of the proposed IRF, coordinating reform activities and reporting directly to the Children and Families Standing Committee. The Chief Executive Officer of Territory Families told the Commission:

*'The intent is that this office will take carriage, on behalf of the chief executives of health, education, housing, police, Territory Families, Attorney-General and Justice and treasury, and [the Department of the Chief Minister], to make sure there's proper project management around this reform agenda so that the reports and the consultancies that we have talked a little bit about don't just sit on a shelf: that in fact they're made live.'*<sup>41</sup>

The Commission understands that establishing the RMO is underway with the appointment of its Senior Executive scheduled to commence in early November 2017.

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## Children's Sub-Committee of Cabinet

The Children's Sub-Committee of Cabinet is designed to ensure effective communication across departments. It includes senior ministers responsible for the Departments of Treasury, Health, Education, Housing and Community Development and Attorney-General and Justice.<sup>42</sup>

## Children and Families Standing Committee

The Children and Families Standing Committee was established in October 2016 as an authoritative body accountable for:

- supporting the delivery of government objectives by ensuring a joined-up approach to children and families across government agencies whenever required
- identifying public policy challenges and opportunities that affect Northern Territory children and families
- identifying cross-cutting emerging opportunities to coordinate service delivery for children and families in the Northern Territory
- driving inter-departmental cooperation and communication about matters and issues relating to children and families, and
- ensuring a whole-of-government approach to improving outcomes for children and families.<sup>43</sup>

Members of the Committee are the chief executive officers of the Departments of Territory Families, Health, Education, Housing and Community Development and Attorney-General and Justice; the Northern Territory Commissioner of Police and the Deputy Chief Executive Officer of the Department of the Chief Minister.<sup>44</sup>

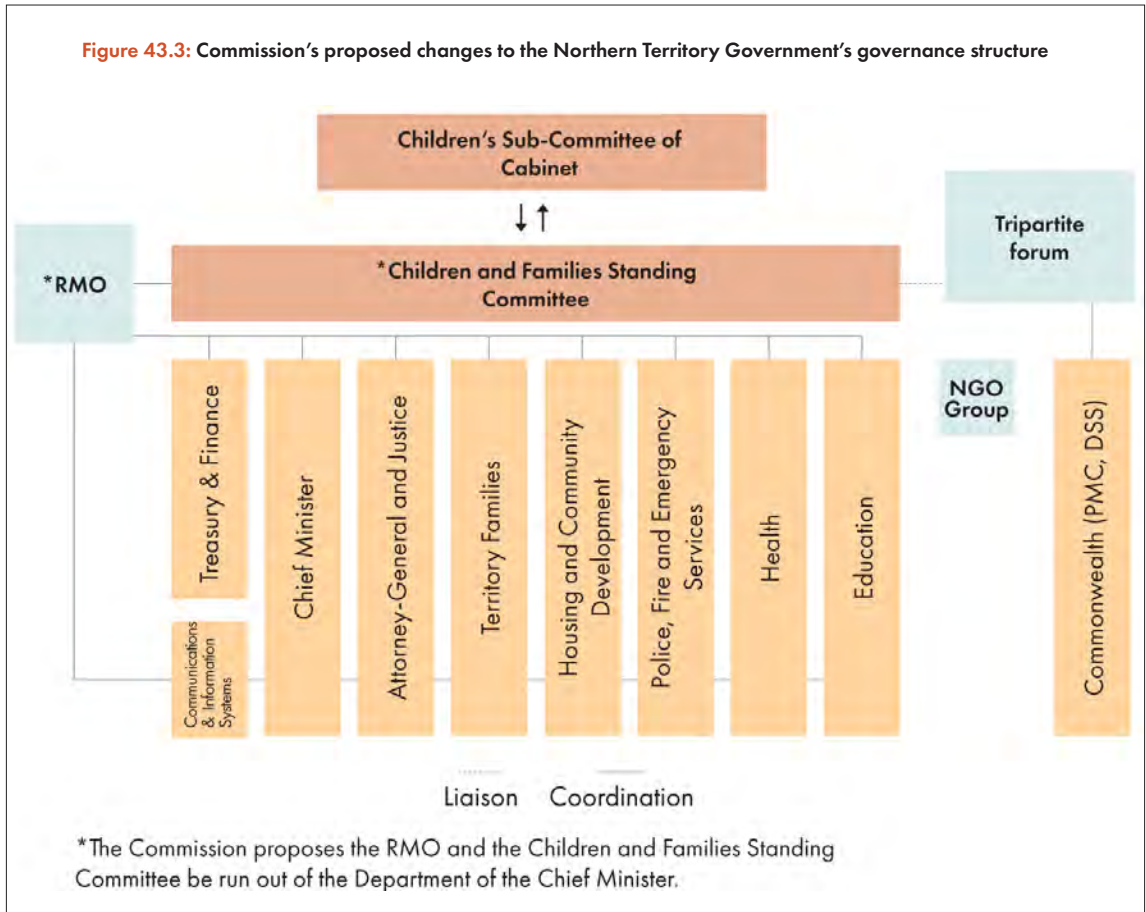
## Aboriginal Affairs Bi-lateral Coordination Group

The Northern Territory Government and the Department of the Prime Minister and Cabinet established the Aboriginal Affairs Bi-lateral Coordination Group in late 2016.<sup>45</sup> The group provides strategic leadership and direction, driving intergovernmental collaboration and coordination on Aboriginal affairs in policy, programs and services.<sup>46</sup>

Other Commonwealth agencies are included in the group as required to address specific issues.<sup>47</sup> At the time of writing this report a liaison channel between the Children and Families Standing Committee and the Aboriginal Affairs Bi-lateral Coordination Group was being established to facilitate cross-government cooperation between stakeholders that contribute to Aboriginal affairs.<sup>48</sup>

## ADDITIONAL PROPOSALS

The Commission supports the Northern Territory Government’s IRF. However, the Commission has proposed some amendments to ensure better coordination across government and the community sector. These proposals give the Department of the Chief Minister, as a central agency, more responsibility for driving reform and suggest a new forum for tripartite coordination between the Northern Territory, the Commonwealth and the community.



### Placing coordination within the Department of the Chief Minister

The RMO and the Children and Families Standing Committee play key roles in coordinating inter-governmental reform efforts. Given the importance of this coordinating role, the Commission considers that the RMO, the Children and Families Standing Committee and supporting secretariat functions would be best administered from within the Department of the Chief Minister.

Although Territory Families is the line agency most affected by the reform agenda, placing the key coordination mechanisms within a central agency will promote a whole-of-government approach to implementation and enhance accountability of the Northern Territory Government in delivering change. This arrangement was recommended by *Growing them strong, together – Promoting the*

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*Safety and Wellbeing of the Northern Territory's Children – Report of the Board of Inquiry into the Child Protection System in the Northern Territory.* In considering the broad level of engagement required to implement the proposed reforms, the report recommended that the main driver and coordinating entity for achieving reform be operationally responsible to the Chief Executive of the Department of the Chief Minister as it has a 'track record of driving significant cross agency reforms'.<sup>49</sup>

## Commonwealth Government engagement

Commonwealth involvement in the Northern Territory Government's proposed governance framework will be facilitated by linking the existing Aboriginal Affairs Bi-lateral Coordination Group and the Children and Families Standing Committee.<sup>50</sup>

In addition to this group, the Commission understands that Commonwealth agencies will contribute to each of the service delivery sectors identified in Figure 43.2 above. The Northern Territory Government has noted that:

*Each NTG [Northern Territory Government] agency has an ongoing relationship with Commonwealth agency (which should continue), however this governance model recognises the requirement for greater alignment between NTG and the Commonwealth<sup>51</sup>*

This is important and suggests that collaboration between the Northern Territory Government and the Commonwealth Government will occur in many areas at different levels.

However, the Commission considers that it is important that links between the Northern Territory and the Commonwealth around youth justice and child protection issues not to be limited to the sphere of Aboriginal Affairs. It is important that a broader social policy perspective be considered.

Chapter 6 (Funding and expenditure) and Chapter 38 (Early support) highlight the value of the Northern Territory and Commonwealth governments coordinating expenditure and service delivery for child protection and youth justice-related programs. Chapter 38 (Early support) recommends that the Northern Territory and Commonwealth governments develop an overarching Joint Co-ordination Funding Framework to provide a coordinated approach to funding and service delivery across all government agencies, the non-government sector and local communities.

## Coordinated engagement with the community and community sector

A coordinated whole of government response in partnership with the community must be embedded within the reform and implementation process. The Commission's recommendations are directed at improving outcomes for communities and it is critical that communities are fully involved in determining how the recommendations are implemented, as discussed in Chapter 7 (Community engagement). Communities also play a critical role in ensuring that the government of the day is held to account for meeting the reform objectives.

A clear set of principles – one that includes government, service providers and communities, such

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as the Aboriginal Peak Organisations Northern Territory (APO NT) Partnership Principles – must be used to inform consultation and engagement throughout the implementation process.<sup>52</sup> This will ensure shared commitment and responsibility for decision-making.

A greater regional presence should be established to enhance engagement with communities. The Commission understands that Territory Families is already considering ways to increase its footprint in communities, noting it is considering co-locating with existing services such as health and education in regional areas.<sup>53</sup> It will also look at using existing infrastructure and resources to work alongside staff members who are currently in remote locations and have existing knowledge and community insight.<sup>54</sup> As discussed in Chapter 39 (Changing the approach to child protection) the Commission also recommends establishing place-based networks of Family Support Centres, which emphasise partnerships between government and community.

Commonwealth Government engagement coordinators also play an important role in facilitating the flow of information from the community to governments. The Associate Secretary of Indigenous Affairs, Department of the Prime Minister and Cabinet, told the Commission:

*'The idea is that those government engagement coordinators are working in community to both represent what the Australian government is doing but also to listen to the community about what's happening in the community; work with service providers, act as a point of coordination.'*<sup>55</sup>

There are formalised arrangements between coordinators and the Northern Territory Government in some communities, but not all.<sup>56</sup> The Commission was told that coordinators generally communicate with the Commonwealth or Northern Territory governments through the regional offices to senior staff in Canberra, although there is also some direct engagement.<sup>57</sup> The Commission considers that the forum discussed below would be appropriately placed to take a role in ensuring a more systematic means of sharing information and reporting from government engagement coordinators to both the Northern Territory Government and the Commonwealth Government.

## **New tripartite coordination and engagement forum**

The Northern Territory Aboriginal Health Forum (NTAHF) is a tripartite forum between the Northern Territory Government, the Commonwealth Government and the non-government health sector (represented by Aboriginal Medical Services Alliance Northern Territory and the Northern Territory Primary Health Network) that provides *'high-level guidance and decision-making aimed at ensuring that Aboriginal peoples in the Northern Territory enjoy health and wellbeing outcomes equal to that of the community as a whole'*.<sup>58</sup>

As foreshadowed in Chapter 39 (Changing the approach to child protection), the Commission recommends that a similar body be established to facilitate effective high-level engagement around youth justice and child protection issues between the Northern Territory Government, the Commonwealth Government and relevant bodies representing the community sector. The forum should replace the current Aboriginal Affairs Bi-lateral Coordination Group as the primary liaison mechanism between the Northern Territory Government, the Commonwealth and the non-government sector on these issues (see Figure 43.3).

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The forum's main roles would be to provide strategic coordination of policy and services; coordination of engagement with the community; and to guide implementation of the Northern Territory Government's reform agenda and the Commission's recommendations. The forum could be responsible for overseeing the development of the Generational Strategy, as discussed in Chapter 39 (Changing the approach to child protection). Participating parties should agree on an approach that places the safety, wellbeing and future of children at the centre of policy design and coordination. The forum should meet at least quarterly and report annually to the relevant Northern Territory and Commonwealth government ministers and boards of the member community organisations. Given the clear links between youth justice, child protection and health, the new forum should work collaboratively with the NTAHF where possible.

The forum would be designed to ensure coordinated cross-government and interdepartmental cooperation in overseeing the delivery of the reform agenda and services for children and young people. This extends to community engagement, which currently takes place at multiple levels, across multiple departments, at both a Northern Territory and Commonwealth level. It is crucial that engagement with communities is coordinated and purposeful, as discussed in Chapter 7 (Community engagement).

While the proposed new forum provides high-level cooperation, it must have links at the operational level, most notably with Northern Territory Police and other frontline services. To ensure this occurs, the Commission considers that the Northern Territory Government's existing governance framework, which includes working groups at all levels beneath Chief Executive Officer level, should be utilised. Mechanisms should be put in place to ensure information flows between forum representatives and these operational-level working groups.

## Forum membership

The Northern Territory Government should chair the forum and provide secretariat functions. The Northern Territory's participation should be facilitated through the Children and Families Standing Committee, given that it contains representatives from all relevant government departments at the Chief Executive Officer level, is a coordination point within the Northern Territory Government and has a key role in implementing the Northern Territory's reform agenda. The Standing Committee's secretariat would ideally provide secretariat support to the forum.

The Commonwealth could most effectively be represented by the Social Policy Group within the Department of the Prime Minister and Cabinet as well as the Department of Social Services, which is principally responsible for children's services in the Commonwealth.

The Northern Territory Council of Social Service (NTCOSS) and APO NT, as well-established peak bodies, should represent the community sector in this forum. APO NT is an alliance of peak Aboriginal organisations in the Northern Territory, including the Central Land Council, Northern Land Council, North Australian Aboriginal Justice Agency, Central Australian Aboriginal Legal Aid Service and Aboriginal Medical Services Alliance Northern Territory. NTCOSS is the peak body for the social and community sector in the Northern Territory.

### **Recommendation 43.5**

The Children and Families Standing Committee and Children’s Sub-Committee of Cabinet remain permanent bodies with a dual mandate of implementing reform, and guiding policy and operational strategy.

### **Recommendation 43.6**

The Children and Families Standing Committee and the Reform Management Office be run out of the Department of the Chief Minister.

### **Recommendation 43.7**

A tripartite forum be established with representatives from the Northern Territory Government, Commonwealth Government and community sector, to coordinate and oversee policy and programs for children and young people in the youth justice and child protection systems. In doing so, the tripartite forum is to:

- meet at least quarterly, and
- deliver an annual report to the relevant Northern Territory and Commonwealth government ministers and boards of the member community organisations.



## ENDNOTES

- <sup>1</sup> Community Meeting, Alice Springs (Women's Group Meeting), 26 September 2016; Community Meeting, Tennant Creek (Women's Group Meeting), 28 September 2016; Community Meeting, Tennant Creek, 28 September 2016; Community Meeting, Alice Springs, 18 October 2016; Community Meeting, Maningrida, 18 October 2016; Community Meeting, Tennant Creek, 24 October 2016; Community Meeting, Groote Eylandt, 24 October 2016; Community Meeting, Mutijulu, 27 October 2016.
- <sup>2</sup> Senior Counsel Assisting, Opening Address to the Royal Commission into the Protection and Detention of Children in the Northern Territory, 11 October 2016, p. 4.
- <sup>3</sup> The concept of 'progressive realisation' is outlined in Article 2(1) of the *International Covenant on Economic, Social and Cultural Rights* in relation to the realisation of the rights contained in that Convention. It states that 'each State Party to the present Covenant undertakes to take steps... to the **maximum of its available resources**, with a view to **achieving progressively** the full realization of the rights recognized in the present Covenant by **all appropriate means**, including particularly the adoption of legislative measures'. (**Emphasis added**).
- <sup>4</sup> See for example Chapter 6 (Funding and expenditure), Chapter 24 (Leaving detention and throughcare), Chapter 27 (Reshaping youth justice), Chapter 32 (Entry into the child protection system), Chapter 41 (Data and information-sharing).
- <sup>5</sup> Transcript, Keith Hamburger, 6 December 2016, p. 401: lines 24-25.
- <sup>6</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, para. 24.6.
- <sup>7</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, para. 24.6.
- <sup>8</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, para. 34(e).
- <sup>9</sup> Exh.647.000, Statement of Ken Davies, 30 June 2017, tendered 30 June 2017, paras 37, 41-42.
- <sup>10</sup> Submission, Danila Dilba Health Service, Detention, 31 May 2017, p. 28.
- <sup>11</sup> Parenting Research Centre, *Implementation best practice: A rapid evidence assessment*, 2016, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, p. 13.
- <sup>12</sup> Parenting Research Centre, *Implementation best practice: A rapid evidence assessment*, 2016, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, p. 29.
- <sup>13</sup> Parenting Research Centre, *Implementation best practice: A rapid evidence assessment*, 2016, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, pp. 8-9.
- <sup>14</sup> Transcript, Frank Oberklaid, 29 May 2017, p. 4017: lines 40-44.
- <sup>15</sup> Exh.642.000, Statement of Denise Riordan, 21 June 2017, tendered 29 June 2017, para. 67.
- <sup>16</sup> Transcript, Muriel Bamblett, 12 October 2016, p. 212, lines 10-15; Exh.535.000, Statement of Robyn Lambley, 6 June 2017, tendered 20 June 2017, paras 23, 30; Exh.011.001, Statement of Howard Bath, 1 October 2016, tendered 12 October 2016, paras 43, 45, 46.
- <sup>17</sup> Victorian Government, 'Family Violence Steering Committee' [website], <<http://www.vic.gov.au/familyviolence/committees-for-change/family-violence-steering-committee.html>>, accessed 7 September 2017.
- <sup>18</sup> Victorian Government, 'Family Violence Steering Committee' [website], <<http://www.vic.gov.au/familyviolence/committees-for-change/family-violence-steering-committee.html>>.
- <sup>19</sup> *Family Violence Reform Implementation Monitor Act 2016* (VIC) ss 7(1), 13, 14.
- <sup>20</sup> Victorian Government, 'Plan for Change' [website], <<http://www.vic.gov.au/familyviolence/our-10-year-plan.html>>, accessed 7 September 2017.
- <sup>21</sup> Exh.024.006, National Report – Royal Commission into Aboriginal Deaths in Custody – Volume 5, 15 April 1991, tendered 13 October 2016, p. 1382.
- <sup>22</sup> Allison, F & Cunneen, C (2013), *Indigenous Justice Agreements*, Current Initiatives Paper 4, Indigenous Justice Clearinghouse, p. 1.
- <sup>23</sup> *Children's Commissioner Act* (NT) s 10(1)(e).
- <sup>24</sup> Productivity Commission, 'Overcoming Indigenous Disadvantage', Australian Government [website], <<https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage>>, accessed 1 September 2017.
- <sup>25</sup> Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Productivity Commission, Canberra, p. 1.2.
- <sup>26</sup> Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Productivity Commission, Canberra, p. 1.2.
- <sup>27</sup> Productivity Commission, 'Overcoming Indigenous Disadvantage', Australian Government [website], <<https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage>>, accessed 1 September 2017.
- <sup>28</sup> Productivity Commission, 'Overcoming Indigenous Disadvantage', Australian Government [website], <<https://www.pc.gov.au/about/core-functions/performance-monitoring>>, accessed 1 September 2017.
- <sup>29</sup> Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Productivity Commission, Canberra, p. 1.2.
- <sup>30</sup> Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Productivity Commission, Canberra, p. 2.3.
- <sup>31</sup> Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Productivity Commission, Canberra, p. 2.3.
- <sup>32</sup> Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Productivity Commission, Canberra, pp. 2.4, 2.5.
- <sup>33</sup> Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Productivity Commission, Canberra, p. 2.5.
- <sup>34</sup> Exh.647.000, Statement of Ken Davies, 30 June 2017, tendered 30 June 2017, paras 6-7.
- <sup>35</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, para. 49.
- <sup>36</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, para. 50.

- <sup>37</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, paras 15, 18.
- <sup>38</sup> Exh.469.342, Northern Territory Government Child Protection and Youth Justice Reform – Implementation and Reporting Framework, April 2017, tendered 2 June 2017, pp. 9-10.
- <sup>39</sup> Exh.469.342, Northern Territory Government Child Protection and Youth Justice Reform – Implementation and Reporting Framework, April 2017, tendered 2 June 2017, pp. 9-10.
- <sup>40</sup> Exh.469.342, Northern Territory Government Child Protection and Youth Justice Reform – Implementation and Reporting Framework, April 2017, tendered 2 June 2017, pp. 16, 17.
- <sup>41</sup> Transcript, Ken Davies, 30 June 2017, p. 5418, lines 20-25.
- <sup>42</sup> Exh.647.000, Statement of Ken Davies, 30 June 2017, tendered 30 June 2017, paras 19-20.
- <sup>43</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, para. 12.
- <sup>44</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, para. 12.
- <sup>45</sup> Exh.578.000, Statement of Andrew Tongue, 15 June 2017, tendered 26 June 2017, para. 40.
- <sup>46</sup> Exh.578.000, Statement of Andrew Tongue, 15 June 2017, tendered 26 June 2017, para. 41.
- <sup>47</sup> Exh.578.000, Statement of Andrew Tongue, 15 June 2017, tendered 26 June 2017, para. 42.
- <sup>48</sup> Exh.469.342, Northern Territory Government Child Protection and Youth Justice Reform – Implementation and Reporting Framework, April 2017, tendered 2 June 2017, p. 16.
- <sup>49</sup> Exh.014.002, *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 – Volume 2, tendered 12 October 2016, pp. 543, 548.
- <sup>50</sup> Exh.469.342, Northern Territory Government Child Protection and Youth Justice Reform – Implementation and Reporting Framework, April 2017, tendered 2 June 2017, p. 16.
- <sup>51</sup> Exh.469.342, Northern Territory Government Child Protection and Youth Justice Reform – Implementation and Reporting Framework, April 2017, tendered 2 June 2017, p. 16.
- <sup>52</sup> Aboriginal Peak Organisations Northern Territory, ‘APO NT Partnership Principles for working with Aboriginal organisations and communities in the Northern Territory’ [website], May 2017, <<http://www.amsant.org.au/apont/wp-content/uploads/2015/02/21070504-APO-NT-Partnership-Principles-Updated-version.pdf>>, accessed 29 August 2017.
- <sup>53</sup> Exh.647.000, Statement of Ken Davies, 30 June 2017, tendered 30 June 2017, para. 40.3.
- <sup>54</sup> Exh.647.000, Statement of Ken Davies, 30 June 2017, tendered 30 June 2017, paras 33-36.
- <sup>55</sup> Transcript, Andrew Tongue, 26 June 2017, p. 5005: lines 42-45.
- <sup>56</sup> Transcript, Andrew Tongue, 26 June 2017, p. 5006: lines 9-17.
- <sup>57</sup> Transcript, Andrew Tongue, 26 June 2017, p. 5011: lines 3-8.
- <sup>58</sup> Aboriginal Medical Services Alliance Northern Territory, ‘Northern Territory Aboriginal Health Forum’ [website], <<http://www.amsant.org.au/whatwedo/ntahf/>>, accessed 15 September 2017.

# APPENDICES



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ENTERED ON RECORD by me in Register of Patents No. 51, page 54, on 1 AUGUST 2016



ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Margaret Jean White AO; and  
Michael Lloyd Gooda

GREETING

WE do, by Our Letters Patent issued in Our name by Our Administrator of the Government of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you, to inquire into the following matters:

- (a) failings in the child protection and youth detention systems of the Government of the Northern Territory during the period since the commencement of the *Youth Justice Act* of the Northern Territory (the *relevant period*);
- (b) the treatment, during the relevant period, of children and young persons detained at youth detention facilities administered by the Government of the Northern Territory (the *relevant facilities*), including the Don Dale Youth Detention Centre in Darwin;
- (c) whether any such treatment during the relevant period may:
  - (i) amount to a breach of a law of the Commonwealth; or
  - (ii) amount to a breach of a law in force in the Northern Territory; or
  - (iii) amount to a breach of a duty of care, or any other legal duty, owed by the Government of the Northern Territory to a person detained at any of the relevant facilities; or

Secretary to the Federal Executive Council

- (iv) be inconsistent with, or contrary to, a human right or freedom that:
  - (A) is embodied in a law of the Commonwealth or of the Northern Territory; and
  - (B) is recognised or declared by an international instrument; or
- (v) amount to a breach of a rule, policy, procedure, standard or management practice that applied to any or all of the relevant facilities;
- (d) both:
  - (i) what oversight mechanisms and safeguards (if any) were in place during the relevant period at the relevant facilities to ensure that the treatment of children and young persons detained is appropriate; and
  - (ii) whether those oversight mechanisms and safeguards have failed, or are failing, to prevent inappropriate treatment, and if so, why;
- (e) whether, during the relevant period, there were deficiencies in the organisational culture, structure or management in, or in relation to, any or all of the relevant facilities;
- (f) whether, during the relevant period, more should have been done by the Government of the Northern Territory to take appropriate measures to prevent the recurrence of inappropriate treatment of children and young persons detained at the relevant facilities and, in particular, to act on the recommendations of past reports and reviews, including:
  - (i) the Review of the Northern Territory Youth Detention System Report, of January 2015; and
  - (ii) the Report of the Office of the Children's Commissioner of the Northern Territory about services at Don Dale Youth Detention Centre, of August 2015;



- (g) what measures should be adopted by the Government of the Northern Territory, or enacted by the Legislative Assembly of the Northern Territory, to prevent inappropriate treatment of children and young persons detained at the relevant facilities, including:
  - (i) law reform; and
  - (ii) reform of administrative practices; and
  - (iii) reform of oversight measures and safeguards; and
  - (iv) reform of management practices, education, training and suitability of officers; and
  - (v) any other relevant matters;
- (h) what improvements could be made to the child protection system of the Northern Territory, including the identification of early intervention options and pathways for children at risk of engaging in anti-social behaviour;
- (i) the access, during the relevant period, by children and young persons detained at the relevant facilities, to appropriate medical care, including psychiatric care;
- (j) any matter reasonably incidental to a matter mentioned in paragraphs (a) to (i).

AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to consider the following matters, and We authorise you to take (or refrain from taking) any action that you consider appropriate arising out of your consideration:

- (k) the need to establish mechanisms to facilitate the timely communication of information, or the furnishing of evidence, documents or things, in accordance with section 6P of the *Royal Commissions Act 1902* or any other relevant law, including, for example, for the purpose of enabling the timely investigation and prosecution of offences;
- (l) the need to ensure that evidence that may be received by you that identifies particular individuals as having been subject to inappropriate treatment is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries;
- (m) the need to establish appropriate arrangements in relation to current and previous inquiries, in Australia and elsewhere, for evidence and information to be shared with you in ways consistent with relevant obligations so that the work of those inquiries, including, with any necessary consents, the testimony of witnesses, can be taken into account by you in a way that avoids unnecessary duplication, improves efficiency and avoids unnecessary trauma to witnesses.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate.

AND We appoint you, the Honourable Margaret Jean White AO, to be the Chair of the Commission.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902*.

AND We declare that you are authorised to conduct your inquiry into any matter under these Our Letters Patent in combination with any inquiry into the same matter, or a matter related to that matter, that you are directed or authorised to conduct by any Commission, or under any order or appointment, made by the Government or a Minister of the Northern Territory.

AND We declare that in these Our Letters Patent:

*child* means a person under the age of 18 years, and *children* has a corresponding meaning.

AND We:

- (n) require you to begin your inquiry as soon as practicable; and
- (o) require you to make your inquiry as expeditiously as possible; and
- (p) require you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 31 March 2017.

IN WITNESS, We have caused these Our Letters to be made Patent.

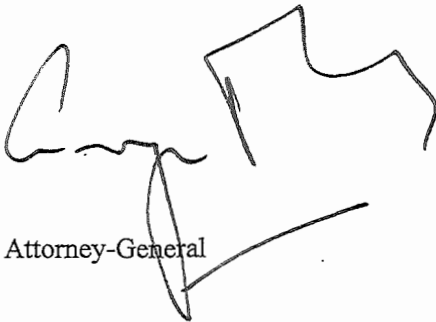
WITNESS the Honourable Paul de Jersey AC QC,  
Administrator of the Government of the Commonwealth of  
Australia.

Dated *1st August* 2016



Administrator

By His Excellency's Command



Attorney-General





NORTHERN TERRITORY OF AUSTRALIA

*Inquiries Act*

APPOINTMENT OF BOARD OF INQUIRY

I, Adam Graham Giles, Chief Minister of the Northern Territory of Australia, under section 4 of the *Inquiries Act*:

- (a) appoint the following persons to be a Board of Inquiry to inquire into and report to me on the matters relating to the Territory and mentioned in the Schedule:
  - (i) The Honourable Margaret Jean White AO;
  - (ii) Michael Lloyd Gooda; and
- (b) appoint The Honourable Margaret Jean White AO to be the Chairperson of the Board.

The inquiry is to be conducted in combination with an inquiry into the same matters, or any matters related to those matters, required or authorised under Letters Patent dated 1 August 2016 appointing the members of the Board to be a Commission of inquiry.

The inquiry does not require inquiring, or continuing to inquire, into a particular matter, to the extent that the Board is satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

To avoid doubt, the Board is, for the purposes of the inquiry and report, to consider the following, and to take (or refrain from taking) any action that the Board considers appropriate arising out of the consideration:

- (a) the need to establish mechanisms to facilitate the timely communication of information, or the furnishing of evidence, documents or things including, for example, for the purpose of enabling the timely investigation and prosecution of offences;
- (b) the need to ensure that evidence that may be received by the Board that identifies particular individuals as having been subject to inappropriate treatment is dealt with in a way that does not prejudice

current or future criminal or civil proceedings or other contemporaneous inquiries;

- (c) the need to establish appropriate arrangements in relation to current and previous inquiries, in the Northern Territory and elsewhere, for evidence and information to be shared with the Board in ways consistent with relevant obligations so that the work of those inquiries, including, with any necessary consents, the testimony of witnesses, can be taken into account by the Board in a way that avoids unnecessary duplication, improves efficiency and avoids unnecessary trauma to witnesses

Dated

3/8/16



Chief Minister

SCHEDULE

1. In this instrument:

**child** means a person under the age of 18 years.

2. The matters are:

(a) failings in the child protection and youth detention systems of the Government of the Northern Territory during the period since the commencement of the *Youth Justice Act* (the **relevant period**);

(b) the treatment, during the relevant period, of children and young persons detained at youth detention facilities administered by the Government of the Northern Territory (the **relevant facilities**), including the Don Dale Youth Detention Centre in Darwin;

(c) whether any such treatment during the relevant period may:

- i. amount to a breach of a law of the Commonwealth; or
- ii. amount to a breach of a law in force in the Territory; or
- iii. amount to a breach of a duty of care, or any other legal duty, owed by the Government of the Northern Territory to a person detained at any of the relevant facilities; or
- iv. be inconsistent with, or contrary to, a human right or freedom that:

A is embodied in a law of the Commonwealth or of the Northern Territory; and

B. is recognised or declared by an international instrument; or

v. amount to a breach of a rule, policy, procedure, standard or management practice that applied to any or all of the relevant facilities;

(d) both:

i. what oversight mechanisms and safeguards (if any) were in place during the relevant period at the relevant facilities to

- ensure that the treatment of children and young persons detained is appropriate; and
- ii. whether those oversight mechanisms and safeguards have failed, or are failing, to prevent inappropriate treatment, and if so, why;
- (e) whether, during the relevant period, there were deficiencies in the organisational culture, structure or management in, or in relation to, any or all of the relevant facilities;
- (f) whether, during the relevant period, more should have been done by the Government of the Northern Territory to take appropriate measures to prevent the recurrence of inappropriate treatment of children and young persons detained at the relevant facilities and, in particular, to act on the recommendations of past reports and reviews, including:
- i. the Review of the Northern Territory Youth Detention System Report, of January 2015; and
  - ii. the Report of the Office of the Children's Commissioner of the Northern Territory about services at Don Dale Youth Detention Centre, of August 2015;
- (g) what measures should be adopted by the Government of the Northern Territory, or enacted by the Legislative Assembly of the Northern Territory, to prevent inappropriate treatment of children and young persons detained at the relevant facilities, including:
- i. law reform; and
  - ii. reform of administrative practices; and
  - iii. reform of oversight measures and safeguards; and
  - iv. reform of management practices, education, training and suitability of officers; and
  - v. any other relevant matters;
- (h) what improvements could be made to the child protection system of the Northern Territory, including the identification of early intervention



options and pathways for children at risk of engaging in anti-social behaviour;

- (i) the access, during the relevant period, by children and young persons detained at the relevant facilities, to appropriate medical care, including psychiatric care;
- U) any matter reasonably incidental to a matter mentioned in paragraphs (a) to (i).





ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Margaret Jean White AO; and  
Michael Lloyd Gooda

GREETING

WHEREAS We, by Our Letters Patent issued in Our name dated 1 August 2016, as amended by Our Letters Patent issued in Our name dated 9 February 2017 and 27 June 2017, appointed you to be a Commission of inquiry, required and authorised you to inquire into certain matters, and required you to submit to Our Governor-General a final report of the results of your inquiry, and your recommendations, not later than 30 September 2017.

AND it is desired to further amend Our Letters Patent dated 1 August 2016, as previously amended.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, amend Our Letters Patent dated 1 August 2016, as previously amended, by omitting from paragraph (q) “30 September 2017” and substituting “17 November 2017”.

ENTERED ON RECORD by me in Register of Patents No. 52

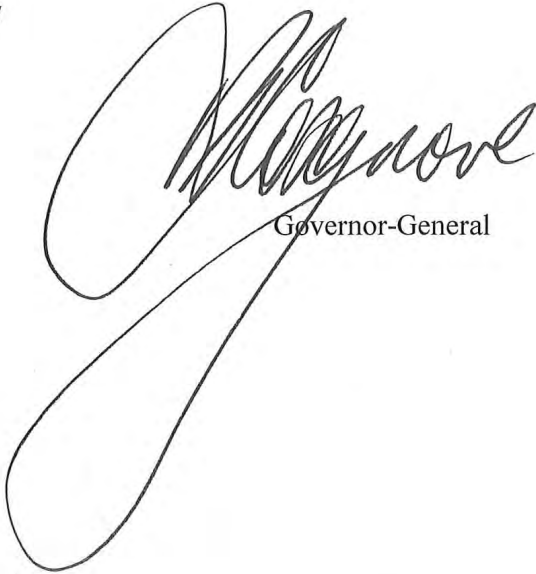
page 39, on 7 September 2017.

Secretary to the Federal Executive Council  
*Michelle Graham*

IN WITNESS, We have caused these Our Letters to be made Patent.

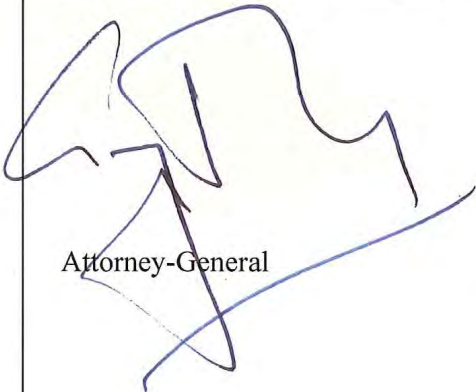
WITNESS General the Honourable Sir Peter Cosgrove AK MC  
(Ret'd), Governor-General of the Commonwealth of Australia.

Dated *7th September* 2017



Governor-General

By His Excellency's Command



Attorney-General



## Royal Commission into the Protection and Detention of Children in the Northern Territory

### Persons who appeared before or provided a formal witness statement to the Commission

No.	Name
1.	AB
2.	AD
3.	Adam Giles
4.	Adrienne Boucher
5.	AF
6.	AG
7.	AI
8.	AK
9.	AL
10.	Alistair Ferguson
11.	Amanda Nobbs-Carcuro
12.	AN
13.	Andreea Laschz
14.	Andrew Cowan
15.	Andrew Dowadi
16.	Andrew Fidler
17.	Andrew Jackomos
18.	Andrew Magee
19.	Andrew McAllan
20.	Andrew Tongue
21.	Andrew Walder
22.	Ann Lewis
23.	Ann Owens
24.	Anna Gill
25.	Anneleise Hey
26.	Anthony Collins
27.	Anthony O'Brien
28.	Antoinette Carroll
29.	AP
30.	AQ
31.	AS

*Pseudonyms were provided to most vulnerable witnesses who gave evidence in a confidential hearing or a statement to the commission.*

32.	Ashley Morton
33.	AT
34.	AU
35.	AX
36.	AY
37.	BA
38.	Barrie Clee
39.	BC
40.	BE
41.	Ben Kelleher
42.	Ben Mason
43.	Ben Streeter
44.	BF
45.	BH
46.	Bill Munro
47.	Bill Rogers
48.	BK
49.	BL
50.	BN
51.	BQ
52.	BR
53.	Brett McNair
54.	Brianna Bell
55.	Bronwyn Thompson
56.	Bruce Evans
57.	BV
58.	BX
59.	BY
60.	BZ
61.	CA
62.	Carolyn Richards
63.	Carolyn Whyte
64.	CB
65.	CD
66.	CE
67.	CF
68.	CG
69.	CH
70.	Charlie Taylor

*Pseudonyms were provided to most vulnerable witnesses who gave evidence in a confidential hearing or a statement to the Commission.*

71.	Christopher Castle
72.	Christopher Jones
73.	Christopher White
74.	CI
75.	CJ
76.	CK
77.	Claire Gardiner-Barnes
78.	CM and CL
79.	Colleen Gwynne
80.	Conan Zamolo
81.	Craig Laidler
82.	Craig Turner
83.	DA
84.	Dale Milne
85.	Darren Foreman
86.	Darren Young
87.	Darryl Higgins
88.	David Cole
89.	David Ferguson
90.	David Glyde
91.	David McGuire
92.	David Pugh
93.	David Toy
94.	DB
95.	DD
96.	DE
97.	Derek Tasker
98.	DF
99.	DG
100.	DH
101.	DI
102.	DJ
103.	DK
104.	Donna Ah Chee
105.	Dr Carmela Pestell
106.	Dr Christine Connors
107.	Dr Christine Fejo-King
108.	Dr Damien Howard
109.	Dr Denise Riordan

*Pseudonyms were provided to most vulnerable witnesses who gave evidence in a confidential hearing or a statement to the Commission.*

110.	Dr Elizabeth Grant
111.	Dr Gary Manison
112.	Dr Howard Bath
113.	Dr James Fitzpatrick
114.	Dr Jill Guthrie
115.	Dr John Rudge
116.	Dr Joseph McDowall
117.	Dr Katherine McFarlane
118.	Dr Katie McKibbin
119.	Dr Mick Creati
120.	Dr Rohan Lulham
121.	Dr Ruth Rudge
122.	DS
123.	Dylan Voller
124.	Eddie Jampajinpa Robertson
125.	EE
126.	Eliza Tobin
127.	Elizabeth Johnson
128.	Errol Wilson
129.	Frank Alcidi
130.	Gabrielle Brown
131.	Gavin Johns
132.	Gemma Turner
133.	Geoff Radford
134.	Glen Dooley
135.	Graham Bell
136.	Greg Donald
137.	Greg Harmer
138.	Gurindji Corp
139.	Harold Morgan
140.	His Honour Judge Michael Shanahan
141.	His Honour Judge Peter Johnstone
142.	His Honour Justice Denis Reynolds
143.	Ian Johns
144.	Ian Lea
145.	Jamal Turner
146.	James Bamber
147.	James O'Brien
148.	James Sizeland

*Pseudonyms were provided to most vulnerable witnesses who gave evidence in a confidential hearing or a statement to the Commission.*



149.	Jamie Clee
150.	Janet Wright
151.	Jared Sharp
152.	Jasen Bryers
153.	Jason Deane
154.	Jayne Lloyd
155.	Jeanette Kerr
156.	Jenni Gannon
157.	Jennie Renfree
158.	Jennilyn Daniel-Yee
159.	Jens Tolstrup
160.	Jeremy Styles
161.	Jerry Jangala
162.	Jesse Palu
163.	Jessica Watkinson
164.	Jim Corpus
165.	Jodeen Carney
166.	Jodie Woolcock
167.	Jody Barney
168.	Joe Yick
169.	John Burton
170.	John Elferink
171.	John Fattore
172.	Jon Walton
173.	Jonathan Hunyor
174.	Jonathan Linggood
175.	Joseph Ingles
176.	Josephine Crawshaw
177.	Joy Simpson
178.	Judge Andrew Becroft
179.	Julie Edwards
180.	Julie Weber-O’Bryan
181.	Karen Broadfoot
182.	Karen Heenan
183.	Katrina Wong
184.	Keith Williams
185.	Kelly Dedel
186.	Ken Davies
187.	Ken Middlebrook

*Pseudonyms were provided to most vulnerable witnesses who gave evidence in a confidential hearing or a statement to the Commission.*

188.	Kieran Wells
189.	Kim Charles
190.	Kirsten Engels
191.	Kirsten Schinkel
192.	Konstantine Vatskalis
193.	Kristy Bloomfield
194.	Kumalie Riley
195.	Kyla Raby
196.	Kylie Proctor
197.	Leilani Tonumaipea
198.	Leonard de Souza
199.	Leonie Wharburton
200.	Lesley Taylor
201.	Lisa Coon
202.	Liza Balmer
203.	Loretta Crombie
204.	Louise Inglis
205.	Luis Lima
206.	Luke Twyford
207.	Lynette Egglestone
208.	Magistrate Jennifer Bowles
209.	Magistrate Kay McPherson
210.	Maisie Floyd
211.	Malcolm Solomano
212.	Mandy Loundar
213.	Marcia Anne Wala Wala
214.	Margaret Anderson
215.	Margaret Kemarre Turne
216.	Marion Guppy
217.	Marius Puruntatameri
218.	Mark Christopher
219.	Mark Payne APM
220.	Marnie Couch
221.	Martinho Tchong
222.	Mary Culhane-Brown
223.	Matt Davidson
224.	Matthew Fawkner
225.	Matthew Hollamby
226.	Matthew McKinlay

*Pseudonyms were provided to most vulnerable witnesses who gave evidence in a confidential hearing or a statement to the Commission.*

227.	Maurice Sgarbossa
228.	Maxine Carlton
229.	Megan Mitchell
230.	Melanie Wylie
231.	Melissa Previtara
232.	Meredith Day
233.	Michael Hughes
234.	Michael Jones
235.	Michael Vita
236.	Michael Yaxley
237.	Mike MacFarlane
238.	Minawarra Japangardi Dixon
239.	Monalisa Campbell
240.	Moses Wigness
241.	Muriel Bamblett
242.	Nate Balis
243.	Nicklaus Robison
244.	Nicola MacCarron
245.	Nicolette Krepapas
246.	Noeletta McKenzie
247.	Noni Eather
248.	Norman Bouffler
249.	Olga Havnen
250.	Patricia Anderson
251.	Patricia Lloyd
252.	Peter Bravos
253.	Peter Fletcher
254.	Peter Rainbird
255.	Petronella Vaarzon-Morel
256.	Philippa Martin
257.	Phillip Brown
258.	Priscilla Collins
259.	Professor Eileen Baldry
260.	Professor Fiona Arney
261.	Professor Frank Oberklaid
262.	Professor Graham Vimpani
263.	Professor John Boulton
264.	Professor John Rynne
265.	Professor Jon Jureidini

*Pseudonyms were provided to most vulnerable witnesses who gave evidence in a confidential hearing or a statement to the Commission.*

266.	Professor Larissa Behrendt
267.	Professor Leah Bromfield
268.	Professor Michael Levy
269.	Professor Neil Morgan
270.	Professor Stuart Kinner
271.	Professor Sven Silburn
272.	Ray Church
273.	Renae Moore
274.	Riley Kirwin
275.	Robert Keith Hamburger
276.	Robyn Lambley
277.	Rosalee Webb
278.	Rosanne Lague
279.	Roslyn Baxter
280.	Russell Caldwell
281.	Russell Goldflam
282.	Ruth Morley
283.	Saki Muller
284.	Salli Cohen
285.	Samantha Taylor-Hunt
286.	Sandy Lau
287.	Sarah Huddleston
288.	Scott Avery
289.	Scott Barlow
290.	Sean Harvey
291.	Shahleena Musk
292.	Shane Neumann
293.	ShMaya Houtman
294.	Stephen Ralph
295.	Sven Thormann
296.	Tamara Stone
297.	Tania Collins
298.	Tanya Blakemore
299.	Terry Byrnes
300.	The Honourable Gerry McCarthy MLA
301.	The Honourable Justice Hilary Hannam
302.	Therese Ellis-Smith
303.	Thomas Quayle
304.	Thomasin Opie

*Pseudonyms were provided to most vulnerable witnesses who gave evidence in a confidential hearing or a statement to the Commission.*

LIST OF PERSONS WHO APPEARED BEFORE OR PROVIDED A FORMAL WITNESS STATEMENT TO THE COMMISSION

305.	Tom Svikart
306.	Toni Eyles
307.	Tracey Hancock
308.	Tracy Luke
309.	Trevor Hansen
310.	Victor Williams
311.	Vincent Schiraldi
312.	Wade Marshall
313.	Wendy Morton
314.	Will McGregor
315.	Yogendera Dahiya
316.	Youth Justice Officer A
317.	Youth Justice Officer B

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## Royal Commission into the Protection and Detention of Children in the Northern Territory

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**Directions Hearing  
Darwin, 6 September 2016**

### **OPENING REMARKS**

#### **Commissioner Mick Gooda**

This is the first public sitting of the Royal Commission into the Protection and Detention of Children in the Northern Territory and it is appropriate that we acknowledge the traditional owners of the land upon which we meet – the Larrakia people. I acknowledge your Elders who are here today, those who have gone before us and those who are yet to emerge.

My people are the Gangulu from the Dawson Valley in Central Queensland and my Elders tell me to acknowledge your continued struggle for your culture and your country.

This is also an auspicious week to start our public hearings, because as we start, yesterday was the beginning of Child Protection Week around Australia. We take that as a signal that we are on solid ground as we start this inquiry.

The Executive of the Commonwealth of Australia under the Australian Constitution and the *Royal Commissions Act 1902* (Cth), and the then Government of the Northern Territory, pursuant to the Territory's *Inquiries Act* (NT), have appointed us to inquire into the failings in the youth detention and child protection systems of the Northern Territory from 1 August 2006, the date the *Youth Justice Act* (NT) commenced, and to make recommendations about improving child protection and preventing the inappropriate treatment of children and young persons detained at youth detention facilities in the Northern Territory.

There has been some speculation that I will not bring an impartial mind to some aspects of the terms of reference. I wish to assure those people and the community that I will look only at the evidence and other information given to the Commission and that nothing extraneous will affect the conclusions I reach with my co-Commissioner.

The deadline for delivery of the Royal Commission's report to the Governor-General is 31 March 2017.

The Official Secretary was appointed in early August and she began, in consultation with Commissioner White and me, the planning necessary to establish the Royal Commission. The Official Secretary has also been responsible, with me, for developing a community engagement plan so that we can ensure all members of the community and those affected by aspects of the Commission's inquiry can engage with the Commission and have the opportunity to have their views heard.

In recent weeks Commissioner White and I, together with the solicitors to the Commission and its Official Secretary, have had the opportunity to meet with a number of peak organisations and stakeholders including representatives of young people and their families, youth justice groups, various departments of government in the Northern Territory, police and relevant unions.

These were occasions to discuss the processes of the Commission in a fairly general way and to see how they and we could best work together to achieve a harmonious and efficient relationship over the coming months which, we hope, will result in a clear understanding of the circumstances which gave rise to this inquiry and allow us to make workable, worthwhile and enduring recommendations to government.

There are still organisations yet to be approached. It has been made plain to us that many individuals and organisations throughout the Territory have experiences concerning the child protection and youth detention systems which they wish to share. A number of researchers in this area, around Australia, have signified a desire to contribute to the Commission's work.

Critical to the outcomes of this Royal Commission will be the engagement of all parts of the Northern Territory community, the Aboriginal and non-Aboriginal communities. Commissioner White and I understand the formality of a Royal Commission can be particularly daunting to a lay person not well versed in processes akin to a court room. Our aim is to act with a high degree of cultural competence as we balance the need to ensure a culturally safe space with the rigour necessary for this Royal Commission to address what our terms of reference demand of us.

To this end, the Official Secretary has engaged two senior Aboriginal people, one based in Alice Springs and the other in Darwin tasked with ensuring the community is generally aware of the work of the Royal Commission and, importantly, that those people, particularly young persons, feel safe and secure if and when they tell us their stories.

Many of the preliminary tasks have now been completed but there are many more which must be undertaken before the Commission is fully operational. The Commission anticipates that the recruitment process will shortly bring the full complement of personnel.

The success of the Commission is likely to be judged by the Australian community by the recommendations made and the readiness of governments to implement them. Consequently we want to work with all affected parties to craft the best, implementable recommendations possible.

In my many discussions with all sections of the Australian community since my appointment, there is a general consensus that we don't need more research to *'describe the issues'*.

We have already seen many Royal Commissions and Inquiries take place, looking at a range of issues including institutional and out of home care, the various child protection systems in the states and territories, the stolen generations, Aboriginal deaths in custody, and child sexual abuse in Indigenous communities, as well as many other issues.

Many of those previous inquiries have touched upon the issues raised by this Royal Commission's Terms of Reference. These Royal Commissions and Inquiries acknowledge that many wrongs have been committed in the past which have caused great trauma and lasting damage to many people. Despite being a painful process, for a community to move forward, it must come to understand where these wrongs have occurred and ensure these wrongs are not repeated.

This Royal Commission must develop meaningful recommendations which, when implemented through legislation and changes in institutional culture and management, will ensure a better future for all in the Northern Territory.



Commissioner White and I have committed to consultations with the Aboriginal community and their representative bodies, the Northern Territory and Commonwealth public service, unions and subject matter experts so that our recommendations are feasible, do-able and can be implemented.

It is important to acknowledge that whilst this Royal Commission is primarily focused on the child protection and youth detention systems of the Northern Territory, the Terms of Reference allow us to inquire into associated human rights and freedoms violations.

Notwithstanding a number of recent revelations in the media about concerning aspects of youth detention in other jurisdictions our Terms of Reference are confined to the Northern Territory. I understand that there have been many calls from Australians in other jurisdictions to have the scope of the Royal Commission widened, but I would like to state we are guided and limited by our Terms of Reference.

The Commission also intends to engage with universities and other experts to ensure our final report does not duplicate other reports and that we rely on the best research currently available on the matters into which we have been asked to inquire.

The Commission has concluded that it will be assisted in its work by holding a number of roundtable discussions with a range of bodies and people pertinent to the terms of reference. To that end the Commission will release a number of brief issues papers to facilitate those round tables.

We will also conduct community meetings in locations where there is strong interest in the work of the Royal Commission and seek the views of all members of the Northern Territory community.

### **Commissioner Margaret White AO**

I, too, wish to acknowledge the traditional custodians of the land where we are gathered today – the Larrakia people – and to thank them for welcoming the Commission to their country.

I acknowledge my family's long and valued association with the land of the Quandamooka people on North Stradbroke Island near Brisbane.

The Commission is grateful to his Honour the Chief Justice of the Northern Territory for generously offering the Commission the use of this courtroom and associated facilities for its public sittings in Darwin.

To all who may be able to offer some evidence-based observations or experiences pertinent to our Terms of Reference, we ask that you make contact with the staff of the Commission to discuss how this might be done.

The Commission can be contacted by telephone, email or writing in the old fashioned way, or through the Commission's community engagement officers who will be available in various parts of the Territory. The contact details are on an information sheet which is available outside this courtroom and on our website.

A preliminary approach does not necessarily mean that that person will be called to give evidence formally before the Commission. Counsel Assisting in consultation with the Commissioners will

decide who is to be summonsed to attend. Should a person receive a summons to give evidence that person will have all the protections of a witness under the *Royal Commissions Act* including that no statement or disclosure made in the course of giving evidence before the Commission is admissible against that person in criminal or civil proceedings. Furthermore, it is an offence to seek to prevent any person from attending as a witness or to inflict any violence, punishment or other detriment on that person.

The Commission will be astute to protect those who are summonsed to attend and will not hesitate to refer those who would impede its work to the appropriate authorities.

The Commission recognises the potential which the public airing of allegations may have to damage the reputation of individuals. Mindful of this possibility, the Commission will confine the allegations which it permits to be placed in the public domain to circumstances where it believes that the airing of those allegations is justified and will do so responsibly.

Where there is a risk to a person's reputation or the possibility of adverse findings being made about a person or an institution, the Commission will, to the extent that it is able to do so, provide any adverse statements (or a précis) and/or documents to the affected person in advance of the hearing at which it is expected that evidence will be adduced. Of course, any person in that situation will have leave to be represented legally before the Commission if that leave has not already been granted.

More generally, any person who believes that he or she has a direct or substantial interest in the subject matter of all or any of the Terms of Reference and wishes to appear and participate in the hearings of the Commission, should seek leave to appear either through legal representatives or personally. To do so they should forward a written application for leave to appear to the Office of the Royal Commission as soon as possible. That may be done electronically by email, or by delivering a hard copy to the Commission's offices at 8 McMinn Street, Darwin, by post or by delivery. Contact details are available on the Commission's website and are posted outside this courtroom.

The Commission will only grant leave to appear to a person or entity who has a direct or substantial interest in the subject matter of the hearings. Where leave is granted, it will likely be limited to the particular matter in which there is a direct or substantial interest.

Any person summonsed to attend and give evidence before the Commission pursuant to section 2 of the *Royal Commissions Act* may, if he or she chooses, and without any further application, be legally represented before the Commission while giving evidence.

Any leave to appear or to be legally represented before the Commission may be varied or withdrawn by the Commission or be made subject to altered or additional conditions at any time.

It is expected that all applications for leave will be made and decided on written application without the need for an oral hearing. In some circumstances, particularly where it is not proposed to grant leave, the application may be listed for a short oral hearing.

Subject to the control of the Commission, Counsel Assisting will decide which witnesses are to be called and in what order, and what documents are to be tendered and when, although Counsel

Assisting will endeavour to meet the convenience of witnesses and their representatives wherever possible without jeopardising the orderly flow of the evidence.

All witnesses will be called by Counsel Assisting the Commission. Any person who wishes to place the evidence of a witness before the Commission must notify Senior Counsel Assisting, through the Office of the Commission, of the name or names of the witness. The staff at the Commission may then interview the potential witness to ascertain if his or her evidence would assist the Commission in carrying out the Terms of Reference.

Any person who is legally represented and who has been examined by Counsel Assisting, may next be examined by his or her own legal representative and then cross-examined by or on behalf of any person considered by the Commission to have an interest in doing so. At the conclusion, the witness's own legal representative may re-examine and then be followed by Counsel Assisting. The Commission will be alert to confine questioning to relevant matters and to encourage the avoidance of duplication in lines of questioning.

A person other than Counsel Assisting will not, ordinarily, be authorised to cross-examine a witness unless that person has provided Counsel Assisting in advance with a signed statement of evidence advancing material contrary to the evidence of that witness.

Witnesses summonsed to appear or given leave to appear at a hearing of the Commission may be eligible for financial assistance including for legal assistance and witness expenses. All enquiries about legal financial assistance should be directed to the Commonwealth Attorney-General's Department. Enquiries about witness expenses should be directed to the Office of the Royal Commission. The contact details may be found on the Commission's website and on the information sheet outside the courtroom.

In conclusion, may I observe that the Terms of Reference of the Commission are wide, requiring investigation into the youth detention system and child protection system in the Northern Territory over a period of 10 years. That, of course, is an historical investigation – what happened and why – a process familiar to all courts of law. It will require the examination of the records of institutions and persons with first-hand knowledge of how these systems operated in practice. It should go without saying that the Commission approaches this part of its task open to the evidence as it unfolds and will reach its conclusions only on that evidence.

If the second part of our task is to be successful, that is, making recommendations to government, every person and institution who can assist the Commission is urged to do so. There can be no one in our community who is not anxious to find out if there are ways to bring about a significant reduction in child offending so that those children may live fulfilling lives in harmony with their own communities and so that a broader civil society may prevail, overall, in the Territory.





## Royal Commission into the Protection and Detention of Children in the Northern Territory

Public Hearing  
Darwin, 11 October 2016

### OPENING REMARKS

#### Counsel Assisting Peter Callaghan SC

##### *Background – establishment and plans for this session*

The fact that we are able to convene at all, just over 70 days since the signing of the Letters Patent, has only been possible because of the intensity with which the Commission Secretariat has worked to establish an office, recruit staff (almost all of whom have had to relocate from many different parts of the country), and invoke procedures for managing the enormous amount of information that the Commission will be required to process. Such things cannot simply be conjured up. The process has been the equivalent of calling into existence a major legal practice that may, in other circumstances, have taken years to evolve.

We have also had to establish the very processes by which these hearings will be conducted. This is one of many, many tasks to which our instructors from the Australian Government Solicitor have been committed. For the purposes of today, and subsequent hearings, when statements and exhibits are received during the evidence of a witness before this Commission, a physical copy will typically be present in the courtroom. For the most part, however, documents will be tendered electronically to the Commission and given exhibit numbers.

At the end of each day, exhibits will be processed electronically, coded and uploaded onto the Commission's website. Anyone, including the general public can access them, subject to any confidentiality directions or the like. This process may take some time, but statements, exhibits and daily transcripts will be publicly available as soon as practicable following the end of each hearing day. With these systems in place, we are in a position to commence receiving evidence.

The dominant purpose of the oral testimony to be adduced this week is to provide background and context. This will lay the foundation for later and more detailed inquiry. We do not propose, this week, for the evidence to descend into the detail of particular incidents, reports or established sources of controversy.

With this scheme in mind, there will however be some evidence called from some witnesses whose evidence serve more than one purpose. Witnesses such as Dr Howard Bath and Ms Colleen Gwynne will have relevant evidence to give about the detail of controversial matters.

It is not proposed to ventilate that evidence this week. We understand that there are parties who will wish to cross-examine these witnesses, but who have not had the opportunity to comply with Practice Guideline 1. There will be ample opportunity for them to do so, however, as it is proposed to re-call these witnesses at a later date. That will occur at the point in time when the Commission is addressing, directly, the issues to which some controversy may attach.

The evidence to be received in these next days is to be regarded as the first instalment in an information gathering exercise that will inform all that follows. That information gathering process will continue for the remainder of this month, as the Commission is occupied by a series of community meetings and youth forums.

This process may be of particular relevance in some of the more remote parts of the Territory. Much is already known that will be relevant to enquiries about procedures applicable to, and events that occurred in, Darwin and Alice Springs, but the Commission is as dedicated to learn as much as it can about issues which are of specific concern in regions beyond those areas. For the two weeks following these hearings, the Commission will be holding community meetings in Tiwi, Alice Springs, Maningrida, Tennant Creek, Katherine, Nhulunbuy, Hermannsburg, Groote Eylandt, Yuendumu and Mutitjulu.

### ***Information already gathered – what we know already***

Although there is much yet to be learned, much is already known. The Terms of Reference drew our attention to the fact that other inquiries have already addressed the subject matter with which we are concerned. At the directions hearing, we noted that we were even then aware of the existence of more than a dozen such inquiries. In fact, we have identified more than 50 reports that have some relevance to issues covered by our Terms of Reference. Most of these have been produced in the past 10 years.

There was a National Inquiry, and there have been two Royal Commissions (the *Royal Commission into Aboriginal Deaths in Custody* and the South Australia Nyland Commission), four commissions or boards of enquiry, a Parliamentary report, four Northern Territory government reviews and 23 independent reviews that have all published findings and recommendations that command our attention. There are a further seven reports that include relevant statistical analyses and implementation or progress reviews. We have also identified, from coronial proceedings, 11 decisions which themselves contain relevant recommendations.

I tender an index that identifies each of these, and the reports set out in it will be admitted into evidence either in a bundle or through an appropriate witness in due course.

It seems to us that all of these investigations have been conducted, and indeed this Commission is being held, under the long shadow cast by the *Royal Commission into Aboriginal Deaths in Custody*.

### ***Royal Commission into Aboriginal Deaths in Custody***

The Royal Commission into Aboriginal Deaths in Custody was premised on a terrible truth – that between 1 January 1980 and 31 May 1989, 99 Aboriginal people died in prisons or in the custody of police. Three died in youth detention centres - one was just 14 years old.

Those Commissioners undertook, pursuant to their Terms of Reference, to examine the deaths of each of those 99 people, and investigate the underlying social, cultural and legal issues that lay behind their deaths.

They made 339 recommendations.

Recommendation 62 recognised that the *'problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities'*.

A sample of other recommendations that, notwithstanding their age, remain conceptually relevant to our Terms of Reference include Recommendations 69, 72, 79, 83, 84, 167, 170, 173, 181 and 182.

It is worth reflecting, in particular, on three.

Recommendation 167 called for the review of practices and procedures operating in youth detention centres, in light of the principles underlying the recommendations relating to police and prison custody, with a view to ensuring that no lesser standards of care applied in youth detention centres.

Recommendation 181 recognised the *'extreme anxiety'* suffered by Indigenous prisoners in solitary confinement, and that even where it occurred there remained minimum standards for *'fresh air, lighting... water and sanitation facilities and some access to visitors'*. Events at the heart of this Commission draw direct attention to that recommendation, made so long ago.

Recommendation 182 concerns the misuse of prison disciplinary rules by correctional officers and the obligation for prisoners to be treated with courtesy and humanity. We may discover that legislation has been enacted and policies have been drafted to address this issue, but the extent of their application in the Northern Territory will be a legitimate focus for inquiry.

In 2015 a report commissioned by Amnesty International Australia reviewed the implementation of that Royal Commission's report recommendations by the Federal, State and Territory Governments. We propose to receive evidence from Julian Cleary, a research officer from Amnesty International Australia about that report as it relates to the Northern Territory.

Although our terms of reference effectively confine scrutiny to that which has occurred over the last 10 years, these examples and Mr Cleary's evidence make clear that issues addressed by the *Royal Commission into Aboriginal Deaths in Custody* are of enduring concern. The principles which underpinned that Commission's recommendations are timeless.

### ***The other 50 – the very fact of them***

In many of the other 50 or so reports those principles are repeated and reflected in the recommendations that have been made. And of course, within that 50, there are observations and recommendations that extend into territory that was not necessary for the Deaths in Custody Commission to consider.

Our review of these reports makes good the proposition advanced by Commissioner Gooda at the Directions Hearing, when he said that there was not a need for more to be done *'to describe the issues'*.

With that observation we respectfully agree, but the very fact that there have been so many reports prepared already, and the very existence of this Commission after so much has been said and written, raises, we suggest, another issue altogether.

It invites the question as to whether there is a need to confront some sort of *'inquiry mentality'*, in which investigation is allowed as a substitution for action, and reporting is accepted as a replacement for results. The bare fact that there has been so much said and written over such a long time is suggestive of a persistent failure that should not be allowed to endure.

Nevertheless, and although the Commission has not been created to audit that which has gone before, we see great potential for assistance in an examination of what has been done already. It can only be of assistance to ask questions about whether previous inquiries, and their recommendations, have been at all effective and, if not, why not.

So we propose to examine that which has gone before in an effort to ensure that the recommendations made by this Commission do not leave the way open for yet another Inquiry into the same issues to be called at some time in the near future. We will be concerned that this Commission's recommendations are made to the right person or institution. They will need to be framed in such a way as to ensure that their intentions are not frustrated by the commissioning of a further review that seeks to test this Commission's findings. We will be conscious of the need for recommendations that are clear and appropriately targeted. And, to the extent that it is possible, they must be practical and likely to be effective.

These ambitions might sound obvious, but, as we have just noted, so much has gone before, and yet so many problems have endured. This very fact is a clue that things may not be that simple. Indeed, one proposition that emerges from our preliminary investigations is that the Northern Territory has, compared with other jurisdictions, youth detention and child protection systems that are, in numeric and budgetary terms, relatively small.

The following statistics are from the Productivity Commission's 2016 *Review of Government Service Provision* report, two relevant chapters of which are identified on the report bundle index we have tendered.

As at 30 June 2015 a total of 1,073 children in the Northern Territory were the subject of some form of care and protection order. In 2014-2015 the total expenditure by the Northern Territory Government on child protection-related services was \$119.9 million. That is recorded as an average of \$92,000 per child per year.

In 2013-2014 the daily average number of children aged 10-17 years in detention in the Northern Territory was just 48. A further 118 were subject to community based-supervision. In 2014-2015 the total expenditure by the Northern Territory Government on youth justice services was \$23.5 million. Of that, \$14.9 million or 63% was directed to expenditure on detention-based services, and \$3.5 million or just under 15% was directed to community-based services. The remaining \$4.8 million was directed to group conferencing, a kind of diversion of young offenders away from courts.

Despite the relatively small size of the care and detention jurisdictions, they suffer from complications that are without comparison – at least, they are sufficiently different from those faced



in other parts of Australia for it to be said that much learning from those jurisdictions is of limited value.

The examination of the existing reports about these systems is a vast undertaking, and in large part does not need to be the subject of evidence; much can be achieved through research and analysis, and those processes are already underway.

But it will be of assistance to explore, in public hearings, at least a sample of that which is been done already, and we propose to do that in the next three days.

***Broader issues anticipated***

Our expectations for this Commission have already been informed by the analysis already done.

We expect certain themes to recur.

In particular, and although we remain conscious as to the limitations set by our Terms of Reference, we can already discern an interconnectedness of issues that will make it impossible to ignore some matters that are of wider concern to the Northern Territory community.

It would be an artificial exercise to consider issues relevant to youth detention and child protection without receiving information about the social and cultural forces that steer young people into detention centres, or operate to place them at risk in the first place. Although the inquiry will extend beyond the situation of Aboriginal people, the position of Aboriginal children and the socio-economic circumstances of Aboriginal communities will be a major concern.

While our Terms of Reference do not specifically identify Aboriginal children, we will not be able ignore the significant overrepresentation of those children in the child protection and detention systems here in the Northern Territory.

According to the Australian Bureau of Statistics, as at 30 June 2015 Aboriginal people made up approximately 30% of the population of the Northern Territory.

However of those children in detention in the Northern Territory in 2013-2014, 95% were Aboriginal. Of the children the subject of care and protection orders in 2014-2015, 86% of those children were Aboriginal (*2016 Review of Government Service Provision* report).

As further examples of themes – and they are only that – we foresee a need for the Commission to receive information about Fetal Alcohol Spectrum Disorder, psychological and intergenerational trauma, hearing loss, and a whole range of medico-social issues that confront disadvantaged young people in the Northern Territory.

Additionally, the need to investigate and report upon certain aspects of the treatment of young people in detention is already apparent. For example, the proposition that the use of behaviour management practices in youth detention centres should not be used to administer further punishment will be considered.

### ***The Intervention***

Some of these issues have been the subject of investigation and recommendation. Across governments and communities, efforts have been and are being made to deal with the issues that confront us. But this in turn invites our attention to an issue that we can already tell will be attended by some controversy. This Commission will have to scrutinise the degree to which these efforts have been coordinated.

To illustrate the point, we can look to the evidence of Professor Thomas Calma, who, as Aboriginal and Torres Strait Islander Social Justice Commissioner prepared, in 2005 and 2008, reports relating to Indigenous young people with cognitive disabilities.

At around this time the Northern Territory Emergency Response, commonly referred to as simply the Intervention, was instigated by the Federal Government responding to the *Little Children are Sacred* Report. Professor Calma describes the Intervention as a significant distraction to policy and program efforts that were being undertaken at the time.

In the event, and as noted by Professor Calma in his *2007 Social Justice Report*, this action by the Federal Government, while using the Little Children are Sacred as a catalyst, enacted legislation that, amongst other things, excluded the application of parts of the *Racial Discrimination Act 1975* (Cth), introduced an income management regime, compulsorily acquired land, prohibited the sale, consumption or purchase of alcohol in 'prescribed areas', and ended the funding of the Community Development Employment Program.

We will deal further with the Intervention in more detail in later hearings, but anticipate this is just one example in which it is possible to diagnose a tension between efforts being made by different parties who are ostensibly striving towards the same end, but whose actions complicate rather than complement each other.

It is to this analysis, in particular, that we must bring an awareness as to the interconnectedness of issues, and the necessity for the recommendations of this Commission to exist within, and improve the intricate frameworks that administer youth detention and sustain child protection in the Northern Territory.

### ***The Children's Commissioners***

It seems to us that two of the witnesses best qualified to provide the Commission with at least a preliminary understanding of that framework are Dr Howard Bath and Ms Colleen Gwynne.

Dr Bath was formerly the Children's Commissioner of the Northern Territory. Ms Gwynne occupies that role now. There are at least two aspects to the evidence of these witnesses that will be important.

Each has evidence to give about specific events that will be of interest to this Commission. There are parties with leave to appear who may wish to produce their own evidence about these issues, and who may therefore wish to question Dr Bath and Ms Gwynne before they do so. Those events, and that process, will be given the Commission's full attention in due course.

For current purposes, however, what is important is the knowledge that both of them have about the child protection and youth detention systems that operate in the Northern Territory. To their statements are annexed the successive annual reports covering the years 2008 to 2015. The reports provide a chronology of the needs and vulnerability of children throughout the Territory. These witnesses are in a position to provide the Commission with what we anticipate will be a helpful overview of the issues that will be addressed in the months ahead. We see it as a useful exercise to call them at this stage for that purpose, and at some later point during the public hearings, they will be recalled in order to give evidence about more specific matters.

### ***International obligations***

Also by way of overview and introduction, we plan to receive evidence at this time from the National Children's Commissioner, Ms Megan Mitchell. Amongst other things, Ms Mitchell's evidence will remind us of the internationally recognised standards that provide a benchmark against which you can assess all that comes before the Commission.

There are two notable features about the status within Australia of these international human rights obligations.

First, these obligations are entered into on behalf of the nation of Australia and so they do apply to the states and territories. Other than by reference to the external affairs power, the Commonwealth does not have specific power to legislate about these matters. It is for the states and territories to do so.

It follows that a failure by a state or territory to act in accordance with Australia's international obligations will trigger enforcement of those obligations. As we apprehend it, breaches of human rights standards by a state or territory are a matter for which the Australian Government can be held to account, through international law and in the various processes of the United Nations.

In the Australian system of law, international treaties are not of domestic legal effect unless incorporated through legislation or other measures. It is therefore of great importance to examine the existence of domestic laws in the Territory which directly or indirectly give effect to Australia's treaty and other international law obligations and to examine the extent to which there may be deficiencies.

For our purposes, we note at the outset of proceedings that there are limited legislative protections of human rights for children at the national level. And in particular, since youth detention is a state and territory responsibility there are no national laws that protect human rights in this context. As to the Northern Territory Government's treatment of those responsibilities, we propose to ask Ms Mitchell about the extent and sufficiency of existing legislative protections for the rights of children in detention in the Northern Territory.





## Royal Commission into the Protection and Detention of Children in the Northern Territory

Public Hearing  
Alice Springs, 13 March 2017

### OPENING REMARKS

#### Counsel Assisting Tony McAvoy SC

It is a significant moment for Counsel and Solicitors Assisting the Commission to be part of these historic hearings on the traditional lands of the Arrernte people. Today the Commission resumes for a three-week sitting period and in that time we will hear from more than 60 witnesses. The schedule is full and you will hear the story from many perspectives.

We will hear from those responsible for youth detention in the Northern Territory, those working in the system, and the young people who will tell us how the system has and continues to fail them. These stories will help the Commission identify failures in youth detention, and possible breaches of law, policy, and human rights.

In particular, the stories will help demonstrate how youth detention came to be in the critical state it reached, how senior management in successive governments saw fit to respond, and how the children in detention fared. Current and former detainees will speak of their experiences and provide an account of their life in detention. Commissioners will be told of children being detained in rundown facilities, often involving prolonged isolation and mistreatment and excessive physical force. We will hear that detention in the Northern Territory offers these young people very little in the way of rehabilitation, stability, and hope.

Here in Alice Springs loneliness and fear will be a theme many young people will talk about. Being transported from detention in Alice Springs to Don Dale – halfway across Australia, away from loved ones and support. The Inquiry's Terms of Reference recognise that to look to the future you must examine the wrongs of the past and understand the position the system was in and continues to be in to this very day.

In October co-Counsel Assisting Peter Callaghan SC referred to a culture of commissioning reports as a substitute for action. There can be no doubt that this Commission represents the best opportunity for the Northern Territory Government and the people of the Northern Territory to commit to wholesale change. Over the next three weeks you will hear from people working on the ground, day in and day out, in the detention facilities. This will be the first opportunity they have had to give their views publicly. This follows private group meetings that the Commissioners held with detention centre workers both here in Alice Springs and in Darwin.

It became apparent at those meetings that there were many concerned and dedicated workers within the youth detention system in the Northern Territory. The Commission expects to hear stories of a culture where bullying, lack of support, chronic and constant short staffing and woeful training are the norm. The youth justice officers themselves will tell of the great challenges they face working in a system which does not give them the tools to do their job: to support and rehabilitate the young children in their charge.

The Australian community expects that the Commission will hear from the leaders who oversaw a system in disarray and disrepair. To that end, in these sittings the Commission will hear from all positions in the chain of command. The Commission will hear from the superintendents, the deputy directors, the Commissioner for Correctional Services, and former ministers. The former Minister for Correctional Services, the Honourable Gerry McCarthy MLA, will be giving evidence in this room on Friday. In Darwin we will hear from the Honourable John Elferink MLA, a former minister with responsibility for corrections.

We have seen that the Northern Territory Government has taken steps to improve the system, announcing increases in youth diversionary programs, housing for regional and remote communities, and an expansion of the Families as First Teachers programs. But the evidence will show there is still much to be done and it will take commitment, leadership and courage to reform the system, because as the detention workers and the children will tell us, the system appears to be making these kids angrier and tougher. The research and experiences confirm that they will be much more likely to commit further and more serious crimes as a result. This does not serve anyone's interests in the Northern Territory. At a recent roundtable held here in this centre we heard from the community, leaders, and experts about solutions and alternative approaches to detention that are already working.

However, as one young person has said:

*I don't think the detention system makes kids better. The whole time I was in detention I was worried about being assaulted by guards or other kids.*

And further:

*I think that most of us come out of detention – come out more angry and acting tougher than when we went in. It didn't make me want to be a better person.*

These young people are not being given every chance to rehabilitate in detention. In fact, in many cases they are not given any chance to rehabilitate at all. Since the Commission last rose the Commonwealth of Australia and the Northern Territory Government extended the term of the Commission. An interim report will now be delivered by 31 March 2017 and the final report delivered on 1 August 2017. This extension shows an appreciation of the breadth and the complexity of the issues we seek to unpack, and the reality that many of the witnesses are vulnerable people who require additional care and protection.

Shortly we will begin to hear from these young people, and I ask the Commissioners to note that the evidence will be given in different ways to ensure the safety and wellbeing of each of the individual vulnerable witnesses. Many of the witnesses will provide testimony in closed sessions, some remotely through audio-visual link, and some in open court.



## Royal Commission into the Protection and Detention of Children in the Northern Territory

Public Hearing  
Alice Springs, 29 May 2017

### OPENING REMARKS

#### Counsel Assisting Tony McAvoy SC

We pay our respects to the Arrernte people and express our gratitude for welcoming us back to Mparntwe, Alice Springs, for hearings this week about the child protection system in the Northern Territory.

The evidence which we will hear this week in Mparntwe, and in the week commencing Monday 19 June 2017 in Darwin, will inform the findings and recommendations addressing the Terms of Reference of the this Royal Commission and Board of Inquiry.

Although the inquiry into the failings of the youth detention system in the Northern Territory and the inquiry in to the child protection system are closely related and involve a saddening level of overlap, the Terms of Reference (ToR) relating to child protection are somewhat different to those for youth detention.

As regards the child protection system, the Terms of Reference require the Commission to inquire into the failings of that system in the period since August 2006 (ToR (a)), what improvements could be made to the child protection system including early intervention and pathways for children at risk of engaging in anti-social behaviour (ToR (h)) and any matter reasonably incidental to those terms (ToR (j)).

In order to fulfil the Commission's work in relation to child protection it is of the utmost importance to hear from the people most affected by the child protection system, that is the children, the families and the communities who are aggrieved by their treatment. We will also hear evidence from Aboriginal community support workers, community organisations, foster carers, residential care providers, caseworkers, government officers and ministers.

In these hearings we will hear the stories of vulnerable people whose lives have been deeply impacted by the child protection system. The evidence contained in those personal stories has been gathered by Commission staff from across the Northern Territory and many of those stories were recorded and will be played in the hearing room. Those people will not be cross-examined, though their account will be given in open court with their identity protected. The material from those people will not be evidence in this inquiry.

We will also inquire into a number of case studies – hearing from individual vulnerable witnesses and other witnesses related to the witness's experience of the child protection system and the examination and tender of relevant documents. The evidence adduced in the case studies will be available to inform the findings about systemic failings and recommendations aimed at remedying those failings.

The gravity of this task ahead cannot be overstated. Few parents would disagree with the proposition that the most egregious act the State can inflict upon a person is the removal, by force, of their children. The Human Rights and Equal Opportunities Commission inquiry into the removal of Aboriginal and Torres Strait Islander children finished 20 years ago with the handing down of the *Bringing them Home* report, and what it revealed remains fresh in our mind. And for a child, the loss of its birth family is nothing short of a catastrophe.

Notwithstanding the recommendations of that report, the rise in the rate of removal of Aboriginal and Torres Strait Islander children from their families has continued unabated, to the point where last year in the Northern Territory there were 20,465 notifications to the government agency with responsibility for protecting children, now called Territory Families. In a territory with a population of 250,000 people, that number alone is shameful, without considering the prediction of the present Northern Territory Children's Commissioner that the number will continue to rise exponentially over coming years.

The 20,465 notifications in 2016 translated to 91.5 children per 1,000 receiving child care and protection services. This compares with 28.6 per 1,000 nationally, or three times the rate.

We will hear evidence that the number of notifications is in fact greater than the official figure and regardless of the fact the Central Intake Team within Territory Families, which receives and handles allegations of harm to children, has been reviewed five times since 2009 – the last review completed in April 2017 disclosed a string of unacceptable practices, some of which had been the subject of previous recommendations.

Territory Families, formerly the Department of Children and Families, we know is the responsible government agency but which has, historically, and continues to be under-funded and under-staffed. It cannot employ and retain enough professional officers to fill the desperate need for caseworkers.

We will hear evidence in relation to the application of the Aboriginal Child Placement Principle. The purpose of the Aboriginal Child Placement Principle is to ensure that, as far as possible, when Aboriginal children need to be removed from their parents they are not deprived the benefit of being raised in their own culture, with their own community, siblings, skin group and kin, speaking their own language. We will be hearing this week from respected community Elders of the difficulties children face when they ultimately return to their community.

In the Northern Territory, the Aboriginal Child Placement Principle is found in section 12 of the *Care and Protection of Children Act (NT)* and finds great support in international human rights instruments to which Australia is party. The *United Nations Convention on the Rights of the Child* observes in its preamble that the State parties to the Convention are convinced that the family, as the fundamental group of society and the natural environment for growth and wellbeing of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

At Article 3 the Convention reinforces the principles that in all actions *'the best interests of the child shall be the primary consideration'*.

However, Article 5 of the Convention provides that State parties shall respect the responsibilities, rights and duties of the parents or, where applicable, the members of the extended family or



community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the Convention.

Article 20 provides that where a child is temporally or permanently deprived of his family environment, the State has the responsibility to provide alternative care for the child and that due regard shall be had to the desirability of continuity in a child's upbringing and to the children's ethnic, religious, cultural and linguistic background.

Other Articles of the Convention are directed to the rights to a standard of living adequate for the child's physical, mental, spiritual, moral and social development, the right to education, the right to play and the right to development.

Of great importance to this inquiry is the strong language in Article 30 to the effect that an Indigenous child shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to practise his or her religion and to use his or her own language.

In addition to the *Convention on the Rights of the Child*, Australia has supported the *United Nations Declaration on the Rights on Indigenous Peoples*. Of particular relevance to this portion of the Commission's work where the evidence has shown and will reinforce that both the Commonwealth government and the Northern Territory government have over decades done things for or to Aboriginal people, and have not done with Aboriginal people, are Articles 18 and 19 of the Declaration. They provide that Indigenous peoples have the right to participate in decision-making in matters which affect their rights, through their own representatives, to develop and maintain their own decision-making institutions, and perhaps most importantly, that the States shall consult and cooperate in good faith with Indigenous people to be affected by their decision through their own institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative change.

These Articles recognise and emphasise the effect of disempowerment upon Indigenous people and the need for government to engage in respectful dialogue. There has already been evidence given to this Commission about the absence of respectful engagement that led to the findings and recommendations in the *Growing them strong, together* report in 2010, and we will hear evidence that there is no structured engagement with the Aboriginal community at a local level, regional or on a Territory-wide basis.

Of course, we do not have to – or at least should not have to – turn to international human rights instruments to inform us of key principles and key human needs.

First, the fundamental principles about how to effectively engage with Indigenous peoples. Second, the need to protect and support our families, to strengthen and defend them, whichever form those families take. Third, that taking children away from their families must be avoided and should only be done with extreme care.

Commissioners, there can be no doubt that the child protection system in the Northern Territory is comprised of many committed people both within government and within the foster carers, kinship carers and non-government support service providers, but the evidence will show that it is nevertheless a system with many, many failings. Relevant to ToR (h) some witnesses will give

evidence in relation to the need for a much greater emphasis on supporting families and communities. Given that this very same observation was made by the authors of the *Growing them strong, together* Report in 2010, the question must be asked as to whether the agency that was the Department of Children and Families and is now Territory Families is able to make the cultural and philosophical shift from policing child protection laws which facilitate removals, to supporting communities and families in need.



## Royal Commission into the Protection and Detention of Children in the Northern Territory

Public Hearing  
Darwin, 30 June 2017

### CLOSING REMARKS

#### Commissioner Margaret White AO

So today marks the final day of public hearings of this Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory.

Since our first day of hearings on 11 October 2016, we have conducted seven sets of hearings here in Darwin and in Alice Springs. During these hearings, we have heard much evidence from those involved in both the detention and protection of children in the Northern Territory. Over 200 witnesses have given evidence before the Commission, including over 40 vulnerable witnesses.

In addition, we have received in written form, 430 personal stories. The evidence gathered in the public hearings has provided valuable insights into the failures that have occurred in both detention and protection.

That evidence has challenged us to find a way to manage young people in crisis which finds its expression in antisocial and criminal behaviour and ensure the safety of the community and allow all children to be safe and nurtured.

Some of the evidence in the public hearings has been both confronting and speaks to the challenges that face children and those charged with their care, both in protection and detention. At the same time, we have also heard evidence that gives cause for optimism, particularly for those working on alternatives to the existing detention and child protection models.

Even though public hearings end today, we are still gathering documentary evidence. We have received over 400 formal witness statements, thousands of documents in response to notices to produce and over 300 written submissions from individuals and organisations.

Our ongoing work culminates when Commissioner Gooda and I hand over the final report of the Royal Commission into the Protection and Detention of Children in the Northern Territory. This work will be completed well within the operating budget, which has not been increased as a result of the move to a reporting date of 30 September.

I would like to thank all who have contributed to the work of the Commission through personal appearance, written submission, contribution in meetings, and through their own stories.

The Commission has received generous assistance from many experts from other jurisdictions, many of whom have appeared in our public hearings, usually by video-link. We are particularly grateful to those outside Australia who have shared with us their solutions to many of the challenges which have been revealed to be present in the Northern Territory. We thank them all.



## Royal Commission into the Protection and Detention of Children in the Northern Territory

Might we also thank the many lawyers who have appeared for particular clients throughout our detention and child protection hearings. They have added greatly to the Commission's better understanding of many of these issues. May we single out two. Dr Peggy Dwyer and Ms Felicity Graham appearing for NAAJA and CAALAS respectively. They have been consistently present and their insightful and probing questions have assisted the work of the Commission.

While there is, of course, much work for the Commission staff to do, we want to thank them for facilitating these public hearings so well.

We would like to thank Law in Order who have provided the technology to our hearings in both Alice Springs and Darwin. The glitches have been remarkably few.

But especially we want to thank the transcribers here in Darwin and Alice Springs. Their skill, dedication and good humour has been remarkable, working some days from 8.30 am until 7pm, not to mention the prevalence of some extraordinarily speedy speakers.

Finally, the Commission wishes to thank the Chief Justice of the Northern Territory and the court staff for their hospitality in hosting the Commission in this building.

### **Commissioner Mick Gooda**

On the commencement of our task guiding this Royal Commission, Commissioner White and I decided respectful engagement with all parts of the Northern Territory community would be an integral feature of our inquiry if we are to make meaningful change to those issues that led to our establishment.

This engagement has taken the Commission to numerous public meetings, many round tables and targeted meetings with communities, workers, advocates and individuals. Commissioner White and I attended many of these to hear first-hand of the issues confronting the Northern Territory in the areas of child protection and youth detention.

While our community engagement teams have been key to ensure the community has had the opportunity to connect with this Commission.

In the pursuit of best practice there has been 43 site visits here in the Northern Territory and other parts of Australia as well as New Zealand, whilst our staff have scoured world-wide for real life examples of other countries for dealing with the issues we are looking at.

As Commissioner White said this week, we have seen many of those experts giving evidence from places such as Ontario, Canada, Spain, the United Kingdom, New York and Ohio in the USA.

All witnesses in our seven sets of public hearings have contributed enormously to our understanding of the issues that have led to the failure in both the detention and protection systems here in the Northern Territory.

These public hearings have provided the opportunity for those most involved to have their voices heard, including the children and families of the Northern Territory as well as front line workers, current and past, of the detention and protection systems.

Engaging with all of those has been central to the work of the Royal Commission. And has supported our public hearings by enabling us to gather the valuable perspectives on the issues that people see is relevant to this inquiry.

However, as participants with and observers of our hearings would have seen, some of the evidence has been hard, distressing and very personal. Witnesses opened up to us, some intimate parts of their lives, their struggles and their challenges but we also heard stories of resilience where out of some of the most dire circumstances are families, children and young people who tell us they see a brighter future.

I join Commissioner White in thanking all of those who have appeared in the formal sittings of this Commission.

Of course, it's important to understand that anyone who is distressed by the content that has been exposed by the Commission or the stories or information that has been told, can contact the free helpline for support. This is available through Relationships Australia and Danila Dilba, the details of which are on our website.

To the future, after these hearings, our engagement with the community will be continuing. So it's important to note that there is still time for any person or community to tell their stories to us about those child protection and youth detention systems. They can do that up until 31 July and information about how you can tell the Commission your story is available on our website.

Finally, like Commissioner White, I would like to thank everyone who has assisted and has been involved in our hearings: the court, the technical staff, and all counsel who have appeared and, of course, their legal teams.