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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 2A**

# 8

## DETENTION EXPERIENCES





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# CASE STUDY: DYLAN VOLLER

Dylan Voller is a 20-year-old Aboriginal male with a lengthy history of detention. His treatment by youth justice officers at the Don Dale Youth Detention Centre was captured on CCTV. Some of the footage was saved and became the subject of national controversy after it was broadcast on the ABC's *Four Corners* program in July 2016. Dylan agreed to appear in person before the Commission and consented to his identity being made public. He gave evidence and was vigorously cross-examined by the Solicitor-General for the Northern Territory.

What Dylan's story demonstrates so powerfully, and the purpose of telling it, are the consequences of failing to intervene therapeutically in the life of a child when the need to do so first arises. His is a story of those who should have better recognised that the underlying causes of his difficult behaviour needed not only investigation, but also treatment. It is also a story of missed opportunities during his first interaction with child protection officers in the Northern Territory at a young age, his time at the many schools he attended, his time with out-of-home care providers and his early encounters with police, and the harsh and uninformed operation of detention centres and the failure of rehabilitation. Aspects of his story are to be found reflected in many others who entered youth detention in the Northern Territory during the relevant period and who gave evidence to the Commission.

Dylan moved to the Northern Territory at the age of 7.<sup>1</sup> His early education was fragmented and his behaviours affected his attendance and performance at school. He recalls that, at about the age of 10, he was prescribed the drug Ritalin to treat a diagnosis of ADHD. While the medication had some beneficial impact on his behaviours at school, it also made him feel sick and he experienced bad side effects, such as vomiting in the afternoon.<sup>2</sup>

Shortly after he moved to Alice Springs, his family became involved with the Department of Children and Families. From time to time he was placed in a residential group home (known as a 'resicare home') run by a non-government organisation. On one such occasion, he was placed at 'Forrest

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House' with other boys who were older, most of whom smoked marijuana.<sup>3</sup> The boys would sneak it in, close their door and smoke it at the back window.<sup>4</sup> This was where Dylan tried marijuana for the first time.<sup>5</sup> Providing an introduction to that drug was not the only way in which these boys were a bad influence. Some of the offences that Dylan later committed – in and out of custody – were with one of them.<sup>6</sup>

In October 2009, shortly after he had turned 12, Dylan was first taken into custody at Aranda House.<sup>7</sup> On this occasion he was subjected to his first strip search.<sup>8</sup> Dylan's evidence of this event was compelling. The Commission notes in Chapter 13 that strip searches of young people should rarely, if ever, occur.

Dylan detailed the conditions in which he lived in Aranda House. It was very small. It had a kitchen but meals were not cooked – they were frozen meals, reheated in the microwave. The detainees' rooms contained two metal bed frames with mattresses and very poor natural light. There were cockroaches and dust. When visitors came, he had to sit in the kitchen or the little area where the basketball hoop was, with all the other inmates looking at him and his visitor.<sup>9</sup>

Antoinette Carroll, a case worker and independent advocate for Dylan from 2009 to 2016, recalled a time when she visited Dylan and another young person in Aranda House, on Christmas day in 2010. Dylan was 13 years old. It was a very '*sad situation*', a '*dismal place to be spending Christmas for such a young child*'. She gave him some Lego and a jigsaw puzzle to make the day a bit more comfortable.<sup>10</sup> Ms Carroll described Aranda House as an '*appalling environment*'. She was concerned about the '*social and emotional wellbeing of young people, isolation, the close proximity of the physical space, the lack of education, the lack of nutritional meals, lack of therapeutic supports*'.<sup>11</sup>

John Fattore, General Manager Community Corrections and former Audit and Investigations Officer of the Professional Standards Unit, accepted that Aranda House was a facility that was only ever intended to be for short periods of detention and was not fit for lengthy (beyond a week) detention.<sup>12</sup> Commissioner Ken Middlebrook described it as a '*deplorable place*'.<sup>13</sup>

If someone so young was to be detained in such an environment, then there was an obligation to provide therapeutic services directed to putting him on a new path and minimising the chance that he would re-offend and return to custody. This included addressing his serious behavioural issues<sup>14</sup> that must by then have been obvious to those in positions of supervision.

At various points during Dylan's life, attempts were made to address his behavioural issues. The Commission has evidence that a raft of psychological reports and other assessments were ordered by the court or requested by the Northern Territory Government, particularly during the first few years of his detention.<sup>15</sup> Ms Carroll told the Commission that there were many such reports, but the recommendations were rarely implemented.<sup>16</sup> The Commission did receive information demonstrating that some efforts were made.<sup>17</sup>

For example, in April 2010, when he was 12 and in detention, the Department of Children and Families (as it was then known) requested a comprehensive behavioural assessment due to a reported escalation in Dylan's aggressive and unlawful behaviour.<sup>18</sup> In August 2010, Daryl Murdock

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prepared an extensive report that explained what was necessary in Dylan case. He proposed management strategies to assist in dealing with his behaviours.<sup>19</sup> It was clear, even then, that detention was not a suitable environment for him to receive the care and treatment he required, but at least in this report there was a plan. It was, however, short-lived, and the services of Mr Murdock were terminated by the Northern Territory Government in August 2010.<sup>20</sup>

In September 2010, Dylan was referred to the Therapeutic Services program, which was part of the Department of Children and Families.<sup>21</sup> A manager/senior clinician of the program expressed concerns in January 2011 about the use of behavioural management strategies, including physical restraints and isolation. She reported a concern that the *'lack of sufficiently secure therapeutic settings in the Northern Territory [was] contributing to the long term harm'* of Dylan.<sup>22</sup> A social worker from the Therapeutic Services team who worked closely with Dylan's team during this time said that she felt like she was *'constantly coming up against brick walls'*.<sup>23</sup> She was of the view that Dylan did not have access to the appropriate professional care or treatment facilities when he was in detention and that the professionals who did have the relevant expertise were not provided or encouraged to have necessary access to his care.<sup>24</sup>

In January 2012, the Department of Correctional Services prepared a detailed business case noting that Dylan had in the past responded better to one-on-one staffing in a controlled environment. It stated that *'if nothing was done to break the cycle'* the Department could realistically have Dylan in detention until his 18th birthday.<sup>25</sup> Commissioner Middlebrook requested advice from a psychologist,<sup>26</sup> who stressed the need for staff at the centre to be trained in the use of de-escalation skills and noted that Dylan required a facility with trained face-to-face staff and clinical services with a stable, caring and predictable environment.<sup>27</sup> On 17 March 2012, this proposal was approved by Commissioner Middlebrook and, in an attempt to implement it, Dylan was transferred from the Don Dale Youth Detention Centre to Aranda House on 31 March 2012.<sup>28</sup> However, the plan was short-lived when, on 26 April 2012, six detainees were transferred to Aranda House for a maximum of two weeks, as the Alice Springs Youth Detention Centre had reached full capacity.<sup>29</sup> On 25 May 2012, after an attempted escape by other detainees from the Alice Springs Youth Detention Centre, six detainees were placed at Aranda House. On 27 May 2012, Dylan was transferred to the Alice Springs Youth Detention Centre due to potential risks to his safety from other detainees.<sup>30</sup> Mr Yaxley accepted that the plan failed *'sooner'* than they thought.<sup>31</sup>

In July 2014, another psychiatric report again supported a further psychological assessment and treatment to help Dylan manage difficult feelings and behaviour.<sup>32</sup> A Northern Territory Government document records that Russell Caldwell, Executive Director of Youth Justice, was keen to do a follow-up assessment, which was requested in September and October. An email dated 24 October 2014 noted that the Forensic Mental Health Team leader was *'mindful that the NT has a mental health service delivery gap with youth'* and that *'by placing clients like Dylan at risk with a direction for a psychiatric assessment follow up'* could fast-track this referral assessment process.<sup>33</sup>

A further behavioural assessment was prepared by Mr Murdock and finalised on 26 February 2015, at the request of the Department of Correctional Services. This report contained another series of recommendations that, if implemented, could have made a difference.<sup>34</sup> The report was discussed and actions to implement the recommendations were agreed and circulated on 3 March 2015 to staff members including Barrie Clee, who was then the Officer in Charge of the Alice Springs Youth

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Detention Centre, and Mr Caldwell.<sup>35</sup> However, the following day, Dylan was placed in the restraint chair and, a further 3 days later, he was transferred to the Don Dale Youth Detention Centre. The Commission has identified failures in the case management 'system' and examined the way in which transfers were handled in Chapter.

After his transfer to Don Dale, Dylan began to engage with the clinical psychologist then recently employed at the Don Dale Youth Detention Centre. Dylan told the Commission that 'I started making a lot of progress in my violent offending management, and enjoyed that and liking that process'.<sup>36</sup> The psychologist recorded that Dylan significantly reduced his self-harm behaviour and engagement in detention centre incidents after the commencement of this treatment.<sup>37</sup> By then, however, he was into his last few months in the youth detention system and he was transferred to an adult correctional facility on 24 September 2015.

It is clear from the totality of the evidence that while Dylan was the subject of numerous inquiries and reports, he was far less the subject of implementation of the recommendations of those inquiries and reports during the period that he was detained in a youth detention facility.

The Northern Territory Government pressed for the tender of all incident reports prepared by youth justice officers concerning Dylan while in detention.<sup>38</sup> The Commission has considered the accuracy of reports of this nature and record-keeping elsewhere in Chapter 21 of this report.<sup>39</sup> Those reports were said to be relevant to his treatment by staff members, including the appropriateness of their responses to his behaviour (such as delays or failures to provide food or water), cell placements including isolation and at-risk placements, and the use of force or restraints. On his own evidence, Dylan accepted that he was difficult to manage and control, and could be verbally and physically aggressive. He admitted his habitual spitting at those in authority and the records indicate that this included a nurse.<sup>40</sup> When giving his evidence to the Commission, he said that he was not proud of the things that he had done.<sup>41</sup> The accuracy and truthfulness of the entirety of those reports might legitimately be the subject of question and are considered in several other chapters. Even if the accuracy of those reports is accepted fully by the Commission, what they disclose is a young person who was in desperate need of serious therapeutic intervention. As already noted, despite the efforts of some of those who were entrusted with his care and treatment, this was not delivered in a structured, continuous and ultimately fruitful fashion until shortly before he was to be transferred out of the youth justice system.<sup>42</sup>

The implementation of any plan depended on staff members, and Dylan had good things to say about some of them.<sup>43</sup> One particularly positive learning experience occurred during his time at the Don Dale Youth Detention Centre with an Aboriginal youth worker, Harold Calma. For about two months, Mr Calma provided Dylan with one-on-one tutoring. Dylan felt that he concentrated better and had a better learning experience when working with Mr Calma, who was patient and would listen. However, this promising initiative ended when Dylan was transferred to Aranda House on 31 March 2012, as part of the plan that was short-lived and referred to above.<sup>44</sup>

Dylan also spoke favourably about other youth justice officers, including Ian Johns and Greg Harmer.<sup>45</sup> The evidence demonstrates that he could be managed, with structure and kindness. But that sort of management had to be provided by the right staff members, who were experienced, had ongoing training and were themselves provided with professional supervision and support.

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Deficiencies in the behaviour of some staff members towards Dylan were recorded as early as 2011. They increasingly personalised his behaviours, became less able to tolerate discussion about him or any explanation for his behaviour, and appeared increasingly frustrated and angry, with the result that physically restrictive interventions such as isolation occurred.<sup>46</sup>

In some cases, the problem went beyond inadequate training. On at least three occasions, Dylan was denied the elementary dignity that should attach to the act of going to the toilet.<sup>47</sup> One of these occasions occurred in March 2015, on the first day of his two-day transfer by road from Alice Springs to the Don Dale Youth Detention Centre. The distance to be travelled on the first day, to Tennant Creek, was about 500 kilometres, which occurred three days after Dylan had been placed in a restraint chair with a spit hood over his head. During this transfer, Dylan was handcuffed and placed in the back of a caged van. He said he was hot, threatened self-harm and felt sick from the exposure to the youth justice officers' cigarette smoke. One of the youth justice officers responsible for escorting Dylan told the Commission that his behaviour had been 'extremely abusive and threatening during the trip' and a decision was made that he was not allowed to exit the vehicle. Dylan told the Commission, and the escorting officer accepted, that about an hour into the drive he needed to go to the toilet. He was told to remain in the vehicle and urinate through the cage. Dylan was denied the opportunity to use the toilet at the police station at Ti Tree as it was not open. After refusing further requests to go to the toilet, the escorting officers stopped to 'relieve themselves' shortly before their arrival in Tennant Creek. At this time they were 'surprised' to discover that Dylan had defecated in his shirt. The escorting officer prepared a report of this incident one month later. This was unjustifiable, and one of the escorting officers responsible acknowledged the absurdity of his explanation for it.<sup>48</sup> The first leg of his trip to Darwin was in contrast to the second day, where different escorting officers allowed Dylan to sit on the side of the vehicle at road stops and engaged with him during the his trip back to Darwin.<sup>49</sup>

As has been found in Chapter 12 (Abuse and humiliation), children in detention were sometimes treated by staff members in an offensive and demeaning fashion. Dylan joined other detainees who reported being, in effect, used as objects of entertainment by staff members. Specifically, he complained about being goaded by Conan Zamolo into drinking salted milk.<sup>50</sup> Mr Zamolo denied this. Had Dylan been alone on this point, it might have been difficult to make a finding.<sup>51</sup> But given the particularity of the detail, the unusualness of what was alleged, and when considered against a background of a pattern of bad behaviour – verified by video footage and by Mr Zamolo's own admissions – the Commission is satisfied that this did in fact occur. The use of children in this way by a person in a position of power and protection, particularly children with serious behavioural issues, is indefensible. The behaviour of other staff members who were complicit, or at least tolerant of such behaviour, significantly fell short of the required standards of their positions.<sup>52</sup> The Commission has considered the demeaning treatment of detainees in Chapter 12.

It is also undeniable that force was used against Dylan while he was in detention. Evidence of these occasions was received as part of his story, and the CCTV footage of these incidents assisted the Commission to understand some realities of life in detention. It included evidence of the occasions when:

- a. On 20 October 2010 at, just 13 he was thrown onto his mattress, where he was left crying and obviously distraught, and no medical assistance was provided to him.<sup>53</sup> Still images from the

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- CCTV showing Dylan being thrown onto the mattress are in Chapter 13.
- b. On 9 December 2010, he was restrained by the neck and forced onto a mattress and while restrained, stripped naked and left alone in a clearly distressed condition<sup>54</sup> Still images from the CCTV showing Dylan being grabbed around the neck are in Chapter 13.
  - c. On 7 April 2011, following a minor infraction involving a telephone call, a youth justice officer pulled Dylan out of a chair, kned him in the hip and struck him across the left side of the face.<sup>55</sup>
  - d. On 4 October 2011, while standing in a cell by himself, facing a wall, crying, and with his head in his hands, Dylan was grabbed around the neck and placed on the ground. His arm was twisted and a knee placed on his shoulder while he was stripped of all his clothing.<sup>56</sup>

Dylan was involved in other incidents in which he may have been subjected to excessive force. Some of these are referred to in Chapter 13 concerning the use of force on detainees.

By its Terms of Reference the Commission need not inquire into those matters that have been or will be sufficiently and appropriately considered by another inquiry or investigation or proceeding. Many of these incidents have been investigated thoroughly and reported on by the Children's Commissioner. Furthermore, there is pending civil litigation arising out of Dylan's treatment by the Northern Territory Government. The Commission makes no findings about these incidents or their circumstances apart from the brief observation below.

It is a matter of public record that some incidents were followed by police investigation and the institution of criminal proceedings against staff members. No convictions were obtained. What was not publically known, until the Commission, was that at least one case was allocated to an unexpensed prosecutor.<sup>57</sup>

The Commission accepts that the context for some of these situations included an assessment that Dylan was deemed to be at risk of self-harm. Such situations pose a serious challenge for the staff of detention centres.<sup>58</sup> However, they must be treated like any other mental health emergency, despite taking place in a detention centre. That was demonstrably not the way in which Dylan's issues were met. Dylan told the Commission that he would threaten self-harm because he felt depressed on a lot of occasions and *'didn't want to be in Don Dale any more'*. He said that sometimes he would do this when he was not in fact feeling depressed, to isolate himself from other people, including youth justice officers, or when he felt bullied by other detainees.<sup>59</sup> On the other hand, Dylan did in fact attempt self-harm on a number of occasions. He once tried to strangle himself by tying the 'at-risk' material around his neck.

When he was cross-examined by the Solicitor-General, examples of Dylan's unfulfilled threats of self-harm were seized on as a basis on which his credibility before the Commission could be impugned.<sup>60</sup> Accepted psychiatric research and clinical experience demonstrates beyond doubt that every threat of self-harm contains an element of a child wanting to hurt or punish themselves, and also of their wanting somebody to listen.<sup>61</sup> Dr Jon Jureidini, an expert child psychiatrist, told the Commission that it was not necessary or even desirable for youth justice officers to be concerned about whether such threats are genuine. Rather, he suggested they should listen to what is invariably a distressed and vulnerable young person.<sup>62</sup>

In March 2012, while Dylan Voller was in detention, representatives from the Central Australian

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Aboriginal Legal Aid Service (CAALAS), including Ms Carroll, raised with Dylan's case manager from the Department its concerns regarding the lack of post-release planning for Dylan. It was noted that one of the major problems when Dylan was sentenced in November 2011 was the complete absence of any plan for him upon release.<sup>63</sup> One difficulty was identifying a structured accommodation placement to accommodate his needs. During the following six months, Ms Carroll continued to contact Dylan's case manager to 'push for' the development of a comprehensive post-release plan. On at least one occasion in August 2012, an application was made on behalf of the Department to the court for Dylan to remain in custody for a further period, in relation to separate further charges, to enable the Department to source a placement for him. The Department's own notes record that on 1 August 2012, Dylan appeared in court in relation to criminal proceedings but, as the Department was unable to comment on the readiness of Dylan's placement, the matter was adjourned. Eight days later and despite being made aware that on the previous occasion that the magistrate was ready to release Dylan on 13 August 2012, the Department made an application for a later release date of 15 August 2012 to enable it to assure a placement was ready. This application was refused by the magistrate. Ms Carroll later made a complaint to the Children's Commissioner about the Department's actions and told the Commission that if the application had been upheld, Dylan would have had to stay in detention for a further period *'purely because the Department had not managed, within the 18 month period of his detention, to develop a post release plan'*.<sup>64</sup>

One particular experience tells a wider story. Starting on 19 December 2012, when he was 15, Dylan spent a period of 210 days in custody.<sup>65</sup> Ninety of those days were spent in isolation or in the Behavioural Management Unit, where no child or young person should ever have been accommodated.

His experiences there can be added to those recorded in Chapter 14 (Isolation). Nothing done during that 210-day period resembled anything that could be described as a meaningful attempt at rehabilitation. It can be accepted that Dylan was at times particularly difficult – but he was still a young person. Twenty-four of those 90 days were spent in isolation consecutively in the lead-up to his release on 17 July 2013.<sup>66</sup> On that date, he was taken from the state of sensory deprivation in which he was living and released directly into the community.<sup>67</sup> Less than a month before he was released, Dylan called Ms Carroll to express his frustration at the lack of post-release planning.<sup>68</sup> It is impossible to understand how anyone thought he could, against that background, emerge as a functional member of society. Predictably, he got into trouble again. Those against whom he subsequently offended are entitled to feel aggrieved – but it should not be directed exclusively at Dylan. It should also be directed to a system that was incapable of following the therapeutic intervention and management plan which it had commissioned and may have succeeded in deflecting him from further criminal offending.

Dylan Voller's story is one that is reflected in other histories that have been described to the Commission and that form part of this report. Children and young people like him were incarcerated, ignored and deprived of their basic needs. They were held in conditions some of which were unspeakably bad and treated in a way that meant rehabilitation was impossible. They were forgotten until it became convenient to demonise them for the fact of their incarceration. Unsurprisingly, their mistreatment bred more wrongdoing and more significant behavioural issues. A child or young person in detention should not be allowed to be treated in this way.





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# CASE STUDY: AN

The Commission has included some aspects of AN's story of her time in detention as a young adolescent acknowledging that her increasingly complex behaviour made her one of the most difficult detainees to manage. Her detention files are extensive and this short analysis of her mental health treatment in detention does not do more than identify the damaging effects of incompetence. What AN was offered was not beneficial to her.

AN spent a total of approximately 18 months of her adolescence between the ages of 13 and 16 in youth detention. The length of her admissions to detention varied between three days and six months. Over that time, she displayed increasingly serious and frequent self-harm and suicidal behaviours.

When she first entered detention, AN already had a complex history of family and early-life trauma. She had significant cognitive impairment, as well as some hearing and vision difficulties. Northern Territory Correctional Services and the courts were made aware of AN's background soon after she first entered detention, by way of reports prepared for her court matters as well as 'at risk' assessments completed by forensic mental health practitioners. She also exhibited defiant, self-harm and suicidal behaviours early on while in detention.<sup>69</sup>

There was much information about AN that was, or should have been, available to youth detention management, including her background; the nature of her behavioural difficulties; the ways in which being in a detention centre environment affected her; the family supports available; and, given these features, how she should be treated. Perhaps of greatest significance was that at age 13 her assessed age was 7.7 years. She was effectively a very young child who was incarcerated. Below are just a few examples of available information:

## Psychological report prepared for Youth Court<sup>70</sup>

... [AN] satisfies the criteria... for *Dysthymic disorder* – this disorder in adults is

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*characterised by a chronically depressed mood but in children and adolescents can present as irritability with low self-esteem, poor social skills and pessimism...[AN's] presentation includes low self esteem, poor concentration, difficulty making decisions particularly in social situations and feelings of hopelessness, including self-harm ... In addition to this mood disorder [AN] presents with the personality characteristics of anger, impulsivity and deficient empathy. She also has extremely low receptive language functioning.*

*[AN] requires cognitive behavioural therapy treatment for her dysthymic disorder. This therapy will need to be adapted to accommodate her low receptive language ability [biological age 13; assessed age 7.7] ...[AN] also requires education in stress management strategies. Currently she has limited ways of managing her stress and often uses self-harm as an inappropriate way of addressing stress.*

### **'At risk assessment', progress notes<sup>71</sup>**

*She [AN] acknowledges, as before, problems with anger control and is obviously impulsive and enraged by the limits and controls of this environment ... [AN] is aware of the arisal [sic] and trajectory of these events and cannot control her emotions and approach to her difficult circumstances ... [AN] does respond well to gentle counsel and concern.*

*D/W [discussion with] ... Supervisor Don Dale case meeting to explore management options which might intersect with these destructive rages and consequent dangerous self-harming or suicidal outcomes as a matter of some urgency.*

### **'At risk' assessment, progress notes<sup>72</sup>**

*Her current environment with largely punitive behavioural management techniques and behavioural standards abnormally rigid and restrictive by the normal cultural standards for adolescents, is likely to exacerbate her difficulties in self-management her impulsivity and her drive for stimulation, leading to acting out and lability in mood. It is unclear whether she is regularly visited by her mother and there may be thoughts of abandonment that will exacerbate her situation and precipitate self-harming acts.*

## **Letter from Forensic Mental Health Team member to Community Corrections Probation and Parole Case Manager<sup>73</sup> (referred to in pre-sentence report<sup>74</sup>)**

*As you know, [AN] has a traumatic family past and a complex history of trauma ... I recommend in view of the fact that my involvement was short [four counselling sessions and an 'at risk' assessment]; that as part of long term recovery and involvement with Government Services that she has ongoing psychological counselling to assist with her anger management and coping strategies. She has very close ties to her family which in turn protect her. Her grandmother particularly is a source of hope and comfort.*

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Notwithstanding the availability of information about these conditions, AN was not managed or provided with the recommended therapeutic psychological care and treatment. A lack of communication and information sharing between the agencies charged with her care – Northern Territory Community Corrections, Youth Detention and the Department of Health contributed to this situation. Another contributing factor was that as AN spent considerable time in detention on remand, she was ineligible for intensive case management.<sup>75</sup>

Instead of any structured or planned pre-emptive approach to her management, AN was frequently isolated, including for periods of up to weeks at a time,<sup>76</sup> pursuant to the ‘at-risk’ procedure following self-harm or suicidal behaviour. She was also isolated for non- ‘at risk’ behavioural reasons.<sup>77</sup>

Management plans developed for AN did not consider the opinions and advice of mental health practitioners, were not trauma-informed and did not include any attempt to understand the background to the feelings driving her behaviour.<sup>78</sup> Plans instead offered naïve reward[s] and punishment in a vain attempt to shape her behaviour.<sup>79</sup> Professor Jureidini, who prepared a report about AN for the Commission, opined:

*the behaviourist approach will inevitably be experienced by the child as punitive, and if it has apparent effect, it is most likely because it leads the young person to be so dispirited that they give up and stop resisting.<sup>80</sup>*

It is uncontroversial that authorities responsible for the care of children and young people should develop a thorough understanding of their background, personality, vulnerabilities and needs. Furthermore, authorities should consider this information in assessing why a child or young person is displaying distressed and distressing behaviour in detention in order to be able to respond appropriately and effectively.<sup>81</sup>

In AN’s experience there was little distinction between the manner in which she was managed while ‘at risk’ and the punitive behaviour management regime adopted as part of isolation placements for children and young people who misbehaved, discussed in Chapter 14 (Isolation). Both approaches were marked by confinement, control, loneliness and an absence of therapeutic intervention and support. AN said:

*Being in isolation never made me want to act better. It made me angrier and it felt like it was making me more mad inside my head ... I hurt myself because I was either so angry at being put in isolation or I would get so upset that I felt dying was better than staying in isolation ... All I knew at the time was that I hated being in isolation so much that I would rather have killed myself.<sup>82</sup>*

After three years of cycling in and out of detention, where she was subjected to this kind of management without adequate or appropriate treatment, AN moved on to an acute phase of ongoing self-harm and suicidal behaviours in detention. At this point there was a coordinated approach to her management between Department of Health and Department of Correctional Services and some form of meaningful care plan devised. A multi-professional team including psychiatrists, psychologists, doctors, case workers and employees at all levels of the Department of

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Correctional Services were involved in the development of AN's care plan and AN had contact with psychologists and other mental health staff.

Nonetheless, the available responses to her needs exposed a significant gap in the adequacy of mental health services for children and young people in the Northern Territory, particularly those in detention. The plan for AN still resembled a 'confinement and control' style of management, with little thought given to the drivers of her behaviour. During this period, AN was:

- taken on multiple occasions to the hospital emergency department for self-harm and suicide attempts
- refused admission to the adult mental health ward because she was assessed as not having a mental illness and because of concerns about her exposure to very disturbed adult patients and the unavailability of the type of recommended psychological treatment<sup>83</sup>
- refused a referral to the Child and Adolescent Mental Health Service because of her detention status<sup>84</sup>
- accommodated in effective isolation almost continuously for a total of approximately five weeks while she was assessed as being 'at risk', both at the Don Dale Youth Detention Centre (where she had limited interaction with other detainees) and the adult prison medical unit<sup>85</sup>
- transferred from the Don Dale Youth Detention Centre to the adult prison on two occasions to stay in the medical unit for treatment, where she was necessarily effectively isolated in solitary confinement to remain separated from the adults<sup>86</sup>
- placed in a restraint chair for approximately one hour while in the adult prison medical unit, despite concerns having been raised about the lawfulness of this action,<sup>87</sup> and administered diazepam, after what appeared to be unsuccessful attempts at de-escalation before this extreme step was taken,<sup>88</sup> and
- subjected to misguided attempts to shape her behaviour by withholding emotional contact with peers, when such emotional support would have, in fact, helped regulate her behaviour.<sup>89</sup>

### **AN's experience in the restraint chair:**

*The guards brought the chair and put it outside and told me they would put me in it if I didn't stop. I was too out of control to stop myself. The guards then came in and put me on [the] ground. Then they lifted me up and chucked me in the chair and strapped me down tight. I couldn't move. I was screaming and yelling. They said, "shut the fuck up". I said, "you shut the fuck up". The Doctor gave me a needle I think. I didn't agree to that. They left me there looking out the window...I asked them if they could loosen the straps on the arms as it hurt. But they didn't. I felt like I must be a real mental case to be in that chair.<sup>90</sup>*

In enacting the plans, Department of Health and Department of Correctional Services management

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failed to ensure that those charged with her day to day care delivered a basic level of therapeutic intervention and support. The following are examples of inadequate or inappropriate conduct and treatment:

- AN was marked 'at risk' and isolated despite the pre-conditions for this status not being met, from which point her behaviour escalated.<sup>91</sup>
- Female officers used a Hoffman knife to forcefully strip AN of her clothes while male officers restrained her ankles and wrists, which AN describes in further detail in Chapter 15 (Health, mental health and children at-risk).<sup>92</sup>
- A youth justice officer forcefully pushed AN into an isolation room without cause and then left her alone.<sup>93</sup> This appeared to be an assault that the former Commissioner for Correctional Services agreed warranted disciplinary action, or at least some investigation.<sup>94</sup>
- AN was restrained on the ground by multiple male officers and put in handcuffs immediately after a suicide attempt when she was obviously physically weak and limp, and showing no signs of resistance or of being a threat.<sup>95</sup>
- In the immediate wake of serious self-harm and suicide attempts, AN was not offered any comfort or care beyond ensuring physical safety.<sup>96</sup>
- Youth justice officers lost or misplaced AN's medication.<sup>97</sup>
- Adequate youth detention staff resources were not made available at the detention centre to deliver the recommended constant observation via face to face contact or at least closed-circuit television while AN was 'at risk'.<sup>98</sup>
- Alternative psychological services were not located for AN for a period of months after the youth detention psychologist became unable to give her regular sessions.<sup>99</sup>
- Services were not delivered to AN, because she was not sentenced.<sup>100</sup>

Youth Detention Assistant General Manager, General Manager and Commissioner for Correctional Services agreed in evidence to the Commission that there was a lack of knowledge and expertise about how to deal with AN's complex behaviours at the Don Dale Youth Detention Centre.<sup>101</sup> The General Manager lamented a lack of services and options generally within the health system.<sup>102</sup> Eventually, apparently unable to meet AN's needs, Northern Territory Department of Health forensic mental health practitioners sought to send her to an adolescent mental health unit in a hospital interstate.<sup>103</sup> This did not eventuate and a short time later AN was released from detention.

AN's treatment and management in detention not only failed to meet her needs, but compounded the adverse effects of the detention experience.

*Detention made me a worse person, not better. It also made me angrier and sadder. All that time in isolation made it harder for me to be around people. Now I mostly like to*

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*stick with [relative]. I still have nightmares about being in those rooms.<sup>104</sup>*

*[AN]'s case highlights the extra detrimental effects of isolation on a child who has little experience of being alone. An additional exacerbating factor is her documented receptive language disorder ... [AN] would have been severely compromised in her capacity to make sense of instructions and explanations, seriously compounding the ill-effects of her solitary incarceration.<sup>105</sup>*

*The harmful effects of isolation, particularly when it is poorly managed, will compound the damage done throughout time in detention, both through increasing the likelihood of further isolation experience and sensitising the young person to damage from those experiences.<sup>106</sup>*

AN's experiences demonstrate:

- the incapacity of the Northern Territory youth detention and health systems to meet the needs of detainees who, although assessed as not having a mental or psychiatric illness, display complex self-harm and suicidal behaviours
- a lack of coordination between government services responsible for the care and management of children and young people in the criminal justice system
- how the behaviour management style of staff members and use of a non-trauma informed approach in youth detention during the relevant period traumatised children and young people.

The Commission recognises that the complexity of behaviours which AN presented with in youth detention was not representative of those exhibited by other children and young people in detention. Nonetheless, the Northern Territory Government youth detention and health services could and should have done more to treat AN before the period of acute, repeated self-harm and suicidal behaviours. By the time the seriousness of her position was acknowledged, more could and should have been done to ensure she was adequately cared for by on-the-ground staff.

Many of the situations involving AN during her self-harm and suicide attempts would have been harrowing and difficult experiences for staff members as well. As has been explained elsewhere in this report,<sup>107</sup> youth detention staff members were not adequately qualified, trained and equipped with support services to act as was required in such situations. Professor Jon Jureidini explained the tension between AN and those staff members:

*[AN's] behaviour could be understood to be part of an ongoing and sustained frustrating miscommunication between her and the authorities. Each party, to some extent, feels disappointed by the other's response, leading each to feel as though they are being mistreated and/or manipulated, and also to be dismissive of the other's distress. Thus, attempts from either side to build a relationship are likely to fail.<sup>108</sup>*

AN's treatment and management highlight the inadequacies of a youth detention model focussed on behaviour, the inadequacies of the 'diagnosis and medication' approach to psychiatric issues, and the lack of a youth specialist forensic mental health service. Professor Jureidini observed:

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*The lack of a psychiatric diagnosis should not be used by mental health services as a way of abrogating a duty of care. Whether or not a psychiatric diagnosis is justified, when a child causes difficulties within a juvenile detention system beyond the ordinary capacity of that system, it is reasonable for them to expect support from mental health services. This will often not be to provide intensive therapeutic input...but rather consulting with and providing support and training for juvenile justice staff.*<sup>109</sup>

Some of the matters raised above have been the subject of investigation, findings and recommendations by the Children's Commissioner in an own-initiative investigation report published in August 2016.<sup>110</sup>





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# CASE STUDY: AG

AG is a young Aboriginal woman who spent more than 13 months at the former Don Dale Youth Detention Centre between 2012 and 2014. She was 14 when she first entered the youth justice system, and has spent time in and out of prison since turning 18.<sup>111</sup> AG was detained at the former Don Dale Youth Detention Centre for periods ranging from a few days to more than three months.<sup>112</sup>

## FIRST TIME IN YOUTH DETENTION

AG did not recall being informed of any rules when she first entered the former Don Dale Youth Detention Centre. Instead she learnt about these things, including the classification system, on her own or from other young people. One female detainee told AG that she thought the rules were as follows: *'don't disrespect the guards, don't swear and don't associate with the boys.'*<sup>113</sup>

AG described the rooms in the girls' block at the former Don Dale Youth Detention Centre as *'disgusting'*. She recalled they were covered in spit stains. Normally there were two girls to a room; however, she recalled occasions when three girls would have to share a room. On these occasions, the girls would line mattresses on the floor so they could fit.<sup>114</sup>

## EXPERIENCE WITH YOUTH JUSTICE OFFICERS

AG described being frequently physically handled by male youth justice officers while she was in detention. She believed that some female youth justice officers made rude comments or taunted her so that she would react and consequently be restrained by male officers. On one occasion, AG said that a female staff member called her a *'skank'*. AG got angry at this and started to yell and swear and challenged the officer to a fight. Male officers were then called to deal with her. AG said this kind of situation happened *'all the time'*.<sup>115</sup>

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As AG became an older detainee, she started taking the younger girls 'under [her] wing' as she did not want to see them being handled by the male youth justice officers in the way she was. She spoke to the girls and told them how to avoid getting into trouble. She described how when she saw that some girls were ready to get into an argument or fight, she tried to sit and talk to them to diffuse the situation. She said sometimes she would physically intervene to break up a fight before the youth justice officers stepped in.<sup>116</sup>

AG said that some of the younger youth justice officers 'turn[ed] [the detainees] against each other' by asking AG and other young people to fight certain detainees. AG thought they were asked to do this because the officer did not like a particular detainee, or, in one instance because the officer thought a certain detainee had stolen their car.<sup>117</sup> AG also said that youth justice officers asked detainees to steal their car so they could make a claim on their insurance.<sup>118</sup>

AG explained that some male youth justice officers behaved inappropriately towards female detainees. This is discussed in more detail in Chapter 17 (Girls in detention). She perceived many male youth justice officers as 'creepy'. She said she often observed male officers staring inappropriately at female detainees when they walked around in their bra and underwear because it was too hot. She recalled that some of the male officers made inappropriate comments such as 'nice bra'.<sup>119</sup> AG also observed male guards touching some girls, such as on their arms, for no apparent reason. She said those girls later told her that it made them feel uncomfortable.<sup>120</sup>

The Commission did not investigate each of AG's generalised allegations about staff conduct. However, two particularised allegations she made about such matters were proven, and the Commission considered her evidence to be reliable.<sup>121</sup>

On one occasion when AG was released from detention and still under the age of 18, she received unsolicited sexual messages on Facebook from Jon Walton, a former male youth justice officer aged in his 20s at the time.<sup>122</sup> Mr Walton said in hindsight that he was 'deeply ashamed and embarrassed' about communicating in that manner with AG.<sup>123</sup>

AG's impression of many youth justice officers was that they appeared to only be at work 'for the pay cheque' and 'they didn't really care'. She also considered: '[t]hey had [a] lack of training, lack of experience on how to control youths ... like, they didn't know what to do when [things got] serious'.<sup>124</sup>

AG acknowledged that the younger youth justice officers' inability to deal with difficult situations allowed her and others to sometimes take advantage of them.<sup>125</sup>

For the more experienced staff however, AG described being more respectful and better behaved. She thought those staff members had a completely different attitude compared with the younger officers:

*[T]hey would tell us what we [could] do, what we [couldn't] do. They'd warn us and stuff. They'd tell us they've been there for, like, 10 years or so, and we could tell that they [had] a lot more experience than the younger guards ...*<sup>126</sup>

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## BOREDOM IN DETENTION

AG described how she and other young people were often bored while at the former Don Dale Youth Detention Centre.<sup>127</sup>

During her time in youth detention, AG recalled participating in a several programs and activities, including a church program, the alcohol and other drugs youth program 'DAISY', and YMCA-run activities during the school holidays. However, these programs did not appear to amount to a regular, full program of activities, as AG said:

*there was a lot of time when we did nothing at all. During that time we would sit around and talk but there wasn't much to do.*<sup>128</sup>

While AG was generally positive about her experience at the Tivendale School at the former Don Dale Youth Detention Centre,<sup>129</sup> she was also often excluded or suspended from the classroom. The reasons for her exclusion at times included behaviours such as talking back to and swearing at teachers, refusing to enter class or not doing her work.<sup>130</sup>

AG was 'expelled' following damage to a classroom during a serious incident in 2013 involving a number of detainees, for which she considered herself wrongly held responsible.<sup>131</sup> This incident is discussed below. AG recalled being initially 'locked down' in her room during this period of exclusion from school and only sometimes allowed reading material for stimulation before she was eventually permitted to do physical work around the detention centre. AG thought the exclusion went on for a number of months.<sup>132</sup> On the available documentary records the Commission was unable to establish the length of AG's exclusion on that occasion.<sup>133</sup>

### A 'call out for help' – riot incident in 2013

One evening in 2013, AG was involved in a riot incident where eight detainees, male and female, broke into a roof cavity in the main building of the former Don Dale Youth Detention Centre and stayed in the roof until the next day (2013 Incident). The detainees caused significant property damage throughout the centre.<sup>134</sup>

AG explained the event from her perspective in this way:

*The guards were picking on the young kids (who were around 12 years old), I was going to be on a 24 hour room placement the next day and the boys were being starved. By this I mean the boys told me they were not getting enough to eat. Before we broke into the ceiling, the guards had been saying things to us like "you are animals". They boys were hungry so I took muesli bars, yoghurt and cereal from the kitchen for them. I ended up getting charged [criminally] for this.*

*The boys started going mad and broke into the roof and then they pulled me into the roof and we all went mad. One of the senior officers threated [sic] to tear gas us, but two of the other inmates had asthma and we told the guards this. After we told the guards about the asthma they did not tear gas us. The Police threatened us with putting the dogs on us. The next day we came down because we were bored, it was hot and*

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*our skin started to get itchy from the fibre glass in the roof.*<sup>135</sup>

AG said that the young people involved were not trying to escape. AG described the incident as a 'call out for help'.<sup>136</sup>

The Commission makes no findings about this particular incident and AG's allegations. However, it is worth noting that AG's perception of mistreatment by youth justice officers is consistent with the Commission's findings about the conduct of some staff at the former Don Dale Youth Detention Centre during the period in which this incident occurred,<sup>137</sup> and at the very least discloses the existence of a very poor relationship between some staff and detainees at this time.

## THE BEHAVIOUR MANAGEMENT UNIT

After the Incident, AG and the other detainees involved were placed in the Behavioural Management Unit. Usually girls who were placed in isolation were placed in the 'High Dependency Unit', however this had been damaged by detainees in the course of the Incident. The girls accommodation area, J Block, had also been damaged and was unable to be used for accommodation.<sup>138</sup>

For the first two days after the incident, AG was placed with two other female detainees in a single cell in the Behavioural Management Unit.<sup>139</sup> For the following 21 days, having been assessed as a security risk because of her participation in the riot, AG was housed in single cell in the Behavioural Management Unit and High Dependency Unit.<sup>140</sup> The length of time which AG was formally 'isolated' pursuant to legislation following the 2013 Incident is unclear, however daily journal records indicated she was 'changed back to Stage 1' (presumably a reference to classification) 11 days after the 2013 Incident, and 'returned to mainstream' accommodation four days after that.<sup>141</sup>

AG's account of the harsh conditions in the Behavioural Management Unit called the 'back cells' – echoes that of many other young people and staff members who gave evidence to the Commission about the environment:

*The back cells were hot, disgusting, had no fans and no air-conditioning and the toilets did not flush properly (meaning that sometimes it wouldn't stop flushing). Sometimes some of the good guards would leave the door to the admissions block area open so we could get a bit of air-conditioning coming in through that block.*<sup>142</sup>

The heat and lack of fresh air in the back cells were especially oppressive when AG was in a cramped cell with two other female detainees.<sup>143</sup>

With the heat came thirst. With no bubblers in the cells, AG described difficulties in obtaining water, which required the assistance of youth justice officers:

*During this time in isolation, we were always hungry and thirsty. We did not have access to water in our cells and a couple of times the guards told us that we weren't allowed to have water. When we were given water, we had to ask every time and they would usually take their time in getting the water for us.*<sup>144</sup>

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AG said that during this period she was only allowed out of her cell for half an hour each day. She spent her out of cell time taking a shower and going to the basketball court. She recalled being let out separately to other young people in isolation, so her recreation time was spent alone.<sup>145</sup>

Consistent with the accounts of some other young people who gave evidence to the Commission,<sup>146</sup> AG said she did not know, and was not told, how long she would be in the 'back cells'.<sup>147</sup> She recalled that she was eventually put on a Management Plan:

*While I was in the back cells, I was put on a Management Plan. The Management Plan was created by the boss of Don Dale (by which I mean the Superintendent) and I did not have any say in the creation of the Management Plan. The Management Plan was that if I was good for a week in the back cells I could have around half an hour out to the basketball court. The longer that I was good, the more time that I got to be out of my cell. It also said that if I was good for a period of time, they would let me out of the BMU [Behaviour Management Unit]. The problem was that when I was good, they still didn't do the things they said that they would according to the Management Plan. I was never actually given a copy of the plan to keep.<sup>148</sup>*

AG was placed on 'at risk' status at one stage while in the Behaviour Management Unit. AG said she mostly went 'at risk' to get the attention of the youth justice officers, or because she was bored:

*The only difference between being in the BMU and being placed on "at risk" was that the guards would come, strip your clothes and then leave us with the non-rip gowns. We did not get the option of changing our clothes to the non-rip gowns ourselves [in privacy] ... One time one of the girls in the cell wanted to have some water, but the guards weren't listening to us. I said that we should all lie down as if we were dead or unconscious to get the guard's attention. The guards came in, stripped us and gave us the gowns.<sup>149</sup>*

## REFLECTIONS AND RECOMMENDATIONS

Since leaving youth detention, AG has reflected on her time at the former Don Dale Youth Detention Centre and expressed a desire to share her experience with other young people in similar situations:

*'I'd like to talk to all the young mob... [and] tell them what I've experienced, what I've been through... I know the kids...they're broken and that, but they don't know how to control their behaviour...I'd like to tell them my side and help them as well.'<sup>150</sup>*

AG also said:

*I have known a lot of people who have gone into youth detention. They usually have ended up in trouble with the law because there has been drug and alcohol misuse in their family, they have been abused, some have been the victims of paedophilia and some have been bullied. There are a lot of people who were taken by Welfare and put into foster care that became depressed or started having problems because they were taken away from their family or because they were abused by their foster carers.<sup>151</sup>*

AG believes children and young people need to get help for these kinds of issues before they enter

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the youth justice system. She also considers that if children and young people are to be detained, there should be more programs, activities and support offered by workers who can relate to their experiences:

*'there] should ... [be] more local workers working with the kids that understand and have experiences...because a lot of us kids come from broken homes and welfare ... because so much [sic] young kids have been traumatised with all of this ... [by] how they've been treated ... [And] it's hard for them to talk up because they're so young... they need more counselling.'*<sup>152</sup>

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# CASE STUDY: AU

AU is an Aboriginal man from a remote community in the Northern Territory. He is the only child of parents from two major regional families.<sup>153</sup> He has undergone a traditional upbringing in his father's country, where he engaged in activities such as hunting for geese, dugongs, kangaroos and fishing with a senior ceremony man in the community.<sup>154</sup> AU can speak three languages – English, Barrarra and Kriol – and can understand a further two, being Kunwinjku and Djapana, both of which are Arnhem languages.<sup>155</sup> AU's connection to country was, and remains, strong.

AU has been through business, including initiation and a Gunupipi ceremony, some of which occurred over many months<sup>156</sup> and took place before he was incarcerated at the former Don Dale Youth Detention Centre.<sup>157</sup> This case study considers the challenges faced by Aboriginal detainees who are removed from their country and thrust into a youth justice system that they are unfamiliar with and do not fully understand.

## AU'S INITIAL INTERACTION WITH THE POLICE AND THE COURTS

AU recalls that he was addicted to ganja by the time he was 14 or 15 years old.<sup>158</sup> He acknowledges that when he was 16 or 17 years old,<sup>159</sup> he 'did some bad things, like stealing from the community store and stealing cars'<sup>160</sup> for which he was later arrested, granted bail and a further court date was set. However, AU failed to attend. He gave the following evidence before the Royal Commission:

*And why did you miss court?---I was just – I think I was at man ceremony, yeah, and that day – I didn't really like understand the court orders and all that, you know. Yeah.  
And so you didn't understand the court orders?---Yeah.  
About needing to be at court?---Yeah.<sup>161</sup>*

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AU's non-attendance was a breach of his bail conditions. He was later arrested for unlawfully using a motor vehicle, and he was subsequently sent to Don Dale Youth Detention Centre for a period of 12 days. AU was later sent to Don Dale on two other occasions and spent almost a year there until he was transferred to the adult prison on his 18<sup>th</sup> birthday.<sup>162</sup>

## ARRIVAL AND TIME AT DON DALE YOUTH DETENTION CENTRE

When AU arrived at the former Don Dale Youth Detention Centre, he told the Commission that no one instructed him as to the rules of the detention centre or the punishment for transgressing those rules.<sup>163</sup> Nor was he provided with any documentation to that effect.<sup>164</sup>

AU said that no-one explained to him what he ought to expect of life at a youth detention centre. His only expectation was based on what ex-detainees in his community had told him about how they were treated, including that '*they sometimes got bashed there. Sometimes by other boys from town but also by the guards.*'<sup>165</sup> AU was very scared by what he heard.<sup>166</sup>

AU gave evidence that he was left to work out the rules of the detention centre on his own, which he did by observing the actions of others and how they were treated in response.<sup>167</sup> AU understood that one of the rules was that the detainees were not to speak to the guards in their native language.<sup>168</sup> AU said that whilst he was in detention, the Elders from his community never visited Don Dale Youth Detention Centre.<sup>169</sup>

AU was confused by the guards' demeanour and the way he was treated in the former Don Dale Youth Detention Centre. AU recalled that he could see violence in the guards' bodies, that they always had '*bad emotions*' and it felt to him like they were angry on the inside.<sup>170</sup> AU said that guards were unaware of men's business, and gave the following evidence before the Commission:

*[Commission] And you'd been through, as we discussed, you'd been through business back in [your community]; that's right? Did you expect to be treated in a certain way when you were at Don Dale, because you'd been through business?*

*[AU] Yeah.*

*[Commission] What way did you expect to be treated?*

*[AU] As a man, you know....*

*[Commission] And did the guards know that you'd been through business?*

*[AU] No.*

*[Commission] And do you think it would have helped if they did know?*

*[AU] Yeah, I think.*

*[Commission] Because they might have been able to treat you – or you could have explained to them the way that you expected to be treated under lore?*

*[AU] Yeah.*<sup>171</sup>

However, AU said that some youth justice officers had a positive attitude, were friendly and would ask the detainees how they were feeling.<sup>172</sup> AU had a good relationship with two Aboriginal Youth Justice Officers. He commented that the difference between these youth justice officers and others was they



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could understand his sense of culture and community, and his relationship with his country.<sup>173</sup> AU felt like they understood the sadness he experienced in being so far away from his community.<sup>174</sup> AU said that he did not have a chance to practise his culture while in detention.<sup>175</sup> AU's interaction with these Aboriginal youth justice officers was his only connection to culture – one taught him how to paint and would occasionally speak to him in Kunwinjku.<sup>176</sup>

Being from a remote community, AU also felt isolated from other detainees who were 'from town' and remembers them calling him 'full blood'.<sup>177</sup>

*[Commission] You mention there's some differences between the town kids and the community kids. Is that right, in Don Dale?*

*[AU] Yeah.*

*[Commission] What were the differences between those two kids?*

*[AU] Because like, me, I grew up in community and living in community life, it's different than living town, you know, yeah. Like – yeah, we would get, like – some time, like, the community kid – community kid would come into Don Dale, you know, they would get teased by the town kids, you know. Yeah, they would like be cheeky to them, you know, say a lot of bad stuff to them.<sup>178</sup>*

AU describes his time at the former Don Dale Youth Detention Centre as being incredibly lonely. He struggled being away from his family and community..<sup>179</sup> AU felt like he had no one to talk to about being stressed or sad.<sup>180</sup>

## HOW DON DALE YOUTH DETENTION CENTRE CHANGED AU

AU was released on a good behaviour bond and flown back to his community.<sup>181</sup> He remembers that he had changed a lot and that the former Don Dale Youth Detention Centre had made him tougher.<sup>182</sup>

*I was on the streets and I was mad. I'd get in fights. All I was thinking in my mind was that I wanted to make a big name for myself. People would say, 'Look at that boy. He comes in and out of Don Dale'. They would respect me. This was a new way of thinking after Don Dale. All the boys talked like that there.<sup>183</sup>*

AU breached his good behaviour bond and was returned to the former Don Dale Youth Detention Centre for approximately one week.<sup>184</sup> After being released for a second time, his crimes became more serious. He fell deeper into drug and alcohol addiction, and while intoxicated committed an armed robbery, for which he was subsequently sent to the former Don Dale Youth Detention Centre for a third time.<sup>185</sup>

AU recalls that as his 18th birthday approached, people started talking to him about Berrimah Prison.<sup>186</sup> AU said:

*'No one ever sat with me and explained that I would be going but I knew. The kids would say things about what would happen there. They told me that I would get bashed.'<sup>187</sup>*

Documents record that AU requested that he remain at the former Don Dale for the month left in his sentence beyond his 18<sup>th</sup> birthday. AU's caseworker and the school principal supported this request, so

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that he could continue to access services in youth detention, and this would allow him the opportunity to finish the school year.<sup>188</sup> However, on the morning of AU's 18th birthday, he received a birthday cake and was subsequently transferred to Berrimah Prison, despite only having a short period of his sentence left to serve.<sup>189</sup>

## AU'S TREATMENT BY YOUTH JUSTICE OFFICERS

Whilst AU was in the former Don Dale Youth Detention Centre, he says he experienced treatment which was of concern. For example, he says he was withheld access to drinking water and toilet facilities. AU also told the Commission that youth justice officers bribed another detainee to assault him. Other detainees told the Commission that they endured similar treatment.<sup>190</sup>

AU told the Commission that when he was in a normal cell, he was made to wait to use the toilet and to have a drink of water. He said:

*There was no water to drink in the room. You would be busting for the toilet or a drink of water. When you wanted water or the toilet, you had to press a button. Sometimes the guards would make you wait for a really long time and I would just keep pressing the button. They gave you water in a small cup.*<sup>191</sup>

Twelve other witnesses (including detainees and youth justice officers) described similar treatment.<sup>192</sup> AU also told the Commission that he was bashed by another detainee, and was hospitalised as a result of the incident.

There are conflicting accounts as to how AU sustained his injuries. AU told the Commission that as he was trying to run away from the detainee he leapt onto a table and a youth justice officer pulled AU's shirt and AU hit his head on the corner of a concrete wall.<sup>193</sup> Contemporaneous incident reports state that AU slipped and fell after being chased by the other detainee.<sup>194</sup>

AU said that he later became friends with that detainee, and that detainee told AU that two youth justice officers, Ben Kelleher and another guard, had told him on that occasion to bash AU in return for chips and soft drinks.<sup>195</sup> This is denied by both Ben Kelleher<sup>196</sup> and the other youth justice officer.<sup>197</sup> The incident reports record that Mr Kelleher was not present during the incident.<sup>198</sup> However, the fact that Mr Kelleher was not present during the incident is not conclusive evidence that Mr Kelleher did not ask the detainee beforehand to assault AU. The Commission outlines further examples of this type of conduct in Chapter 12 (Abuse and humiliation).

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## CONCLUSION

AU gave evidence that it was a nightmare being locked up as kid and that he feared for his life at the former Don Dale Youth Detention Centre.<sup>199</sup> He now has nightmares every night and said that 'everything I did, and being in Don Dale, meant that I haven't been able to reach my goals in life'.<sup>200</sup>

When asked what he would do to change the former Don Dale Youth Detention Centre, AU said:

*I would, like, create activities, you know, keep the kids active, you know, instead of getting into fight[s] and ... each other and abusing guards, you know, yeah. Make them do music, sports, you know, keep them busy and occupied, you know, with their time as well, you know, make their time easy, you know.*<sup>201</sup>

AU decided to tell his story in the hope that what happened to him does not happen to any other child.<sup>202</sup>



## ENDNOTES

- <sup>1</sup> Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, para 12.
- <sup>2</sup> Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, paras 13-15; Transcript, Dylan Voller, 12 December 2016, p. 678: lines 26-45.
- <sup>3</sup> Transcript, Dylan Voller, 12 December 2016, p. 679: lines 2-22.
- <sup>4</sup> Transcript, Dylan Voller, 12 December 2016, p. 679: lines 26-29.
- <sup>5</sup> Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, para. 22.
- <sup>6</sup> Transcript, Dylan Voller, 12 December 2016, p. 679: lines 31-40.
- <sup>7</sup> Dylan Voller was first remanded in custody on 13 October 2009, remaining there until 19 October 2009. This was followed by significant further periods of detention between 8 April 2010 and July 2013. He was again detained on 8 February 2014 and remained in youth detention until he was transferred to an adult correctional facility upon turning 18 years of age in September 2015: Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, para. 33.
- <sup>8</sup> Transcript, Dylan Voller, 12 December 2016, p. 684: line 13 – p. 685: line 24; Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, para. 113.
- <sup>9</sup> Transcript, Dylan Voller, 12 December 2016, p. 680: lines 3-31; Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, paras 34-35.
- <sup>10</sup> Transcript, Antoinette Carroll, 13 December 2016, p. 730: lines 13-27; Exh.063.001, Statement of Antoinette Carroll, 28 November 2016, tendered 14 December 2016, paras 52, 89.
- <sup>11</sup> Transcript, Antoinette Carroll, 15 March 2017, p. 1173: lines 31-46.
- <sup>12</sup> Transcript, John Fattore, 14 March 2017, p. 1020: lines 32-33; p. 1023: lines 23-26.
- <sup>13</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2924: line 46.
- <sup>14</sup> Transcript, Jon Jureidini, 29 June 2017, pp. 5339: lines 17-27 and 5342: lines 21-40.
- <sup>15</sup> Exh.979.001, [Redacted] Don Dale Clinical File Document 10, 26 February 2015, tendered 28 October 2017.
- <sup>16</sup> Transcript, Antoinette Carroll, 13 December 2016, p. 756: lines 23-32.
- <sup>17</sup> [Redacted] IOS – Confidential Psychiatric Report – Child Adolescent Psychiatrist, 15 March 2011, tendered 28 October 2017.
- <sup>18</sup> Exh.974.001, [Redacted] – IJIS [Redacted] – YJC ASP 21126806, 30 May 2010, tendered 28 October 2017, pp. 107-109.
- <sup>19</sup> Exh.975.001, [Redacted] HRN [Redacted] – CAMHS Medical Record – Part 2, 18 August 2010, tendered 28 October 2017, pp. 1017-1039.
- <sup>20</sup> Exh.715.010, Annexure 10 to the Statement of Melanie Wylie, Memorandum, 7 July 2011, tendered 25 July 2017, p. 2.
- <sup>21</sup> Exh.714.000, Statement of Shmaya Houtman, 31 March 2017, tendered 25 July 2017, para. 35. Further statements were provided by others within Therapeutic Services: Exh.715.000, Statement of Melanie Wylie, 26 March 2017, tendered 25 July 2017; Exh.710.000, Statement of Dr Katie McKibbin, 3 February 2017, tendered 25 July 2017.
- <sup>22</sup> Exh.714.000, Statement of Shmaya Houtman, 31 March 2017, tendered 25 July 2017, paras 129-130; Exh.714.014, Annexure 14 to the Statement of Shmaya Houtman, Briefing, 24 January 2011, tendered 25 July 2017, p. 3.
- <sup>23</sup> Exh.715.000, Statement of Melanie Wylie, 26 March 2017, tendered 25 July 2017, para 81.
- <sup>24</sup> Exh.715.000, Statement of Melanie Wylie, 26 March 2017, tendered 25 July 2017, para 92; Exh.710.000, Statement of Dr Katie McKibbin, 3 February 2017, tendered 25 July 2017, paras 61, 62.
- <sup>25</sup> Exh.191.005, Annexure MY-4 to the Statement of Michael Yaxley, 27 February 2017, tendered 28 March 2017, p. 2.
- <sup>26</sup> [Redacted] – IJIS [Redacted] – Clinical file – Part No 004, 2 February 2012, tendered 28 October 2017,
- <sup>27</sup> Exh.976.001, [Redacted] – IJIS No. [Redacted] – Clinical file – Part No 005, 12 March 2015, tendered 28 October 2017, pp. 9154-9167.
- <sup>28</sup> Exh.191.001, Statement of Michael Yaxley, 27 February 2017, tendered 28 March 2017, paras 20-31.
- <sup>29</sup> Exh.191.001, Statement of Michael Yaxley, 27 February 2017, tendered 28 March 2017, paras 17-18.
- <sup>30</sup> Exh.191.001, Statement of Michael Yaxley, 27 February 2017, tendered 28 March 2017, paras 32-34; Transcript, Michael Yaxley, 29 March 2017, p. 2243-2247; Exh.191.004, Annexure MY-3 to the Statement of Michael Yaxley, 27 February 2017, tendered 28 March 2017; Exh.191.005, Annexure MY-4 to the Statement of Michael Yaxley, 27 February 2017, tendered 28 March 2017; Exh.191.006, Annexure MY-5 to the Statement of Michael Yaxley, 27 February 2017, tendered 28 March 2017; Exh.191.009, Annexure MY-8 to the Statement of Michael Yaxley, 27 February 2017, tendered 28 March 2017; Transcript, Ken Middlebrook, 29 March 2017, p. 3349: lines 24-28.
- <sup>31</sup> Transcript, Michael Yaxley, 29 March 2017, p. 2246: lines 24-41.
- <sup>32</sup> Exh.978.001, [Redacted] – HRN [Redacted] – TEHMS CCIS Documents, 28 October 2017, tendered 28 October 2017.
- <sup>33</sup> Exh.982.001, [Redacted] – IJIS No. [Redacted] – Clinical file – Part No 007, 28 October 2017, tendered 28 October 2017, .
- <sup>34</sup> Exh.979.001, [Redacted] Don Dale Clinical File Document 10, 26 February 2015, tendered 28 October 2017; Exh.063.001, Statement of Antoinette Carroll, 28 November 2016, tendered 14 December 2016, para. 140.
- <sup>35</sup> Exh.979.001, Case Worker – Case Notes, 30 September, 2016, tendered 28 October 2017, pp. 3673-3674.
- <sup>36</sup> Transcript, Dylan Voller, 20 April 2017, p. 2671: lines 16-20.
- <sup>37</sup> Exh.1166.001, DV #310152 Don Dale Clinical File Document 47, 8 September 2015, tendered 4 November 2017.
- <sup>38</sup> Exh.723.018, Bundle of incident reports 2009, Various dates, tendered 25 July 2017; Exh.723.019, Bundle of incident reports 2010, various dates, tendered 25 July 2017; Exh.723.020, Bundle of incident reports 2011, various dates, tendered 25 July 2017; Exh.723.021, Bundle of incident reports 2012, various dates, tendered 25 July 2017; Exh.723.022, Bundle of incident reports 2013, various dates, tendered 25 July 2017; Exh.723.023, Bundle of incident reports 2014, various dates, tendered 25 July 2017; Exh.723.024, Bundle of incident reports 2015, various dates, tendered 25 July 2017.

<sup>39</sup> See, for example, Transcript, David Ferguson, 24 March 2017, p. 1823: line 46 – p. 1824: line 7.

<sup>40</sup> Transcript, Dylan Voller, 12 December 2016, p. 700: line 34 – p. 701: line 26.

<sup>41</sup> Transcript, Dylan Voller, 20 April 2017, p. 2644: line 8 – p. 2645: line 7, p. 2682: line 37 – p. 2684: line 36; Exh.717.000, Statement of Dylan Voller, 8 April 2017, tendered 25 July 2017, paras 167, 169-170.

<sup>42</sup> Exh.715.000, Statement of Melaine Wylie, 27 March 2017, tendered 25 July 2017, para. 93.

<sup>43</sup> Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, para. 198.

<sup>44</sup> Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, para. 67; Transcript, Dylan Voller, 12 December 2016, p. 686: lines 1-22; Exh.307.001, Statement of Lisa Coon, 12 April 2017, tendered 21 April 2017, paras 56-60.

<sup>45</sup> Exh.717.000, Statement of Dylan Voller, 8 April 2017, tendered 25 July 2017, paras 74, 75, 81; Transcript, Dylan Voller, 20 April 2017, p. 2679; Exh.151.001, Statement of Greg Harmer, 3 February 2017, tendered 24 March 2017, para 61.

<sup>46</sup> Exh.710.000, Statement of Dr Katie McKibbin, 3 February 2017, tendered 25 July 2017, paras 57-60; Exh.334.001, Statement of Dr Howard Bath, 24 March 2017, tendered 28 April 2017, paras 76-87; Transcript, Conan Zamolo, 19 April 2017, p. 2433: line 43 – p. 2437: line 28; Transcript, Benjamin Kelleher, 19 April 2017, p. 2470: line 10 – p. 2472: line 21; Exh.053.027, Annexure 17 to the Statement of Dylan Voller, Final Investigation report: Complaints relating to services provided by NTDCS Juvenile Detention to Dylan Voller, 12 February 2015, tendered 14 December 2016, pp. 82-86.

<sup>47</sup> Transcript, Dylan Voller, 12 December 2016, p. 683: lines 30-37, p. 690: lines 1-5, p. 691: lines 43-46; Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, paras 179, 208, 324; Exh.306.001, Statement of Bruce Evans, 31 January 2017, tendered 21 April 2017, paras 23-31; Transcript, Bruce Evans, 21 April 2017, p. 2695: lines 1 – p. 2696: line 2.

<sup>48</sup> Transcript, Bruce Evans, 21 April 2017, p. 2695: lines 10-15, p. 2699: lines 10-21.

<sup>49</sup> Transcript, Dylan Voller, 12 December 2016, p. 692: lines 11-26.

<sup>50</sup> Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, para 207.

<sup>51</sup> Transcript, Conan Zamolo, 19 April 2017, p. 2438: lines 5-47, p. 2451: line 6; Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, para 207.

<sup>52</sup> Transcript, Leonard de Souza, 22 March 2017 p. 1656: line 45 – p. 1657: line 27.

<sup>53</sup> Exh.053.027, Annexure 17 to the Statement of Dylan Voller, Final Investigation Report: Complaints relating to services provided by NTDCS Juvenile Detention to Dylan Voller, 12 February 2015, tendered 14 December 2016, pp. 7-8, images 1-4.

<sup>54</sup> Exh.053.027, Annexure 17 to the Statement of Dylan Voller, Final Investigation report: Complaints relating to services provided by NTDCS Juvenile Detention to Dylan Voller, 12 February 2015, tendered 14 December 2016, pp. 19-35.

<sup>55</sup> Exh.053.027, Annexure 17 to the Statement of Dylan Voller, Final Investigation report: Complaints relating to services provided by NTDCS Juvenile Detention to Dylan Voller, 12 February 2015, tendered 14 December 2016, pp. 35-41, image 28; Transcript, Dylan Voller, 12 December 2016, p. 702: lines 1-26.

<sup>56</sup> Exh.053.027 Annexure 17 to the statement of Dylan Voller, Final Investigation Report: complaints relating to services provided by NTDCS Juvenile Detention to Dylan Voller 12 February 2010, tendered 14 December 2016, pp.41-45.

<sup>57</sup> Note that the person responsible for the prosecution acknowledged that she was not suitably experienced to conduct such a prosecution: Exh.399.001, Statement of Ruth Morley, 20 December 2016, tendered 12 May 2017, paras 37-41, 68-70, 74; Exh.1029.001, Statement of Meredith Day, dated 7 April 2017, tendered 28 October 2017, paras 15 and 17.

<sup>58</sup> Transcript, Jon Jureidini, 29 June 2017, p. 5341: line 43 – p. 5342: line: 33.

<sup>59</sup> Transcript, Dylan Voller, 12 December 2016, p. 698: lines 13-30; Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, paras 144, 158-9.

<sup>60</sup> Transcript, Dylan Voller, 20 April 2017, p. 2659: line 46 – p. 2661: line 6.

<sup>61</sup> Transcript, Jon Jureidini, 29 June 2017, p. 5341: line 43 – p. 5342: line: 33.

<sup>62</sup> Transcript, Jon Jureidini, 29 June 2017, p. 5342: lines: 20-33.

<sup>63</sup> Exh.063.014, Annexure 14 to the Statement of Antoinette Carroll, tendered 14 December 2016.

<sup>64</sup> Exh.413.001, Statement of Antoinette Carroll, 30 January 2017, tendered 12 May 2017, para. 5; Exh.063.001, Statement of Antoinette Carroll, 28 November 2016, tendered 14 December 2016, paras 105-122; Exh.063.014, Annexure 14 to the Statement of Antoinette Carroll, tendered 14 December 2016; Exh.063.027, Annexure 27 to the Statement of Antoinette Carroll, tendered 14 December 2016; Exh.063.028, Annexure 28 to the Statement of Antoinette Carroll, tendered 14 December 2016; Transcript, Antoinette Carroll, 13 December 2016, p. 782: line 29 – p. 783: line 39; Exh.709.001, Annexure 1 to the Statement of Craig Turner, 15 February 2017, tendered 25 July 2017, pp. 0012-0017.

<sup>65</sup> Exh.793.001, 174. DV IOMS – Offender History of Beds Part 2, tendered 24 October 2017; Exh.1216.001, 175. DV IOMS – Offender History of Beds Part 3, tendered 6 November 2017.

<sup>66</sup> Transcript, Dylan Voller, 12 December 2016, p. 698: line 23 – p. 699: line 27.

<sup>67</sup> Exh.063.001, Statement of Antoinette Carroll, 28 November 2016, tendered 14 December 2016, para 132; Exh.063.001, Annexure 32 to the Statement of Antoinette Carroll, 28 November 2016, tendered 14 December 2016; Transcript, Antoinette Carroll, 13 December 2016, p. 740: lines 30-39 and p. 741: lines 6-30.

<sup>68</sup> Exh.063.001, Statement of Antoinette Carroll, 28 November 2016, tendered 14 December 2016, para 132.

<sup>69</sup> Summary of behaviours reflected in incidents and ‘at risk’ episodes contained in confidential Exh.954.001, File review for [AN], [redacted], tendered 28 October 2017, p. 3692.; CONFIDENTIAL Annexure A to submissions of AN, Psychological Report re [AN], [redacted], p. 3: history of self-harm which appeared to be over the past 12 months, including while in detention. The Commission’s report contains numerous other references to AN’s experiences of other inappropriate treatment in terms of use of force, restraint and interactions with male youth justice officers (see Chapter 12 (Abuse and humiliation), Chapter 13 (Use of force), Chapter 15 (Health,

mental health and children at risk) and Chapter 17 (Girls in detention)).

70 Confidential Annexure A to submissions of AN, Psychological Report re [AN], [redacted], pp. 5-7.

71 Confidential Annexure B to submissions of AN, Progress Notes re [AN], [redacted], p. 2.

72 Confidential Annexure B to submissions of AN, Progress Notes re [AN], [redacted], p. 1.

73 Exh. 954.001, File review for [AN], [redacted], tendered 28 October 2017, p. 3700.

74 Exh.956.001, Pre-sentence report prepared by Probation and Parole Officer, [redacted], tendered 28 October 2017, p. 4693.

75 See Chapter 19 (Case management and exit planning) for further information.

76 Exh.160.030, Case Worker Case Notes [dates redacted], tendered 24 March 2017, p. 0100: AN was in the HDU (High Dependency Unit) for two weeks in one month in 2012; Exh.163.001, Offender History of Beds, various dates, tendered 24 March 2017, pp. 3-4: AN was in the HDU for six days in one month in 2013, and for 12 days in one month in early 2014 and 13 days in the space of four weeks the following month.

77 Exh.163.001, Offender History of Beds, various dates, tendered 24 March 2017, pp 3-4: AN was in the BMU on at least two occasions in 2014.

78 Exh.641.000, Statement of Jon Jureidini (Confidential Exhibit), 28 May 2017, tendered 29 June 2017, p. 10.

79 Exh.160.003, Intensive Management Plan, [redacted], tendered 24 March 2017; Exh.160.004, Intensive Management Plan, [redacted], tendered 24 March 2017; Exh.641.000, Statement of Jon Jureidini, 28 May 2017, tendered 29 June 2017, p. 10.

80 Exh.641.000, Statement of Jon Jureidini (Confidential Exhibit), 28 May 2017, tendered 29 June 2017, p. 9.

81 Exh.641.000, Statement of Jon Jureidini (Confidential Exhibit), 28 May 2017, tendered 29 June 2017, p. 9.

82 Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, para 113.

83 Confidential Annexure C to submissions of AN, Referral letter to Adolescent Mental Health Unit, [redacted], p. 11:

84 Confidential Exh.954.001, File review for [AN], [redacted], tendered 28 October 2017, p. 3693.

85 Exh.163.001, Offender History of Beds, various dates, tendered 24 March 2017, pp. 1-2; Transcript, James Sizeland, 28 March 2017, p. 1978: lines 34-35.

86 Confidential Exh.954.001, File review for [AN], [redacted], tendered 28 October 2017, p. 3693.

87 See Chapter 13 (Use of Force).

88 Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, paras 57-58; Exh.283.300, Progress Notes, various dates, tendered 31 March 2017, p. 1; Exh.064.245, Ministerial Flash Brief re attempted self-harm, [redacted], tendered 31 March 2017, p. 2.

89 Exh.641.000, Statement of Jon Jureidini (Confidential Exhibit), 28 May 2017, tendered 29 June 2017, pp. 8-9: referring to Exh.064.239, Emails regarding AN, [redacted], tendered 24 March 2017, p. 3 where the psychologist stated: *'I am again pushing for her to stay isolated from other detainees and stimuli until she again stabilises. I am proposing to correctional staff here that she go back to TV, fan and showers as a reward.'*

90 Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, para 57.

91 Exh.185.001, IOMS Report, [redacted], tendered 28 March 2017, pp. 1-2; Transcript, James Sizeland, 28 March 2017, p. 1976: lines 40-45.

92 Exh.160.019, IOMS Officer's Report, [redacted], tendered 24 March 2017, p.1.

93 Exh 328, Confidential footage relating to AN (edited version), [redacted], tendered 27 April 2017; Exh.255.001, Confidential footage relating to AN (full version), [redacted], tendered 31 March 2017.

94 Transcript, Ken Middlebrook, 28 April 2017, p. 3378: lines 40-45 – p. 3379: lines 1-40.

95 Exh.254.001, Confidential footage relevant to AN, [redacted], tendered 31 March 2017; Exh.641.000, Statement of Jon Jureidini (Confidential Exhibit), 28 May 2017, tendered 29 June 2017, p. 8.

96 Exh.641.000, Statement of Jon Jureidini (Confidential Exhibit), 28 May 2017, tendered 29 June 2017, pp. 7-8.

97 Exh.283.102, Emails re AN, [redacted], tendered 31 March 2017, pp. 9780-9781.

98 Exh. 283.094, Emails re AN, [redacted], tendered 31 March 2017, p. 0599; Ex.064.233, Management Plan, [redacted], tendered 24 March 2017, pp. 1-3; Exh.064.240, Graduated Management Plan for AN (annexure to email), [redacted], tendered 24 March 2017, p. 3: *'Current staff numbers do not allow for 2 x staff or constant face-to-face observations at all times. Where it can be provided it will be, however, at a minimum, YJO staff to manage each shift so that [AN] can come out for shower and out of room time/interaction time.'*

99 Exh.954.001, File review for [AN], [redacted], tendered 28 October 2017, p. 3693.

100 Confidential Annexure B to submissions of AN, Progress Notes re [AN], [redacted], p. 6.

101 Transcript, James Sizeland, 28 March 2017, p. 1974: lines 35-36; Transcript, Russell Caldwell, 29 March 2017, p. 2158: lines 15-35; Transcript, Ken Middlebrook, 28 April 2017, p. 3377: lines 30-40.

102 Transcript, Russell Caldwell, 29 March 2017, p. 2158: lines 15-35.

103 Confidential Annexure C to submissions of AN, Referral letter to Adolescent Mental Health Unit, [redacted].

104 Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, para 115.

105 Exh.641.000, Statement of Jon Jureidini (Confidential Exhibit), 28 May 2017, tendered 29 June 2017, p. 8.

106 Exh.641.000, Statement of Jon Jureidini (Confidential Exhibit), 28 May 2017, tendered 29 June 2017, p. 8.

107 See Chapter 20 (Detention centre staff) and Chapter 15 (Health, mental health and children at risk).

108 Exh.641.000, Statement of Jon Jureidini (Confidential Exhibit), 28 May 2017, tendered 29 June 2017, p. 9.

109 Exh.641.000, Statement of Jon Jureidini (Confidential Exhibit), 28 May 2017, tendered 29 June 2017, p. 13.

110 Exh.053.029, Annexure 19 to Statement of Dylan Voller, Own Initiative Investigation Report: Services Provided by the Department of Correctional Services to Don Dale Youth Detention Centre, Alice Springs Youth Detention Centre, 15 August 2016, tendered 14 December 2016.

111 Exh.150.023, AG Bed History, various dates, tendered 24 March 2017.

- <sup>112</sup> Exh.150.023, AG Bed History, various dates, tendered 24 March 2017.
- <sup>113</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 15.
- <sup>114</sup> Closed court transcript, AG, 24 March 2017, p. 9: lines 10-15.
- <sup>115</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 21.
- <sup>116</sup> Closed court transcript, AG, 24 March 2017, p. 15: lines 20-40.
- <sup>117</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 29.
- <sup>118</sup> Closed court transcript, AG, 24 March 2017, p. 10: lines 9-15.
- <sup>119</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 22.
- <sup>120</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 23.
- <sup>121</sup> See Chapter 17 (Girls in Detention) regarding conduct of Mr Zamolo and Mr Walton.
- <sup>122</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 26.
- <sup>123</sup> Exh.147.001, Statement of Jon Walton (in response to AG), 21 February 2017, tendered 24 March 2017, para. 33.
- <sup>124</sup> Closed court transcript, AG, 24 March 2017, p. 12: lines 3-8.
- <sup>125</sup> Closed court transcript, AG, 24 March 2017, p. 12: lines 33-38.
- <sup>126</sup> Closed court transcript, AG, 24 March 2017, p. 12: lines 43-45 – p. 13: lines 1-9.
- <sup>127</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 52.
- <sup>128</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, paras. 12-13.
- <sup>129</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, paras. 55-56.
- <sup>130</sup> Exh.150.030, Education incident report, [redacted] 2012, tendered 24 March 2017; Exh.150.031, Education incident report, [redacted] 2013, tendered 24 March 2017; Exh.150.032, Education incident report, [redacted] 2013, tendered 24 March 2017; Exh.150.033, Education incident report, [redacted] 2013, tendered 24 March 2017.
- <sup>131</sup> Closed court transcript, AG, 24 March 2017, p. 23: lines 18-20, p. 24: lines 10-25; Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 54.
- <sup>132</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 55.
- <sup>133</sup> AG left detention approximately one month after the incident, and returned a few months later. During that subsequent admission was she recorded as attending school, though she was excluded again during a further re-entry period a further few months later: Exh.308.002, Annexure LC-1 to statement of Lisa Coon, email to Lisa Coon, [redacted] 2014, tendered 21 April 2017, p1; Exh.308.003, Annexure LC-2 to statement of Lisa Coon, email to Lisa Coon, [redacted] 2014, tendered 21 April 2017, p1; Exh.150.034, Email from Larissa Gadza to Russell Caldwell and Trevor Hansen, [redacted] 2014, tendered 24 March 2017.
- <sup>134</sup> Exh.211.001, Statement of Sally Cohen, 21 March 2017, tendered 30 March 2017, para. 165.
- <sup>135</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, paras. 33-34.
- <sup>136</sup> Closed court transcript, AG, 24 March 2017, p. 17: lines 40-45.
- <sup>137</sup> See Chapter 12 (Abuse and humiliation).
- <sup>138</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 36.
- <sup>139</sup> Exh.342.011, DDYDC Daily Journal [redacted] [Confidential], 2013, tendered 9 May 2017, pp. 1089-1096.
- <sup>140</sup> Exh.342.011, Confidential tab (DDYDC Daily Journal [redacted]), 2013, tendered 9 May 2017.
- <sup>141</sup> Submissions for the Northern Territory Government, 19 October 2017, para 41.
- <sup>142</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para 39.
- <sup>143</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 36.
- <sup>144</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 38.
- <sup>145</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 35.
- <sup>146</sup> See Chapter 14 (Isolation) for more information.
- <sup>147</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 41.
- <sup>148</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 49.
- <sup>149</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 42.
- <sup>150</sup> Closed court transcript, AG, 24 March 2017, p. 25: lines 30-34.
- <sup>151</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 97.
- <sup>152</sup> Closed court transcript, AG, 24 March 2017, p. 25: lines 21-26.
- <sup>153</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 6.
- <sup>154</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 8.
- <sup>155</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 10.
- <sup>156</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 9.
- <sup>157</sup> Closed Court Transcript, AU, 23 March 2017, p. 3: lines 32-33.
- <sup>158</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 12.
- <sup>159</sup> Closed Court Transcript, AU, 23 March 2017, p. 4: lines 10-11.
- <sup>160</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 12.
- <sup>161</sup> Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para 64.
- <sup>162</sup> Exh.129.002, IOMs bed history, 9 November 2012, tendered 23 March 2017.
- <sup>163</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 25.
- <sup>164</sup> Closed Court Transcript, AU, 23 March 2017, p. 12: lines 37-38.
- <sup>165</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 21.
- <sup>166</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 21.
- <sup>167</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 26.
- <sup>168</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 25; Closed Court Transcript, AU, 23 March 2017,



- p. 7: lines 27-40.
- <sup>169</sup> Closed Court Transcript, AU, 23 March 2017, p. 21: line 1.
- <sup>170</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 43.
- <sup>171</sup> Closed Court Transcript, AU, 23 March 2017, p. 7: lines 42-47; p. 8: lines 1-6.
- <sup>172</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 41.
- <sup>173</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 42.
- <sup>174</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 42.
- <sup>175</sup> Closed Court Transcript, AU, 23 March 2017, p. 11: lines 46-47.
- <sup>176</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 42.
- <sup>177</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 55.
- <sup>178</sup> Closed Court Transcript, AU, 23 March 2017, p. 11: lines 36-44.
- <sup>179</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 54.
- <sup>180</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 58.
- <sup>181</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 16.
- <sup>182</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 16.
- <sup>183</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 16.
- <sup>184</sup> Exh.129.002, IOMs bed history, 9 November 2012, tendered 23 March 2017.
- <sup>185</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 16.
- <sup>186</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 66.
- <sup>187</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 66.
- <sup>188</sup> Extract, DAJ.0001.1092.2883, to be extracted and tendered.
- <sup>189</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 67.
- <sup>190</sup> See [Chapter Abuse]
- <sup>191</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para 28.
- <sup>192</sup> See [Chapter Abuse] and the section 'Control of basic human needs such as food, water and the use of toilets'
- <sup>193</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, paras 48-49
- <sup>194</sup> Exh.498.001, Annexure JI-1 to Statement of Joseph Ingles, IOMS report, tendered 19 May 2017; Exh.498.002, Annexure JI-2 to Statement of Joseph Ingles, IOMS report, tendered 19 May 2017; Exh.498.003, Annexure JI-3 to Statement of Joseph Ingles, IOMS report, tendered 19 May 2017; Exh.498.004, Annexure JI-4 to Statement of Joseph Ingles, IOMS report, tendered 19 May 2017; Exh.498.005, Annexure JI-5 to Statement of Joseph Ingles, IOMS report, tendered 19 May 2017; Exh.498.006, Annexure JI-6 to Statement of Joseph Ingles, Daily Journal Record, tendered 19 May 2017.
- <sup>195</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, paras 48-52
- <sup>196</sup> Exh.106.001, Statement of Benjamin Kelleher, 16 March 2017, tendered 21 March 2017, para 60.
- <sup>197</sup> Exh.498.000, Statement of Joseph Ingles (Responsive to AU), 12 April 2017, tendered 19 May 2017, para 17.
- <sup>198</sup> Northern Territory Government, Submissions in response to Notice of Adverse Material 8/17, 24 August 2017, para 45(b); Exh.498.001, Annexure JI-1 to Statement of Joseph Ingles, IOMS report, tendered 19 May 2017; Exh.498.002, Annexure JI-2 to Statement of Joseph Ingles, IOMS report, tendered 19 May 2017; Exh.498.003, Annexure JI-3 to Statement of Joseph Ingles, IOMS report, tendered 19 May 2017; Exh.498.004, Annexure JI-4 to Statement of Joseph Ingles, IOMS report, tendered 19 May 2017; Exh.498.005, Annexure JI-5 to Statement of Joseph Ingles, IOMS report, tendered 19 May 2017; Exh.498.006, Annexure JI-6 to Statement of Joseph Ingles, Daily Journal Record, tendered 19 May 2017.
- <sup>199</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 68.
- <sup>200</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 68.
- <sup>201</sup> Closed Court Transcript, AU, 23 March 2017, p. 12: lines 19-23.
- <sup>202</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 68.



# 9

## THE PURPOSE OF YOUTH DETENTION



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# THE PURPOSE OF YOUTH DETENTION

## INTRODUCTION

In the Northern Territory, the *Youth Justice Act* (NT) provides a comprehensive framework encompassing all aspects of youth justice, including the court process by which a young person is sentenced to detention, and the management of youth detention centres.

The youth justice system is designed to respect the specific rights and special needs of children, which are encapsulated in a number of human rights instruments, including the *Convention on the Rights of the Child* (CRC) and other international rules and standards that set benchmarks for systems of youth justice and detention. Some of these human rights standards are embodied in specific provisions of *Youth Justice Act* (NT), see Chapter 5 (Human rights).

States and territories are largely responsible for the establishment and administration of systems that implement Australia's obligations under these instruments. There is no national legislation that establishes appropriate systems of youth detention, but the Commonwealth Government may be held accountable by the international community under various scrutiny mechanisms for the way in which its constituent states and territories deal with young offenders.

Youth justice systems across Australian jurisdictions seek to reflect these international standards, balance community safety, repair the harm caused to victims and hold young people accountable for their behaviour. Ultimately they seek to ensure that children and young people are supported to develop prosocial behaviour and participate effectively in the community. Because of developmental factors, the youth justice system recognises – as a foundation principle – the great potential for children and young people to be rehabilitated.

The *Youth Justice Act* recognises that children and young people are different from adults and therefore must be treated differently. Various sections of the *Youth Justice Act*, including sections 4(g), 154(4), (5) and (6), use terminology which distinguishes between detainees and the detention of children and young people and adult correctional facilities and prisoners.

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## WHAT IS YOUTH DETENTION

Several witnesses told the Commission that youth detention is a potentially risky and traumatic experience for children and young people. The National Children's Commissioner suggested that the best solution for a child is not to be placed in a detention setting at all because *'being in a jail is not good for kids. At the end of the day it mostly entrenches criminal identities and associations and that's not a good investment'*.<sup>1</sup> This opinion is supported by a vast amount of research showing that *'institutional environments are detrimental to the physical and mental wellbeing of children'*.<sup>2</sup> Paediatrician Dr James Fitzpatrick opined that *'one of the worst environments would be a highly charged and highly punitive detention facility where the young person's arousal state is constantly escalated and where they are very likely to tip over into antisocial behaviour'*.<sup>3</sup>

*'If you put somebody in juvenile detention and expect them to survive that experience, and even benefit from the experience, that is asking an enormous amount. So you can't expect it to happen without a lot of energy and inevitably expense being put towards that process, otherwise you're using juvenile detention as a kind of ... way of keeping kids off the streets. You have to acknowledge that you are going to harm those children by keeping them off the streets, you know the kind of economical approach to it is going to do harm, and is going to cost a lot more harm in the long term because you are producing damaged individuals who are going to cost society'*.<sup>4</sup>

Prof Jon Jureidini, senior child psychiatrist and research leader of Critical and Ethical Mental Health Research Group in the Robinson Research Institute, University of Adelaide.

Preventing involvement in the youth justice system in the first place is obviously desirable, but as the National Children's Commissioner told the Commission, this goal relies on the availability of alternatives in the community and ensuring that youth justice is not used as a welfare response.<sup>5</sup> It must also be accepted that there may be *'particular individuals who commit such crimes that, regardless of their age, may need to be held in secure facilities'*.<sup>6</sup>

The form of and settings for such a secure facility must still be considered within a broader context, and ought to be designed in recognition of the needs of children and young people. Mr Hamburger, an experienced administrator of prisons, recognised that a period of institutionalisation will be necessary for some young people but *'it has to be done in an appropriate way'*.<sup>7</sup> He suggested that it was time to *'take a very measured approach to understanding what the problem is, and looking creatively at the best solutions that reflect the intent of the legislation in the Northern Territory to have the least restrictive options applied and to ensure that young people are given the best opportunity to develop and become law-abiding citizens'*.<sup>8</sup> The design of a secure facility should reflect the broad goals of youth detention and efforts directed toward rehabilitation.

### Different from adult imprisonment

A fundamental principle underpinning youth justice and detention is that children and young people should not be managed in the same way as adults. The CRC includes a special framework to safeguard the rights of children and young people placed in detention. The *'best interests of the child'* is the primary consideration.<sup>9</sup>

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As espoused by the UN, the rights of children and young people in detention must be specially considered and protected. Research has demonstrated that children and young people often come into conflict with the law because they lack maturity, make poor and risky decisions, and are highly susceptible to negative influences, particularly peer pressure.<sup>10</sup> The development of a child's brain and associated issues are discussed further in Chapter 3 (Context and challenges).

Once in detention, children and young people are vulnerable for many reasons including the inherent power imbalance between adults and children, absence from their family and natural advocates, combined with the greater risks of abuse, exploitation and silencing which may be present in a closed environment.<sup>11</sup>

The Australasian Juvenile Justice Administrators, of which the Northern Territory is a member, developed Principles of Youth Justice in Australia in partnership with the Australian Institute of Criminology. Their aim was to draw together best-practice evidence, legislative obligations and international covenants, and together with the advice of key stakeholders, arrive at a concise set of principles to guide policy making and implementation. In this way, it was thought possible to reduce the harm caused to, and by, young offenders and respond to the needs of children and young people who commit offences.<sup>12</sup> All Australian states and territories endorsed the principles in 2014. If they are given effect they will result in the following:

- offending behaviour is prevented and young people are diverted from the justice system
- young people are held accountable for their behaviour
- effective support is provided to victims of youth offending
- effective policy and service responses are made to address the over-representation of Aboriginal and Torres Strait Islander young people in the justice system
- authentic collaboration is achieved across service systems
- service responses are evidence-based
- developmental needs of young people are addressed
- interventions are informed by the drivers of offending and the assessed risk of future offending
- support to young people is individualised and reflects the diversity of cultures and communities in which they live, and
- health and mental health needs of young people are addressed.<sup>13</sup>

The principles build on the Australian Juvenile Justice Administrators Juvenile Justice Standards, developed in 2009, which are broadly used to assess the quality of services and programs delivered to juveniles against certain benchmarks. The standards seek to deliver services that:

- are procedurally fair and acknowledge the rights and responsibilities of all involved
- provide professional, timely, evidence-based advice to courts, statutory authorities and other stakeholders
- support compliance, contribute to reducing offending, increase community safety and support positive behaviour
- reduce offending by working with families and the support and cultural networks of children and young people who are involved in the juvenile justice system
- partner with government and community organisations to improve integrated services to children and young people
- reduce the number of children and young people in the justice system through diversionary strategies
- provide the facilities and other resources required to deliver effective and efficient juvenile justice services
- ensure that agencies implement workforce practices that support staff to deliver effective and



- 
- efficient juvenile justice services
  - ensure that environments in which children and young people are lawfully detained are safe, secure and developmentally appropriate, and
  - provide juvenile justice services in ways that optimise the health and wellbeing of children and young people.<sup>14</sup>

## Youth detention as a last resort

Australia's international obligations require that children and young people ought be placed in detention only as a last resort which in practice, will mean only for the most serious offences or when alternative forms of punishment or rehabilitation are not suitable.<sup>15</sup>

The *Youth Justice Act* embodies this principle and provides that 'a youth should only be kept in custody for an offence, whether on arrest, in remand or under sentence, as a last resort and for the shortest appropriate period of time'.<sup>16</sup> Section 81 of the Act gives specific effect to the general principle, as well as other principles set out in section 4 such as accountability and responsibility, and the participation of the youth's family.

The principle of detention as a last resort was included in the *Youth Justice Act* in 2006. Since 2006, the number of children and young people in detention in the Northern Territory has increased. The number of individual youth admissions into detention annually has doubled over the relevant period, while the yearly daily average population in detention has grown at a similar rate.<sup>17</sup> The Northern Territory Government provided the Royal Commission with sentencing data for youth who appeared before Northern Territory courts. The data indicates that the most common penalty imposed after the victim's mandatory levy (which is ordered in conjunction with all non-custodial penalties) is detention. Further statistics about the youth detention population and crime rates are included later in this chapter.

## REHABILITATION

Deprivation of liberty is the consequence of a sentence which is to be served for a period in a youth detention centre. Deprivation of liberty is the punishment and young people should not suffer additional punishment for their crime/s while in detention. Once a child or young person enters a detention facility, the focus of their time in detention should be their rehabilitation.<sup>18</sup> Rehabilitation in this sense is directed to identifying and addressing the individual needs and characteristics of children and young people that cause their offending behaviour. The aim is prevention of further offending, thereby ensuring community safety.

International and domestic human rights standards for youth detention, as well as the *Youth Justice Act*, enshrine rehabilitation as one of the important purposes and objectives of youth detention. The Review of the Northern Territory Youth Detention System conducted by Mr Michael Vita (the Vita review) summarised the general objective as follows:

*Everything that happens in a juvenile detention facility should in some way, either directly or indirectly, be aimed at [a young person's] eventual successful release and reintegration back into the community.*<sup>19</sup>

To achieve this, case management services must be designed around individual needs-based assessment and planning involving children, young people, their families and community support

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networks. These services should be delivered in a physical environment that is humane, safe, secure and promotes rehabilitation.<sup>20</sup> This requires collaborative approaches as well as robust administrative practices, programs and policies directed toward rehabilitative purposes.

Ideally, the needs of children and young people at risk of entering the criminal justice system would be identified and addressed prior to such involvement. The Commission notes the Northern Territory Government's recent focus is aimed at achieving this goal.<sup>21</sup> When contact with the youth justice system resulting in detention is not avoidable, detention provides an opportunity to address these needs. Contact with the youth justice system can provide an opportunity to begin addressing some of these issues, including health issues, while the child or young person is in a controlled and stable environment. Periods in detention should be used to provide positive and therapeutic interventions and rehabilitation to children and young people.<sup>22</sup> Without a clear objective of rehabilitation and a well-designed system of services to achieve it, the detention of children and young people is merely punishment and will rarely yield any benefit to the individual or the community.

## CHILDREN AND YOUNG PEOPLE IN YOUTH DETENTION IN THE NORTHERN TERRITORY

To assess the effectiveness and appropriateness of past practices in youth detention in the Northern Territory and arrive at recommendations for suitable reforms, an understanding of the children and young people in detention is needed. This should include demographic information, including age, gender, cultural background, where they live, their health and education characteristics, and why are they are in detention.

While there are significant limitations to relevant data collection in the Northern Territory (discussed in Chapter 41 (Data and information-sharing)), the Commission has been able to draw a picture of the youth detention population based on what data is available, statistics and other evidence. From this it can be concluded that there is no single consistent profile. They come from a wide span of urban, rural and remote communities, range in actual and developmental ages, and have diverse health conditions and education levels.

This dictates an individualised approach to managing children and young people in detention. Nonetheless, certain observations can be made about the cohort which require recognition at a systemic level. These include:

- the over-representation of Aboriginal children and young people
- a significant proportion of children under the age of 15
- repeated admissions to youth detention
- a background of early life or childhood trauma
- health conditions such as cognitive and developmental impairments or mental illness
- placement in detention on remand for short periods for reasons other than the seriousness of offending and need for the protection of the community.

### The size of the youth detention population

Although the percentages per population unit of the youth detention population in the Northern Territory is very high compared with other Australian jurisdictions the actual numbers of young people in detention are not large.

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In 2015–16, there was a yearly daily average of 49 children and young people in detention in the Northern Territory.<sup>23</sup> The numbers of children and young people in detention have increased over the relevant period. The yearly daily average population in detention has increased from 29 in 2006–07 to 49 in 2015–16, whilst the number of individual admissions into detention doubled in the ten years between 2006 and 2016. In 2006–7 there were 120 admissions and in 2015–16 there were 254.<sup>24</sup> It is noted that the comparatively small population of Northern Territory youth detention necessarily raises caution in the interpretation of trends.<sup>25</sup> The Australian Institute of Health and Welfare data for the period between 2012 and 2016 indicates that the Northern Territory youth detention population remained more stable or did not show a clear trend in the period between 2012 and 2016.<sup>26</sup>

The Australian Institute of Health and Welfare prepared national data which shows that youth detention rates are presently stable after long-term falls, despite a recent rise in numbers over the last year.<sup>27</sup> Its 2016 bulletin examined the numbers and rates of young people aged 10 and over who were in youth detention in Australia due to their involvement, or alleged involvement, in crime. It looked at trends over the four-year period from the 2012 to 2016. While recognising that there were different trends in the youth detention population across the states and territories, it found that, nationally:

- the number of young people in detention on an average night decreased, from a high of 1,069 in the June quarter 2012 to 917 in the June quarter 2016
- the rate of young people aged 10–17 in detention on an average night decreased, from 3.8 per 10,000 to 3.3 per 10,000, over the four-year period, and
- over 2015–16, despite a slight increase in the number of young people of all ages in detention, on an average night in each quarter from 877 to 917, the rate of those aged 10–17 in detention remained relatively stable, at between 3.1 and 3.4 per 10,000.<sup>28</sup>

In April 2017, statisticians for the Northern Territory Government examined detention admission numbers in the period since the airing of the Four Corners program in July 2016. They concluded that while there were less admissions than projected following the program, the numbers increased shortly after:

*The airing of the Four Corners episode in late July 2016 seems likely to have been the reason why youth detainee numbers were substantially lower than projected between August 2016 and January 2017 ... Youth detainee numbers increased substantially in February and March 2017 ... Accordingly, whatever the cause for the fall in the numbers of detainees after July 2016, it appears that the effect is wearing off.<sup>29</sup>*

## Recidivism and repeated admissions to youth detention

The Northern Territory does not produce its own statistics about recidivism or reoffending rates.<sup>30</sup> Nonetheless, it is uncontroversial that many children and young people who enter youth detention return there, sometimes repeatedly.

Many of the children and young people who gave evidence to the Commission had entered detention many times and for short periods throughout their youth.<sup>31</sup> For example:

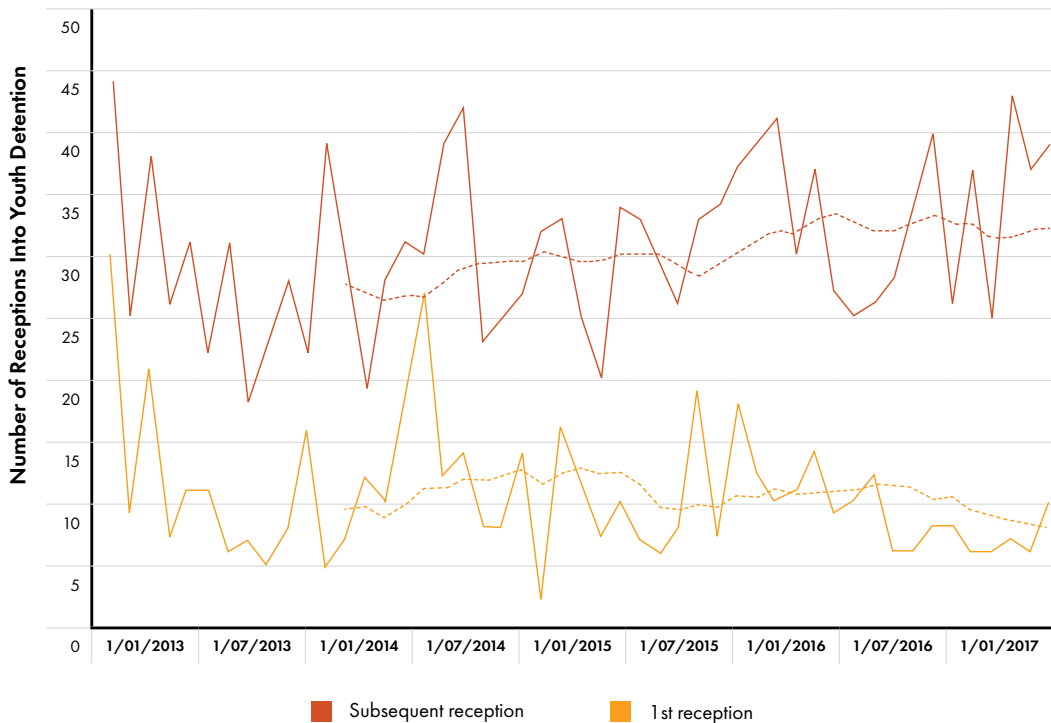
- Vulnerable witness BR was admitted to the former Don Dale Youth Detention Centre from the age of about 12. He was in and out of detention up until about the age of 17 and spent longer periods in

custody as he got older. He was held at the former Don Dale Youth Detention Centre almost every year from the ages of 12 to 17.<sup>32</sup>

- Vulnerable witness BH was in and out of the current Don Dale Youth Detention Centre about eight times since January 2015 for periods of one to two months.<sup>33</sup>
- Vulnerable witness AG was in and out of youth detention centres eight times since 2012, with periods of detention ranging from a few days to a year.<sup>34</sup>
- Vulnerable witness AS had 13 episodes of detention since 2012 with periods of detention ranging from a few days to over a year.<sup>35</sup>
- Vulnerable witness BV entered youth detention centres five times since 2012, with periods up to and exceeding 12 months.<sup>36</sup>

The Northern Territory Government provided an analysis of data for the period 2013–16 regarding children and young people entering detention, as to whether they had a prior record of reception into youth detention or whether they were a first-time entrant. Noting seasonal variations,<sup>37</sup> the analysis showed that between 2013 and 2016 on average there were more children and young people received into detention on a repeated admission than children and young people on their first admission.<sup>38</sup>

**Figure 9.1:** Chart showing greater number of repeated admissions into detention than first time admissions, 2013-2017.<sup>39</sup>



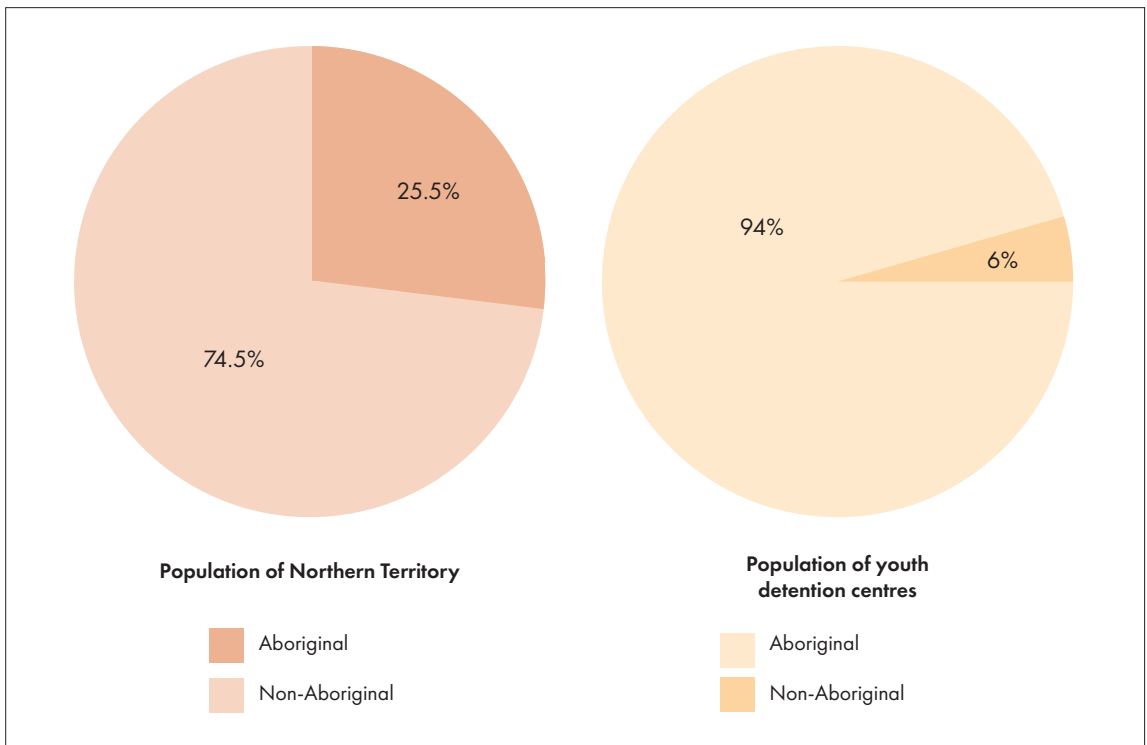
## Age, gender and cultural background

The children and young people in detention in the Northern Territory are aged 10 to 17, and come from a diverse range of communities across the Northern Territory.<sup>40</sup>

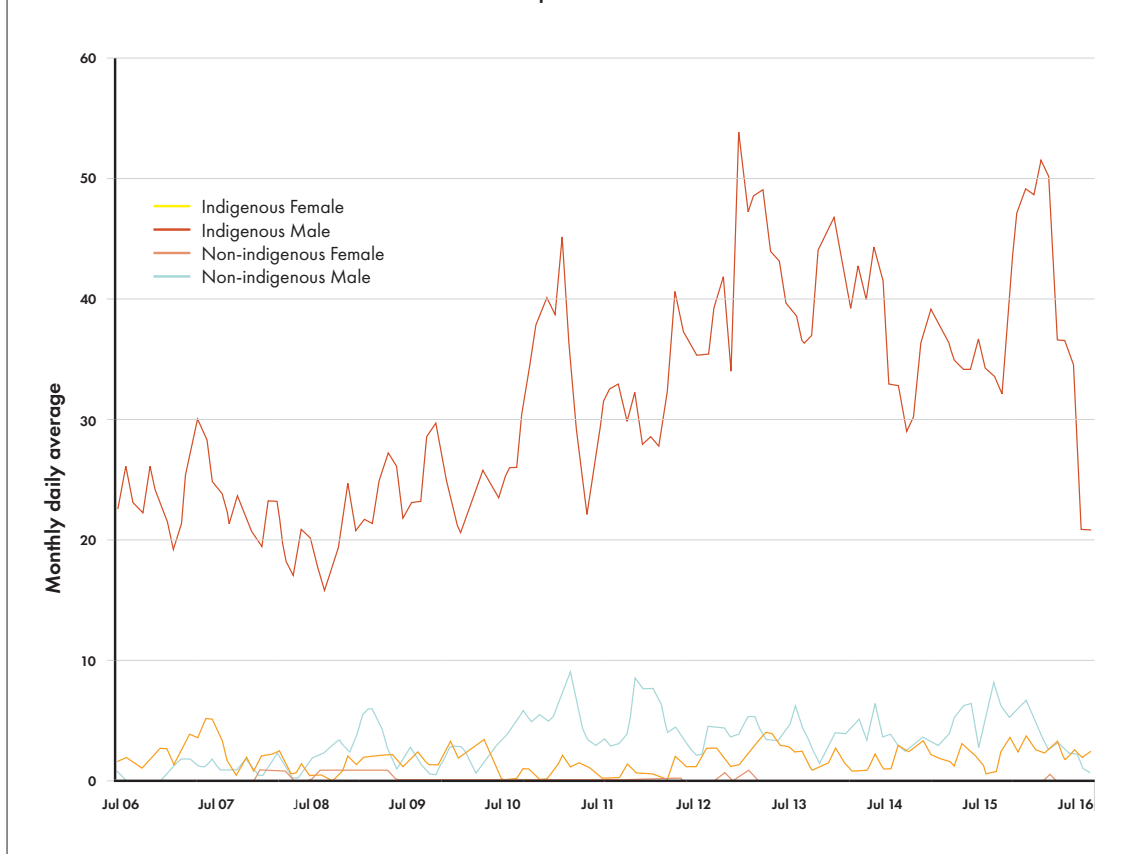
Children as young as 10 – the earliest age when a child may be found criminally responsible – have been placed in youth detention. Northern Territory Government statistics show an increased number of children and young people between the ages of 10 and 14 who have been apprehended since 2006.<sup>41</sup> While the total number of youth apprehensions increased substantially overall, the proportion of those aged between 10–14 years compared to other ages doubled, making up 44% of youth apprehensions in 2015–16, compared with 19% in 2006–07.<sup>42</sup> This data indicates a trend over the relevant period of children and young people coming into contact with the youth justice system at a younger age.

Aboriginal children and young people are over-represented in detention compared to the non-Aboriginal population. Only 25.5% of the Northern Territory’s population are Aboriginal<sup>43</sup> and yet in 2015–16, around 94% of children and young people admitted into the Northern Territory’s youth detention population were Aboriginal, with young Aboriginal males representing approximately three quarters of those.<sup>44</sup>

In 2015–16, approximately 79% of children and young people admitted into detention were male.<sup>45</sup> However, there has been an increase in the numbers of girls entering detention since 2006, particularly Aboriginal girls. In the years prior to 2008–09 there was, on average, one female in detention in the Northern Territory each night. In 2008–09, the average increased to three. Since 2010–11, the average has generally fluctuated between four and five female detainees, all of whom were Aboriginal.<sup>46</sup>



**Figure 9.2: Monthly daily average number of youth in detention by Indigenous status and sex 1 July 2006 to 25 September 2016**



The number of female detainees in detention per night can be significantly more than the yearly daily average. In early 2009, there was a peak of eight female detainees at the former Don Dale Youth Detention Centre.<sup>47</sup> Between December 2010 and March 2011, there were five or six female detainees at Don Dale. As at March 2011, one female detainee was held at Aranda House.<sup>48</sup> While the yearly daily average in 2011–12 for females in detention was five, on 9 February 2012 the Don Dale Daily Census recorded 11 female detainees in the former Don Dale Youth Detention Centre. Similarly, while the yearly average for 2012–13 for females in detention was four, there were times including where the Don Dale Daily Census recorded 10 female detainees.<sup>49</sup>

In Alice Springs, the presence of females has been limited and ad hoc, because of the incapacity of Aranda House and the Alice Springs Youth Detention Centre to accommodate female detainees separately from males. Management intended that females only be detained at the Alice Springs Youth Detention Centre on short periods of remand. The common practice has been for girls to be transferred from Alice Springs to Darwin and detained at the former and current Don Dale Youth Detention Centres. Nonetheless, daily records suggest that from mid-2015 up to six female detainees at a time were accommodated there, though it is more commonly one to three.<sup>50</sup> The particular needs and treatment of girls and young women in youth detention are discussed in further detail in Chapter 17 (Girls in detention).

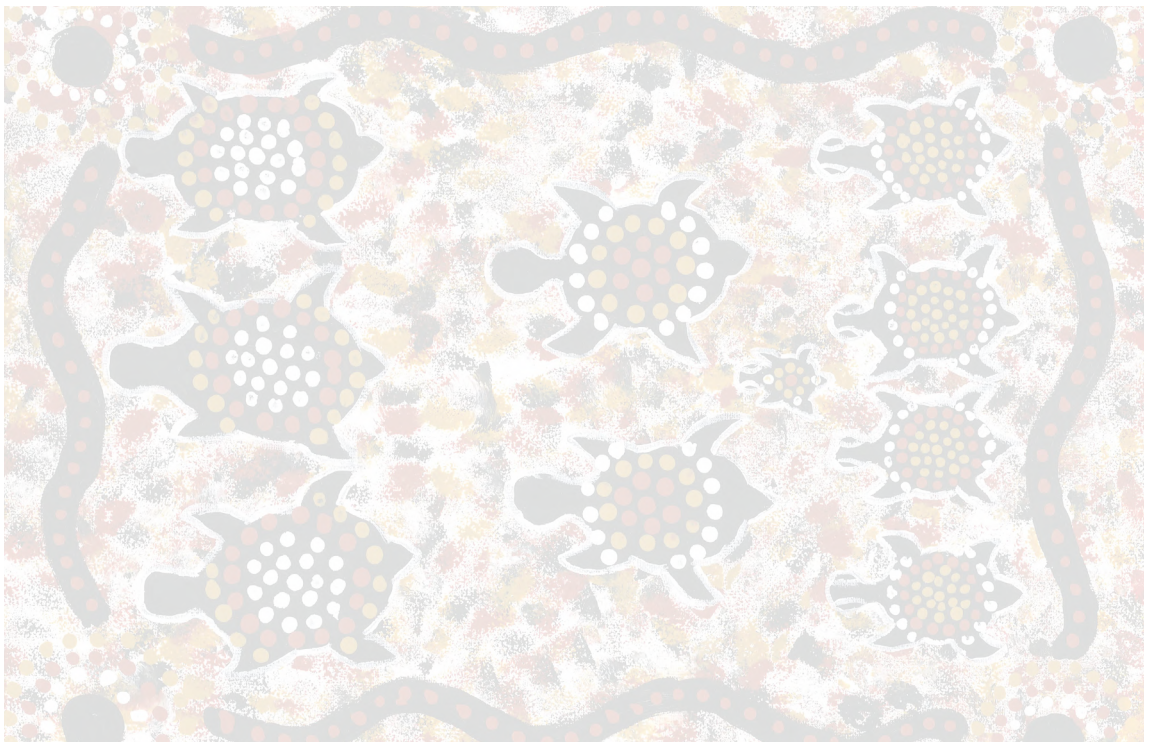
## Geographical home location

The Northern Territory encompasses a geographical area that covers 18% of Australia's landmass but holds only about 1% of its population. It is characterised by great distances between sparsely populated regional and remote communities.<sup>51</sup> In 2016, the population of the Northern Territory was 245,700.<sup>52</sup> About 60% of the population live in Darwin, 12% in Alice Springs, 5% in Katherine, 4% in Tennant Creek, and the remaining 19% live in small communities spread across the approximately 1.4 million square kilometres of the Territory.<sup>53</sup>

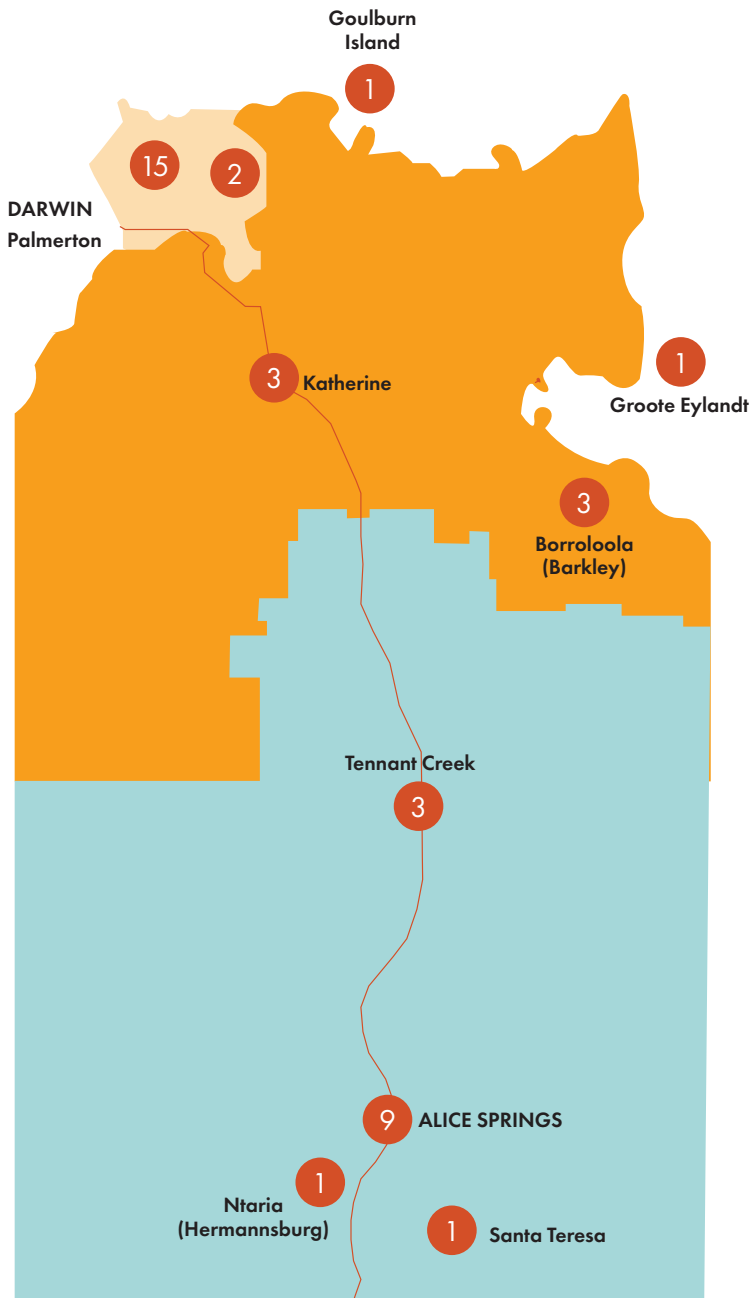
The majority of children and young people in detention are from Greater Darwin and Alice Springs, but a not insignificant number come from remote communities, and they are overwhelmingly Aboriginal.

A point-in-time snapshot taken at 30 June 2016 shows that there were 37 children and young people in youth detention across the Northern Territory on that day.<sup>54</sup> They came from the following regions:

- Greater Darwin – 15 (including Palmerston – 2)
- Alice Springs – 9
- Katherine – 3
- Tennant Creek – 3
- Borroloola (Barkley) – 3
- Santa Teresa – 1
- Goulburn Island – 1
- Ntaria (Hermannsburg) – 1
- Groote Eylandt – 1.<sup>55</sup>



**Figure 9.3: Home regions of children and young people in detention in the Northern Territory (as at 30 June 2016).<sup>56</sup>**



Source: Exh.045.002, Statement of Joe Yick, 17 November 2016, tendered 8 December 2016, p. 6. The current location of detention centres in Darwin and Alice Springs means children and young people from other communities who are placed in detention are relocated away from their community and country.



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Part of the cause of hardship is the diversity of language and culture – not just between the urban centres and remote communities – but also between the Centre and Top End of the Northern Territory. Former Commissioner of Corrections, Mr Ken Middlebrook, was just one witness who recognised that:

*the needs of young people in Central Australia are quite different to the needs of the young people in the Top End, and there's quite different needs for people that do come in from remote communities.*<sup>57</sup>

## Complex needs: health and education

There are significant limitations on data collected about the health and characteristics of children and young people in youth detention in the Northern Territory as discussed in Chapter 41 (Data and information-sharing).

In the absence of such data, the Commission obtained multidisciplinary assessments of a sample of people who were, or had been, in youth detention in the Northern Territory during the relevant period and who gave evidence in the Commission's hearings.<sup>58</sup>

The sample included 16 children and young people who were aged between 14 and 22, with 10 over 18. While the content of individual assessments is confidential, the Commission collated the data contained in those assessments and the recommendations for the behavioural management and therapeutic support of those young people. The data showed a prevalence of multiple complex needs in individuals, including drug or alcohol misuse, mental health issues, trauma backgrounds, cognitive and learning impairments, and low-level literacy and numeracy skills.

This assessment was consistent with other evidence the Commission received about the health and education characteristics of children and young people in detention,<sup>59</sup> and of many children and young people in the Northern Territory who come into contact with the youth justice and child protection systems.<sup>60</sup>

## WHY ARE CHILDREN AND YOUNG PEOPLE IN DETENTION

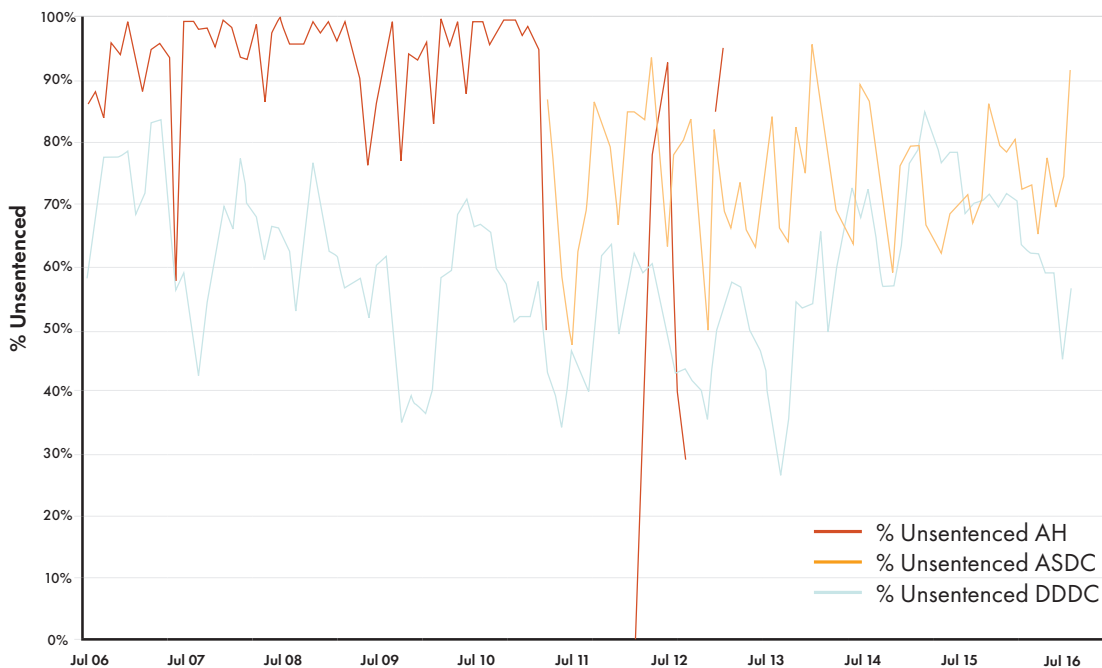
If not granted bail, children and young people are placed in detention centres on remand pending the conclusion of the criminal charges against them, either by way of disputed hearing or sentence. The provisions of the *Bail Act* (NT), which apply to all including children and young people, set out in considerable detail the criteria which must be considered by the court when a charged person is seeking bail. There is a general presumption in favour of bail<sup>61</sup> unless the charged offence falls within a particular category of offences, broadly, serious offences of violence or relating to drugs, as to which the alleged offender must demonstrate that they are not a risk of failing to appear, committing other crimes or interfering with witnesses<sup>62</sup> (a detailed consideration of bail is found at Chapter 25 (The path into detention)). The principle of detention as a measure of last resort requires that children should not be 'remanded in custody' unless there is no other option to protect the community but that is not a criterion in the *Bail Act* although the presumption in favour of bail supports this principle.

## Children remanded in custody

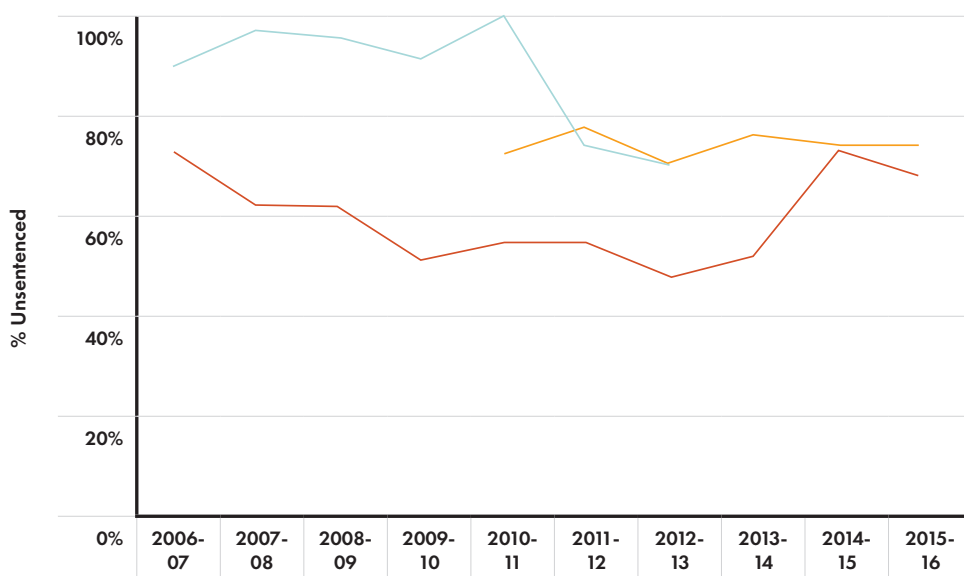
The composition of the Northern Territory youth detention population has been marked consistently throughout the relevant period by a high proportion of children and young people on remand, between approximately 50 to 80%.<sup>63</sup>

Between July 2006 and July 2009, the proportion of children and young people on remand at the former Don Dale Detention Centre was 62–72%, or approximately two-thirds to three-quarters of the detention population. Between July 2009 and July 2014, the proportion was 48–54%, or approximately half the population. Since July 2014, the yearly daily average percentage of youth detainees who are unsentenced has increased again to 68–73%. However, it is noted that the monthly daily average percentage of youth detainees has exhibited a downward trend since July 2015. At the Alice Springs youth detention facilities, including Aranda House, rates of remand have consistently been above 70% of the detention population and have frequently been as high as 90%.<sup>64</sup>

**Figure 9.4: MONTHLY DAILY AVERAGE PERCENTAGE OF YOUTH DETAINEES WHO ARE UNSENTENCED, BY DETENTION CENTRE 1 July 2006 to 25 September 2016**



**Figure 9.5: YEARLY DAILY AVERAGE PERCENTAGE OF YOUTH DETAINEES WHO ARE UNSENTENCED BY DETENTION CENTRE 2006-07 to 2015-16<sup>65</sup>**



<span style="color: #4682B4;">■</span>	% Unsented AH	89%	97%	96%	91%	100%	74%	70%		
<span style="color: #FF8C00;">■</span>	% Unsented ASDC					72%	77%	71%	76%	74%
<span style="color: #C00000;">■</span>	% Unsented DDDC	72%	62%	62%	51%	55%	54%	48%	52%	68%

The individualised nature of bail determinations makes it difficult to assess the reasons why children and young people may be refused bail and remanded to detention. Nonetheless, children and young people in the Northern Territory are held in detention on remand for reasons unrelated to the protection of the community and the seriousness of their alleged offending. Since the criminalisation of breach of bail in 2011, a number of children and young people have been detained on remand only for breach of bail offences. This is discussed in Chapter 25 (The path into detention).

In 2015, the Children's Commissioner Colleen Gwynne was commissioned by the Chief Minister to prepare a report for Cabinet on youth services in the Northern Territory. In that report, delivered in June 2015, she identified and explained other reasons why children and young people may be held in detention on remand, unrelated to the protection of the community:<sup>66</sup>

*It is evident that some youth are held on remand in the Territory not for the protection of the community or due to a risk of re-offending, but for their own wellbeing or protection in circumstances where they are/have:*

- crisis or at risk of harm;
- incapable of maintaining relationships with family, or in out of home care or anyone who attempts to support them;
- such high or complex needs that no community-based residential services are

- available with the capacity to provide the required level of treatment and support; or
- mental health conditions or cognitive disability make it difficult for them to adhere to their bail conditions.

These conclusions are consistent with general observations of the major legal aid providers to young people in the Northern Territory, Northern Territory Legal Aid Commission, North Australian Aboriginal Justice Agency and Central Australian Aboriginal Legal Aid Service. Anecdotally, the lack of suitable, stable accommodation for young people charged and awaiting final disposition of their charges is the predominant reason for refusal of bail.

Statistics demonstrate that in only a small number of cases are children and young people sentenced to a period of detention beyond their period of remand, as shown in Table 9.1. Taken together with the average short length of remand episodes, there is good reason to conclude that only a small number of children and young people who enter detention are found guilty and receive sentences beyond their remand period.

The average length of remand periods is relatively short, being approximately three weeks since 2012–13.<sup>67</sup> The proportion of ‘remand only’ detention episodes has been high during the period for which data is available since 2011. The number of ‘remand only’ periods increased by 57% between 2011–12 and 2013–14, during which legislation making breach of bail an offence was introduced and has since remained relatively steady.<sup>68</sup>

**Table 9.1: Total admissions into youth detention, total periods in detention on remand only and average number of days spent on remand, 2011–12 to 2015–16<sup>69</sup>**

Period	Total admissions	Total remand only periods	Average remand only length (days)
2011–12	328	283	38.1
2012–13	429	380	21.1
2013–14	469	445	25.4
2014–15	463	433	23.7
2015–16	533	438	17.5

Source: Adapted from Exh.045.001, Statement of Joe Yick, 14 October 2016, p. 0058 and Exh.969.001, Statement of Carolyn White, 9 June 2017, tendered 10 July 2017, p. 0055.

**Table 9.2: Total number of sentences commenced and mean length of sentences, 2012–13 to 2015–16<sup>70</sup>**

Period	Total number of sentence commencements	Mean sentence length (days)
2012–13	84	360
2013–14	77	239
2014–15	69	225
2015–16	74	247

Source: Adapted from Exh.045.001, Statement of Joe Yick, 14 October 2016, p. 0058 and Exh.969.001, Statement of Carolyn White, 9 June 2017, tendered 10 July 2017, p. 0055.

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Additionally, the very short nature of most remand periods is demonstrated by statistics from 2014–15, during which:

- 72% of all youths released spent 30 days or less in detention, and
- at least 50% of all youths released spent 11 days or less in detention.<sup>71</sup>

It is instructive to consider the statistics for 2015–16 in more detail to evaluate the relationship between placement in detention and ultimate sentence. While court finalisations within a given year for a certain offence do not directly correspond to the same statistics for admissions to detention for those offences within the same given year, there is sufficient consistency in the instances of each across the period to draw conclusions from the relationship.

In 2015–16 there were 533 admissions to detention.<sup>72</sup> 83% of those admissions were for periods of remand only.<sup>73</sup> That is to say, approximately 17%, or 74 detention admissions, involved detention for a sentence beyond a period of remand.<sup>74</sup>

Of the admissions to detention during that period, 209 were for charges with a most serious offence falling in the category of acts intended to cause injury, primarily assault.<sup>75</sup>

During the same period, there were 90 separate instances where children and young people who had been on remand had offences of that nature dealt with finally by the court. Of those:

- sentences of any kind were imposed in only 77 instances. That is, on 13 occasions, or 14% of the time, the charges were withdrawn or the young person acquitted, and
- only 54 instances or 60% resulted in a sentence of actual detention.<sup>76</sup>

This suggests that in 40% of cases where a child or young person was remanded in custody for this offence, they were not then ultimately sentenced to a period of detention.

More broadly, of the 197 occasions in the same period where a young person, whether on remand or not, was dealt with at court where an act intended to cause injury was the most serious offence:

- only 135 eventuated in a sentence at all. That is, on 62 occasions or approximately 30% of those occasions, the charges were withdrawn or the young person acquitted,<sup>77</sup> and
- only 55 occasions resulted in a sentence of actual detention, including partially suspended, or back-dated sentences, *'time already served on remand'*.<sup>78</sup>

These statistics suggest:

- only 40% of children and young people admitted to detention are sentenced to detention beyond the remand period
- a significant portion, between 14 and 30% of charges laid upon children and young people, including where the person is on remand:
  - do not eventuate in sentences of actual detention, and/or
  - do not eventuate in a sentence at all, and
- a child or young person's status on remand does not reflect the likelihood of their being ultimately sentenced to a period of detention for the offence for which they are remanded in custody.

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These suggestions are supported by data more broadly across the relevant period of 2006–16 including:

- only 16% of court finalisations resulted in sentences of actual detention (10% in 2009–10 and 22% in 2015–16)<sup>79</sup>
- of all court finalisations, 24% resulted in all charges being withdrawn or the youth acquitted<sup>80</sup>
- sentences of actual detention were the result for 25% of finalisations for charges of acts intended to cause injury, 19% for unlawful entry with intent and 16% for theft and related offences,<sup>81</sup> and
- dismissal of the charge or discharge of the child or young person was the third most frequently used ‘sentencing option’, averaging 15% of charges.<sup>82</sup>

## PUBLIC EXPECTATIONS AND GOVERNMENT POLICIES

The political and policy climate for youth detention in the Northern Territory has altered markedly over the relevant period. There have been two changes of government in the Northern Territory since 2006. These changes occurred in 2012 and 2016.

There have also been a series of ministerial changes, which have affected the policies and approaches to youth detention. A list of ministers over the period relevant to the Commission’s inquiry is set out in the Chronology. The Minister currently responsible for youth justice and detention is the Minister for Territory Families, the Hon. Dale Wakefield MLA. The Minister for Territory Families is responsible for youth detention, as well as other aspects of youth justice including diversion programs, community supervision and supporting youth services.<sup>83</sup> Former long-serving Ministers with relevant responsibilities for youth detention include:

- Minister for Corrections/Correctional Services, John Elferink, 4 September 2012 to 12 December 2014; 4 February 2015 to 26 July 2016, and
- Minister for Correctional Services, Gerald McCarthy, 9 February 2009 to 29 August 2012.

Changes to the departmental location of the youth justice and detention portfolio have also affected the policies and approaches taken over the relevant period. In 2006, responsibility for youth detention and adult corrections was located within the same portfolio under the Department of Justice. In 2012, the Northern Territory Government created the Department of Correctional Services (DCS) as a separate department.<sup>84</sup> DCS was responsible for managing adult prisons, youth justice services, detention centres and community correctional services for adults and youth.<sup>85</sup> Within DCS, youth justice services were managed by a youth division until March 2016. In March 2016, Corrections Commissioner Mark Payne placed youth detention services under custodial operations as an interim measure due to concerns about a lack of structure and organisation within youth detention, particularly at the current Don Dale Youth Detention Centre.<sup>86</sup> This made the Northern Territory the only jurisdiction in Australia to manage the detention and supervision of children and young people from within an adult custodial corrections division.<sup>87</sup>

The new Northern Territory Government implemented its commitment to move youth justice out of the corrections portfolio and transferred the responsibility for youth justice and detention to Territory Families after the 2016 election.<sup>88</sup> Territory Families is also responsible for care and protection of children and other matters.<sup>89</sup>

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## Priority of youth detention within corrections

Successive Northern Territory governments have adjusted priorities for youth detention over the relevant period. It is apparent that problems in adult corrections led to a lower priority being given to youth detention until issues emerged in the youth facilities after 2010. On 12 February 2009, the Government launched its *New Era in Corrections* policy, which made no mention of youth detention. Former Minister McCarthy told the Commission that, while the lack of reference to youth detention struck him then, the *'absolutely extreme position'* of the adult Darwin Correctional Centre *'was the priority of government by far'* at least in terms of corrections issues.<sup>90</sup> Mr Middlebrook told the Commission that, due to media and political interest in crises in the adult corrections system, there was limited attention given to youth detention:

*'the emphasis in the early days was on the adult system, not on the juvenile system, and it wasn't till – the juvenile system really didn't start to get attention until we started to have some major problems in the juvenile system.'*<sup>91</sup>

This appears to have played a role in terms of the funding and support provided to youth in detention. The present Chief Executive Officer of Territory Families told the Commission that the management of youth justice functions by Corrections meant that *'youth justice was not operated as part of a wider continuum providing support for young persons and their families'*, particularly given the differential between the size of adult correctional services and youth services.<sup>92</sup>

## Punitive and tough on crime policies

Several witnesses, including former Ministers, told the Commission that Northern Territory governments have pursued what can be described colloquially as *'tough on crime'* and *'law and order'* policies for children and young people in detention in response to calls from the Northern Territory community to deal with youth crime and ensure community safety.

Tough on crime approaches are not particular to the Northern Territory. Government responses to crime nationally have grown increasingly more punitive in recent decades, driven in part by a landscape which has focused on fear of crime as a strong populist concern.<sup>93</sup> Community perceptions of safety in public places nationally have decreased between 2008–09 to 2014–15.<sup>94</sup> While 76–85% of Territorians report feeling *'safe'* or *'very safe'* in their homes at night, their perception of safety while walking alone or on public transport during the night is much lower.<sup>95</sup>

Public perceptions do not necessarily reflect the actual trends of youth crime. Australian and international research has consistently shown that there is often a significant difference between the perceived and the actual crime rates in a town or community.<sup>96</sup> The Review of the Northern Territory Youth Justice System found that, despite the relatively low numbers of young offenders and the relatively low-level nature of their offending, the desire for governments to be seen as tough on crime has been a recurring theme in the youth justice system. Based on a review of media commentary, it appears that each decade has seen increased levels of community concern about the rate and effects of youth crime.<sup>97</sup>

Former Ministers told the Commission that tough on crime policies post-2012 were a response to community or public expectations. Former Minister Elferink told the Commission that this approach was based on *'a public expectation that the youth who commit crimes in the community are brought to justice, like anybody else'*.<sup>98</sup> Former Chief Minister Adam Giles told the Commission that, while he

did not pursue a deliberate strategy of tough on crime:

*'law and order is probably the number one issue on people's minds in the community, particularly if you went through Katherine and Alice Springs, I think probably Darwin it's more likely to be a – probably the second point, maybe the first for some people, but probably the second in a majority.'*<sup>99</sup>

The tough on crime approach flowed through to the policy makers and administrators of youth detention in the Northern Territory.

*'The Government was very, very clear, they had a tough on crime policy platform and our role as public servants, yes, while providing frank and fearless advice at some point you have to administer their – and work under their direction or choose otherwise to leave.'*<sup>100</sup>

Mr Middlebrook told the Commission that he did not know of any studies that indicated that tough on crime measures had any benefits for the rehabilitation and turning around of young persons and sought to persuade governments that tough on crime did not work.<sup>101</sup>

*'Tough on crime means more numbers, means overcrowding and stress on the system that just doesn't allow you to do things. I mean, that's what tough on crime means. And, you know, if I can just make this statement. In 2009, there was a press release which was critical of the imprisonment rate in the Northern Territory at 550 per 100,000 or something, and I think in the last September quarter the imprisonment rate in the Northern Territory is 934 per 100,000, which would be the worst – one of the worst figures in the world. You know – you know, I used to be embarrassed to have to go along to a conference and know that I was in charge of a system – you know, that was locking up 934 people to 100,000, where I really could do nothing about that because I don't control government policy. I try to influence government policy but when you've got a government that's tough on law and order, you know, and people – I – you only have to look at the way that we tried to get people out and what we tried to do to reduce that recidivism or reduce that return to prison. But I often wonder – now, I'm not in the system, but I often wonder what it's going to be like in another five years here in the Northern Territory.'*<sup>102</sup>

Former Minister Elferink also conceded that there was no evidentiary basis for thinking that harsh measures, with respect to youth justice offenders, has any effect on particular individuals going through the system although he noted that *'whether or not a tough on crime approach deters other youths from committing offences or not is not measurable'*.<sup>103</sup>

## Portrayals of children and young people in detention

*'These children are not the kind that bring home apple pie for their parents. These youths have the ability to be very violent and extremely dangerous.'*<sup>104</sup>

Former Minister John Elferink



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This message was contained in an extract of an approved ministerial response to a media question about the use of tear gas at the former Don Dale Youth Detention Centre. A former departmental officer told the Commission that *'you would often hear the then Minister talking about detainees in similar ways'*.<sup>105</sup>

An article on 24 October 2014 quoted Minister Elferink as saying that a group of children involved in one incident were *'the worst of the worst'* and *'villains'* and that:

*'All courtesies that we have attempted to bring to bear on them or give to them up until now have been withdrawn. These are strapping young lads, but my goodness gracious me we will crack down on them and we will control them'*.<sup>106</sup>

Mr Elferink told the Commission that he was *'not particularly aware'* of the ages of the children because these are operational issues as to how kids are dealt with and housed but his comments reflected the conduct of the children involved.<sup>107</sup>

Former Commissioner Middlebrook agreed in evidence before the Commission that some sections of the media looked for stories to paint certain children as *'ratbags'*.<sup>108</sup>

The Commission was told of concerns about *'demonisation'* of children and young people in detention and the potentially labelling effect on them.<sup>109</sup> This is discussed further below.

## EFFECTIVE HELP AND SUPPORT FOR CHILDREN AND YOUNG PEOPLE IN DETENTION

As noted above, children and young people in detention are a particularly vulnerable group. They have varying and complex needs and behaviours.<sup>110</sup> Many have come from crisis situations or a background of disadvantage, have experienced trauma or have a range of health issues. Detention itself may give rise to trauma, which may compound already highly complex behaviours and needs.<sup>111</sup>

To address the needs of these children and young people effectively, underlying issues need to be recognised. For example, Professor John Boulton told the Commission that, while valid data is needed, it is probable that there is a causal relationship between the extent of Fetal Alcohol Spectrum Disorder (FASD) and early life trauma amongst Aboriginal children and young people and the high percentage of children and young people in detention being from remote Aboriginal towns and communities.<sup>112</sup> Mr Hamburger told the Commission that:

*'The police and judiciary are reacting to the client group that's coming from the socially dysfunctional and economically disadvantaged communities, and they are just doing their job, and it's not correct in my view to say that the police and the judiciary are determining the flow into the system. And so it seems to miss the point that we've made in our report about the need to address these underlying problems in the lower socioeconomic and economically deprived communities that we are dealing with'*.<sup>113</sup>

Tough on crime rhetoric acts as an impediment to identification of these issues.<sup>114</sup> The use of law and order as a political tool creates barriers to the analysis of causal pathways. It is counter-productive to the design of intervention strategies if child and youth crime is not seen by society as a disease transmitted across generations and exacerbated by poverty, social exclusion and cognitive disability

often as an accumulation of those factors.<sup>115</sup> Coupled with an absence of data, it obscures 'rational debate and hence talking honestly about what might be done differently'.<sup>116</sup> While recognising community perceptions about 'soft on crime' approaches, Mr Hamburger explained:

*'I can understand people of my age group who have worked hard and been through the services and whatever could have that sort of attitude, and they get very annoyed and angry about the fact that young people seemingly are running berserk and doing those sorts of terrible things, and the courts are soft on them and everything else. But I ask them to reflect on the fact that most of us that hold those sort of views basically had the good fortune to come from a loving and supportive family and were helped through our trials and tribulations in school, and generally got on with our lives, and when we did have discipline imposed upon us within that supported environment we understood it in the context of our loving family situation. And that applies, fortunately to the significant majority of people in our community, but the people that come into our detention centres and our prisons don't come, in the main, from that loving supportive background. They have been sexually abused, they have gone to school without lunch, they have had quite serious things happen in their lives. So if you put them in jail and think another good kick up the backside or something like that is going to change their ways, you have got to think again because they have had far worse at home, on the street, and so that sort of punishment that people like to think should be dished out to those sort of people, is not being – it has no effect in that sense ... in a civilised society we don't incarcerate people for punishment and treat them brutally. Sadly, it does happen though. But that's not the mission. The mission is, as we've talked about, is to stabilise those people, understand them as individuals, and get some individual personal pathway plans in place to support those people back to a law-abiding society in some way.'*<sup>117</sup>

## What is 'trauma-informed practice'

Many of the children and young people in youth detention have experienced significant childhood trauma such as exposure to domestic violence, neglect, sexual abuse, and drug and alcohol abuse. Childhood trauma affects brain development, particularly the ability to manage emotions and impulses.<sup>118</sup> In response to intense emotional stress, victims of childhood trauma may resort to verbal and physical aggression or self-harm.<sup>119</sup>

The use of force and isolation to manage this behaviour often re-traumatises the child and thereby exacerbates the behaviour. Mr Hamburger noted in his 2016 review of the Department of Correctional Services that '*research shows that threatening and punitive interactions, incarceration, and punishment escalate the aggressive behaviour of troubled youth.*'<sup>120</sup>

To ensure that the needs of these children are met, several witnesses and submissions recommended that '*trauma-informed practice*' form part of the training of youth justice officers.<sup>121</sup>

Trauma-informed practice has emerged as a field and involves:

1. recognising that childhood trauma affects behaviour and the ability to regulate emotions
2. understanding how this behaviour plays out in social settings, and
3. developing strategies for managing and responding to the behaviour of victims of childhood trauma in a way that meets their needs.<sup>122</sup>

Incorporating a trauma-informed approach into the training of youth justice officers would assist staff to recognise the behaviour of victims of childhood trauma and to help children to manage safely their internal stress, rather than becoming aggressive or self-harming. The training would also ensure that youth justice officers do not respond to behaviour in a way that would cause further trauma.

Former NT Children's Commissioner, Dr Bath gave an example of the importance of trauma informed practice when he said:

*'... some young people appear to place themselves in situations that expose them to further harm, thus re-enacting their original trauma, physical abuse or abandonment. In the youth detention context, this might be manifested in a traumatised young person repeatedly provoking staff into using violent techniques on them. Such behaviour may be driven by the child's underlying and unresolved trauma and anxiety and staff need to be aware of this process to ensure that they are not goaded into responding in a harmful way'.<sup>123</sup>*

Other Australian jurisdictions have recognised the role of trauma in the lives of children in developing approaches to youth justice and detention. The Principles for Youth Justice in Australia recognise the impacts of trauma when addressing the health and mental health needs of young people.<sup>124</sup>

Queensland regulations require detention staff to have regard to any known trauma experienced by the child and its impact on their behaviour when imposing disciplinary measures.<sup>125</sup>

A model based on therapeutic care or trauma-informed approaches should apply to all children and young people in detention, whether on remand or sentenced. Dr Mick Creati told the Commission that *'the effects of trauma howsoever caused should be planned for throughout the full-term of any imprisonment'*. While appreciating the *'practical difficulties'* associated with shorter periods of custody, benefits to a child or young person could flow through so that, *'if trauma is not assessed in custody, it should be followed up on release'*.<sup>126</sup> The Northern Australian Aboriginal Justice Agency advocated for a *'continuum of care'* for children and young people depending on the stage of contact with the criminal justice system.<sup>127</sup>

Encouragingly, Territory Families expressed its commitment to a trauma-informed approach as a basis for future reforms relating to care and protection and youth justice, including *'ensuring young people in detention receive effective support and services to address their offending behaviour together with their history of trauma through the delivery of therapeutic care'*.<sup>128</sup> As a particularly vulnerable group, they need the support and protections of good policies, procedures and practices, together with effective and appropriate administration, supervision and management of action taken to ensure the purposes of youth detention are achieved.

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# LEGAL FRAMEWORKS FOR YOUTH DETENTION IN THE NORTHERN TERRITORY

## Youth Justice Act

The *Youth Justice Act*, which commenced in 2006,<sup>129</sup> is the central legislative framework for youth detention in the Northern Territory. While the provisions of the *Bail Act* do apply to youth, the principles and provisions of the *Sentencing Act* expressly do not.<sup>130</sup>

The *Youth Justice Act* was introduced into the Northern Territory Parliament on 30 June 2005 following a review, and subsequent repeal, of the *Juvenile Justice Act (NT)*,<sup>131</sup> which had preceded it.<sup>132</sup> The purpose of the Bill was:

*to ensure that the legislation that applies to offending by young people provides an appropriate framework for responding effectively to the different circumstances and needs which arise when young people become involved in the criminal justice system. The framework set in place by the bill will cover all facets of a youth justice system, from the investigation of offences through to trial and sentencing outcomes.*<sup>133</sup>

The 2006 *Youth Justice Act* reflected contemporary policy and academic thinking in the area of youth justice which were based on restorative models of justice.<sup>134</sup> Key provisions in the *Youth Justice Act* were the introduction of objects and principles to be taken into account in the administration of the *Youth Justice Act*. These principles are:

- if a youth commits an offence, he or she must be held accountable and encouraged to accept responsibility for the behaviour
- the youth should be dealt with in a way that acknowledges his or her needs and will provide him or her with the opportunity to develop in socially responsible ways
- a youth should only be kept in custody for an offence (whether on arrest, in remand or under sentence) as a last resort and for the shortest appropriate period of time
- a youth must be dealt with in the criminal justice system in a manner consistent with his or her age and maturity and have the same rights and protection before the law as an adult in similar circumstances
- a youth should be made aware of his or her obligations under the law and of the consequences of contravening the law
- a youth who commits an offence should be dealt with in a way that allows him or her to be re-integrated into the community
- a balanced approach must be taken between the needs of the youth, the rights of any victim of the youth's offence and the interests of the community
- family relationships between a youth and members of his or her family should, where appropriate, be preserved and strengthened
- a youth should not be withdrawn unnecessarily from his or her family environment and there should

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be no unnecessary interruption of a youth's education or employment

- a youth's sense of racial, ethnic or cultural identity should be acknowledged and he or she should have the opportunity to maintain it
- a victim of an offence committed by a youth should be given the opportunity to participate in the process of dealing with the youth for the offence
- a responsible adult in respect of a youth should be encouraged to fulfil his or her responsibility for the care and supervision of the youth
- a decision affecting a youth should, as far as practicable, be made and implemented within a time frame appropriate to the youth's sense of time
- punishment of a youth must be designed to give him or her an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways
- if practicable, an Aboriginal youth should be dealt with in a way that involves the youth's community
- programs and services established under this Act for youth should:
  - be culturally appropriate
  - promote their health and self-respect
  - foster their sense of responsibility
  - encourage attitudes and the development of skills that will help them to develop their potential as members of society
- unless the public interest requires otherwise, criminal proceedings should not be instituted or continued against a youth if there are alternative means of dealing with the matter, and
- as far as practicable, proceedings in relation to youth offenders must be conducted separately from proceedings in relation to adult offenders.

This legislation has much to commend it, with some exceptions, and has been endorsed by those who have worked with it.<sup>135</sup> The problem has been a failure to embrace its provisions fully and to give complete effect to many of its principles. This has occurred through, among other things, a failure to fund adequately the means whereby youth could be rehabilitated and diverted from crime and a failure to provide adequate detention accommodation and therapeutic programs when detention was imposed.

The Act has been amended 22 times since its commencement. One such amendment, the *Youth Justice Amendment Act* (NT) commenced on 1 August 2016 and inserted limitations on the use of mechanical devices and restraints. A Youth Detention Provisions Legislative Review Working Group has been established to advise the Northern Territory Government specifically on amendments to provisions of the *Youth Justice Act* regarding detention, although there was no consultation with this group regarding these amendments.<sup>136</sup> The Northern Territory Government proposes a review of both the *Youth Justice Act* and the *Care and Protection of Children Act* (NT). The Commission considers

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reform of the *Youth Justice Act* in conjunction with the *Care and Protection of Children Act* with a view to exploring a single Act.

## MANAGEMENT OF YOUTH DETENTION

The *Youth Justice Act* includes provisions supporting the framework for youth detention in the Northern Territory. The Minister may approve facilities as youth detention centres. The *Youth Justice Act* provides for administration and management of detention centres, including the appointment and role of the superintendent, procedures concerning detainees and other matters.

The superintendent of a youth detention centre has overarching responsibilities for the centre. The Act sets out the superintendent's functions, responsibilities, obligations and powers, including requirements for the keeping of certain registers and ability to seek assistance from adult prisons.

- Section 151 of the *Youth Justice Act* outlines the superintendent's general responsibilities and obligations. For example, the *Youth Justice Act* requires the superintendent to promote programs to enhance detainee wellbeing and encourage the development and improvement of the welfare of detainees, as well as stipulating that the superintendent has a duty to '*maintain order and ensure the safe custody and protection of all persons who are within the precincts of the detention centre, whether as detainees or otherwise*'.<sup>137</sup> Section 152 operates to provide the powers necessary or convenient for the performance of the superintendent's functions.
- Section 153 provides an additional obligation on the superintendent to '*maintain discipline at the detention centre*'. It provides that the superintendent can use reasonably necessary force to maintain discipline but includes caveats on the superintendent's ability to use force for these purposes.

The *Youth Justice Act* does not expressly provide for any rights of appeal or review of decisions made in youth detention, unlike the *Correctional Services Act* (NT) which deals with complaints for adult prisoners.<sup>138</sup> However, the superintendent is required to ensure that a detainee is given an opportunity to be heard on any disciplinary measures involving that detainee.

Other provisions of the *Youth Justice Act* serve to:

- establish a scheme for official visitors to inquire into the treatment and behaviour of, and conditions for, children and young people in detention at least every month
- set out rights of access to medical treatment, including specifying consents and arrangements for custody in hospital, and
- set out offences concerning detention centres, including offences of escaping from the centre.

### Youth Justice Regulations

Youth Justice Regulations (NT) have been made under the *Youth Justice Act* throughout the relevant period. The first regulations commenced on 1 August 2006.

The current regulations prescribe a number of matters and procedures relevant to the youth detention centres and detainees, including:

- provision for administrative determinations by Commissioner or superintendent

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- processes for managing children and young people at risk of self-harm
  - matters relating to visitors in the detention centre
  - detainee's mail and communication, including telephone calls
  - health of detainees, including medical treatment, and
  - management of detainees including misbehaviour, isolation and searches.

## Judicial decisions

The courts in the Northern Territory have on occasion interpreted provisions of the *Youth Justice Act* in relation to measures taken in youth detention centres during the relevant period. These matters are discussed in the report in the relevant chapter such as in Chapter 14 (Use of force).

Two cases in the Northern Territory Supreme Court have considered the scope of the superintendent's powers and responsibilities under the Act, in the context of aspects of force used against children and young people in detention.

Recent amendments have inserted additional provisions into these sections. Subsection 152(1A) was inserted in 2016 and specifically provides the superintendent with powers '*[t]o protect a detainee from self-harm, or to protect the safety of another person.*' The courts have not considered any impact of this amendment on its earlier interpretation as to the broad scope of the superintendent's powers.

## OUTLINE OF DETENTION ISSUES

In the course of its inquiry, the Commission heard evidence from experts, current and former government employees, and non-government organisations about the operation of the youth detention systems in the Northern Territory between 2006 and the present day. The Terms of Reference directed the Commission to inquire into the failings in the youth detention system in the Northern Territory including particularly the treatment of children and young people detained at youth detention facilities administered by the Northern Territory Government.

The following chapters highlight significant failings across the system that ultimately failed the children and young people it was supposed to help and the purposes for which youth detention exists, and thereby failed the community generally.

The Commission has made recommendations about some changes to the legislative framework. However, no legislation will be effective to protect the rights of some children and young people in detention unless full effect is given, in practice, to its provisions. This has not happened in the Northern Territory. Many staff members on the ground were not familiar with the content of the Act that specified the legal obligations they were required to discharge at all times.<sup>139</sup> More remarkably, even executive staff members considered that there were challenges applying the *Youth Justice Act* in an operational sense within the context of the environment within which they were required to work and chose operational expedience over the requirements of the *Youth Justice Act*.<sup>140</sup> This is discussed in Chapter 23 (Leadership and management).

There have been three significant external inquiries about youth detention, in 2011, 2014 and 2015, as well as many Children's Commissioner investigations, and internal reviews and audits.<sup>141</sup> Notwithstanding this, the later period which has been the focus of much of the Commission's inquiry was marked by a series of serious incidents.<sup>142</sup>

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The Commission acknowledges that the present Northern Territory Government has committed to reforms. The former Department of Correctional Services commenced implementation of changes recommended by the 2015 Vita Review which has continued.<sup>143</sup> Territory Families was provided with 22 election commitments from this government relevant to youth justice and detention.<sup>144</sup> On 25 November 2016, the Northern Territory Government approved the high-level Reform Direction for Child Protection and Youth Justice, and identified Territory Families as the lead agency for implementing the reform over the next four years.<sup>145</sup> It includes a set of guiding principles and systemic improvements. One area of focus is developing and maintaining a secure facility that provides a rehabilitative environment where young people are assisted to address their offending behaviours.<sup>146</sup> The proposed review of the *Youth Justice Act* is to ensure it is up to date and meets requirements.<sup>147</sup>

The Northern Territory Government acknowledges that success will require a coordinated and sustained effort focused on whole-of-government responses that improve outcomes for children and families in the Northern Territory.<sup>148</sup>



## ENDNOTES

- <sup>1</sup> Transcript, Megan Mitchell, 11 October 2016, p. 34: lines 38-39.
- <sup>2</sup> Exh.636.000, Precis of evidence of Dr Elizabeth Grant – Addendum 1, 12 June 2017, tendered 29 June 2017, p. 4.
- <sup>3</sup> Transcript, Dr James Fitzpatrick, 8 December 2016, p. 540: lines 27-31.
- <sup>4</sup> Transcript, Dr Jon Jureidini, 29 June 2017, p. 5339: lines 32-40.
- <sup>5</sup> Transcript, Megan Mitchell, 11 October 2016, p. 34: lines 29- 35; p. 44: lines 37-45.
- <sup>6</sup> Transcript, Megan Mitchell, 11 October 2016, p. 44: lines 34-37.
- <sup>7</sup> Transcript, Keith Hamburger, 6 December 2016, p. 372, lines: 19-20.
- <sup>8</sup> Transcript, Keith Hamburger, 6 December 2016, p.372: lines 14-20.
- <sup>9</sup> Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, Article 3.
- <sup>10</sup> Submission, Center for Children’s Law and Policy, 19 October 2016, p. 2.
- <sup>11</sup> Transcript, Megan Mitchell, 11 October 2016, p. 22: lines 12-30.
- <sup>12</sup> Exh.311.050, Australasian Juvenile Justice Administrator Principles, October 2014, tendered 28 April 2017.
- <sup>13</sup> Exh.311.050, Australasian Juvenile Justice Administrator Principles, October 2014, tendered 28 April 2017.
- <sup>14</sup> Exh.283.232, Juvenile Justice Standards 2009, 1 July 2015, tendered 31 March 2017.
- <sup>15</sup> See Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, Article 37; Exh.006.001 Rules for the Protection of Juveniles Deprived of their Liberty, 14 December 1990, tendered 11 October 2016, Rule 1; *Youth Justice Act* (NT) s 4(c).
- <sup>16</sup> *Youth Justice Act* (NT) s 4(c).
- <sup>17</sup> Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, table: Distinct youth received by financial year, gender and Indigenous status, 2006-07 to 2015-16 and Chart 1: Yearly daily average number of youth in detention by Indigenous status and sex.
- <sup>18</sup> While a child or young person on remand in custody has not been convicted of an offence and is presumed innocent, this does not detract from the importance of rehabilitative and trauma-informed approaches and environments to promote the wellbeing of children and young people who have come into contact with youth justice and detention systems.
- <sup>19</sup> Exh.437.002, Annexure 2 to Statement of Michael Vita, *Review of the Northern Territory Youth Detention System Report*, 11 January 2015, tendered 12 May 2017, p. 12.
- <sup>20</sup> Exh.311.050, Australasian Juvenile Justice Administrator Principles, October 2014, tendered 28 April 2017, standards 3, 4, 5, 7.
- <sup>21</sup> Exh.339.000, Statement of Jeanette Kerr, 17 March 2017, tendered 8 May 2017, paras 45 and 56.
- <sup>22</sup> Submission, Central Australian Aboriginal Legal Aid Service, July 2017, p. 78.
- <sup>23</sup> Exh.045.002, Statement of Joe Yick, 17 November 2016, tendered 9 December 2016.
- <sup>24</sup> Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, p. 55.
- <sup>25</sup> The AIHW has noted that trends among small populations should be interpreted with caution: Exh.654.022, AIHW, *Youth Detention Population in Australia (2016)*, 21 June 2017, tendered 30 June 2017, p. 12.
- <sup>26</sup> Exh.654.022, AIHW, *Youth Detention Population in Australia (2016)*, 21 June 2017, tendered 30 June 2017, p. 2.
- <sup>27</sup> Exh.654.022, AIHW, *Youth Detention Population in Australia (2016)*, 21 June 2017, tendered 30 June 2017, p. 1.
- <sup>28</sup> Exh.654.022, AIHW, *Youth Detention Population in Australia (2016)*, 21 June 2017, tendered 30 June 2017, p. 1.
- <sup>29</sup> Exh.415.001, Statement of Carolyn Whyte, 18 April 2017, tendered 12 May 2017, paras 27 and 30.
- <sup>30</sup> See Chapter 19 (Case management and exit planning).
- <sup>31</sup> Exh.043.001, Statement of AD, 22 November 2016, tendered 9 December 2016, paras 13, 35 and 36; Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para 13; Exh.180.001, Statement of AQ, 14 February 2016, tendered 28 March 2017, paras 20, 28, 49, 51 and 52; Exh.102.001, Statement of BN, 14 February 2017, tendered 20 March 2017, paras 30-37; Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, paras 16-19; Exh.111.001, Statement of AX, 17 February 2017, tendered 21 March 2017, paras 14 and 42; Exh.068.001, Statement of BF, 20 February 2017, tendered 12 March 2017, para 15; Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para 15; Exh.084.001, Statement of BY, 21 February 2017, tendered 16 March 2017, paras 18 and 32; Exh.065.001, Statement of Jamal Turner, 21 February 2017, tendered 13 March 2017, para 37; Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para 14; Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para 15; Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, para 4.
- <sup>32</sup> Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para 15.
- <sup>33</sup> Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, para 4.
- <sup>34</sup> Exh.150.023, IOMS Bed History, 4 December 2011, tendered 24 March 2017

- <sup>35</sup> Exh.140.009, Bed History for AS, tendered 23 March 2017.
- <sup>36</sup> Exh.242.012, Confidential exhibit (History of beds for BV), tendered 31 March 2017.
- <sup>37</sup> Carolyn Whyte states that it is 'well established that the numbers of youths and adults in the Northern Territory demonstrate a seasonal pattern' and 'for youths, the projected number in custody is lowest in August and highest in February, though considerable variation exists in the actual numbers': Exh.415.001, Statement of Carolyn Whyte, 18 April 2017, tendered 12 May 2017, para 11.
- <sup>38</sup> Exh.415.001, Statement of Carolyn Whyte, 18 April 2017, tendered 12 May 2017, para 25.
- <sup>39</sup> Exh.415.001, Statement of Carolyn Whyte, 18 April 2017, tendere 12 May 2017, para 22.
- <sup>40</sup> See Chapter 3 (Context and challenges)
- <sup>41</sup> Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, p. 9 (Table 3). This table shows the number of distinct youths apprehended by year, by age when apprehended. The number of distinct youths apprehended in 2006-07 aged 10-14 was 100, which increased to 268 in 2015-16. This represented a 168%increase compared to an overall increase of 36%across all categories.
- <sup>42</sup> Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, p. 8 (Chart).
- <sup>43</sup> Australian Bureau of Statistics, 'Census of Population and Housing: General Community Profile 2016', *Australian Bureau of Statistics* [website] 27 June 2017, Available at: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/2001.0>.
- <sup>44</sup> Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, p. 55 (Table). This table shows the number of distinct youths received by financial year, gender and indigenous status between 2006-07 and 2015-16. Out of a total 254 distinct youths admitted into Northern Territory youth detention in 2015-16, 193 were Aboriginal and male while 241 were Aboriginal (male and female).
- <sup>45</sup> Exh.045.001, Statement of Joe Yick, p. 55 (Table).Table shows the number of distinct youths received by financial year, gender and indigenous status between 2006-07 and 2015-16. Out of a total 254 distinct youths admitted into Northern Territory youth detention in 2015-16, 202 were male (indigenous and non-indigenous).
- <sup>46</sup> Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, p. 48 (Chart 1: Yearly daily average number of youth in detention by Indigenous status and sex).
- <sup>47</sup> Exh.095.014, Annexure GM-13 to Statement of Gerald McCarthy, Issues Paper dated May 2009, 14 March 2017, tendered 17 March 2017, p. 4.
- <sup>48</sup> Exh.095.015, Annexure GM-11 to Statement of Gerald McCarthy, Ministerial Flash Briefs dated December 2010, January and March 2011, tendered 17 March 2017, pp. 0039-0041.
- <sup>49</sup> See example, Exh.1073.001, Daily census records, 9 February 2012, tendered 28 October 2017; Exh.1073.001, Daily census records, 27 February 2013, tendered 28 October 2017; Exh.1068.001, Daily census records, 28 February 2013, tendered 28 October 2017.
- <sup>50</sup> See example, Exh.1069.001,Monthly daily average reports for August 2015, tendered 28 October 2017; Exh.1071.001, September 2014, tendered 28 October 2017; Exh.1067, Monthly daily average January 2015, tendered 28 October 2017; Exh.1070.001, Monthly Daily Average, April 2015, tendered 28 October 2017.
- <sup>51</sup> Exh.096.017, Carney Review of the Northern Territory Youth Justice System, 30 September 2011, tendered 17 March 2017, p. 34.
- <sup>52</sup> Australian Bureau of Statistics, 'Australian Demographic Statistics, Sep 2016', Australian Bureau of Statistics [website], 23 March 2017, Available at: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0>.
- <sup>53</sup> Exh.031.006, Annexure 5 – *A safer Northern Territory through correctional interventions: Summary report of the Review of the Northern Territory Department of Correctional Services*, 31 July 2016, tendered 5 December 2016, p. 50.
- <sup>54</sup> Exh.045.002, Statement of Joe Yick, 17 November 2016, tendered 9 December 2016, p. 6.
- <sup>55</sup> Exh.045.002, Statement of Joe Yick, 17 November 2016, tendered 9 December 2016, p. 6.
- <sup>56</sup> Exh.045.002, Statement of Joe Yick, 17 November 2016, tendered 9 December 2016, p. 6.
- <sup>57</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2936: lines 22-30.
- <sup>58</sup> Exh.1105.001, Telethon Kids Institute Report, 9 August 2017.
- <sup>59</sup> See Chapter 15 (Health, mental health and children at-risk) and Chapter 16 (Education in detention).
- <sup>60</sup> See Chapter 4 (Challenges for Aboriginal people in the Northern Territory).
- <sup>61</sup> *Bail Act* (NT), s 8.
- <sup>62</sup> *Bail Act* (NT), s 7A.
- <sup>63</sup> Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, 'Chart 2: Yearly daily average percentage of youth detainees who are unsentenced, by detention centre 2006-07 to 2015-16' p. 49. NB: Aranda House statistics have not been included due to the focus on housing detainees for short remand periods.

- <sup>64</sup> See Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, 'Yearly daily average percentage of youth detainees who are unsentenced by detention centre 2006-2007 to 2015-2016' p.49 and 'Monthly daily average percentage of youth detainees who are unsentenced, by detention centre 1 July 2006 to 25 September 2016': p. 42.
- <sup>65</sup> Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016.
- <sup>66</sup> Exh.311.087, Report to Cabinet on Service Provision for Youth in the Northern Territory, 1 June 2015, tendered 28 April 2017, p. 28.
- <sup>67</sup> Exh.696.007, Annexure CW-6 to statement of Carolyn Whyte, Table 2b(iii) Remand-only summary 2011-12 to 2015-16, tendered 10 July 2017, p. 0054.
- <sup>68</sup> Exh.696.001, Statement of Carolyn Whyte, 9 June 2017, tendered 10 July 2017, para 71.
- <sup>69</sup> 2012 to 2015 data taken from Exh.045.001, Statement of Joe Yick, 14 October 2016, p. 0058 'Youth sentenced episode commencements in NT by aggregate sentence and most serious offence 2012-2013 to 2014-2015 table; 2015-2016 data taken from Exh.969.001, Statement of Carolyn White, 9 June 2017, tendered 10 July 2017, p. 0055 'Output 2.cii-2015-2016 data for youth sentenced episode commencement sin NT aggregate sentence and most serious offence.'
- <sup>70</sup> 2012 to 2015 data taken from Exh.045.001, Statement of Joe Yick, 14 October 2016, p. 0058 'Youth sentenced episode commencements in NT by aggregate sentence and most serious offence 2012-2013 to 2014-2015 table; 2015-2016 data taken from Exh.969.001, Statement of Carolyn White, 9 June 2017, tendered 10 July 2017, p. 0055 'Output 2.cii-2015-2016 data for youth sentenced episode commencement sin NT aggregate sentence and most serious offence.'
- <sup>71</sup> Exh.311.140, 5.15 Youth Detainee numbers briefing, 8 September 2016, tendered 24 April 2017, p. 1.
- <sup>72</sup> Exh.696.006, Annexure CW-5 to statement of Carolyn Whyte, 9 June 2017, tendered 10 July 2017, p. 43.
- <sup>73</sup> Exh.696.007, Annexure CW-6 to statement of Carolyn Whyte, 9 June 2017, tendered 10 July 2017, p. 0054.
- <sup>74</sup> Exh.696.001, Statement of Carolyn Whyte, 9 June 2017, tendered 10 July 2017, para 79-80.
- <sup>75</sup> Exh.696.006, Annexure CW-5 to statement of Carolyn Whyte, Number of Youth Receptions by Legal Status and Most Serious Offence/Charge with Breakdown of Breach of Justice Order category, tendered 10 July 2017, p. 0043.
- <sup>76</sup> Exh.696.010, Annexure CW-9 to statement of Carolyn Whyte, Output 2d: Court Finalisation Occasion for Youth by Outcome and Most Serious Offence for those who have been on Remand, tendered 10 July 2017, p. 0064.
- <sup>77</sup> Exh.696.010, Annexure CW-11 to statement of Carolyn Whyte, Court Finalisation Occasions for Youth by Outcome and Most Serious Offence, tendered 10 July 2017, p. 0071.
- <sup>78</sup> Exh.696.012, Annexure CW-11 to statement of Carolyn Whyte, Court Finalisation Occasions for Youth by Outcome and Most Serious Offence, tendered 10 July 2017, p. 0071.
- <sup>79</sup> Exh.696.001, Statement of Carolyn Whyte, 9 June 2017, tendered 10 July 2017, para 114.
- <sup>80</sup> Exh.696.001, Statement of Carolyn Whyte, 9 June 2017, tendered 10 July 2017, para 115.
- <sup>81</sup> Exh.696.001, Statement of Carolyn Whyte, 9 June 2017, tendered 10 July 2017, para 117.
- <sup>82</sup> Exh.696.001, Statement of Carolyn Whyte, 9 June 2017, tendered 10 July 2017, para 124.
- <sup>83</sup> Exh.033.001, Witness statement of Jeanette Kerr, 2 December 2016, tendered 6 December 2016, para 12.
- <sup>84</sup> Exh.321.001, Statement of John Elferink, 30 March 2017, tendered 27 April 2017, para 8.
- <sup>85</sup> Exh.031.006, Annexure 5 to Statement of Keith Hamburger, *A safer Northern Territory through correctional interventions: Summary report of the Review of the Northern Territory Department of Correctional Services*, 31 July 2016, tendered 5 December 2016, p. 50.
- <sup>86</sup> Exh.031.006, Annexure 5 to Statement of Keith Hamburger, *A safer Northern Territory through correctional interventions: Summary report of the Review of the Northern Territory Department of Correctional Services*, 31 July 2016, tendered 5 December 2016, p. 140.
- <sup>87</sup> Exh.031.006, Annexure 5 to Statement of Keith Hamburger, *A safer Northern Territory through correctional interventions: Summary report of the Review of the Northern Territory Department of Correctional Services*, 31 July 2016, tendered 5 December 2016, p. 140.
- <sup>88</sup> Exh.035.001, Statement of Mark Payne, 4 December 2016, tendered 6 December 2016, para 27.
- <sup>89</sup> Exh.033.001, Statement of Jeanette Kerr, 2 December 2016, tendered 6 December 2016, para 12.
- <sup>90</sup> Transcript, Gerald McCarthy, 17 March 2017, p. 1329: lines 21-28.
- <sup>91</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2936: lines 40-43; See also Transcript, Ken Middlebrook, 26 April 2017, p.2938: lines 15-40.
- <sup>92</sup> Exh.647.000, Statement of Ken Davies, 30 June 2017, tendered 30 June 2017, para 12.
- <sup>93</sup> Cunneen, C, 2011, 'Punishment: two decades of penal expansionism and its effects on Indigenous imprisonment', *Australian Indigenous Law Review*, vol. 15(1), p. 11.
- <sup>94</sup> Productivity Commission, *Report on Government Services*, 2016, Table CA.2, p. 1.
- <sup>95</sup> Productivity Commission, *Report on Government Services*, 2016, Table CA.2, p. 1. Perceptions of safety in the Northern

- Territory in public places in 2008-09 were 49%(walking alone) and 21.4%(public transport). In 2014-15, these figures were 43.8%(walking alone) and 12%(public transport).
- <sup>96</sup> See Davies, B and Dossetor, K, '(Mis)perceptions of Crime in Australia' (2010), *Trends & Issues in Crime and Criminal Justice* No 396, Australian Institute of Criminology, Available at: [http://aic.gov.au/media\\_library/publications/tandi\\_pdf/tandi396.pdf](http://aic.gov.au/media_library/publications/tandi_pdf/tandi396.pdf).
- <sup>97</sup> Exh.096.017, Carney Review of the Northern Territory Youth Justice System, 30 September 2011, tendered 17 March 2017, p. 4 and 44.
- <sup>98</sup> Transcript, John Elferink, 27 April 2017, p. 3145: lines 27-28.
- <sup>99</sup> Transcript, Adam Giles, 28 April 2017, p. 3229: lines 35-39.
- <sup>100</sup> Transcript, Salli Cohen, 30 March 2017, p. 2394: lines 10-13.
- <sup>101</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2930: lines 1-8. Mr Middlebrook told the Commission that he showed Ministers and governments a document outlining increasing Northern Territory imprisonment rates compared to general population growth between 2001-02 and 2013-14 in the form of Exh.320.001, Northern Territory Imprisonment Rates from the years 2001-2 to 2013-14, tendered 26 April 2017, p. 1, that he tried to show governments.
- <sup>102</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2926: lines 15-29.
- <sup>103</sup> Transcript, John Elferink, 27 April 2017, p. 3145: lines 41-45.
- <sup>104</sup> Exh.240.001, Re: proposed response, 24 August 2014, tendered 30 March 2017.
- <sup>105</sup> Transcript, Salli Cohen, 30 March 2017, p. 2390: lines 34-35.
- <sup>106</sup> Exh.283.294, Juveniles highlight major flaws after damaging screen at Darwin's Holtze maximum security unit, prison officers union says, 24 October 2014, tendered 31 March 2017.
- <sup>107</sup> Transcript, John Elferink, 27 April 2017, p. 3139: line 13.
- <sup>108</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2985: line 21.
- <sup>109</sup> Transcript, John Elferink, 27 April 2017, p. 3142: line 16.
- <sup>110</sup> Exh.033.001, Statement of Jeanette Kerr, 2 December 2016, tendered 6 December 2016, para 14.
- <sup>111</sup> Exh.088.001, Statement of Marion Guppy, 13 March 2017, tendered 16 March 2017, para 171; Exh.642.000, Statement of Dr Denise Riordan, 21 June 2017, tendered 29 June 2017, paras 25-26.
- <sup>112</sup> Exh.027.001, Statement of John Boulton, 6 October 2016, tendered 13 October 2016, para 50. Initial findings from the Banksia Hill Project show that about one in three young people at Banksia Hill Detention Centre in Western Australia have FASD: Telethon Kids Institute, Media release - '1 in 3 young people in detention has alcohol related brain damage', 2 March 2017, Available at: <https://www.telethonkids.org.au/news--events/news-and-events-nav/2017/march/1-in-3-young-people/>.
- <sup>113</sup> Transcript, Keith Hamburger, 6 December 2016, p. 379: lines 26-32.
- <sup>114</sup> Exh.027.001, Statement of John Boulton, 6 October 2016, tendered 13 October 2016, para 51.
- <sup>115</sup> Exh.027.001, Statement of John Boulton, 6 October 2016, tendered 13 October 2016, para 53.
- <sup>116</sup> Exh.027.001, Statement of John Boulton, 6 October 2016, tendered 13 October 2016, para 53.
- <sup>117</sup> Transcript, Keith Hamburger, 6 October 2016, p. 400: lines 23-41; p. 401: lines 1-3.
- <sup>118</sup> Transcript, Megan Mitchell, 11 October 2016, p. 44: lines 46-47.
- <sup>119</sup> Exh.011.001, Statement of Howard Bath, 5 October 2016, tendered 12 October 16, para 99h.
- <sup>120</sup> Exh.031.002, Annexure 1 to Statement of Keith Hamburger, *A safer Northern Territory through correctional interventions: Summary report of the Review of the Northern Territory Department of Correctional Services*, 31 July 2016, tendered 5 December 2016, p. 158.
- <sup>121</sup> Exh.011.001, Statement of Howard Bath, 5 October 2016, tendered 12 October 16, para 99h; Exh.004.001, Statement of Megan Mitchell, 9 October 2016, tendered 11 October 2016, para 130; Transcript, Keith Hamburger, 5 December 2016, p. 316: lines 8-10; Exh.639.000, Statement of Sean Harvey, 21 June 2017, tendered 29 June 2017, s. 11(c), pp. 27-39.
- <sup>122</sup> Transcript, Howard Bath, 12 October 2016, p. 119: lines 27-29, 43-46; Transcript, Megan Mitchell, 11 October 2016, p. 30: lines 28-29.
- <sup>123</sup> Exh.011.001, Statement of Howard Bath, 5 October 2016, tendered 12 October 16, para 99h.
- <sup>124</sup> Exh.311.050, Australasian Juvenile Justice Administrator Principles, October 2014, tendered 28 April 2017, p. 3.
- <sup>125</sup> Youth Justice Regulation 2016 (Qld) r 16.
- <sup>126</sup> Exh.143.001, Precip of evidence of Mick Creati, March 2017, tendered 23 March 2017, paras 14-15.
- <sup>127</sup> Submission, North Australian Aboriginal Justice Agency, July 2017, pp. 2, 178.
- <sup>128</sup> Exh.033.001, Statement of Jeanette Kerr, 2 December 2016, tendered 6 December 2016, para 14.
- <sup>129</sup> Exh.096.017, Carney Review of the Northern Territory Youth Justice System, 30 September 2011, tendered 17 March 2017, p. 203.
- <sup>130</sup> *Sentencing Act (NT)* s 4.
- <sup>131</sup> Exh.096.017, Carney Review of the Northern Territory Youth Justice System, 30 September 2011, tendered 17 March

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- 2017, p. 203; Department of Justice, 'A Discussion Paper to Seek Input from the Public', NT Department of Justice, March 2004, Available at: [https://justice.nt.gov.au/\\_\\_data/assets/pdf\\_file/0005/171896/juvenile-justice-act-discussion-paper.pdf](https://justice.nt.gov.au/__data/assets/pdf_file/0005/171896/juvenile-justice-act-discussion-paper.pdf), p. 1.
- <sup>132</sup> Youth Justice Bill (No. 2) (NT), Explanatory Statement.
- <sup>133</sup> Youth Justice Bill (No 2) (NT), Second Reading Speech.
- <sup>134</sup> Exh.096.017, Carney Review of the Northern Territory Youth Justice System, 30 September 2011, tendered 17 March 2017, p. 203; Submission, Central Australian Aboriginal Legal Service, July 2017, paras 1.1-1.2.
- <sup>135</sup> Transcript, Hilary Hannam, 8 May 2017, p. 3425: lines 4-19; Submission, Central Australian Aboriginal Legal Service, July 2017, paras 1.1-1.2.
- <sup>136</sup> Exh.052.001, Statement of Russell Goldflam, 24 November 2016, tendered 13 December 2016, paras 8-14; Exh.103.001, Statement of Jonathon Hunyor, 16 February 2017, tendered 20 March 2017, para 40.
- <sup>137</sup> *Youth Justice Act* (NT), s 151 (3)(a), (b) and (c).
- <sup>138</sup> *Correctional Services Act* (NT), ss 68-80 concerning misconduct decisions, penalties and review of decisions.
- <sup>139</sup> Exh.104.001, Statement of Terry Byrnes, 10 December 2016, tendered 20 March 2017, para 52; Transcript, Conan Zamolo, 20 March 2017, p. 1463: lines 41-43.
- <sup>140</sup> Transcript, Salli Cohen, 30 March 2017, p. 2366: lines 15-40; Transcript, Russell Caldwell, 29 March 2017, p. 2123-2126.
- <sup>141</sup> Exh.437.002, Annexure 2 to Statement of Michael Vita, *Review of the Northern Territory Youth Detention System Report*, January 2015, tendered 12 May 2017, Exh.031.002, Annexure 1 to Statement of Keith Hamburger, *A Safer Northern Territory through Correctional Interventions*, 31 July 2016, tendered 5 December 2016.
- <sup>142</sup> Exh.437.002, Annexure 2 to Statement of Michael Vita, *Review of the Northern Territory Youth Detention System Report*, January 2015, tendered 12 May 2017, p. 56.
- <sup>143</sup> Exh.033.001, Statement of Jeanette Kerr, 2 December 2016, tendered 6 December 2016, para 29.
- <sup>144</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, para 7.
- <sup>145</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, paras 14 and 16.
- <sup>146</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, paras 13-24.6
- <sup>147</sup> Transcript, Jeanette Kerr, 8 December 2016, p.481: lines 14-15.
- <sup>148</sup> Exh.424.000, Statement of Ken Davies, 17 March 2017, tendered 12 May 2017, para 50.



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DETENTION FACILITIES





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# DETENTION FACILITIES

## INTRODUCTION

The physical environment of a youth detention facility – the architecture, buildings, spaces, surroundings, furniture and ambience – greatly affects a child or young person’s experience of detention and therefore their prospects of rehabilitation. The environment can affect the mindsets, perceptions and behaviours of the children and young people housed in a youth detention facility, and those of the adults who work there. For more information, see Chapter 28 (A new model for youth detention).<sup>1</sup>

Any place of detention should be a positive, therapeutic environment and a pleasant place to work. It should promote and protect children and young people’s health, wellbeing and human dignity, and support their rehabilitation.<sup>2</sup> It should provide all the child’s or young person’s basic needs, including fresh air, natural light, privacy, unrestricted access to toilets and water, a comfortable place to sleep and moderation from extreme temperature conditions.<sup>3</sup> There should be suitable spaces and facilities for children and young people to exercise and do activities, and participate in programs, recreation, training and education. There should be spaces and facilities for staff and professionals to provide the case management, health, legal and other services that children and young people need.<sup>4</sup> The environment should also be culturally appropriate.<sup>5</sup>

The environment should not be harsh or punitive.<sup>6</sup> It should not inflict additional punishment on a child or young person whose punishment is the deprivation of liberty.<sup>7</sup>

A youth detention facility should not look, feel or be designed like an adult prison.<sup>8</sup> Nor should it be located on the same site as or near an adult prison.<sup>9</sup> It is fundamental that detained children and young people be kept separate from adult prisoners.<sup>10</sup> The facility should be built for children and young people. A facility designed for adult prisoners is unlikely to be suitable for youth detention.

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A secure detention facility should have security measures that are sensible and proportionate to the level of risk to the public and to detainees.<sup>11</sup> As the Commission heard from overseas experts, security does not need to be maintained by keeping children and young people behind razor-wire fences,<sup>12</sup> however confidence in perimeter security is essential. For more information, see Chapter 26 (Other youth justice and detention models).

It goes without saying that any detention facility and workplace, like any institution – especially one that houses children and young people – must be safe, clean and kept in good condition.<sup>13</sup> Children and young people in detention have the right to facilities that meet all the requirements of health and human dignity.<sup>14</sup>

These propositions are drawn from international instruments, particularly the *United Nations Convention on the Rights of the Child* (CRC) and the body of more detailed requirements in the *Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) and *Rules for the protection of Juveniles Deprived of their Liberty* (Havana Rules) developed from the CRC and the Juvenile Justice Standards produced by the Australasian Juvenile Justice Administrators (AJJA) in 2009. Australia is a party to these international instruments while AJJA, of which the Northern Territory is a member, sought to reflect those instruments in its standards. They state that facilities for ‘effective juvenile justice services’ should:

- support safe and positive environments for staff and children and young people
- provide a physical environment that is safe and secure and promotes rehabilitation
- be maintained properly and kept in working order, and
- provide a safe and healthy work environment

For more information about the Juvenile Justice Standards, see Chapter 9 (The purpose of youth detention).<sup>15</sup>

The *Youth Justice Act* (NT) does not set any standards for youth detention centres. The Act gives the Minister the power to approve an establishment to be a youth detention centre without specifying any criteria for it to be suitable for use as a youth detention centre, or any considerations that the Minister must take into account before giving approval.<sup>16</sup>

## THE FACILITIES

A ‘youth justice centre’ is defined by the Australian Productivity Commission as:

*[a] place administered and operated by a youth justice department where young people are detained while under the supervision of the relevant youth justice department or a remand or sentenced detention episode.*<sup>17</sup>

In the Northern Territory, there were five different establishments used as youth detention centres during the relevant period:

- The former Don Dale Youth Detention Centre in Darwin, used until September 2014, was built in 1991 to accommodate 25 male detainees, though its capacity more than doubled during the relevant period as the facility expanded and existing infrastructure was re-converted to detainee accommodation.<sup>18</sup> The facilities included low to medium security accommodation, a high-security

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area, a basketball court, a sports field, classrooms, a dining hall, two workshops and offices.<sup>19</sup> For a time, there was also a swimming pool, but this was subsequently filled in and cemented over.

- Aranda House, also known as the Alice Springs Juvenile Holding Centre, was the main youth detention centre in Alice Springs until early 2011.<sup>20</sup> It was a small, square, brick block with an internal courtyard, built for a maximum of 10 children or young people, though five detainees was considered the maximum desirable number due to the limitations of the infrastructure.<sup>21</sup> It had no areas dedicated to education, on-site case management or outdoor recreation.<sup>22</sup>
- The Alice Springs Youth Detention Centre, currently in use, is an improvement on Aranda House, but is still *'very small'*.<sup>23</sup> It has 16 beds in one brick building, a small unsurfaced outside area, a basketball court and limited staff amenities. The detention centre was converted from a vacant block of the Alice Springs adult prison. A fence divides the adult and youth facilities.<sup>24</sup>
- Holtze Youth Detention Centre in Darwin was used between August and December 2014 and was initially seen as an improvement on the former Don Dale Youth Detention Centre.<sup>25</sup> The facility was modern, *'brighter and more aesthetically pleasing'*,<sup>26</sup> but its design, construction and location were unsuitable for youth detention. It was designed as a mental health facility for adult prisoners and located on the site of Darwin's new adult prison.<sup>27</sup>
- The current Don Dale Youth Detention Centre, where children and young people have been held in Darwin since December 2014, is on the site of Darwin's former adult prison, which was built in the 1970s. Four blocks of the old prison were turned into cells for children and young people, as well as classrooms, a case management area, an admissions area, an administration block, an at-risk area, a high-security area, a medical area, a recreation centre and enclosed basketball courts.<sup>28</sup>

Only two of the five facilities – the former Don Dale Youth Detention Centre and Aranda House in Alice Springs – were designed for youth detention, and were the two in use at the beginning of the relevant period. The remaining three were converted from facilities designed or used for adult prisoners.

The Commission visited four of the five centres in the course of its investigations. Three were no longer operational but it was, nonetheless, possible to obtain some understanding of what they were like as places to keep young people in secure detention and to comprehend the evidence of the witnesses when they were describing particular features of those places.

The Commission visited detention centres for juveniles in South Australia, Cavan Youth Training Centre, New South Wales, Reiby Juvenile Justice Centre and Cobham Juvenile Justice Centre Queensland, Cleveland Youth Detention Centre and Brisbane Youth Detention Centre and the Australian Capital Territory, Bimberi Youth Justice Centre, all of which are delivering therapeutic programs in facilities which vary in design and age.

The Commission heard from many witnesses that none of the Northern Territory facilities were adequate, including those currently in use.<sup>29</sup> These witnesses described the different youth detention facilities as *'poor'*,<sup>30</sup> *'unsatisfactory'*,<sup>31</sup> *'unsuitable'*,<sup>32</sup> *'not fit for purpose'*,<sup>33</sup> *'unacceptable'*,<sup>34</sup> *'oppressive'*,<sup>35</sup> *'appalling'*,<sup>36</sup> *'deplorable'*<sup>37</sup> and *'dangerous'*.<sup>38</sup>

After hearing the evidence and seeing the facilities,<sup>39</sup> the Commission is of the view that the Northern Territory Government failed, on the whole, to provide suitable facilities and even the most basic conditions for the detained children and young people under its care during much of the relevant period.

## OUTDATED AND HARSH YOUTH FACILITIES

### The former Don Dale Youth Detention Centre

The former Don Dale Youth Detention Centre and Aranda House were built for youth detention in the 1990s and 1970s respectively.<sup>40</sup> By 2006, the commencement of the relevant period under investigation by the Commission, neither facility provided therapeutic environments for modern youth detention.<sup>41</sup> They were both decommissioned during the relevant period.<sup>42</sup>

The former Don Dale Youth Detention Centre was built in 1991.<sup>43</sup> It was described by an Australian Law Reform Commission Report in 1997 as an example 'of a high standard' youth detention facility.<sup>44</sup> By 2006 it could not be described as fit for purpose.<sup>45</sup> It was run down,<sup>46</sup> did not comply with Australian building code standards,<sup>47</sup> did not have enough accommodation space, lacked appropriate facilities<sup>48</sup> and had appalling isolation cells, which are the subject of a separate chapter – see Chapter 14 (Isolation).

Michael Vita, who conducted an independent review of the youth justice system after the tear-gassing incident in 21 August 2014, found that the inadequate infrastructure at the former Don Dale Youth Detention Centre hindered the staff's ability to respond to security incidents effectively.<sup>49</sup>



The former Don Dale Youth Detention Centre

### Aranda House

Aranda House was built in the 1970s<sup>50</sup> and was a holding centre. It was perhaps the worst of all the facilities.<sup>51</sup> The entire space was about the size of a tennis court.<sup>52</sup> It was dark,<sup>53</sup> with no open outdoor area,<sup>54</sup> with heavy metal bars and razor wire.<sup>55</sup> Children and young people slept in small rooms, on 'metal bed frames with a mattress on [them]'.<sup>56</sup> They described Aranda House as 'a miserable place with barely anything in it', and 'more like a maximum-security prison than a juvenile detention centre'.<sup>57</sup> Others likened it to a cage<sup>58</sup> and a dungeon,<sup>59</sup> 'just square with four brick

walls,<sup>60</sup> 'all concrete'<sup>61</sup> with 'metal bars'.<sup>62</sup> One said 'the whole place was an isolation facility'.<sup>63</sup> Although it had long been closed by the time the Commission visited in September 2016 its physical limitations were obvious and these descriptions seemed accurate.

Mr Ken Middlebrook, Commissioner for Correctional Services from 2012 to 2015,<sup>64</sup> could not have put it more bluntly: 'I hated Aranda House. It was a deplorable place'.<sup>65</sup> He saw it as a safety risk:

*Aranda House was not an appropriate facility, no education, no external recreation, very limited amenities and totally unsuitable to be used as a youth detention facility. I was of the opinion that Aranda House was a serious incident waiting to happen and I had grave concerns for the safety of staff and the detainees, particularly with high numbers and minimal activity.*<sup>66</sup>

Another witness said the facility was so poorly designed, oppressive and unsuitable for children and young people that it 'should be demolished'.<sup>67</sup> It is no longer in use and currently sits derelict.



The need for new youth detention facilities was recognised at the highest levels relatively early in the relevant period – see Chapter 23 (Leadership and management). The Commission heard that towards the end of 2009, Aranda House and the former Don Dale Youth Detention Centre were at capacity, and the latter 'was at crisis point'.<sup>68</sup> Rising numbers of children and young people coming into detention, particularly in 2010 and 2011, put the inadequate infrastructure under more strain.<sup>69</sup> In 2011, detention centre operations in Alice Springs moved from Aranda House to a new facility, which is now the current Alice Springs Youth Detention Centre. Darwin youth detention operations were relocated twice, in August and December 2014, after a number of incidents including the tear-gassing incident of 21 August 2014.<sup>70</sup>

All three moves were to adult facilities that had been converted into youth detention centres.



## USE OF ADULT FACILITIES

### The Alice Springs Youth Detention Centre

The Alice Springs Youth Detention Centre was remodelled from a low-security cottage, formerly part of the adult prison.<sup>71</sup> It opened in 2011 as 'a short-term solution ... to get out of Aranda House',<sup>72</sup> but has continued to operate as a youth detention centre ever since.

When the detention centre was converted from an adult facility, the changes were not 'done to give effect to the therapeutic or rehabilitative aims of a detention centre for children and young people'.<sup>73</sup> The few improvements that have been made to the Alice Springs Youth Detention Centre have been upgrades to security.<sup>74</sup> A former caseworker described a 'dungeon-like physical environment' which 'probably triggered young people who had a background where they had experienced trauma'.<sup>75</sup> The former careworker said:

*It was an old building, there were thick brick walls and bars and gates. It was crowded – overcrowded. It was draconian.*<sup>76</sup>

Mr Keith Hamburger, who inspected the facility in May 2016 as part of his review of the Department of Correctional Services, described it as 'a little prison cell block ... that has been used for juvenile detention'. He told the Commission the facility was 'not acceptable'.<sup>77</sup>



Cell, Alice Springs Youth Detention Centre

The youth detention centre is located within the adult prison precinct, on the outer perimeter of the Alice Springs Correctional Centre site and just outside the boundaries of the main prison, with only a fence between the two facilities.<sup>78</sup> One witness told the Commission that she had seen children and young people talking to adult prisoners through the fence.<sup>79</sup> Ms Salli Cohen, a former Executive Director of Youth Justice in the Department of Correctional Services, said the proximity to the adult prison brought efficiencies,<sup>80</sup> but as noted above and as other witnesses told the Commission, it is inappropriate,<sup>81</sup> especially if it permits interaction between impressionable children in youth detention and adult prisoners. For some young people there was an expectation that they would graduate to the adult system.



Hallway, Alice Springs Youth Detention Centre



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## Holtze Youth Detention Centre

Holtze Youth Detention Centre in Darwin was also located on the site of an adult prison.<sup>82</sup> It was designed as a 'brand-new' mental health facility for adult prisoners called the Complex Behaviour Unit, within the new Darwin Correctional Precinct.<sup>83</sup> The facility was converted into a youth detention centre as an emergency 'interim measure' after the former Don Dale Youth Detention Centre was damaged in the tear-gassing incident on 21 August 2014.<sup>84</sup> While it was a more therapeutic environment with more open space and light, there were safety and security risks, and a number of incidents demonstrated that the facility was not adequate for accommodating children and young people in detention.<sup>85</sup>

## The current Don Dale Youth Detention Centre

A few days before Christmas in 2014, detention centre operations moved from Holtze Youth Detention Centre to the old Berrimah adult male prison, which has been used to this day and is known as the current Don Dale Youth Detention Centre.<sup>86</sup> The Berrimah adult prison opened in 1979 and was decommissioned in 2014 because it was an outdated, inadequate facility for adults and was 'overflowing'.<sup>87</sup> Former Minister Gerald McCarthy described it as 'aged' and 'archaic'.<sup>88</sup> Mr Middlebrook commented in 2011 that the site should be bulldozed.<sup>89</sup>

Youth detention operations were moved there after the adult prisoners were relocated to the new prison at Holtze. About \$800,000 was spent on refurbishments to convert the facility into a youth detention centre, although the Department of Infrastructure estimated that more than \$5 million in renovations and repairs was needed – see Chapter 23 (Leadership and management).<sup>90</sup> More than \$2 million has since been spent on making the facility safer, on repairs and improving the amenity.<sup>91</sup> While improvements have been made, and murals and paintings on buildings have softened the environment to some extent during their visit on 7 December 2016 the Commissioners saw a facility that still looked and felt very much like an old adult prison.<sup>92</sup> It is surrounded by razor wire and children and young people sleep in concrete cells.<sup>93</sup> The High Security Unit (HSU) – where children and young people are held in isolation – is an enclosed concrete block with heavy doors, metal bars and little natural light. The appalling conditions, and the experiences of children who were held there, is discussed in Chapter 14 (Isolation). It should be immediately closed.

Mr Hamburger was left with an 'overwhelming impression of despair and disrepair'<sup>94</sup> when he inspected the facility in May 2016 as part of his review.<sup>95</sup> In his evidence to the Commission, he expressed 'disappointment [and] frustration' that a facility like the current Don Dale Youth Detention Centre still exists for youth detention<sup>96</sup> and added that no amount of renovation can turn the facility into a suitable, safe, therapeutic environment for children and young people in detention.<sup>97</sup>





Current Don Dale Youth Detention Centre





Current Don Dale Youth Detention Centre

## LACK OF SPACE, FACILITIES AND OUTDOOR AREAS

A lack of space and adequate facilities, particularly at the former Don Dale Youth Detention Centre, the Alice Springs Youth Detention Centre and Aranda House, created a poor environment for detained children and young people and a difficult working environment for staff.

There was insufficient accommodation leading to overcrowding at the former Don Dale Youth Detention Centre.<sup>98</sup> At times, between three and six children were housed in a single cell.<sup>99</sup> One young person said *'it didn't seem like enough space for that many kids'*.<sup>100</sup> A staff member told a 2013 review there could be 10 people in a space for one person.<sup>101</sup> Another explained that *'frustrations [would] build' in the environment, which was 'crowded' and 'sweaty' with 'intolerable smells'*.<sup>102</sup> Overcrowding and *'lack of personal space and privacy'* must have affected children and young people's behaviour.<sup>103</sup> The Commission heard that in times of tension or stress they would *'often feed off each other'* and there was no place for them to calm down.<sup>104</sup>



Current Don Dale Youth Detention Centre

Lack of space was and remains a particular problem in Alice Springs. The Alice Springs Youth Detention Centre is a *'very small' and 'very limited'* facility,<sup>105</sup> with *'very poor infrastructure'*.<sup>106</sup> Two detainees sleep in rooms designed for one person.<sup>107</sup> A recent safety review noted that these rooms are not big enough for two people, have *'limited storage, no desk or ensuite'* and *'lack any real amenity'*.<sup>108</sup>

When the facility is over capacity, detainees have slept on mattresses on the floor<sup>109</sup> or in the classroom,<sup>110</sup> or have been sent to Darwin.<sup>111</sup> The Commission heard about the distress these transfers have caused children and young people, as covered in more detail in Chapter 11 (Detention Centre Operations). The youth detention centre gets *'cramped'* and *'congested'*.<sup>112</sup>



At the Alice Springs Youth Detention Centre there is no staffroom and little or no space for children and young people to have private consultations with nurses and medical professionals, or confidential conversations with Official Visitors and lawyers.<sup>113</sup> A medical assessment room is used for all of these purposes and on occasions has been used for visits.<sup>114</sup> This is clearly inappropriate. A draft Cabinet submission in 2013 noted that it ‘has become increasingly difficult to provide an appropriate [youth detention] environment’ in these conditions.<sup>115</sup>

There is limited space to provide services, education and training, and to run the programs and activities that children and young people need to help them rehabilitate and stay occupied.<sup>116</sup> A forensic psychologist described the situation:

*There is absolutely nowhere for caseworkers ... or staff to conduct programs or 1:1 therapeutic sessions with young people at [Alice Springs Youth Detention Centre]. At present [we] see young people outside in the yard. There are always other young people and staff close by, which is not conducive to engaging in meaningful, confidential and often difficult topics related to offending behaviour. In addition, given the elements in Alice Springs, it is either very hot or very cold, or they contend with the sun in their eyes or wind blowing around their papers and worksheets. Offence-focused programs, both individual (CHART) and group (Safe Sober Strong, Step Up), cannot be delivered under these circumstances.*

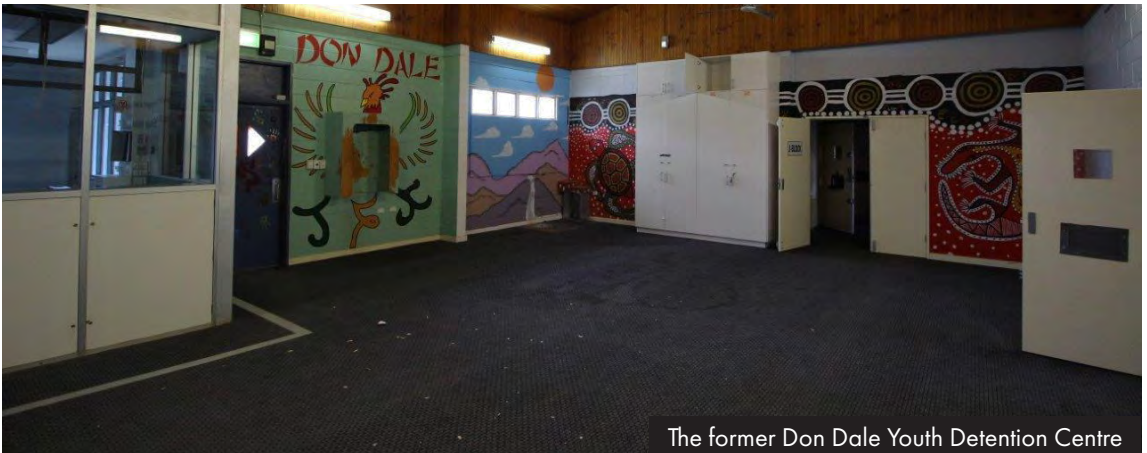
*[We have] spent considerable time ... trying to be creative and find a place where we can safely and appropriately run individual and group programs, however, there were no options within the detention centre (we looked at storerooms, [the] medical room, [the] classroom [and the] shipping container [outside!!!]).<sup>117</sup>*



Alice Springs Youth Detention Centre

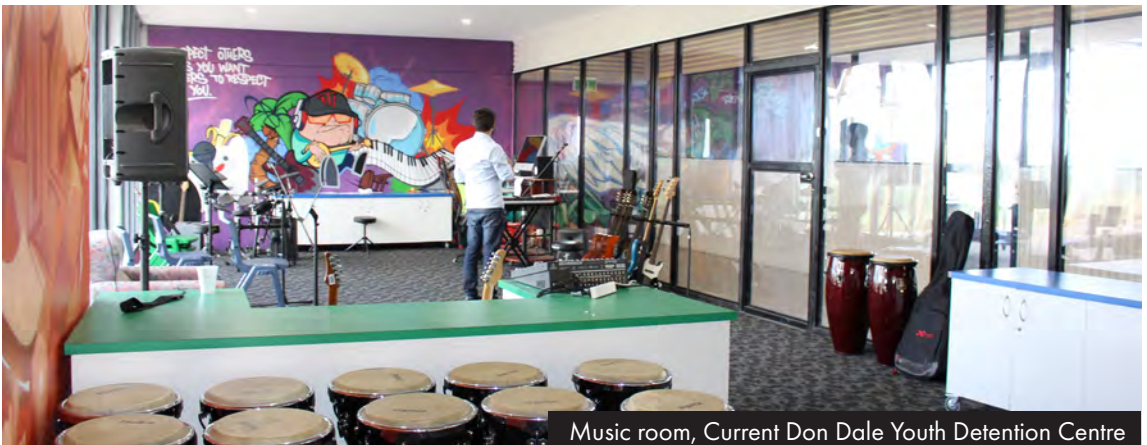
This was not just a problem at Alice Springs Youth Detention Centre. Aranda House had no dedicated space for education or on-site case management.<sup>118</sup> The area for case management at the former Don Dale Youth Detention Centre consisted of 'converted sea containers'.<sup>119</sup> The Commission heard that the lack of suitable spaces for case management, rehabilitation programs and education at the former Don Dale Youth Detention Centre had a negative effect on children and young people.<sup>120</sup>

Activities were also limited at the former Don Dale Youth Detention Centre. Although it had a basketball court and sports field, Mr Middlebrook explained that there was little for children and young people to do there because the facility 'just didn't have the infrastructure'.<sup>121</sup> He considered that the new facility at Berrimah would provide the space for more activities.<sup>122</sup>



The former Don Dale Youth Detention Centre

Mr Middlebrook's successor, Commissioner Mark Payne, regarded the recreational areas at both the current Don Dale Youth Detention Centre and the Alice Springs Youth Detention Centre as inadequate when he assumed responsibility for youth detention in November 2015.<sup>123</sup> A recreational centre has recently been constructed at the current Don Dale Youth Detention Centre. It is a much-needed addition to the facility. It has been described as 'bright and cheery' with a table tennis table and a pool table, areas for arts, woodwork and metalwork, music and computer rooms; and a movie theatre and library.<sup>124</sup> However, lack of access to areas for outdoor activity remains an issue at both detention centres.



Music room, Current Don Dale Youth Detention Centre





The Alice Springs Youth Detention Centre

Disadvantages suffered by young female detainees, particularly due to the consequences of their low numbers, are discussed in Chapter 17 (Girls in detention). The outside area at the Alice Springs Youth Detention Centre is 'barren', dusty and too small for kicking a football around without the risk that it would go over the fence.<sup>125</sup>

This is still better than Aranda House, which had no area at all 'for outside activities or simply to be just outside'.<sup>126</sup> Children and young people had to use a small internal courtyard, almost fully enclosed, with a basketball hoop made out of a milk crate no doubt replacing a hoop in the centre of the facility.<sup>127</sup>



Aranda House Detention Centre, Alice Springs

## INABILITY TO SEPARATE GROUPS OF CHILDREN AND YOUNG PEOPLE

The infrastructure at the former Don Dale Youth Detention Centre and the Alice Springs Youth Detention Centre did not allow groups of children and young people to be separated, or completely separated by age, gender or classification.<sup>128</sup> Commissioner Middlebrook raised this issue with Mr Elferink in 2014:

*None of the facilities meet critical duty of care elements, being the separation of detainees by age groups and by offence types; separation of remand from sentenced detainees; and the appropriate management of a co-gender detainee population. It is paramount [that] Northern Territory detention centre infrastructure inadequacies are addressed so that Government meets its duty of care.<sup>129</sup>*

A draft Cabinet submission noted that children and young people entering detention for the first time could not be isolated from the 'negative influence of other ['high security'] detainees entrenched in the system'.<sup>130</sup> This problem continues. Commission staff were told in June 2017 that children and young people detained in the current Don Dale Youth Detention Centre for the first time are put immediately into the High Security Unit.

Mr Middlebrook spoke about the way the inability to separate groups of children and young people during the relevant period contributed to poor behaviour and incidents:<sup>131</sup>

*One of the difficulties of not having good infrastructure ... is you can't separate kids by age or ... if they're not behaving well, it sometimes tends to influence some of the other detainees, and it does cause problems.<sup>132</sup>*

## INADEQUATE SECURITY

There were numerous incidents at the youth detention centres during the relevant period.<sup>133</sup> Despite the harsh, prison-like qualities, the infrastructure enabled security breaches rather than preventing them.<sup>134</sup> Determined children and young people could climb onto buildings,<sup>135</sup> get into roof cavities<sup>136</sup> and scale fences with relative ease.<sup>137</sup>



Current Don Dale Youth Detention Centre



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There have been numerous escapes from the Alice Springs Youth Detention Centre due to 'unsatisfactory' and unsecure perimeter fencing, and 'the way the building is constructed'.<sup>138</sup> The Commission heard that it is 'a very easy facility to escape from'.<sup>139</sup> Extra razor wire was recently installed at the current Don Dale Youth Detention Centre after an escape in April 2017,<sup>140</sup> adding to its grim, prison-like conditions.

It would be wrong to conclude from this evidence that higher-security facilities are needed rather than 'softer', therapeutic facilities. That view, which seems implicit in the submissions made by the Northern Territory Government to the Commission,<sup>141</sup> fails to acknowledge that inadequate infrastructure combined with other staff and management mistakes contributed to the occurrence of predictable incidents – see Chapter 23 (Leadership and management). This was never canvassed in Minister Elferink's and Commissioner Middlebrook's public statements about the incidents.

It is important in a secure detention facility that staff and management have confidence in the security of the facility, otherwise children and young people suffer additional restrictions.<sup>142</sup>

As an example, in the Alice Springs Youth Detention Centre children and young people have not been able to use the outdoor recreational area because of concerns about the perimeter fence,<sup>143</sup> and they have been handcuffed when being taken from the Alice Springs Youth Detention Centre to Aranda House because the sally port was not secure.<sup>144</sup> At the former Don Dale Youth Detention Centre, young people who had escaped from the facility were accommodated in isolation cells in terrible conditions because there was no other secure place to put them – see Chapter 14 (Isolation).<sup>145</sup> The Commission has been told that escapes from the current Don Dale Youth Detention Centre in 2017 have resulted in measures such as children being handcuffed and, where in a group, walked in single file from place to place in the facility and until July 2017 children in the HSU not being granted access to the new recreation building and being restricted to the HSU. The Commission has been advised that the practice of using handcuffs whilst moving detainees across the current Don Dale Youth Detention Centre ceased in August 2017.

High-security facilities are not the answer, as the Commission heard from a range of experts and as discussed in Chapter 26 (Other youth justice and detention models). Such facilities are in fact a sign of a broken youth justice system.

## EXTREME TEMPERATURES

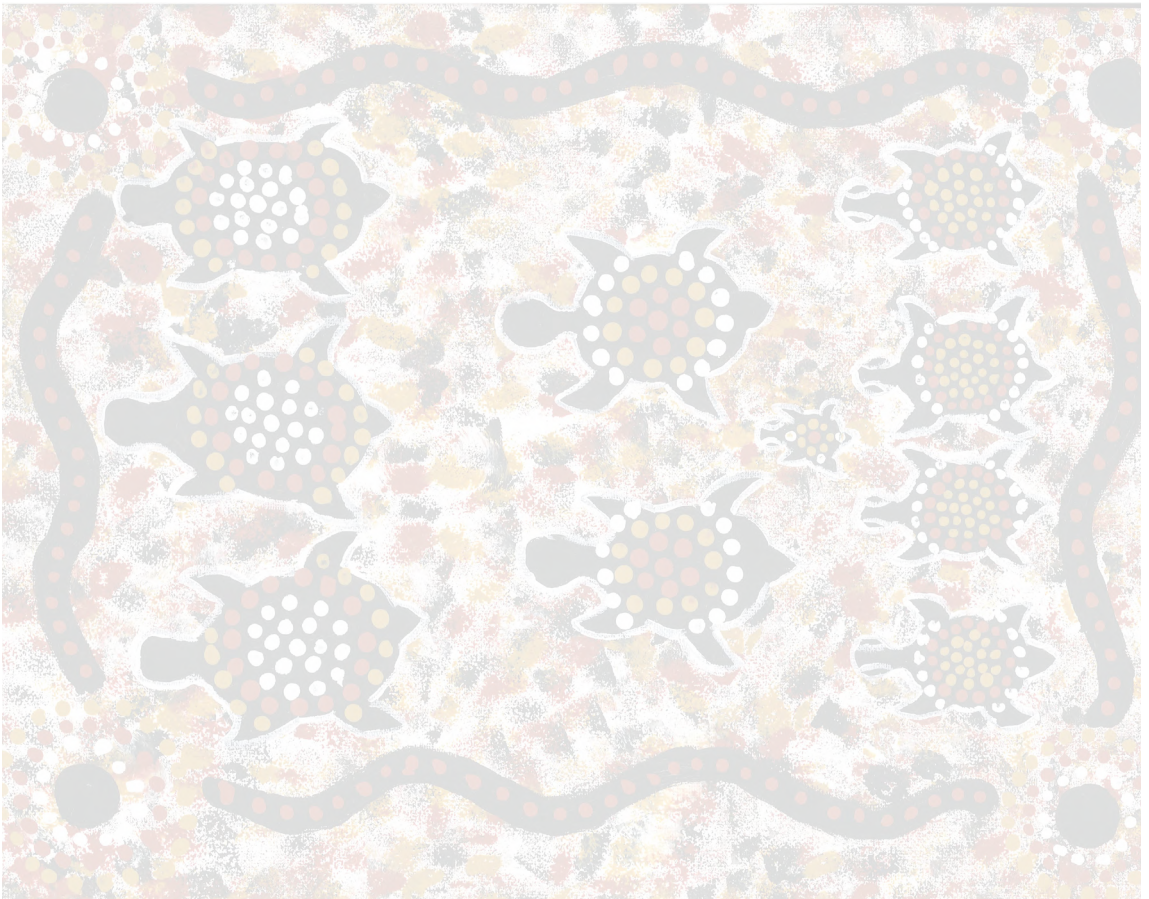
Heat and humidity were problems at the Darwin youth detention centres, for detainees as well as staff.<sup>146</sup> A 2014 review noted that temperatures in two blocks exceeded 35 degrees Celsius.<sup>147</sup> Children and young people told Official Visitors that the heat caused them to become 'irritable' and 'get into trouble' and disturbed their sleep.<sup>148</sup>

Lack of air-conditioning at the former Don Dale Youth Detention Centre was a common complaint to Official Visitors.<sup>149</sup> Air-conditioners were damaged in incidents and repairs to the ceilings caused ventilation problems.<sup>150</sup> Official Visitor reports record that the Northern Territory Government decided not to repair or replace the air-conditioning because the cost was too high and at that stage the future of the detention centre was unclear.<sup>151</sup> Mr Middlebrook told the Commission he was in a 'no-win' situation: he wanted to replace the air-conditioning but was advised that this would create hanging points.<sup>152</sup> Fans were provided but had to be removed when some children and young people started using them as weapons.<sup>153</sup>

The Commission notes that air-conditioning has recently been installed at the Don Dale Youth Detention Centre and will be installed at the Alice Springs Youth Detention Centre.<sup>154</sup> The Commission heard that children and young people detained at the Alice Springs Youth Detention Centre endured very cold conditions during winter when temperatures in Alice Springs often fall to near or below zero degrees. One young person told the Commission that glass louvres in the cells made them 'quite cold at night... There was no heater'... '[W]e only had one blanket and we could not get any more'.<sup>155</sup> Mr Middlebrook said:

*On [one] occasion I visited the Alice Springs Youth Detention Centre in the winter months and the detainees had smashed the louver [sic] windows in one of the dormitory rooms that housed five detainees. Nothing had been done to replace the windows with something more appropriate. The detainees had placed mattresses against the windows to keep the inclement cold weather out and all detainees were in their bunks under many layers of blankets.<sup>156</sup>*

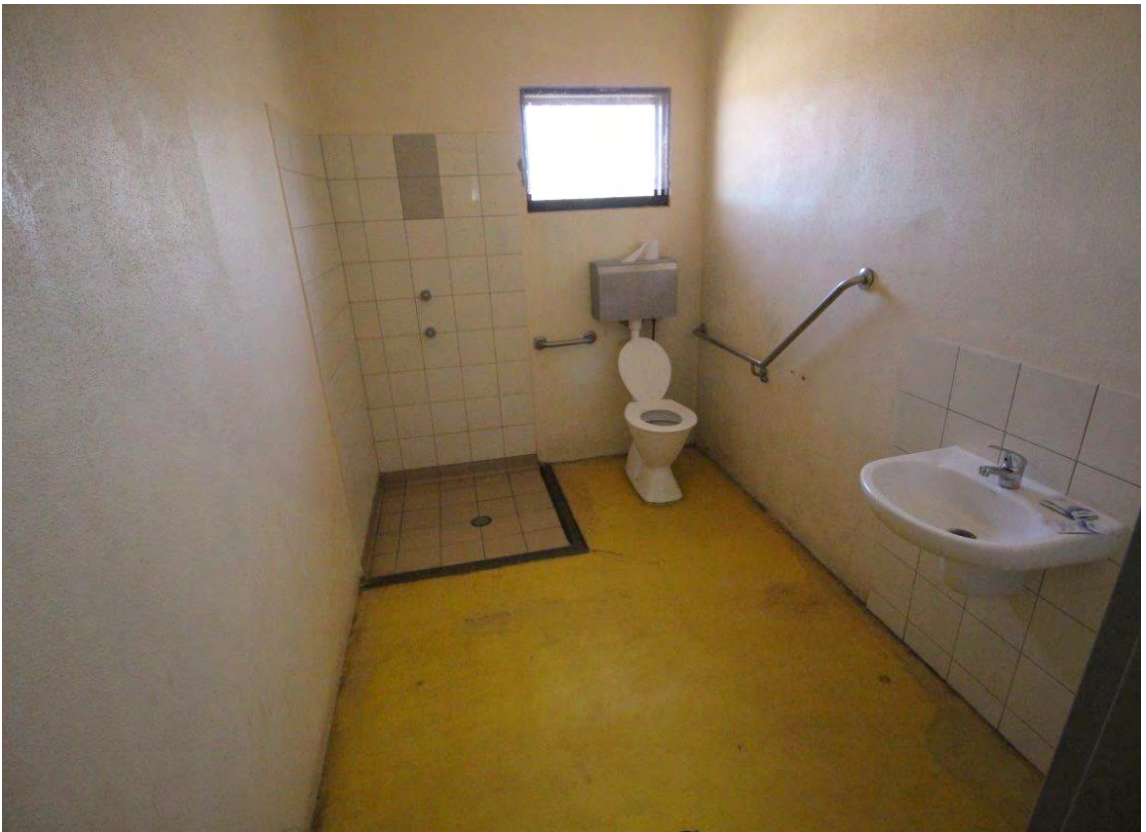
While destructive actions by detainees contributed to more uncomfortable temperatures at the youth detention centres, the facilities were clearly not suitable for the Northern Territory's weather conditions and little was done or could be done to moderate them. The Northern Territory Government has a duty to protect the children and young people in its care and the staff who looked after them from the extremes of the weather, and to provide them with basic comfort and clean, humane conditions.<sup>157</sup> This duty was not always met during the relevant period.



## LACK OF HYGIENE AND BASIC FACILITIES

At times conditions at the youth detention centres were appalling and inhumane. As discussed in Chapter 14 (Isolation), children and young people put in the isolation cells at the former Don Dale Youth Detention Centre's Behaviour Management Unit suffered in unthinkable conditions. Witnesses were unanimous in their condemnation of the conditions within the Behaviour Management Unit.<sup>158</sup>

Many children and young people told the Commission that they lived in '*disgusting*' conditions.<sup>159</sup> They described the presence of dirt, spit, blood, cockroaches and dead mice.<sup>160</sup> Their evidence about filthy, unhygienic conditions was supported by Official Visitors' reports,<sup>161</sup> staff feedback,<sup>162</sup> Mr Vita's report,<sup>163</sup> the evidence of Mr Middlebrook<sup>164</sup> a former Minister. Mr Elferink was '*disturbed at the state of the juvenile facilities*' when he toured them in 2012,<sup>165</sup> and was particularly concerned about the lack of flushing toilets in the cells at the former Don Dale Youth Detention Centre.<sup>166</sup>



Cells at both the former Don Dale Youth Detention Centre and the Alice Springs Youth Detention Centre did not have toilets or running water.<sup>167</sup> Children and young people could not go to the toilet when they needed to or drink water when they were thirsty.<sup>168</sup> They had to press a button and wait for a staff member.<sup>169</sup> A number of children and young people told the Commission that staff withheld access to water and the toilets (as discussed further in Chapter 12 (Abuse and humiliation)).<sup>170</sup>





The former Don Dale Youth Detention Centre



The former Don Dale Youth Detention Centre

When Mr Elferink first ‘walked into a dorm’ at the former Don Dale Youth Detention Centre, ‘it stank of urine.’<sup>171</sup> The smell was soaked in the industrial carpet and did not go away.<sup>172</sup> Mr Elferink said children and young people were being:

*kept in an environment where, rather than waking up the guard and everybody else in the dorm ... they felt that they were forced to urinate in a corner, leaving the dorm stinking of urine.*<sup>173</sup>

He told the Commission:

*I don’t believe that the physical structure of Don Dale enabled it for the most basic of human functions.*<sup>174</sup>

## LACK OF WINDOWS, SUNLIGHT AND FRESH AIR

The Commission heard disturbing evidence about lack of windows and sunlight at Aranda House. Windows were ‘painted over with the result that children and young people could not see out of the windows.’<sup>175</sup> A grid of ‘wires’ and shade cloth covered the internal courtyard and stopped the sun from ‘coming through that area.’<sup>176</sup>



The former Don Dale Youth Detention centre





One young person told the Commission that there was 'no sunlight ... it was like a dungeon'.<sup>177</sup> Another said 'I did not see outside the whole time I was in Aranda House'.<sup>178</sup> Others told the Commission:

*[The larger room] did not have any windows and was covered by a roof which was made out of metal bars. It was like a cage, and there wasn't much sunlight that came in ... The windows [in the cells] were painted over. To even look outside I used to have to pull myself up into the window sill and use a screw or something like that to scratch away a bit of the paint ... I couldn't really see the daylight while I was in Aranda House.*<sup>179</sup>

*There were windows that we could see out of but I remember that at one point they decided to change them so we couldn't see out – they blacked out or tinted the glass – because the kids had been talking to visitors to the centre through the windows and they wanted to stop that. The new windows still let light in, but we couldn't see out.*<sup>180</sup>

This must have affected the health and wellbeing of children and young people. In July 2012, a senior psychologist concerned about the conditions in which young people were being held at Aranda House wrote to the senior caseworker at Don Dale Youth Detention Centre:

*Human beings need fresh air and sunlight for a normal, healthy life. People can manage periods of time without sunlight, but their ability to effectively manage this deprivation is primarily dependent upon the control (or otherwise) [they] have over their situation. When people are deprived of sunlight for extended periods of time they can develop a depressive condition known as Seasonal Affective Disorder ...*

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*Symptoms include hopelessness, increased sleep, lack of energy and interest, social withdrawal and irritability ... [T]he present conditions of the detainees are such that they suffer from forced social withdrawal, are irritable, have no activities in which to be involved, consequently sleep for much of the time and feel a sense of hopelessness about their situation.*

*A lack of sunlight also has a potentially negative impact upon a person's psychological condition ... In the interests of the detainees' physical and mental health, I believe it is imperative that they have a period of time each day outside.*<sup>181</sup>

As the facility did not permit this, as noted above, the psychologist 'strongly' suggested that the young people be transferred to the Alice Springs Youth Detention Centre 'during a portion of the day where they [could] access the outside area'.<sup>182</sup> A young person explained what it was like living in those conditions:

*It was disgusting ... [and] you couldn't really talk to anyone. The only, really, things that you could get from the outside world from there was when you would go for a drive to the court, when you're going to courts or yelling out to people at the top of your lungs to the other people at the school next door.*<sup>183</sup>

These dangers were known to management at the departmental and ministerial levels. An Official Visitor's report to Minister Elferink raised a concern that '[t]he lack of sunshine and access to fresh air ... even for 24 hours is a health consideration at the very least'.<sup>184</sup> A draft Cabinet submission in 2013 noted that the facility 'lacks natural light and is not well ventilated'.<sup>185</sup>

## RISKS TO SAFETY, HEALTH AND WELLBEING

The Commission received evidence about risks to the welfare and safety of children and young people, as well as actual injuries<sup>186</sup> and risks to staff members<sup>187</sup> at the youth detention centres.

There were fire hazards at the former Don Dale Youth Detention Centre.<sup>188</sup> A draft Cabinet submission stated that 'staff and detainees' were 'potentially expose[d] ... to the risk of injury or death'.<sup>189</sup> The current Don Dale Youth Detention Centre is little better. Commission staff members were told that approximately 50% of the facility cannot be used because it contains asbestos, does not meet fire standards and does not meet the expected safe standards due to hanging points.<sup>190</sup>

In 2016, the Children's Commissioner found that the physical condition of at-risk cells at the current Don Dale Youth Detention Centre and the Alice Springs Youth Detention Centre had the 'potential to heighten the risk of self-harm and mental health issues'.<sup>191</sup>

Alarming, the Commission heard that the facilities themselves provided children and young people with the means to do themselves harm.

### Hanging points

Notwithstanding the focus on security, isolation and 'at-risk' accommodation and procedures rather than a therapeutic physical environment, the evidence received about the existence of hanging points at the youth detention centres was of serious concern.<sup>192</sup> This was particularly the case given

the findings and recommendations of the Royal Commission into Aboriginal Deaths in Custody 25 years ago.<sup>193</sup>

*There were a lot of places [at Aranda House] where you could hang yourself from on the corners of the cells. Looking back now, I think it was a perfect example of how you could easily do that to yourself.<sup>194</sup>*

*There were lots of hanging points in the regular rooms or cells [at Don Dale]. A lot of the fellas in there have found ways to hang themselves. I have been there when people have tried.<sup>195</sup>*



Mr Hamburger and his team were 'horrified' when they found numerous hanging points in the cells and accommodation areas during their inspection of the current Don Dale Youth Detention Centre in May 2016.<sup>196</sup> He notified Commissioner Payne immediately so that urgent action could be taken.<sup>197</sup> Mr Hamburger inspected the youth detention centre again in July 2016, after the then Chief Minister asked for assurance that no children or young people would die in detention that night.<sup>198</sup> Hanging points had not been removed but 'other actions had been taken ... to mitigate the risk'.<sup>199</sup> Mr Hamburger advised that he and his team 'were comfortable with the actions beings taken to ensure the safety of the young people in detention qualified by the overall unsatisfactory nature of the facilities'.<sup>200</sup>



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Since then, two audits of hanging points have been carried out at the current Don Dale Youth Detention Centre and one at the Alice Springs Youth Detention Centre.<sup>201</sup> The Commission understands that the Northern Territory Government is acting on the recommendations of those reports to address the risks.<sup>202</sup> Refurbishments and ‘*rectification works*’ have been carried out at the current Don Dale Youth Detention Centre to make it safer and more suitable for youth detention.<sup>203</sup> The children and young people at that centre have been transferred to Darwin while the safety works are being done.<sup>204</sup>

The Commission acknowledges that the Department of Correctional Services faced extraordinary pressures particularly in 2014 and was required to respond to extreme situations with limited options.<sup>205</sup> As discussed in Chapter 23 (Leadership and management), the Department recognised the problems, sounded warnings, wanted new purpose-built facilities<sup>206</sup> and made some efforts towards this end, but did not have the agreement of government.<sup>207</sup> Short-term solutions were needed, and there were no good options.

The Northern Territory did not have suitable youth detention facilities during the relevant period. This situation could only arise through neglect and lack of planning and investment over a long period of time, including well before the relevant period.<sup>208</sup> The result of these failures was that children and young people, many of whom came from trauma and disadvantaged backgrounds and needed help,<sup>209</sup> were put at risk by the environments in which they were held under the government’s care. See Chapter 23 (Leadership and management) for an examination of the management decisions during the relevant period that allowed this to occur.

## Findings

**The youth detention centres used during the relevant period were not fit for accommodating, let alone rehabilitating, children and young people.**

**The poor condition of youth detention centres created the potential for harm to be caused to children and young people. The inadequate facilities put children and young people’s health, safety and wellbeing at serious risk, and played a part in incidents that occurred at youth detention centres.**

**At different times and in different youth detention centres during the relevant period, the conditions under which children and young people were detained fell far short of acceptable standards under international instruments and Australian guidelines. Severe, prison-like and unhygienic conditions, and inadequate security due to poor infrastructure, caused children and young people to suffer punishment.**

**The youth detention centres created difficult and unsafe working environments for staff.**

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## NEW FACILITIES

The Northern Territory Government accepts that the current facilities are not suitable<sup>210</sup> and that new, purpose-built detention accommodation is needed,<sup>211</sup> separate from adult correctional facilities and different from the detention centres that have already been used in the Northern Territory.<sup>212</sup> The Deputy CEO of Territory Families told the Commission that the current centres *'have no therapeutic value and we have to do things vastly differently'*.<sup>213</sup>

The Northern Territory Government announced in December 2016 that it had allocated \$22 million for new youth justice facilities to be built in Darwin and Alice Springs, \$15 million for the Darwin facility and \$7 million for the Alice Springs facility. The Northern Territory Government has received a preliminary design brief for a 'New Darwin Youth Detention Centre', dated December 2016, which is considered in the Commission's discussion about appropriate residential accommodation in Chapter 28 (A new model for youth detention).<sup>214</sup> The Commission also makes recommendations in that chapter about immediate steps the Northern Territory Government should take to improve the current facilities but its recommendation is that the present Don Dale Youth Detention Centre be closed immediately.

### Recommendation 10.1

**The Northern Territory Government immediately close the High Security Unit or by whatever name it is known in the current Don Dale Youth Detention Centre.**

### Recommendation 10.2

**The Northern Territory Government close the current Don Dale Youth Detention Centre (to be replaced with a new, purpose-built facility) and by 17 February 2018, 3 months after the date of this report, the Northern Territory Government report to the Children's Commissioner (or Commission for Children and Young People if that Commission has been established by that time) on the program for that closure.**

## ENDNOTES

- <sup>1</sup> Exh.633.000, Precis of evidence of Rohan Lulham, 22 May 2017, tendered 29 June 2017, paras 4, 6-8, 11, 14-16; Transcript, Rohan Lulham, 29 June 2017, p. 5296: line 40 – p. 5298: line 8; Australian Law Reform Commission Report 84 section 20, accessed 1 November 2017 <<https://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC84.pdf>>.
- <sup>2</sup> Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, Article 32: p. 4; Exh.221.001, Standards Document - Australasian Juvenile Justice Administrators' Juvenile Justice Standards, 2009, tendered 30 March 2017, p. 8; Design Guidelines for Juvenile Justice Facilities in Australia and New Zealand, p. 3, Accessed 1 November 2017 <<http://trove.nla.gov/work/13791510?-selectedversion=NBD42127649>>; Standards for Juvenile Custodial Facilities, p. 54, accessed 1 November 2017 <<https://www.humanrights.gov.au/sites/default/files/Annexure%20H%20-%20AJJA%20Standards.pdf>>; Exh.636.000, Precis of evidence of Elizabeth Grant – Addendum 1, 12 June 2017, tendered 29 June 2017, p. 5; Transcript, Jeannette Kerr, 8 December 2016, p. 499: lines 11-22; Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 212-213; Transcript, Nate Balis, 26 June 2017, p. 4985: line 43 – p. 4896: line 3; Transcript, Keith Hamburger, 5 December 2016, p. 371: line 35 – p. 372: line 23; Exh.268.001, Statement of Therese Ellis-Smith, 13 February 2017, tendered 31 March 2017, para 13.
- <sup>3</sup> Exh.006.005, United Nations Standard Minimum Rules for the Treatment of Prisoners ('the Mandela Rules'), 8 January 2016, tendered 11 October 2016, rules 13-18, 22, 42; Exh.007.001, Committee on the Rights of the Child: General Comment 10 – Child's Rights in Juvenile Justice, 25 April 2007, tendered 11 October 2016, para. 89, p. 23; Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, articles 28, 32, 34: p. 4, article 37: p. 5; Design Guidelines for Juvenile Justice Facilities in Australia and New Zealand, p. 11, accessed 1 November 2017 <<http://trove.nla.gov/work/13791510?-selectedversion=NBD42127649>>; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para 108.
- <sup>4</sup> Exh.006.005, United Nations Standard Minimum Rules for the Treatment of Prisoners ('the Mandela Rules'), 8 January 2016, tendered 11 October 2016, rule 23; Exh.007.001, Committee on the Rights of the Child: General Comment 10 – Child's Rights in Juvenile Justice, 25 April 2007, tendered 11 October 2016, para 89, p. 23; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, paras 86-87; Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, article 28: p. 4, article 32: p. 4; Design Guidelines for Juvenile Justice Facilities in Australia and New Zealand, p. 11 <<http://trove.nla.gov/work/13791510?-selectedversion=NBD42127649>>.
- <sup>5</sup> Transcript, Dr Elisabeth Grant, 29 June 2017, p. 5298: lines 23-26.
- <sup>6</sup> Design Guidelines for Juvenile Justice Facilities in Australia and New Zealand, p. 13; Transcript, Megan Mitchell, 11 October 2016, p. 52: lines 33-47; Exh.576.000, Precis of evidence of Nate Balis, 20 June 2017, tendered 26 June 2017, paras 17-19; Transcript, Dr James Fitzpatrick, 8 December 2016, p. 540: lines 16-31.
- <sup>7</sup> Transcript, Dr Rohan Lulham, 29 June 2017, p. 5304: lines 11-24.
- <sup>8</sup> Exh.601.000, Precis of evidence of Vincent Schiraldi, 6 June 2017, tendered 27 June 2017, para 15; Exh.633.000, Precis of evidence of Rohan Lulham, 22 May 2017, tendered 29 June 2017, paras 14-15; Exh.576.000, Precis of evidence of Nate Balis, 20 June 2017, tendered 26 June 2017, paras 17-19; Transcript, Keith Hamburger, 5 December 2016, p. 339: lines 7-9; Exh.093.001, Statement of Christopher Castle, 7 February 2017, tendered 16 March 2017, para 61.
- <sup>9</sup> Transcript, Megan Mitchell, 11 October 2016, p. 39: lines 5-11; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 53.
- <sup>10</sup> *Youth Justice Act* (NT) s 26; Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, article 37(c); Exh.006.005, United Nations Standard Minimum Rules for the Treatment of Prisoners ('the Mandela Rules'), 8 January 2016, tendered 11 October 2016, rule 11; Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, article 29: p. 4; Exh.007.001, Committee on the Rights of the Child: General Comment 10 – Child's Rights in Juvenile Justice, 25 April 2007, tendered 11 October 2016, pp. 22-23: para. 85; Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), 29 November 1985, tendered 11 October 2016, article 13.4: p. 8, article 26.3: p. 14; Transcript, Ken Middlebrook, 26 April 2017, p. 3038: 42-43; Exh.636.000, Precis of evidence of Elizabeth Grant – Addendum 1, 12 June 2017, tendered 29 June 2017, p. 3.
- <sup>11</sup> Exh.636.000, Precis of evidence of Elizabeth Grant – Addendum 1, 12 June 2017, tendered 29 June 2017, p. 5.
- <sup>12</sup> See, for example, Transcript, David McGuire, 28 June 2017, p. 5271: line 41 – p. 5272: line 20; Exh.631.000, Precis of evidence of David McGuire, 9 June 2017, tendered 28 June 2017, para 13.
- <sup>13</sup> Exh.006.005, United Nations Standard Minimum Rules for the Treatment of Prisoners ('the Mandela Rules'), 8 January 2016, 11 October 2016, rule 17; Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, article 28: p. 4, article 32: p. 4; Exh.221.001, Standards Document - Australasian Juvenile Justice Administrators' Juvenile Justice Standards, 2009, tendered 30 March 2017, p. 8; Design Guidelines for Juvenile Justice Facilities in Australia and New Zealand, p. 11; accessed 1 November 2017 <<http://trove.nla.gov/work/13791510?-selectedversion=NBD42127649>>; Standards for Juvenile Custodial Facilities, pp. 51, 55), accessed 1 November 2017 <<https://www.humanrights.gov.au/sites/default/files/Annexure%20H%20-%20AJJA%20Standards.pdf>>.
- <sup>14</sup> Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, article 31: p. 4.
- <sup>15</sup> Exh.221.001, Standards Document - Australasian Juvenile Justice Administrators' Juvenile Justice Standards, 2009, tendered 30 March 2017, p. 8.
- <sup>16</sup> *Youth Justice Act* (NT) s 148.
- <sup>17</sup> Final Report 2016 – Chapter 16 Youth Justice Services, p. 16.36, accessed 1 November 2017 <<https://www.pc.gov.au/research/>>

- ongoing/report-on-government-services/2016/community-services/youth-justice/rogs-2016-volume-fchapter16.pdf>.
- <sup>18</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para. 74.
- <sup>19</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, paras 74-77; Exh.219.001, Annexure SC-5 to Statement of Salli Cohen, 16 August 2013, tendered 30 March 2017, p. 0648; Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para 211.
- <sup>20</sup> Aranda House continued to be used as a holding centre after 2011: Exh.232.001, MINC140117 – Memoranda to Cabinet Colleagues DCP and YJ STB Tab 265, 18 March 2014, tendered 30 March 2017, p. 3. It was decommissioned in 2015: Exh.311.080, Revocation of Approval of Youth Detention Centre – Aranda House from Minister for Correctional Services, 31 March 2015, tendered 28 April 2017.
- <sup>21</sup> Exh.072.001, Statement of John Fattore, 23 February 2017, tendered 14 March 2017, paras. 13-14.
- <sup>22</sup> Exh.072.001, Statement of John Fattore, 23 February 2017, tendered 14 March 2017, para 26; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para 280; Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, paras 67 and 69.
- <sup>23</sup> Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para 218; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 79-87.
- <sup>24</sup> Transcript, Keith Hamburger, 5 December 2016, p. 338: line 42 – p. 339: line 9.
- <sup>25</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, paras. 179, 193, 201; Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras. 164-165.
- <sup>26</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 201; Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para 161.
- <sup>27</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras. 160-162; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, paras. 199-201.
- <sup>28</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 165 and 211.
- <sup>29</sup> Exh.035.001, Statement of Mark Payne, 4 December 2016, tendered 6 December 2016, para 18; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para 108; Transcript, Jeanette Kerr, 8 December 2016, p. 525: line 13; Transcript, Ken Davies, 30 June 2017, p. 5440: line 35; Transcript, Keith Hamburger, 6 December 2016, p. 371: lines 43-46.
- <sup>30</sup> Exh.437.000, Statement of Michael Vita, 11 January 2017, tendered 12 May 2017, para 13; Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para 218.
- <sup>31</sup> Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para 95; Exh.031.001, Statement of Keith Hamburger, 18 November 2016, tendered 5 December 2016, para 46; Exh.031.002, Annexure 1 – Report ‘A Safer Northern Territory Through Correctional Interventions’ [REDACTED] to Statement of Keith Hamburger, 31 July 2017, tendered 5 December 2016, p. 149; Transcript, Keith Hamburger, 5 December 2016, p. 349: lines 41-43.
- <sup>32</sup> Exh.316.001, Statement of Ken Middlebrook, 1 March 2017, tendered 26 April 2017, para 23; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, paras. 30, 50 (see also paras 40, 240); Exh.321.017, Annexure 16 to Statement of John Elferink, 30 March 2017, tendered 27 April 2017, p. 164; Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para 117. See also Exh.032.001, Annexure 1 to Statement of Keith Hamburger, 18 November 2016, tendered 5 December 2017, pp. 21, 150; Exh.268.001, Statement of Therese Ellis-Smith, 13 February 2017, tendered 31 March 2017, para 13; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, paras. 279-280; Transcript, John Fattore, 14 March 2017, p. 1021: line 20; Transcript, Gerald McCarthy, 17 March 2017, p. 1350: line 32.
- <sup>33</sup> Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para 119; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, paras. 108, 279. See also Exh.219.001, Annexure SC-5 to Statement of Salli Cohen, 16 August 2013, tendered 30 March 2017, p. 0660.
- <sup>34</sup> Exh.031.001, Statement of Keith Hamburger, 18 November 2016, tendered 5 December 2016, para 15; Exh.032.001, Annexure 1 to Statement of Keith Hamburger, 18 November 2016, tendered 5 December 2016, pp. 21, 142; Transcript, Keith Hamburger, 5 December 2016, p. 315: lines 31-39; p. 316: lines 38-42; p. 317: lines 15-18; p. 338: line 42 – p. 339: line 9.
- <sup>35</sup> Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para 120; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para 280. See also Exh.321.017, Annexure 16 to Statement of John Elferink, 30 March 2017, tendered 27 April 2017, p. 143.
- <sup>36</sup> Transcript, Antionette Carroll, 15 March 2017, p. 1173: line 34.
- <sup>37</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2924: line 46.
- <sup>38</sup> Exh.031.001, Statement of Keith Hamburger, 18 November 2016, tendered 5 December 2016, paras. 15, 65; Exh.268.001, Statement of Therese Ellis-Smith, 13 February 2017, tendered 31 March 2017, para 13.
- <sup>39</sup> The Commission inspected the current and former Don Dale Youth Detention Centres on 7 December 2016, Alice Springs Youth Detention Centre on 27 September 2016 and Aranda House on 18 August 2016. See pages 22-23 of the Interim Report. The Commission did not inspect Holtze Youth Detention Centre, which is no longer in operation.
- <sup>40</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2959: lines 5-8. See also Transcript, Ken Middlebrook, 26 April 2017, p. 2959: lines 5-8; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, paras 149, 155.
- <sup>41</sup> See for example, Keith Hamburger, 5 December 2016, p. 314: line 39 – p. 316: line 5; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 240; Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para 43.
- <sup>42</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 46, 156, 211, 224; Exh.437.002,

- Annexure 2 to Statement of Michael Vita, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 12 May 2017, pp. 14, 53-55; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, paras 149, 155; Transcript, Ken Middlebrook, 26 April 2017, p. 3052: line 40 – p. 3053: line 5; Exh.321.001, Statement of John Elferink, 31 March 2017, tendered 27 April 2017, para 45; Transcript, John Elferink, 27 April 2017, p. 3124: lines 25-40, p. 3186: lines 20-25; Transcript, Gerald McCarthy, 17 March 2017, p. 1344: line 45 – p. 1345: line 25; p. 1349: lines 10-45.
- <sup>43</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 74; Exh.219.001, Annexure SC-5 to Statement of Salli Cohen, 16 August 2013, tendered 30 March 2017, p. 0659; Transcript, Ian Johns, 28 March 2017, p. 2059: line 20 – p. 2060: line 10.
- <sup>44</sup> Australian Law Reform Commission Report 84 section 20.38, Accessed 1 November 2017 <<https://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC84.pdf>>.
- <sup>45</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 3052: 40 – p. 3053: line 5; Exh.316.001, Ken Middlebrook, 1 March 2017, tendered 26 April 2017, para 6; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, paras 149, 155; Transcript, John Elferink, 27 April 2017, p. 3124: lines 25-40.
- <sup>46</sup> Transcript, Gerald McCarthy, 17 March 2017, p. 1344: line 45 – p. 1345: line 25.
- <sup>47</sup> Exh.219.001, Annexure SC-5 to Statement of Salli Cohen, 16 August 2013, tendered 30 March 2017, pp. 0648, 0651; Exh.211.012, Annexure SC-11 to Statement of Salli Cohen, 21 March 2014, tendered 31 March 2017, p. 0105.
- <sup>48</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para 211; Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para 118; Exh.437.002, Annexure 2 to Statement of Michael Vita, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 12 May 2017, pp. 64-65.
- <sup>49</sup> Exh.437.002, Annexure 2 to Statement of Michael Vita, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 12 May 2017, pp. 53-55; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 185.
- <sup>50</sup> Aranda House was one wing of the former Giles House, the Northern Territory's first youth detention centre: Exh.072.001, Statement of John Fattore, 23 February 2017, tendered 14 March 2017, paras 12-13; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 220; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 22. See also Exh.219.001, Annexure SC-5 to Statement of Salli Cohen, 16 August 2013, tendered 30 March 2017, p. 0649.
- <sup>51</sup> Exh.065.001, Statement of Jamal Turner, 21 February 2017, tendered 13 March 2017, paras 26-31; Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para 53.
- <sup>52</sup> Transcript, John Fattore, 14 March 2017, p. 1020: line 35 – p. 1021: line 3.
- <sup>53</sup> Transcript, Dylan Voller, 12 December 2016, p. 680: lines 19-22.
- <sup>54</sup> Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 30; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para 280; Exh.096.005, Ministerial brief in relation to Official Visitor report, 23 December 2009, tendered 17 March 2017, p. 2976; Exh.096.007, Official Visitor report, 22 March 2010, tendered 17 March 2017, p. 0293.
- <sup>55</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para 160.
- <sup>56</sup> Transcript, Dylan Voller, 12 December 2016, p. 680: lines 14-15.
- <sup>57</sup> Exh.111.001, Statement of AX, 17 February 2017, tendered 21 March 2017, paras 46-48; Exh.065.001, Statement of Jamal Turner, 21 February 2017, tendered 13 March 2017, paras 26-31.
- <sup>58</sup> Exh.111.001, Statement of AX, 17 February 2017, tendered 21 March 2017, paras 46-48; Exh.065.001, Statement of Jamal Turner, 21 February 2017, tendered 13 March 2017, paras 26-31.
- <sup>59</sup> Transcript, Jamal Turner, 13 March 2017, p. 921: lines 10-15.
- <sup>60</sup> Transcript, Jamal Turner, 13 March 2017, p. 920: lines 45-46.
- <sup>61</sup> Exh.111.001, Statement of AX, 17 February 2017, tendered 21 March 2017, paras 46-48.
- <sup>62</sup> Exh.111.001, Statement of AX, 17 February 2017, tendered 21 March 2017, paras 46-48.
- <sup>63</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para 53.
- <sup>64</sup> Mr Middlebrook was the Commissioner for the Department of Correctional Services from 4 September 2012 until 12 November 2015. Before this he was the Executive Director of Northern Territory Correctional Services from 1 June 2008 to 3 September 2012.
- <sup>65</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2924: line 46.
- <sup>66</sup> Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para. 30.
- <sup>67</sup> Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, paras 120, 170.
- <sup>68</sup> Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 29. See also para 35.
- <sup>69</sup> Exh.072.001, Statement of John Fattore, 23 February 2017, tendered 14 March 2017, paras 15-17; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 100; Exh.437.002, Annexure 2 to Statement of Michael Vita, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 12 May 2017, p. 8; Transcript, Gerald McCarthy, 17 March 2017, p. 1344: line 45 – p. 1345: line 25.
- <sup>70</sup> See Chapter 23 (Leadership and management). Exh.316.001, Statement of Ken Middlebrook, 1 March 2017, tendered 26 April 2017, paras 6-46; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, paras 56-57, 60, 190-195; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, paras 166-167; Transcript, Salli Cohen, 30 March 2017, p. 2327: line 43 – 2328: line 17; Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 150-151; Exh.316.001, Statement of Ken Middlebrook, 1 March 2017, tendered 26 April 2017, para 32; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 29. See also para 40.
- <sup>71</sup> Exh.072.001, Statement of John Fattore, 23 February 2017, tendered 14 March 2017, paras 17-19; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 78; Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 47-48; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, paras 31-33.

- <sup>72</sup> Exh.316.001, Statement of Ken Middlebrook, 1 March 2017, tendered 26 April 2017, para 46; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, paras 31-33; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para. 78; Exh.072.005, Annexure JF-4 to Statement John Fattore, 31 January 2011, tendered 14 March 2017, p. 0038.
- <sup>73</sup> Transcript, Gerald McCarthy, 17 March 2017, p. 1369: line 35 – p. 1370: line 20.
- <sup>74</sup> Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para 218; Transcript, Russell Caldwell, 29 March 2017, p. 2138: lines 17-24; Transcript, Salli Cohen, 24 April 2017, p. 2863: lines 40-46; Transcript, Barrie Clee, 15 March 2017, p. 1151: lines 10-30.
- <sup>75</sup> Transcript, Christopher Castle, 16 March 2017, p. 1291: line 5; p. 1291: line 45.
- <sup>76</sup> Transcript, Christopher Castle, 16 March 2017, p. 1291: lines 5-7.
- <sup>77</sup> Transcript, Keith Hamburger, 5 December 2016, p. 339: lines 7-9. See also Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 50.
- <sup>78</sup> Northern Territory Government, *Alice Springs Youth Detention Centre*, last revised 27 June 2017, viewed 3 July 2017, Accessed 1 November 2017 <<https://nt.gov.au/law/young-people/alice-springs-youth-detention-centre>>; Exh.072.001, Statement of John Fattore, 23 February 2017, tendered 14 March 2017, paras 17-19; Exh.072.006, Annexure JF-5 to Statement of John Fattore, 18 February 2011, tendered 14 March 2017, p. 0042; Transcript, Barrie Clee, 15 March 2017, p. 1136: lines 7-10. See also Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 33.
- <sup>79</sup> Transcript, Antoinette Carroll, 15 March 2017, p. 1170: lines 35-47.
- <sup>80</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 84.
- <sup>81</sup> Transcript, Megan Mitchell, 11 October 2016, p. 39: lines 5-11; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 53.
- <sup>82</sup> Exh.437.002, Annexure 2 to Statement of Michael Vita, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 12 May 2017, p. 8; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 35; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 179; Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 157, 160; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 189.
- <sup>83</sup> Exh.316.001, Statement of Ken Middlebrook, 1 March 2017, tendered 26 April 2017, para 11.
- <sup>84</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 198; Exh.211.016, Annexure SC-15 to Statement of Salli Cohen, 19 August 2014, tendered 31 March 2017.
- <sup>85</sup> Exh.172.001, Statement of James Sizeland, 17 February 2017, tendered 27 March 2017, para 139; Exh.316.001, Statement of Ken Middlebrook, 1 March 2017, tendered 26 April 2017, paras 35-36; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, paras 199-201; Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 161-162.
- <sup>86</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 163-171.
- <sup>87</sup> Transcript, Gerald McCarthy, 17 March 2017, p. 1340: lines 28-29.
- <sup>88</sup> Transcript, Gerald McCarthy, 17 March 2017, p. 1340: lines 28-29.
- <sup>89</sup> Exh.283.291, Last teenage escapees caught, breakout prompts Darwin juvenile detention centre move, 7 August 2014, tendered 31 March 2017. But see Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, paras 124-125; Transcript, Salli Cohen, 30 March 2017, p. 2377: lines 6-23.
- <sup>90</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 211; Exh.316.001, Statement of Ken Middlebrook, 1 March 2017, tendered 26 April 2017, para. 19; Exh.232.001, MINC140117 – Memoranda to Cabinet Colleagues DCP and YJ STB Tab 265, 18 March 2014, tendered 30 March 2017; Exh.211.012, Annexure SC-11, 21 March 2014, tendered 31 March 2017, p. 1.
- <sup>91</sup> Exh.753.000, Statement of Mark Payne, 11 May 2017, tendered 25 July 2017, para. 27; Exh.257.001, Statement of Franck Alcidi, 21 February 2017, tendered 31 March 2017, paras 10-11; Exh.257.002, Annexure FA-1 to Statement of Franck Alcidi, tendered 31 March 2017.
- <sup>92</sup> Commission staff members inspected the youth detention centre on 7 December 2016 and 29 June 2017. See also Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 212; Exh.321.017, Annexure 16 to Statement of John Elferink, 30 March 2017, tendered 27 April 2017, p. 143.
- <sup>93</sup> Transcript, Keith Hamburger, 5 December 2016, p. 314: line 39 – p. 316: line 5; Commission staff members inspected the site on 7 December 2016 and 29 June 2017.
- <sup>94</sup> Exh.031.002, Annexure 1 to Statement of Keith Hamburger, Report 'A Safer Northern Territory Through Correctional Interventions' [REDACTED], 31 July 2016, tendered 5 December 2016, pp. 21, 142. Mr Hamburger recommended that alternative detention accommodation be found and the current facility be closed as quickly as possible (recommendation 142). The Northern Territory Government agreed in principle with this recommendation: Exh.034.002, Schedule A to the Statement of Jeanette Kerr, 'A Safer Northern Territory through Correctional Interventions' – Response to Recommendations – Youth Only, 5 December 2016, tendered 6 December 2016, p. 3.
- <sup>95</sup> Transcript, Keith Hamburger, 6 December 2016, p. 415: lines 5-7.
- <sup>96</sup> Transcript, Keith Hamburger, 5 December 2016, p. 314: line 39 – pp. 316: line 5.
- <sup>97</sup> Exh.031.002, Annexure 1 – Report 'A Safer Northern Territory Through Correctional Interventions' [REDACTED], 31 July 2016, tendered 5 December 2016, p. 147; Transcript, Keith Hamburger, 5 December 2016, pp. 315: line 31 – p. 316: line 5.
- <sup>98</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para 46; Transcript, Russell Caldwell, 29 March 2017, p. 2172: lines 25-35; Exh.072.005, Annexure JF-4 to Statement of John Fattore, 23 February 2017, tendered 14 March 2017 p. 0036; Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 15 September 2013, tendered 31 March 2013, p.0071.



- <sup>99</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 173-174.
- <sup>100</sup> Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para 26.
- <sup>101</sup> Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 15 September 2013, tendered 31 March 2013, pp. 0071.
- <sup>102</sup> Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 15 September 2013, tendered 31 March 2013, p. 0071.
- <sup>103</sup> Mr Hamburger also observed a lack of privacy at Don Dale Youth Detention Centre: Transcript, Keith Hamburger, 5 December 2016, p. 314: line 42.
- <sup>104</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 173-174.
- <sup>105</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 80; Transcript, Salli Cohen, 24 April 2017, pp. 2862: line 43, pp. 2867: line 2; Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para 249.
- <sup>106</sup> Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para 218. See also Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para 254.
- <sup>107</sup> Exh.757.001, Safety Report & Recommendations – Alice Springs Juvenile Detention Centre, 25 November 2016, tendered 22 August 2017, p. 8.
- <sup>108</sup> Exh. 757.001, Safety Report & Recommendations – Alice Springs Juvenile Detention Centre, 25 November 2016, tendered 22 August 2017, p. 8.
- <sup>109</sup> Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para 105; Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para 93.
- <sup>110</sup> Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para 91; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 80.
- <sup>111</sup> Transcript, Salli Cohen, 24 April 2017, p. 2866: line 43 – p. 2867: line 2; Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para 92.
- <sup>112</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para 48; Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para 119; Exh.321.017, Annexure 16 to Statement of John Elferink, 30 March 2017, tendered 27 April 2017, p. 84.
- <sup>113</sup> Exh.031.002, Annexure 1 to Statement of Keith Hamburger, Report ‘A Safer Northern Territory Through Correctional Interventions’ [REDACTED], 31 July 2016, tendered 5 December 2016, pp. 150-152; Transcript, Keith Hamburger, 5 December 2016, p. 338: line 42 – p. 339: line 9; Transcript, Keith Hamburger, 6 December 2016, pp. 378: lines 2-12; Transcript, Antoinette Carroll, 13 December 2016, p. 750 lines 18-24; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, paras 80-81; Exh.093.001, Statement of Christopher Castle, 7 February 2017, tendered 16 March 2017, para 51; Exh.321.017, Annexure 16 to Statement of John Elferink, 30 March 2017, tendered 27 April 2017, p. 84; Transcript, Ken Davies, 30 June 2017, p. 5434: lines 26-30; Exh.034.002, Schedule A to the Statement of Jeanette Kerr, ‘A Safer Northern Territory through Correctional Interventions’ – Response to Recommendations – Youth Only, 5 December 2016, tendered 6 December 2016, p. 4.
- <sup>114</sup> Transcript, Antoinette Carroll, 15 March 2017, pp. 1171: lines 35-46; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, paras 80-81; Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para 218; Exh.321.017, Annexure 16 to Statement of John Elferink, 30 March 2017, tendered 27 April 2017, pp. 84, 87.
- <sup>115</sup> Exh.211.012, Annexure SC-11, 21 March 2014, tendered 31 March 2017, p. 0104.
- <sup>116</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2958: lines 35-47; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para 108; Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para 218; Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 47-48; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, paras 80, 86; Exh.219.001, Annexure SC-5 to Statement of Salli Cohen, 16 August 2013, tendered 30 March 2017, p. 0650; Transcript, Ken Davies, 30 June 2017, p. 5402: lines 1-3; p. 5434: lines 26-30.
- <sup>117</sup> Exh.079.004, Annexure BC-3 to the Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, pp. 1-2. See also Transcript, Antoinette Carroll, 15 March 2017, p. 1169: lines 33-35.
- <sup>118</sup> Transcript, John Fattore, 14 March 2017, p. 1021: lines 5-8; Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para 77; Exh.211.012, Annexure SC-11 to Statement of Salli Cohen, 21 March 2014, tendered 31 March 2017, p. 0113.
- <sup>119</sup> Exh.219.001, Annexure SC-5 to Statement of Salli Cohen, 16 August 2013, tendered 30 March 2017, p. 2; Exh.211.012, Annexure SC-11 to Statement of Salli Cohen, 21 March 2014, tendered 31 March 2017, p. 6.
- <sup>120</sup> Transcript, Russell Caldwell, 29 March 2017, p. 2120: lines 42-44.
- <sup>121</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2959: lines 4-14; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, paras 124, 244.
- <sup>122</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2959: lines 4-14.
- <sup>123</sup> Exh.035.001, Witness statement of Mark Leonard Payne, 4 December 2016, tendered 6 December 2016, para 18. See also Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, paras 124, 244.
- <sup>124</sup> Exh.321.017, Annexure 16 to Statement of John Elferink, 30 March 2017, tendered 27 April 2017, p. 157-8; Exh.031.002, Annexure 1 to Statement of Keith Hamburger, Report ‘A Safer Northern Territory Through Correctional Interventions’ [REDACTED], 31 July 2016, tendered 5 December 2016, p. 149.
- <sup>125</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 80; Transcript, Ken Davies, 30 June 2016, p. 5402: lines 1-3; Transcript, Keith Hamburger, 5 December 2016, p. 339: line 2-9; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para 279. See also Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para 71.
- <sup>126</sup> Exh.096.003, Official Visitor report, 2 July 2009, tendered 17 March 2017, p. 2962; Exh.096.005, Ministerial brief in relation to Official Visitor report, 23 December 2009, tendered 17 March 2017, p. 2976; Exh.096.007, Official Visitor report, 22 March 2010, tendered 17 March 2017, p. 0293.
- <sup>127</sup> Transcript, John Fattore, 14 March 2017, p. 1021: line 10; Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15

- March 2017, para 69.
- <sup>128</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 3052: line 47 – p. 3053: line 3; Exh.437.000, Statement of Michael Vita, 11 January 2017, tendered 12 May 2017, para 14; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para 120; Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para 95; Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para. 119; Exh.219.001, Annexure SC-5 to Statement of Salli Cohen, 16 August 2013, tendered 30 March 2017, p. 0652, 0667.
- <sup>129</sup> Exh.232.001, MINC140117 – Memoranda to Cabinet Colleagues DCP and YJ STB Tab 265, 18 March 2014, tendered 30 March 2017, p.3.
- <sup>130</sup> Exh.219.001, Annexure SC-5 to Statement of Salli Cohen, 16 August 2013, tendered 30 March 2017, p. 0652; Exh.211.012, Annexure SC-11, 21 March 2014, tendered 31 March 2017, p. 0106.
- <sup>131</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 3018: lines 41-47; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 193;
- <sup>132</sup> Transcript, Ken Middlebrook, 26 April 2017, pp. 2971: lines 31-34.
- <sup>133</sup> Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, paras 18, 41-42, 58-60, 63, 78, 85-86, 157-198.
- <sup>134</sup> Exh.316.001, Statement of Ken Middlebrook, 1 March 2017, tendered 26 April 2017, paras 23, 25-26, 34; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 159; Exh.219.001, Annexure SC-5 to Salli Cohen, 16 August 2013, tendered 30 March 2017, pp. 0666-0667. See also Exh.437.002, Annexure 2 to Statement of Michael Vita, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 12 May 2017, pp. 21, 50; Exh.654.010, Review into Security Arrangements Don Dale Youth Detention Centre, April 2017, tendered 30 June 2017, pp. 12-13.
- <sup>135</sup> Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, paras 58-60; Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para 161; Exh.437.002, Annexure 2 to Statement of Michael Vita, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 12 May 2017, p. 50.
- <sup>136</sup> Exh.316.001, Statement of Ken Middlebrook, 1 March 2017, tendered 26 April 2017, para 23; Transcript, John Elferink, 27 April 2017, p. 3124: lines 40-41; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 41; Exh.219.001, Annexure SC-5 to Statement of Salli Cohen, 16 August 2013, tendered 30 March 2017, pp. 0667; Exh.437.002, Annexure 2 to Statement of Michael Vita, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 12 May 2017, p. 50.
- <sup>137</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para 161; Transcript, Derek Tasker, 14 March 2017, pp. 1053: lines 3-39; Exh.437.002, Annexure 2 to Statement of Michael Vita, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 12 May 2017, p. 51.
- <sup>138</sup> Transcript, Derek Tasker, 14 March 2017, pp. 1053: lines 3-39; Exh.437.002, Annexure 2 to Statement of Michael Vita, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 12 May 2017, p. 51; Transcript, Barrie Clee, 15 March 2017, p. 1151: lines 10-30.
- <sup>139</sup> Transcript, Barrie Clee, 15 March 2017, p. 1151: lines 10-30.
- <sup>140</sup> Exh.654.010, Review into Security Arrangements at Don Dale Youth Detention Centre, April 2017, tendered 30 June 2017, pp. 12-13.
- <sup>141</sup> Submission, Northern Territory Government, 23 May 2017, para 78.
- <sup>142</sup> Transcript, Keith Hamburger, 5 December 2016, p. 316: lines 13-19.
- <sup>143</sup> Exh.321.017, Annexure 16 to Statement of John Elferink, 30 March 2017, tendered 27 April 2017, p. 139.
- <sup>144</sup> Transcript, Derek Tasker, 15 March 2017, p. 1087: lines 35-45; p. 1088: lines 20-25.
- <sup>145</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 42, 46, 150-153; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, paras 50, 170.
- <sup>146</sup> Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 15 March 2013, tendered 31 March 2013, pp. 0071.
- <sup>147</sup> Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 15 March 2013, tendered 31 March 2013, p. 0088.
- <sup>148</sup> Exh.321.017, Annexure 16 to Statement of John Elferink, 30 March 2017, tendered 27 April 2017, p. 61, 65.
- <sup>149</sup> Exh.263.001, Statement of Keith Williams, 13 February 2017, tendered 31 March 2017, para 39; Exh.321.017, Annexure 16 to Statement of John Elferink, 30 March 2017, tendered 27 April 2017, p. 30, 36-37, 45, 60-61, 64-65.
- <sup>150</sup> Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, paras 42-43, 166-167; Exh.316.001, Statement of Ken Middlebrook, 1 March 2017, tendered 26 April 2017, paras 22-24; Transcript, Ken Middlebrook, 26 April 2017, p. 2957: lines 39-43; Exh.321.017, Annexure 16 to Statement of John Elferink, 30 March 2017, tendered 27 April 2017, p. 36.
- <sup>151</sup> Exh.321.017, Annexure 16 to Statement of John Elferink, 30 March 2017, tendered 27 April 2017, p. 45. See also Exh.263.001, Statement of Keith Williams, 13 February 2017, tendered 31 March 2017, para 39.
- <sup>152</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2957: line 39 – p. 2958: line 4.
- <sup>153</sup> Exh.172.001, Statement of James Sizeland, 17 February 2017, 27 March 2017, para 138. See also Exh.321.017, Annexure 16 to Statement of John Elferink, 30 March 2017, tendered 27 April 2017, p. 37, 61.
- <sup>154</sup> Transcript, Ken Davies, 30 June 2017, p. 5434: lines 30-33.
- <sup>155</sup> Exh.111.001, Statement of AX, 17 February, tendered 21 March 2017, paras 34.
- <sup>156</sup> Exh.319.001, Statement of Ken Middlebrook, 6 March 2017, tendered 26 April 2017, para 46.
- <sup>157</sup> International standards provide that the physical environment of detention facilities for juveniles should be in keeping with the rehabilitative aim of residential treatment with due regard for privacy, sensory stimuli, opportunities for association with peers and participation in sports: Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, article 32, pp. 4; Australian standards require that facilities provide a physical environment that is safe, secure and promotes rehabilitation, physical resources are properly maintained and kept in working order and facilities provide a safe and healthy work environment: Exh.283.232, Juvenile Justice Standards 2009, tendered 31 March 2017,



- pp. 8. Further, superintendents, who are appointed by the Commissioner of Correctional Service, are responsible for the physical welfare of detainees and for the maintenance and efficient conduct of the detention centre: see *Youth Justice Act* (NT) s 151(2), 3(d).
- <sup>158</sup> See for example, Transcript, John Elferink, 27 April 2017, pp. 3126: line 32 – p. 3127: line 10; Transcript, Conan Zamolo, 20 March 2017, p. 1400: lines 31-44; Transcript, Ben Kelleher, 21 March 2017, p. 1543: lines 33-41; Transcript, Russell Caldwell, 29 March 2017, p. 2126: lines 12-34; Transcript, Salli Cohen, 24 April 2017, p. 2807: lines 43-47.
- <sup>159</sup> See for example, Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para 16; Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para 31; Transcript, Dylan Voller, 12 December 2016, p. 680: lines 24-28.
- <sup>160</sup> Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 31; Transcript, Dylan Voller, 12 December 2016, p. 680: lines 24-28; Exh.102.001, Statement of BN, 14 February 2017, tendered 20 March 2017, paras 73-83; Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, paras 35, 38, 40 and 56; Exh.065.001, Statement of Jamal Turner, 21 February 2017, tendered 13 March 2017, para 61. But see also Transcript, Barrie Clee, 15 March 2017, pp. 1151: line 45 – p. 1152: line 17.
- <sup>161</sup> Exh.321.017, Annexure 16 to Statement of John Elferink, 30 March 2017, tendered 27 April 2017, p. 84, 87, 96, 98.
- <sup>162</sup> Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 15 September 2013, tendered 31 March 2017, pp. 0071.
- <sup>163</sup> Exh.437.002, Annexure 2 to Statement of Michael Vita, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 12 May 2017, pp. 64-65.
- <sup>164</sup> Exh.319.001, Statement of Ken Middlebrook, 6 March 2017, tendered 26 April 2017, para 45.
- <sup>165</sup> Exh.321.001, Statement of John Elferink, 31 March 2017, tendered 27 April 2017, para 45.
- <sup>166</sup> Transcript, John Elferink, 27 April 2017, p. 3124: lines 26-31.
- <sup>167</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 82; Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para 46; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, paras 98-101; Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, paras 28-29; Closed court transcript, BH, 21 March 2017, pp. 5: lines 10-13; Exh.075.001, Statement of Derek Tasker, 16 February 2017, tendered 14 March 2017, paras 59-60; Closed court transcript, AU, 23 March 2017, p. 5: lines 39-45; Transcript, Dylan Voller, 12 December 2016, p. 680: lines 40-46; p. 681: lines 25-32; Exh.437.000, Statement of Michael Vita, 11 January 2017, tendered 12 May 2017, para 14; Exh.437.002, Annexure 2 to Statement of Michael Vita, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 12 May 2017, pp. 64-65.
- <sup>168</sup> Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 50; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, paras 98-99; Exh.111.001, Statement of AX, 17 February 2017, tendered 21 March 2017, paras 34-35.
- <sup>169</sup> Transcript, Dylan Voller, 12 December 2016, p. 680: lines 42-43; p. 681: lines 25-30.
- <sup>170</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, paras 27-30; Exh.111.001, Statement of AX, 17 February 2017, tendered 21 March 2017, para 35. See also Transcript, Derek Tasker, 15 March 2017, pp. 1090: line 34 – pp. 1091: line 39; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, paras 99, 103.
- <sup>171</sup> Transcript, John Elferink, 27 April 2017, p. 3124: lines 26-38.
- <sup>172</sup> Transcript, John Elferink, 27 April 2017, p. 3124: lines 26-38.
- <sup>173</sup> Transcript, John Elferink, 27 April 2017, p. 3124: lines 26-30.
- <sup>174</sup> Transcript, John Elferink, 27 April 2017, p. 3214: lines 42-43.
- <sup>175</sup> Transcript, Dylan Voller, 12 December 2016, pp. 680: lines 16-17; Transcript, John Fattore, 14 March 2017, pp. 1021: lines 13-15; Exh.243.001, Statement of BX, 14 February 2017, tendered 31 March 2017, para 20; Exh.065.001, Statement of Jamal Turner, 21 February 2017, tendered 13 March 2017, para 26.
- <sup>176</sup> Transcript, Dylan Voller, 12 December 2016, p. 680: lines 19-22.
- <sup>177</sup> Transcript, Jamal Turner, 13 March 2017, p. 921: line 13.
- <sup>178</sup> Exh.243.001, Statement of BX, 14 February 2017, tendered 31 March 2017, para 20.
- <sup>179</sup> Exh.111.001, Statement of AX, 17 February 2017, tendered 21 March 2017, paras 46-47.
- <sup>180</sup> Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para 27. See also Transcript, John Fattore, 14 March 2017, p. 1022: lines 17-21.
- <sup>181</sup> Exh.111.003, Annexure B to Statement of AX, 5 July 2012, tendered 21 March 2017, pp. 3.
- <sup>182</sup> Exh.111.003, Annexure B to Statement of AX, 5 July 2012, tendered 21 March 2017, pp. 3.
- <sup>183</sup> Transcript, Dylan Voller, 12 December 2016, pp. 680: lines 24-28.
- <sup>184</sup> Exh.096.007, Official Visitor report, 22 March 2010, tendered 17 March 2017, p. 0293.
- <sup>185</sup> Exh.219.001, Annexure SC-5 to Statement of Salli Cohen, 16 August 2013, tendered 30 March 2017, p. 0649, 0662.
- <sup>186</sup> See, for example, Transcript, James Sizeland, 28 March 2017, pp. 1970: line 1 – p. 1971: line 8.
- <sup>187</sup> Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 15 November 2013, tendered 31 March 2017, p. 0071.
- <sup>188</sup> Exh.321.001, Statement of John Elferink, 30 March 2017, tendered 27 April 2017, para 45; Transcript, John Elferink, 27 April 2017, p. 3132: lines 10-20; p. 3176: lines 22-35; Exh.219.001, Annexure SC-5 to Statement of Salli Cohen, 16 August 2013, tendered 30 March 2017, p. 0667.
- <sup>189</sup> Exh.211.012, Annexure SC-11 to Statement of Salli Cohen, 21 March 2014, tendered 31 March 2017, p. 0105.
- <sup>190</sup> See also Exh.654.010, Review into Security Arrangements Don Dale Youth Detention Centre, April 2017, tendered 30 June 2017, p. 11.
- <sup>191</sup> Exh.053.029, Annexure 19 – Own Initiative Investigation Report: Services Provided by the Northern Territory Department of Correctional Services to Don Dale Youth Detention Centre, Alice Springs Youth Detention Centre [REDACTED], 15 August 2016, tendered 14 December 2016, p. 32.
- <sup>192</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 200; Transcript, James Sizeland, 28 March 2017, pp. 1951: line 17; Exh.219.001, Annexure SC-5 to Statement of Salli Cohen, 16 August 2013, tendered 30 March 2017, p.

0667.

- <sup>193</sup> Transcript, Keith Hamburger, 5 December 2016, p. 318: lines 8-11.
- <sup>194</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para 55. See also Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para 40.
- <sup>195</sup> Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, para 93; Closed-court transcript, AB, 23 March 2017, p. 52: lines 1-6.
- <sup>196</sup> Exh.031.001, Witness Statement of Robert Keith Hamburger, 18 November 2016, tendered 5 December 2016, paras 15, 64-65; Transcript, Keith Hamburger, 5 December 2016, p. 316: lines 38-42; p. 317: lines 20-30.
- <sup>197</sup> Exh.031.001, Witness Statement of Robert Keith Hamburger, 18 November 2016, tendered 5 December 2016, paras 15, 64-65; Exh.031.002, Annexure 1 to Statement of Keith Hamburger, Report 'A Safer Northern Territory Through Correctional Interventions' [REDACTED], 31 July 2016, tendered 5 December 2017, p. 21, 142; Transcript, Keith Hamburger, 5 December 2016, p. 317: lines 20-30.
- <sup>198</sup> Exh.031.001, Witness Statement of Robert Keith Hamburger, 18 November 2016, tendered 5 December 2016, paras 17, 36-46.
- <sup>199</sup> Exh.031.002, Annexure 1 to Statement of Keith Hamburger, Report 'A Safer Northern Territory Through Correctional Interventions' [REDACTED], 31 July 2016, tendered 5 December 2016, pp. 147. See also Transcript, Keith Hamburger, 5 December 2016, p. 345: lines 20-22.
- <sup>200</sup> Exh.031.001, Witness Statement of Robert Keith Hamburger, 18 November 2016, tendered 5 December 2016, para 46.
- <sup>201</sup> Exh.759.001, Audit of accommodation facilities at Don Dale Youth Detention Centre, 4 August 2016, tendered 22 August 2017; Exh.758.001, Safety Report & Recommendations - Darwin, 21 November 2016, tendered 22 August 2017; Exh.757.001, Safety Report & Recommendations - Alice Springs Juvenile Detention Centre, 25 November 2016, tendered 22 August 2017.
- <sup>202</sup> Exh.033.001, Witness statement of Jeanette Kerr, 2 December 2016, tendered 6 December 2016, paras 29, 43-48; Transcript, Ken Davies, 30 June 2017, pp. 5401: lines 1-18; pp. 5434: lines 30-35; Exh.654.010, Review into Security Arrangements Don Dale Youth Detention Centre, April 2017, tendered 30 June 2017, pp. 5, 11-12.
- <sup>203</sup> Exh.033.001, Witness statement of Jeanette Kerr, 2 December 2016, tendered 6 December 2016, paras 29, 43-48; Transcript, Ken Davies, 30 June 2017, p. 5401: lines 1-18; p. 5434: lines 30-35.
- <sup>204</sup> Transcript, Ken Davies, 30 June 2017, p. 5401: lines 20-39; p. 5402: lines 3-9.
- <sup>205</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 151; Transcript, Salli Cohen, 30 March 2017, pp. 2377: line 42 – pp. 2378: line 2; Transcript, Salli Cohen, 24 April 2017, p. 2808: lines 1-6; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 48.
- <sup>206</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para. 139. See also Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 53.
- <sup>207</sup> Exh.316.001, Statement of Ken Middlebrook, 1 March 2017, tendered 26 April 2017, para 16.
- <sup>208</sup> Transcript, Keith Hamburger, 5 December 2016, pp. 318: lines 8-11; p. 349: lines 41-43.
- <sup>209</sup> Exh.093.001, Statement of Christopher Castle, 7 February 2017, tendered 16 March 2017, para 60.
- <sup>210</sup> Transcript, Jeanette Kerr, 8 December 2016, p. 525: line 13; Transcript, Ken Davies, 30 June 2017, p. 5440: line 34-35.
- <sup>211</sup> Transcript, Ken Davies, 30 June 2017, p. 5439: line 12-14.
- <sup>212</sup> Transcript, Jeanette Kerr, 8 December 2016, p. 501: lines 9-19.
- <sup>213</sup> Transcript, Jeanette Kerr, 8 December 2016, p. 525: lines 12-14.
- <sup>214</sup> Exh.635.000, New Darwin Youth Detention Centre Outline Design Brief, 22 December 2016, tendered 29 June 2017.

# 11

## DETENTION CENTRE OPERATIONS



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# DETENTION CENTRE OPERATIONS

## INTRODUCTION

There are a number of aspects of the operations of the youth detention centres, in addition to physical conditions, which created a set of circumstances under which other more significant failings of the system developed. They were able to achieve this in particular by creating an environment of unnecessary anxiety amongst detainees and which in turn has been acknowledged to set the circumstances for poor behaviour and more significant events. In this chapter, and the chapters that follow, a number of these behavioural and operational matters are explored. In this chapter the Commission focuses on the following discrete issues which emerged in the evidence:

1. A lack of information about the operations of the centre, a lack of up to date standard operating practices, which in turn led to inconsistent operating practices and lack of routine for the detainees
2. Transfers of detainees between the youth detention centres and without sufficient warnings and preparation causing distress and disconnection from family and support
3. Restrictions placed on detainees' contact with their families and the potential impact of these restrictions
4. The complexities and issues with classification systems and the behavioural management system used in the detention centre known as 'the token economy', and
5. Transfers to adult prisons which resulted in significant distress and on occasion improper treatment of detainees.

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## INFORMATION, ROUTINE AND CONSISTENCY

Children and young people in detention - like all children and young people - need to know the rules that they are expected to follow, have structure and regular routines, and be treated consistently. It is of particular importance that new detainees understand the rules of a detention centre into which they are received, and what to expect while they are there.

### The international and domestic framework

The *United Nations Rules for the Protection of Children Deprived of Their Liberty* (the Havana Rules) provide supplementary means of interpreting the more general rights contained in the *Convention on the Rights of the Child* (CRC) to which Australia is a party. They provide minimum standards which the United Nations General Assembly encourages States to regard as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.

The Havana Rules provide that:

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:
  - a. Information on the identity of the juvenile
  - b. The fact of and reasons for commitment and the authority therefor
  - c. The day and hour of admission, transfer and release
  - d. Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment
  - e. Details of known physical and mental health problems, including drug and alcohol abuse.
22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.
23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.
24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.
27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.<sup>1</sup>

The Havana Rules provide for a young person on admission to a detention facility to be given a copy of the rules governing the facility, a written description of their rights and obligations in a language they can understand, the contact for complaints and where to apply for legal assistance. If they are illiterate or not able to understand the written document the information should be conveyed in a manner enabling full comprehension. A further level of explanation is urged. The young detainee should be assisted to understand not only the regulations governing the internal organization of the facility but also the goals and methodology of the care to be provided as well as disciplinary requirements and procedures.

Section 150 of the *Youth Justice Act* (NT) embodies these human rights standards and requires that every child and young person entering detention have the rules and his or her rights and responsibilities explained to them as soon as possible after entry. This should include information about the consequences of breaching the rules and about how to make a complaint. The explanation must be given in a language and manner that the young person is likely to understand, having regard to the young person's age, maturity, cultural background and English language skills.<sup>2</sup> The *Youth Justice Regulations* (NT) further embody these human rights standards. Where the superintendent makes rules about the conduct of detainees the superintendent must post a copy in an accessible place and if a detainee is unable to read and understand the rules, similarly to the obligation supported on admission, they must be explained to the detainee.<sup>3</sup> This was also reflected in the policies and procedure manuals that applied to the detention centres in the Northern Territory throughout the relevant period.<sup>4</sup>

Section 150 of the *Youth Justice Act* does not specifically require that the ability of the child or young person to understand the rules, rights and responsibilities be assessed by reference to attributes associated with the person's known or apparent mental or physical health although it is implicit in the obligation to explain in a manner the young person is likely to understand.



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Throughout the relevant period, detention centres in the Northern Territory did not comply with the provisions of the *Youth Justice Act*, Youth Justice Regulations and their own policies and may not have complied with human rights standards which they embody. The approach to the admissions process was for the most part, ad hoc. The Commission has heard evidence that either:

- the centres' staff failed to explain the rules, rights and responsibilities
- the centres' staff failed to explain the rules, rights and responsibilities in a way that could be understood by the children and young people coming into detention, and to use interpreters where required, or
- the detainees could not recall being told about the rules, rights and responsibilities.<sup>5</sup>

Non-compliance with section 150 of the *Youth Justice Act* had significant consequences for the children and young people in detention.<sup>6</sup> The failure to understand the rules – and what might happen if they were breached – caused confusion and anxiety, and likely led to the unnecessary escalation of non-compliant or anti-social behaviours.<sup>7</sup> The experiences of AQ, BE and AN exemplify the consequences of these failures.

AQ was 13 years old when he was first admitted to the former Don Dale Youth Detention Centre.<sup>8</sup> He could not remember being provided with any information about how he was expected to behave or what the rules were.<sup>9</sup> He could not recall being given a booklet to read.<sup>10</sup> He said:

*'I can't remember being given any sort of information about how to behave in Don Dale, or what the rules were. I just did my best to try to be good.'*<sup>11</sup>

He said he learnt the rules just by being in the detention centre and by making mistakes such as swearing.<sup>12</sup>

BE was about 14 years old when he first went into detention. He told the Commission:

*'... I felt very scared. I was sad, lonely and stressed out.'*<sup>13</sup>

[...]

*No-one from the staff at Don Dale ever told me how long I was there for, or what to do. No one explained to me what the rules were.'*<sup>14</sup>

[...]

*When a kid comes into the juvenile prison, someone needs to explain why they are there and also what the rules are. Otherwise it's very confusing.'*<sup>15</sup>

AN gave evidence that when she first entered the centre she was 'in shock'.<sup>16</sup> She recalled being placed in a tiny cell where she was told she had to be strip searched. No one explained why. AN said she was made to take all her clothes off, and squat and cough. She felt 'embarrassed' and 'weird'.<sup>17</sup>

*'None of the staff explained to me what the rules were in detention. I learnt from the older girls that were detained there. I was pretty quiet the first couple of weeks. But then I started getting in trouble and things just got worse from there.'*<sup>18</sup>

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That the relevant statutory obligations were breached has been the subject of inquiry and complaint. Section 150 of the *Youth Justice Act* requires detainees to be told about their rights and responsibilities as a detainees.<sup>19</sup> A former superintendent of both the former and current Don Dale Youth Detention Centres told the Children’s Commissioner in November 2014 that children were not routinely told how to make a complaint to the Children’s Commissioner when they entered detention and that (at that time) they were ‘working on the likes of a handbook at the moment, in terms of orientation type of scenario’.<sup>20</sup>

In August 2015, the Children’s Commissioner recommended in an Own Initiative Investigation Report that the Department of Correctional Services implement policies and procedures about the rights and obligations of children and young people upon admission to a youth detention centre in compliance with the *Youth Justice Act*.<sup>21</sup> In May 2016, the North Australian Aboriginal Justice Agency requested the standard policies and procedures, including a detainee induction manual, with a follow up request made in August 2016.<sup>22</sup> It appears that the detainee induction manual was not provided as the standard operating policies and procedures were still in development.<sup>23</sup>

## Written material in admissions process

To the extent that written material was provided to detainees and was intended to explain the rules, rights and responsibilities of each detainee and discharge the obligations under section 150 of the *Youth Justice Act*, a standard handbook<sup>24</sup> intended for distribution to all detainees does not cater to the various ages, maturity levels, cultural backgrounds and English skills of new detainees. See for example, the standard handbooks provided to detainees at the former Don Dale Youth Detention Centre and the Alice Springs Youth Detention Centre in the first few hours of the admissions process.<sup>25</sup>

An over-reliance on written material during the admissions process failed to have adequate regard to the characteristics of the children and young people coming into detention in the relevant period. This admissions process failed to take into account factors that may have made comprehension difficult, such as age, literacy and English levels, and cognitive impairments.

The handbook was written in ‘plain simple English’ and contained ‘orientation material’ and other matters, including the complaints process and the Official Visitors Program.<sup>26</sup> From 2012 to 2016, the Alice Springs Youth Detention Centre relied upon the detainee handbook in the induction process.<sup>27</sup> Posters placed within the centres were also said to explain some of the rules for children and young people.<sup>28</sup>

However, many of the children and young people who came into detention in the Northern Territory in the relevant period would have been illiterate or otherwise unable to understand the material put before them.<sup>29</sup>

The experience of AS demonstrates how the admissions process failed. When AS entered the former Don Dale Youth Detention Centre he was among the youngest of those held in detention. He did receive information about the rules in the detention centre, but, due to his youth, he could not understand what was going on and mostly learnt from the older boys.<sup>30</sup>

To the extent the rules were set out in the various detainee handbooks, at least some of the information itself was deficient and demonstrated the lack of consistency that the young people came to expect in detention. Various handbooks told children and young people that:

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*Different officers have different approaches and as a detainee you will need to learn the different ways that officers deal with situations. This will help you predict what will happen to you if you behave poorly.*<sup>31</sup>

Expecting a child or young person to intuit officers' differing responses themselves is unrealistic, unfair and absurd in any circumstance. It was particularly unreasonable in circumstances where, for much of the relevant period, standard operating procedures at the detention centres were out of date, and different youth justice officers would 'do their own thing ad hoc' (see below, 'Standard operating procedures did not exist or were out of date').<sup>32</sup>

No witness who appeared at a public hearing attempted to defend such an obviously flawed approach. A former Officer in Charge at Alice Springs Youth Detention Centre responsible for issuing the booklet in Alice Springs agreed that telling children to work things out for themselves was an inappropriate message to send,<sup>33</sup> as did former Commissioner Ken Middlebrook.<sup>34</sup>

The 2016 version of the current Don Dale Youth Detention Centre handbook omitted the above passage. Instead it told children and young people that the information in the booklet 'may sometimes be different to what actually happens to you, but mostly it should paint you a picture of what you can expect'.<sup>35</sup>

## Children and young people with particular needs

There appeared to be no formal process in place to deal with children and young people who had particular needs upon admission. From this it might be inferred that they were expected, like other detainees, to learn the rules as they interacted in the centre.<sup>36</sup>

One former youth justice officer told the Commission that there were no 'special arrangements' for children and young people who could not speak English, where no youth justice officers or other staff members could speak their language. She could not recall the classification rules ever being explained in the relevant language to those detainees.<sup>37</sup>

The Commission received evidence that some staff members used other children and young people, or even family members, as 'interpreters' to help communicate detainees in Aboriginal languages.<sup>38</sup> However, it is not known how widespread this practice was. A former Officer in Charge of Alice Springs Youth Detention Centre said that while he was aware of the Aboriginal Interpreter Service in Alice Springs, he had never sought to make use of it<sup>39</sup> and on occasion had discouraged young people in the detention centre from speaking in their Aboriginal language.<sup>40</sup>

During the period 2011 to early 2017, there was no screening as to whether and to what extent children and young people entering detention had hearing difficulties and what impact any hearing difficulties may have had on a child or young person's ability to comprehend the rules and adjust to life inside a detention centre.<sup>41</sup> Whilst children and young people may have been asked upon admission whether they had identified any hearing problems such as discharge or pain, they were not regularly screened for hearing difficulties or given hearing tests on admission.<sup>42</sup>

Psychologist and hearing loss expert Dr Damien Howard estimated up to 90% of children in detention in the Northern Territory suffer some sort of hearing loss, with many also likely to suffer from active ear disease requiring medical intervention.<sup>43</sup> Absent an awareness of any hearing loss suffered by a detainee and accommodating those difficulties, it is likely that those detainees with hearing problems may have had difficulty understanding the rules and their rights and responsibilities.

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Deaf Indigenous Community Consultant Jody Barney, who worked with hearing-impaired boys in the former Don Dale Youth Detention Centre from 2006 to 2010, highlighted the importance of an appropriate admission process, including outlining the rules and expectations of the facility to detainees with hearing impairment.<sup>44</sup> Ms Barney told the Commission that a number of the hearing-impaired boys she worked with in the former Don Dale Youth Detention Centre did not have a proper understanding of why they were in the facility, and did not understand how the system worked in relation to the expectations and rules of the facility.<sup>45</sup> She said the boys often questioned her about what their rights were, and what they could and could not do.<sup>46</sup> Because young persons with hearing impairments were not aware of what was expected and what might happen to them while in detention, they were likely to become more passive or submissive or more agitated because they were not sure what was happening.<sup>47</sup> She said it *'frightens'* her to think that children and young people with hearing impairments were being admitted to the *'visually traumatic'* Berrimah facility, which she had visited when it was an adult correctional facility.<sup>48</sup>

The Commission heard that a young person with Fetal Alcohol Spectrum Disorder would respond better to information presented in *'small bites'* supplemented by visual aids, not just verbal information.<sup>49</sup> There is no evidence before the Commission that the admissions process in the relevant period was tailored to consider those needs. Further, staff members were not *'informed of the behaviours that [those detainees] could display'*<sup>50</sup> which may have indicated difficulties in comprehending the rules when explained or the handbook provided. One comment was *'[I] didn't know what [they] were doing with some of these children that came in.'*<sup>51</sup>

Early in 2015 was the first time an in-house psychologist had been employed at the current Don Dale Youth Detention.<sup>52</sup> The Commission heard evidence that at this time the psychologist identified a number of issues with the case management and assessment process, including for mental health and was active in attempting to reform the assessment and case management during her time at the current Don Dale Youth Detention Centre.<sup>53</sup> A former youth justice officer who worked at the former Don Dale Youth Detention Centre prior to 2015, told the Commission that there was *'absolutely no attention paid at all'* to mental health issues suffered by children upon admission to detention, whether through addiction or other cause such as isolation from family or lack of language.<sup>54</sup> The Commission has heard evidence that the psychologist who commenced at the current Don Dale Youth Detention Centre in 2015 had a positive impact on detainees.<sup>55</sup>

The Commission heard evidence from the Officer in Charge of Alice Springs Juvenile Holding Centre (Aranda House) from October 2009 to March 2011, later the Deputy General Manager at Alice Springs Youth Detention Centre, who said that there were no systems in place to actively diagnose mental health or cognitive problems early in his employment and that later in his tenure children were at times taken into town for assessments.<sup>56</sup>

The Commission notes that the admissions policy for youth detention centres in Queensland makes induction *'a priority and, unless exceptional circumstances exists, takes precedence over structured day attendance'*. The induction process requires children and young people to be advised of matters such as how they can access legal services and make complaints, what programs and supports are available to them, the routines of the day, the rules of the centre and the types of behaviours that detainees may be disciplined for. Further, staff are required to read the induction booklet with the child or young person and ensure he or she understands it.<sup>57</sup>

## Reform of admissions process

Since the Machinery of Government changes in 2016, there have been no changes to the policies,

procedures or guidelines followed by each youth detention centre to explain the rules of the centre to children and young people. Although the Acting Deputy Chief Executive of Territory Families, Jeanette Kerr, said there was an intention to 'make the rules available, in language, to young people in detention via their iPods',<sup>58</sup> this change has not yet occurred.

Territory Families accepts that the induction on entry, when children and young people were often in a state of shock, while important, was not sufficient.<sup>59</sup> Explanation of the rules may also require the use of interpreters.<sup>60</sup> Territory Families also accepts that information sessions for children and young people on their rights while in detention, conducted by independent organisations such as the North Australian Aboriginal Justice Agency, the Central Australian Aboriginal Legal Aid Service or Legal Aid, would be of assistance.<sup>61</sup>

While the Commission welcomes the commitment made by Territory Families to make changes in this area, improvements should be progressed as a matter of urgency to ensure that the *Youth Justice Act* is complied with and that the anxiety and stress on children and young people entering detention is minimised to the greatest extent possible.

## Finding

**The requirements of section 150 of the *Youth Justice Act* (NT), which embodies the principles contained in Rule 24 of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty relating to minimum standards of information which must be provided to detainees as part of the admission process, were not complied with. There was an ad hoc approach to the admissions process. From time to time:**

- the centres' staff failed to explain the rules, rights and responsibilities,
- the centres' staff failed to explain the rules, rights and responsibilities in a way that could be understood by the children and young people coming into detention, and to use interpreters where required,
- the admissions process failed to take into account factors that may have made comprehension difficult, such as age, literacy and English levels, physical impairments and cognitive impairments.

As a result of these failures, the experiences of some young people were more distressing than they needed to have been.

## Recommendation 11.1

Section 150 of the *Youth Justice Act* (NT) be amended to the following effect:

- the word 'health' is inserted between the words 'maturity' and 'cultural background'
- a new subparagraph is added to section 151(3): 'must take all reasonable steps to ensure section 150 of the *Youth Justice Act* (NT) is complied with', and
- develop an admissions process into youth detention centres comply with section 150 of the *Youth Justice Act*.

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## Standard operating procedures did not exist or were out of date

A lack of consistent rules and procedures for operating the centres meant that clear information could not be communicated to both staff and detainees.

As early as 2007, the standard operating procedures and centre policies at the former Don Dale Youth Detention Centre were out of date and did not reflect the current day-to-day operations.<sup>62</sup> The Commission has heard evidence that there was inconsistent treatment and application of procedures by youth justice officers to other staff members and detainees.<sup>63</sup> By 2011, one witness observed that the 'rule book' did not bear any resemblance to what they saw happening each day at the detention centre and staff members and detainees alike were told by senior youth workers to '*just do what I tell you*'.<sup>64</sup> Some of what was described in the 'rule book' (such as the separation of males and females) was not actually possible in the facilities as they existed (see Chapter 17, (Girls in detention)).<sup>65</sup>

Senior staff tended to run things 'as they saw fit', while the rules seemed to change from day to day depending on who was supervising.<sup>66</sup> Young people knew there was no consistency and that they could play staff members off against each other between shifts.<sup>67</sup> The atmosphere was confusing for both detainees and staff.<sup>68</sup> The same difficulties caused by inconsistency at the former Don Dale Youth Detention Centre were experienced at Alice Springs Youth Detention Centre.<sup>69</sup>

Efforts were made to update the former Don Dale Youth Detention Centre's procedures manual in 2011. Those updates were never signed off by management<sup>70</sup> and were not made available to the staff until at least 2014 when it appeared on the staff intranet (with a 'draft' watermark still in place).<sup>71</sup> By that time the version of the 2011 draft procedures manual was already out of date<sup>72</sup> and staff members were told to use it as a 'guide' only.<sup>73</sup>

Staff at the Alice Springs Youth Detention Centre told interviewers conducting an external review of youth detention in 2013 that the manuals and standard operating procedures were largely produced in Darwin and were '*not really appropriate for Alice Springs*'. They said they needed an operations manual '*that reflects what we are supposed to do within the limitation of our resources and facilities*' but no staff members were available to produce one.<sup>74</sup>

The Executive Director of Youth Justice in 2014 told the Commission that at that time it had been identified that the operating manuals were '*in critical need of updating*'.<sup>75</sup>

By the time of the gassing incident at the former Don Dale Youth Detention Centre in August 2014, the Professional Standards Unit noted there had been no current procedures manual for detention centres since 2011 despite audit recommendations, and that it was '*difficult to run any institution without clear procedures*'.<sup>76</sup>

After the gassing incident, the Manager of Strategic Development and Partnership who was not involved in the day-to-day operations of youth detention centres in the Northern Territory was tasked with developing a centre operations manual for the Holtze Youth Detention centre. She told the Commission that while developing the manual:

*'I did also speak to some of the senior youth justice officers to inform the manual. From my interactions with those officers, I formed the view that there was little uniformity in what the officers did in given situations, and instead there was a culture among the youth justice officers of simply going to Mr Sizeland and asking him to make a call or decision about how to respond to a given situation, rather than relying on knowledge of policies or procedures.'*<sup>77</sup>

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In January 2015, in his review of the Northern Territory Youth Detention System (Vita Report), Michael Vita found *'non-existent, outdated and inadequate detention centre procedures and standard operating procedures at Don Dale, Holtze and Alice Springs YDC's'*.<sup>78</sup> The review found that the procedures manual at Alice Springs had not been updated since at least 2009 and that resourcing and lack of time were the reasons given for the failure to update procedures.<sup>79</sup>

The Vita Report recommended, among other things, an immediate review of a central operational procedures manual for both detention centres in Darwin and Alice Springs.<sup>80</sup> It further noted that there should be one overarching Centre Procedures Manual that applied whether there was one detention centre or 50, which should be centrally maintained and updated. It was then up to each site to interpret the manual and put in place local policy, standard operating procedures and guidelines to reflect the manual.<sup>81</sup>

The failure to develop adequate procedures continued until at least May 2015 when the incoming Deputy Superintendent told Commissioner Middlebrook that the lack of standard operating procedures at Don Dale Youth Detention Centre was *'abhorrent'*.<sup>82</sup> While the former Assistant General Manager did not agree there had been a failure to implement procedures,<sup>83</sup> the incoming Deputy Superintendent's contemporaneous note is forcefully expressed and is unlikely to have been made erroneously.

The record of implementation of the Vita Report recommendations notes that a procedures manual for detention centres had been developed and promulgated.<sup>84</sup> Further, in July 2015, the then Commissioner of Correctional Services approved for release a number of directives (operational procedures) largely modelled on procedures used in adult corrections. This created a conflict with the youth detention procedures and contained inaccuracies given that they did not consider the *Youth Justice Act*, Youth Justice Regulations or other guiding standards (such as the Australian Juvenile Justice Administrators and the CRC).<sup>85</sup> In April 2017, a review of security arrangements at the current Don Dale Youth Detention Centre revealed that policies were in the process of being reviewed, and at least one review – for the Use of Restraints Directive – was complete. However, the centre continued to operate under directives and policies issued by the Department of Correctional Services. The prescribed review period for many of those directives had expired.<sup>86</sup>

The Chief Executive Officer of Territory Families told the Commission the security review highlighted that *'decisions were being made on the run'* at the detention centre. He agreed that the need to comply with existing directives and procedures had been reiterated to the staff since the security review which occurred around April 2017.<sup>87</sup>

The failure to create, maintain and update the operating procedures at youth detention centres in the Northern Territory during the relevant period is considered further in Chapter 23 (Leadership and management).

The Commission understands that Territory Families is planning a *'thorough and systemic redevelopment of all youth justice governance mechanisms, policies and procedures, guidelines, training manuals and processes, and information for young people in detention and their families'*.<sup>88</sup> An implementation date of 30 June 2017 was planned.<sup>89</sup>

While this approach is commendable, the Commission is concerned it will lead to further delay in the implementation of a cohesive and structured approach to the day-to-day operations of detention centres in the Northern Territory. It is difficult to see how the problems of the past can be avoided if the detention centres do not have, as soon as possible, a clear set of procedures that will bring consistency and predictability to the centres' operations, for the children and young people, and the staff.



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## Routines and consistency

A substantial body of research has found prison riots and escalations of behaviour are often driven by administrative issues such as a change in the rules without sufficient notice or the inconsistent application of rules and procedures.<sup>90</sup>

The Commission heard routines in the detention centres would constantly change.<sup>91</sup> Sometimes this was the result of a lack of adherence to policies and procedures, even when they were in place.<sup>92</sup>

Many witnesses spoke about how the lack of rules and consistency affected detainees' behaviour. The former trainer for youth detention said he believed that a lack of routine and consistency was one reason for an escalation in violence and misbehaviour at the former Don Dale Detention Centre from 2011 onwards.<sup>93</sup> From his contact with staff members in Alice Springs, he further understood that the same types of issues were experienced there.<sup>94</sup>

One former youth justice officer told the Commission that, in her view, changes in the culture at the former Don Dale Youth Detention Centre from mid-2011, including the inconsistent application of the rules, were the catalyst for the first serious disturbance at that centre on the evening of Christmas Day and the early hours of Boxing Day in 2011.<sup>95</sup> A report by the Professional Standards Unit following the gassing incident at the centre in August 2014 noted the lack of updated procedures and consistency between shifts may have been contributing factors<sup>96</sup> and concluded that:

*Most of these incidents were most probably entirely preventable with the use of appropriate communication and open interaction with the detainees combined with a regular routine to keep them occupied.*<sup>97</sup>

Young people also gave first-hand accounts of how frustrations over perceived unfairness and inconsistency caused them to act badly.<sup>98</sup>

AG said she thought the way the 'guards' (youth justice officers) treated the children and young people led them to behave badly and created situations where they would get out of control of the guards, 'like when they would get on the roof, or get out of their cell'.<sup>99</sup> She said her involvement in an incident in 2013 when she and a number of other young people broke into the roof cavity at the former Don Dale Youth Detention Centre was to 'call out for help' over the way the guards were treating the detainees. This treatment included calling the girls 'animals' and not giving the boys enough food.<sup>100</sup> She said no one ever asked why the young people had done what they did.<sup>101</sup>

Another young person said 'guards' making up their own rules was 'how arguments would start' and 'this is what all the detainees used to go off about, the rules changing all the time'.<sup>102</sup> BV said feeling like he did not know the rules is 'one of the hardest parts about being in Don Dale' and that 'it feels like you are always getting into trouble because you do not know what the rules are or they have changed'.<sup>103</sup>

BF told the Commission that after he broke his collarbone, different guards had different rules about the sling he was supposed to wear. He said:

*Some of the guards, mostly the older guards, would let me wear the sling, but most of the new guards didn't ... I remember sometimes when I was wearing the sling, I would be fined from my pocket money because I was doing something another guard had asked me not to do.*<sup>104</sup>

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Not only children and young people were affected by lack of consistency. Staff members at higher management levels, and the management styles they brought with them, changed regularly.<sup>105</sup> This created an unsettled and unpredictable workplace for the centre staff, with one former worker stating she *'didn't feel it was worth raising things with management after a few years because I could see nothing was going to change or be different'*.<sup>106</sup>

## Finding

**From at least 2010 onwards, detention centres in the Northern Territory operated without up to date standard operating procedures. The failure to keep operating procedures up to date led staff members to run the centres as they saw fit on a shift-by-shift basis. This created an atmosphere where staff and detainees did not know what they could or could not do in the detention centres, which, in turn, was a likely catalyst in the escalation in behaviour and critical incidents involving detainees.**

## TRANSFERS BETWEEN DETENTION CENTRES

### Transfer decisions

Two of the principles underpinning the *Youth Justice Act* are the desirability of maintaining connection to family as well as cultural identity.<sup>107</sup> The routine transfer of children and young people between Alice Springs and Darwin, 1,500 kilometres north, made this more difficult to achieve.<sup>108</sup> These transfers undermined the rationale for having two detention centres, to enable children and young people to remain closer to country and more easily connected with their culture and family.<sup>109</sup>

Transfers occurred regularly for a number of reasons including overcapacity at the Alice Springs Youth Detention Centre, the provision of age and gender appropriate housing, requests by detainees, accommodation of longer term or sentenced detainees and ensuring access to services.<sup>110</sup>

Transferring children and young people between Alice Springs and Darwin was also used as a means of managing difficult behavior. As a former Deputy Superintendent at Don Dale Youth Detention Centre acknowledged, some transfers were akin to simply moving the problem around.<sup>111</sup>

Transfers also made it more difficult for detainees to engage with legal representatives, community health and rehabilitation services and throughcare that may be available locally to them when they returned to their community.<sup>112</sup> This made rehabilitation of children and young people who were transferred less likely.

In making transfer decisions, detention centre managers were required to consider a range of factors including operational capacity, court appearances, requests from the child or young person and the best interests of the child.<sup>113</sup> The 'best interests of the child' included considering whether the child's needs could be met at the alternate facility, the child's behaviour, their profile and gender and whether the grouping of children within a facility placed the security of the centre at risk.<sup>114</sup> It did not include the desirability of maintaining a child's connection to their family and cultural identity.<sup>115</sup>

A former Executive Director of Youth Justice acknowledged that maintaining a child's connection to their family was not included in any protocol or directive.<sup>116</sup> Further, the former Executive Director of Youth Justice acknowledged that it was *'very, very hard to respect that principle of the Youth*

*Justice Act*’ as decisions were often made not only about the individual but on the basis of the entire population of the centre.<sup>117</sup>

In situations where the transfers were at the child or young person’s request or by consent there is some evidence to suggest that the individual interests of that particular child or young person were considered.<sup>118</sup> However, transfers because of behavioural concerns were ‘usually involuntary’.<sup>119</sup> Other than the general complaints processes, the Commission did not identify any avenue available to a detainee to appeal a decision to transfer and the escorts policy did not identify any procedure for appeal.<sup>120</sup>

## Transfer procedures

The Commission understands that the external escorts procedure was the only procedure applying to transfers. This largely focused on security measures when transferring children and young people between centres.<sup>121</sup> While the procedure provided that where practicable the detainee’s next of kin should be notified prior to the transfer and a visit arranged,<sup>122</sup> the procedure did not require staff to consider the best interests of the child when transferring children between centres. A requirement to consider the best interests of the child was only incorporated into policy on 23 December 2016 when Territory Families issued an interim written directive as outlined further below.<sup>123</sup>

Many children and young people in detention come from geographically isolated communities which are difficult to access in some seasons and have inadequate telephone and internet reception. In breach of procedure, some detainees were transferred without any notice or any opportunity for family members to visit them.<sup>124</sup> They described to the Commission their homesickness and the hardship at having their contact with family curtailed after they were transferred.<sup>125</sup>

*‘I didn’t know I was going to be moved out of Don Dale down to Alice Springs. No-one told me it was going to happen. They just woke me up and took me all of a sudden ... No-one told my family I was moving. They used to visit me regularly at Don Dale and I don’t have any family in Alice Springs ... I didn’t see my family for the whole time I was there. I remember calling my mum from Alice Springs. She was crying and hurt about me being in Alice Springs. That call made me feel bad and really sad. I didn’t want to contact her for a while because of that.’<sup>126</sup>*

AY

*‘I [was] moved from [the] juvenile detention centre [in Alice Springs] to Don Dale [redacted]. They didn’t tell me that I was leaving and I didn’t get to say goodbye to my family. They just moved me to Don Dale. I miss my family and find it hard not being able to communicate with them ... I don’t like it that I am in Darwin as I have no relatives here. I would prefer to be in Alice Springs where I have family.’<sup>127</sup>*

BC

*‘I believe I was transferred from Alice Springs and taken to Darwin twice by car and about 15 times by plane (either a charter plane or Qantas) ... I was never asked if I consented to being transferred from one centre to another. I was never told*

beforehand. I would get woken up and told to get my stuff together as I was being moved that day ...'

I wanted to be in Alice Springs near my family ... My mum had young children at the time too. It was very expensive for her to get to Darwin, and very hard for her to bring the young kids with her. Being away from my family made me feel sad. I felt like I had lost the main part of me. When I was transferred, I wouldn't have time to tell my mum and my family. I would have to wait a day or so after I arrived at the new detention centre to be able to set up Mum's number on the detention centre phone so I could ring her.<sup>128</sup>

Dylan Voller

'I was sent to Don Dale [redacted] after I got in trouble for trying to escape from Alice Springs detention. I tried to escape because I wanted to be with my family for Christmas and New Year. I missed Christmas in 2013 and 2014 because I was in detention. A lot of ceremony (men's business) takes place over the Christmas period and I missed my cousin's (father's side) ceremony while I was in detention one year. I got sick of being away from my family over Christmas so I tried to break out.

I missed my family and friends from [redacted]. I felt angry and lonely all the time because I couldn't see my family. I could not call my mother on the phone very much because the reception is not good where she lives. One time ... I got to speak to my mother, sister, nieces and nephews over a video screen. Later that month, my mother flew up to Darwin and visited me twice.

My family would visit me very regularly when I was in detention in Alice Springs, particularly my mother. I would ask the boss "why am I the one getting sent to Don Dale when none of these mob get family visits?" I didn't understand why I was getting sent to Don Dale when I was one of the few kids whose family visited them all the time. I didn't want to go to Don Dale because I didn't want to be away from my family.

I requested to be transferred to Alice Springs three times. I did this by filling out a 'Blue Slip' and giving it to my case worker. I was never told why these requests were rejected, or why I couldn't be transferred back to Alice Springs.<sup>129</sup>

BW



The physical experience of being transferred could also be humiliating and degrading.<sup>130</sup>

*'Each time I was sent to Don Dale and came back to Alice Springs I had to go through the Alice Springs and Darwin airports in handcuffs. I was by myself and usually had two guards with me. My hands were not covered up and I had to go through the main part of the airport. There were lots of people staring at me and it made me feel shame.'*<sup>131</sup>

BW

*'when they transferred me I was in the back of a paddy wagon by myself for the whole trip, which was more than 17 hours... during the day it was really hot and I found it hard to breath and felt dizzy. There was no breeze in the cage where I was kept.'*<sup>132</sup>

AY

In 2014, Minister for Correctional Services John Elferink was told about the harsh effects of transfers on children and young people:<sup>133</sup>

*'[Redacted] is 17 years old and is from Alice Springs, where his family resides, including his [redacted]. [Redacted] claims he has been placed in the Darwin facility due to a lack of places in Alice Springs. As [redacted] has a [redacted] and an aging grandma, with whom he is close, in Alice Springs, he is desperate to be rehoused there. He doesn't like communicating with his family through video link-ups and feels the allocated telephone times are inadequate to properly relate to his family.'*<sup>134</sup> Without sufficient communication with his family he feels very sad and upset being a long way from home.

*Next was a lad from Tennant Creek. His problems were d) loneliness, no countrymen or visitors and e) he desperately wanted to see his granny who lived in Alice Springs and was very ill.'*

In 2014 Mr Elferink proposed to Cabinet that all sentenced children and young people be automatically transferred from Alice Springs to Darwin.<sup>135</sup> Although the Minister consulted with the relevant departments and agencies including the Children's Commissioner, he had not consulted with the Alice Springs community.<sup>136</sup> At the same time, Mr Elferink told the then Northern Territory Correctional Services Commissioner Ken Middlebrook that his Cabinet colleagues would never agree to the level of funding he was seeking for the construction of purpose-built youth detention facilities in Alice Springs and Darwin, as the Department of Correctional Services had originally proposed.<sup>137</sup>

After this Commission was announced and responsibility for juvenile detention was transferred from the Department of Correctional Services to Territory Families, Territory Families made an interim determination that before transferring children and young people between youth detention centres consultation, must be had with the detainee, their legal representative, their case worker, their case manager and their parent or legal guardian if available. It also provides that this consultation take

place in a fair and transparent manner and that the primary factor in considering a transfer is the wellbeing and interests of the young person. This policy does not appear to have prevented transfers for 'operational reasons' such as where Alice Springs Youth Detention Centre is at capacity.<sup>138</sup>

## Recommendation 11.2

**Territory Families ensure that:**

- a child or young person is placed in a detention facility nearest to the place of residence of his or her family or carer,
- consultation prior to transfer occurs and this consultation take place in a fair and transparent manner with the primary factor being the wellbeing and interests of the young person, and
- transfers over long distances to or between detention centres should be conducted by air transport. If transfers occur by road sufficient breaks should be given, and:
  - drinking water must always be available to the detainee
  - toilet breaks are to be made as required and if the journey is anticipated to be longer than three hours, at least one toilet stop must be included, and
  - the transfer should not prevent the detainee being provided with a meal at least every 4 hours.

## RESTRICTIONS ON FAMILY CONTACT

Children and young people in detention have a specially protected right to have contact with their families. Article 37(c) of the CRC provides that 'every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age' and, in particular, 'every child deprived of liberty ... shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances'.<sup>139</sup>

International human rights rules prohibit preventing contact with family altogether when enforcing disciplinary sanctions and restrictive measures. Restrictions on the means of contact allowed are only to be enforced where it is strictly required to maintain security and order.<sup>140</sup>

Australian Juvenile Justice Standards promote the principle that as far as possible, children and young people should maintain contact with their immediate community because 'effective outcomes are more likely if links with family and significant others are sustained and community partnerships developed'.<sup>141</sup> The Youth Justice Act provides as a general principle in administering the Youth Justice Act:

*...that family relationships between a youth and members of his or her family should, where appropriate, be preserved and strengthened and a youth should not be withdrawn unnecessarily from his or her family environment...<sup>142</sup>*

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The Youth Justice Regulations include minimum requirements for contact with a friend or family member but most rely on the approval of the superintendent. The superintendent must allow a visit as soon as practicable after admission, and then, as practicable, at least one visit and one telephone call to be made or received per week.<sup>143</sup> However, additional visits and calls, and the conditions under which they occur, are at the discretion of the superintendent.<sup>144</sup>

Family contact in Northern Territory youth detention centres was interrupted by administrative and practical barriers.

The security classification system placed specific restrictions on family contact. Restrictions on the number of phone numbers a detainee could call, and the overall number of calls they could make was regulated by their classification.<sup>145</sup> The National Children's Commissioner suggested that since family contact is a basic human right it should not be tied to the classification system or incentives. Given the beneficial link between building communities to support children before and after their involvement with detention, she recommended undertaking a review to ascertain the effectiveness of withholding family connection as a means of enforcing discipline.<sup>146</sup>

Necessarily, an institution like a detention centre must have regulations about visiting times. Visiting hours at the Don Dale Youth Detention Centre were:

- Wednesdays and Thursdays 3:30-4:30pm
- Saturday 3:30-4:30pm, and
- Sunday 11:00am-12:00pm.

The superintendent could approve visits outside those times where it was established that a visitor had travelled a considerable distance to visit a detainee, or where a parent or close relative could only visit at limited times.<sup>147</sup> Similarly, case workers could organise visits out of hours for special reasons, such as family not normally residing in the area or if the young person had received 'bad news' and it was deemed appropriate by the case worker.<sup>148</sup>

The recollections of a number of young people about visits were varied but one young person reported time limits of one hour for each visit with family members consistent with the authorised visiting regime but, with a maximum of 1–2 visits per week. Friends of family could visit if they were over 18 years old, but otherwise had to be accompanied by an adult.<sup>149</sup> Another young person said that he was allowed to see visitors for only half an hour while a 'red shirt'.<sup>150</sup> Vulnerable Witness BN said, *'there was one point....when I wasn't allowed visits for 10 weeks. I was not told why. I think my mum tried to find out why.'*<sup>151</sup>

There were of necessity practical restrictions on telephone calls since there were a limited number of phones available. Caseworkers managed access to the phone system, and detainees would ask them to add and update phone numbers of family, friends and external agencies.<sup>152</sup> As of 2012, the higher the classification of the detainee the fewer family members the detainee was permitted to call.<sup>153</sup> The Commission is unaware of any evidence indicating a change in this restriction since 2012. Detainees could make calls only at certain times and under conditions set up by staff members including a consideration of the *'personal situation and attitude of the detainee'*.<sup>154</sup> The time needed to be convenient to the centre's routine.<sup>155</sup> Vulnerable Witness AS did not know initially that he was entitled to call family members which suggests his induction into the detention centre had been inadequate.



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*'When I first went to Don Dale, I didn't know that you could use a phone to call your family. When I did find this out, it took a couple of days to set up your account and put your numbers that you were allowed to call into the system. I didn't know my dad's number but it must have been on Corrections' system because someone put it on there for me...'*<sup>156</sup>

Although detainees theoretically could write as many private letters as they wished, those with high security classifications had to ask youth justice officers for pen and paper, and could access writing materials only in common areas and under supervision.<sup>157</sup> Youth justice officers could also read detainee's letters when there was a concern relating to security and the good order of the centre.<sup>158</sup> This had an inhibiting effect on at least one detainee who *'felt like there were some things that were personal that I could not write in these letters'*.<sup>159</sup>

Difficulties with family contact were exacerbated by inadequate facilities. At Aranda House, children and young people reported having visits with their family in the kitchen or a small area with the basketball hoop, with no privacy from other detainees.<sup>160</sup> There have not always been video link facilities at the Alice Springs Youth Detention Centre for children to stay connected to their families. There was no video link at Aranda House, while a video link was installed at the Alice Springs Juvenile Detention Centre approximately 12 months after the move to the current facility.<sup>161</sup> The Inspector of Custodial Services Western Australia said that, in his experience, technology such as Skype could be better used but is not a replacement for contact in person:

*'[W]e must never let technology take the place of human contact ... but it should be a supplement.'*<sup>162</sup>

The impact of such restrictions on family contact on children and young people was significant. Children and young people reported becoming very lonely, sad and angry without family visits, even if they were given access via video link.<sup>163</sup> One young person told of their experience of family contact at the former Don Dale Youth Detention Centre:

*'When I was in Don Dale my family came to visit every now and then, when they could. It was a bit hard for my mum to get there. She grew up in the bush and she doesn't really know about town life. She doesn't know how to drive and would have to walk from the bus stop in the heat. She is now pushing a walking frame so that makes it hard, too.'*

*Normally I am around my family all the time, and for me being away from my family was such a big shock – the first couple of weeks especially. The guards were telling me that I wasn't going to get out for 10–15 years. It felt no good hearing that. I was so worried that my mum would die while I was in there. She means everything to me.'*<sup>164</sup>

There was limited recognition of the opportunity that engaging with family offered to manage the behaviour of detainees. Whilst detention centre policies made reference to family being a relevant stakeholder when convening case management meetings to reconsider plans for a detainee, case management occurred infrequently (as set out in Chapter 19 (Case management and exit planning)).<sup>165</sup> One family member said that records inaccurately suggested that they had been involved and consulted in the case management of a detainee.<sup>166</sup> Whilst initial screening by case managers may involve some telephone communication with the family, family are not attendees

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at stakeholder meetings, and only attend case conferences for particularly complex individuals.<sup>167</sup> The failure to involve family effectively in case management is not in keeping with the principles of section 4(h) of the *Youth Justice Act*, 'that family relationships between a youth and members of his or her family should, where appropriate, be preserved and strengthened'.<sup>168</sup>

Transfers between youth detention centres without a formal system of family notification also created barriers to family contact. Some detainees were regularly transferred from Alice Springs to Darwin. There were no policies in place to ensure that family members were notified as a course of an impending transfer.<sup>169</sup> The Commission was told that a system was adopted in early 2017 to record when family members are notified of impending transfers.<sup>170</sup> While the need for family contact was one factor considered in undertaking a transfer, detention centre management also considered other factors including the detainee's remand date, sentence and behaviour.<sup>171</sup>

The Commission acknowledges that, as part of its reform program, Territory Families has committed, wherever possible, to keep young people near country and family and support family contact and engagement.<sup>172</sup> For example, draft Territory Families procedures provided to the Commission highlight the need for child protection and youth justice caseworkers to work together to facilitate contact with family for a child or young person in detention.<sup>173</sup>

## Findings

**Contrary to the intent of the *Youth Justice Act* (NT) and the *Youth Justice Regulations* (NT), the classification system and other disciplinary measures operated to restrict family contact for children and young people in youth detention.**

### Recommendation 11.3

**Restrictions on contact with family associated with security classification and behaviour management systems be removed.**

### Recommendation 11.4

**Specific and appropriate mechanisms and supports for detainees to maintain connection with family while in detention, such as communicating using video technology, be developed and promoted.**

### Recommendation 11.5

**Face-to-face visits with the families of detainees be facilitated through increased weekend visiting hours to strengthen and preserve family relationships.**

## MANAGING BEHAVIOUR AND SECURITY

Behaviour and security was managed at detention centres in a number of ways during the relevant period, including use of force, individual management plans and use of isolation. The following sections discuss the incentive scheme and security classification system that operated in detention centres during the relevant period.

### Incentive scheme – the ‘token economy’

During the relevant period, an incentive scheme in the form of a ‘token economy’ system was used in the youth detention centres. To encourage good behaviour, detainees could earn notional money if they behaved appropriately and purchase certain items with their earnings.<sup>174</sup> The system was similar to schemes that are often used in youth detention centres and adult correctional facilities ‘as a means of behaviour management’.<sup>175</sup>

#### Examples of items for purchase at the Alice Springs Youth Detention Centre in 2014<sup>176</sup>

- three-pack of boxer shorts (no singles available) – \$25.00
- comb – \$4.50
- shampoo, conditioner, body wash, moisturiser – \$6.00
- in-house singlets – \$10.00
- burgers – \$5.00
- CD walkmans – \$30.00
- music CDs – \$5.00
- replacement headphones, as marked – \$ 7.00 to \$20.00
- socks (locker item) – \$4.00
- pair of replacement batteries – \$1.00

Sums were also deducted from detainees’ ‘accounts’. Detainees were ‘charged’ a small amount for ‘rent’ (a document dated 2016 states \$1.50 per day) and they were fined for inappropriate behaviour.<sup>177</sup> For a time at least, fines included:

- \$1.00 fine for ‘feet on couch’
- \$3.00 fine for ‘swearing in front of staff’
- \$5.00 fine for ‘not wearing shoes during sport’ or ‘poor manners in the kitchen’, and
- \$10.00 fine for ‘altering or tearing up Token Economy sheet’.<sup>178</sup>

Detainees would also lose their balances in full if they were given an isolation placement.<sup>179</sup> One detainee lost about \$100 in earnings.<sup>180</sup> Fines are no longer used but loss of earnings for ‘de-escalation placements’ remains a feature of the current policy.<sup>181</sup>

The Commission heard that it was not appropriate to take away rewards earned and that punishment should be separate from incentive schemes. The Vita Report’s review of youth detention in the Northern Territory, following the tear gassing incident at the former Don Dale Youth Detention Centre on 21 August 2014, made the following comments:

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*There is evidence that shows that although an incentive scheme is an important tool in behaviour management, if not applied fairly and consistently it can actually have a negative effect on behaviour management. If a detainee senses that it is not being applied consistently between detainees or a staff member is using it to punish them then the effects can lead to further behavioural problems.*

*Although the review saw no evidence of it being used in this way I would recommend that a formal scheme is introduced that clearly separates the reward based system from a punishment system i.e. once a reward is earned by the correct scoring methods, it cannot be taken away.*

*Punishment for breach of centre rules or other inappropriate behaviour should be a separate course of action.<sup>182</sup>*

This view is consistent with principles of the 'Positive Behaviour Intervention and Support' (PBIS) framework, which is based on the idea of 'positive reinforcement' and 'aims to replace negative behaviours with positive behaviours' by reinforcing the 'replacement behaviours'.<sup>183</sup> It says positive reinforcement when a young person performs a desired behaviour 'explicitly teaches... preferred behaviours' whereas 'punitive consequences' fail to do so.<sup>184</sup> In its submission to the Commission, the Australian Psychological Society stated that it is 'well established that aversive and punishment-based interventions have little if any utility in bringing about long-term adaptive behaviour change'.<sup>185</sup>

The PBIS approach is that young people should be 'rewarded for displaying an appropriate behaviour, not punished for failing to display the behaviour'.<sup>186</sup> This makes a distinction between being unable to earn a reward and imposing a punishment: rewards 'are earned' and 'not removed'. If a young person fails to comply, they fail to earn the reward.<sup>187</sup> The idea is that young people will 'see the benefits of appropriate behaviour and choose to use these (rather than be forced to use them)'.<sup>188</sup> The PBIS approach allows for incentive schemes to be implemented which reinforce good behaviour.<sup>189</sup>

Dr Kelly Dedel, who monitored reforms to Ohio's youth detention system told the Commission about an effective incentive scheme used in Ohio where points earned by detainees for meeting behavioural expectations can be transferred into rewards such as food, TV time, later bedtimes, special activities and extended visits, but those privileges are lost when a detainee breaks a 'serious rule'.<sup>190</sup>

The Commission does not have enough evidence to say whether the incentive schemes currently in use in the Northern Territory's youth detention centres are working effectively to encourage positive behavioural change. It is important that the incentives schemes work well, given their capacity to support behavioural change and the potential for counter-productive effects, as noted by Mr Vita, if a scheme is not well-run. The Commission sees an opportunity for the Northern Territory Government to review the current schemes in consultation with detainees, to determine how effectively they are encouraging behavioural change and identify whether improvements to the structure or operation of the schemes could be made.

This would be an opportunity for detainees to take ownership of the behaviours they should be demonstrating, the rewards they can earn and the consequences of failing to behave as they should. The incentive schemes are more likely to be effective if detainees have had a say in how they operate and in particular in the rewards that they are able to earn and the behaviours that earn the rewards. At Reiby Juvenile Justice Centre in New South Wales, detainees' ideas for incentives, such as a

'good brand of body wash' and access to a 'games room program', have been implemented.<sup>191</sup> Dr Dedel also told the Commission it is important to make an incentives system 'as clear and simple as possible' and to minimise the scope for staff discretion:

*...the more opportunity there is for staff discretion in how to apply it, the more inconsistent the application. Inconsistent application causes frustration amongst the staff, and resentment amongst the kids. If the system is transparent the kids will buy into it. The strongest systems incorporate the child's progress toward treatment goals, along with meeting behaviour expectations.<sup>192</sup>*

### **Excerpt from Detainee Information Book, Alice Springs Youth Detention Centre dated 2016<sup>193</sup>**

#### **HOW DO I EARN MONEY?**

Your ability to earn money is totally dependent on your behaviour. If your behaviour is good you will earn more money than if your behaviour is poor. The responsibility is on you to determine how much you earn (up to \$4.90 a day).

There are three amounts of money a detainee can earn:

Unacceptable	\$0.00
Acceptable	\$0.20
Good	\$0.50
Excellent	\$0.70

If you just do what is required of you, without any problems you will earn \$0.20. If you choose to complain about the work you are asked to do, avoid doing the work and/or do a poor job you will receive \$0.00. [If] you are co-operative, helpful and complete the job with a minimum of fuss or instruction you will get \$0.50. If you complete extra jobs with no fuss you will get \$0.70.

It is up to the Juvenile Justice Office[r] and the Teachers to determine how much money you will earn for each job so if you want to earn a lot of money it might be a good idea to ask the Officers what they expect you to do for you to be able to earn money. It is better to know what is expected of you before you start work than to complain to the Officers that you have not been paid enough.

### **Recommendation 11.6**

**The incentive schemes currently in use in youth detention centres be reviewed with detainee input to:**

- **remove any elements which might be counter-productive**
- **ensure the schemes are effective at encouraging positive behavioural change**

- ensure that the behaviours detainees must exhibit to earn rewards are defined clearly for detainees in ways that they can understand easily, and
- ensure the scope for staff discretion and inconsistent application are minimised.

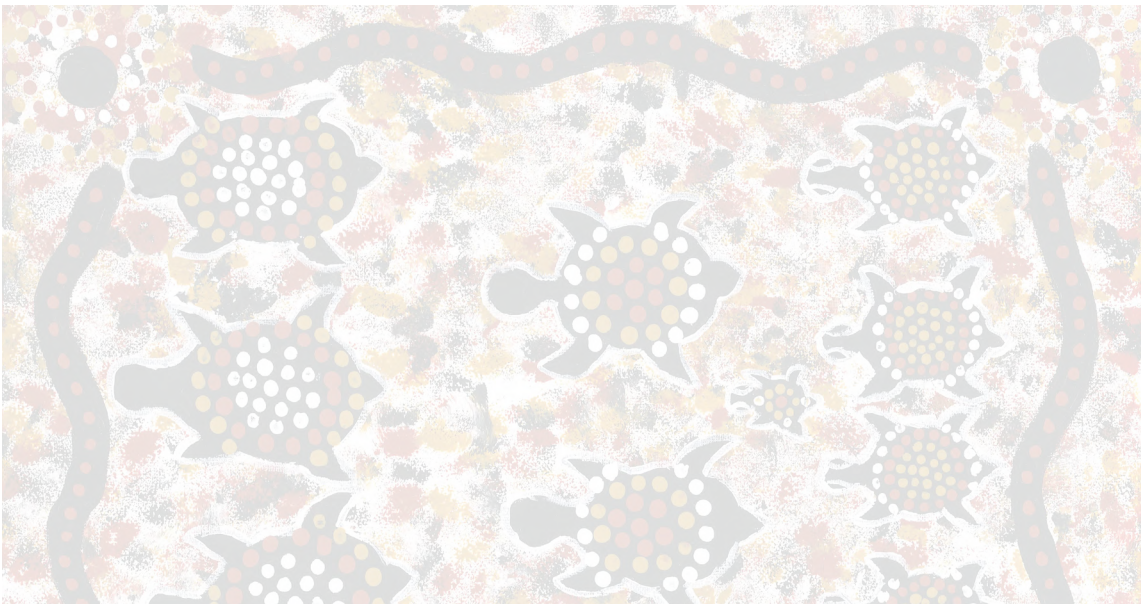
## The security classification system

A security classification system operated throughout the relevant period. Every detainee was given a security classification, for example Low, Medium or High, based on a structured risk assessment.<sup>194</sup>

The classification system informed all aspects of detention centre operations and was 'an integral component of *detainee behaviour management*'.<sup>195</sup> It affected day-to-day life in detention centres, including where detainees were accommodated, their access to activities and recreation times, lock-down times, who they could call and their clothing. Detainees wore different coloured shirts that indicated their security classification level.

This will soon change. Territory Families has started work to provide 'a wider range of options' for children and young people's dress to better reflect their personalities.<sup>196</sup> The Commission welcomes this as it has heard of the benefits of allowing children and young people in detention to choose their own clothes in Missouri and how this has contributed to the humanity of the facility.<sup>197</sup> Each security level involved benefits and restrictions, as shown in the Figure 12.1 below. Figure 12.1 includes the security levels under the current classification procedure for the current Don Dale Youth Detention Centre.

As outlined below, the current procedure provides that new detainees who are yet to be classified are subject to high levels of supervision as the risk level is unknown.<sup>198</sup> The Commission was told that despite the current policy, in practice new detainees default to medium security on admission and are only given a high security classification if recommended on initial assessment.<sup>199</sup> This was confirmed by a recent review of security measures at the current Don Dale Youth Detention Centre conducted in April 2017.<sup>200</sup>



**Figure 12.1: Security classification levels, corresponding shirt colours and examples of benefits and restrictions<sup>201</sup>**

Security level	Shirt colour	Examples of benefits and restrictions
Unclassified (new admission)	Black	<ul style="list-style-type: none"> <li>• Access to writing material under supervision in common areas only</li> <li>• Entitled to four telephone numbers in the PTS system (including three family members or guardians, and one friend or other personal contact)</li> <li>• Locked down no later than 7:30 pm, during the evening staff meal break</li> <li>• No access to sport or recreation and/or free time after dinner</li> <li>• No access to activities outside the centre</li> <li>• Subject to higher levels of supervision</li> </ul>
High	Red	<ul style="list-style-type: none"> <li>• Access to writing material under supervision in common areas only. No access to stationery, including scissors</li> <li>• Entitled to three telephone numbers in the PTS system (family members or guardians only). No contact numbers for friends or partners</li> <li>• No access to general population areas</li> <li>• No access to sport or recreation and/or free time after dinner</li> <li>• Locked down no later than 7.30 pm, during the evening staff meal break</li> <li>• No access to activities outside the centre</li> </ul>
Medium	Orange	<ul style="list-style-type: none"> <li>• Access to writing material and stationery under supervision in common areas only</li> <li>• Entitled to five telephone numbers in the PTS system (three family members or guardians, and two friends or other personal contacts)</li> <li>• Access to the television in the common area during free time</li> <li>• Access to sport and recreation and/or free time after dinner</li> <li>• Locked down at 8.30 pm</li> <li>• No access to activities outside the centre</li> </ul>
Low 2 Security	Blue	<ul style="list-style-type: none"> <li>• Access to writing material and stationery (pencils only) and appropriate arts and craft items in their room</li> <li>• Entitled to seven telephone numbers in the PTS system (three family members or guardians, and four friends or personal contacts)</li> <li>• Can have a single accommodation room, if available</li> <li>• Access to the television in the common area during free time</li> <li>• Access to sport and recreation and/or free time after dinner</li> <li>• Locked down at 9 pm</li> <li>• No access to activities outside the centre</li> </ul>
Low 1 Security	Green	<ul style="list-style-type: none"> <li>• Access to writing material and stationery (pencils only) and appropriate arts and craft items in their room</li> <li>• Entitled to six telephone numbers in the PTS system (three family members or guardians, and three friends or personal contacts)</li> <li>• Can have a single accommodation room, if available</li> <li>• Access to the television in the common area during free time</li> <li>• Access to sport and recreation and/or free time after dinner</li> <li>• Locked down at 9 pm</li> <li>• No access to activities outside the centre</li> </ul>
Open	Yellow	<ul style="list-style-type: none"> <li>• Access to reading and writing materials and stationery (pencils only) and appropriate arts and craft items in their room</li> <li>• Entitled to eight telephone numbers in the PTS system (three family members or guardians, and five friends or personal contacts)</li> <li>• Can have a single accommodation room, if available</li> <li>• Access to the television in the common area during free time</li> <li>• Access to sport and recreation and/or free time after dinner</li> <li>• Locked down at 10 pm</li> <li>• Can have a leave of absence to attend activities outside the detention centre for the benefit of reparation, reintegration and job readiness, where appropriately approved</li> </ul>



**Figure 12.1: Security classification levels, corresponding shirt colours and examples of benefits and restrictions (continued)**

*Note: At a minimum, all classifications have the following benefits and restrictions:*

- access to centre activities and resources
- reading materials in their room
- television in their room after unlock and until 10 pm Sunday–Thursday and 11.30 pm Friday–Saturday
- eligible for identified education and rehabilitation programs in line with their case management and in consultation with relevant stakeholders
- lights off at 10 pm Sunday–Thursday and 11.30 pm Friday–Saturday.

The same classification levels are used at the Alice Springs Youth Detention Centre.<sup>202</sup>

A primary function of the classification system was to ‘provide a structured process’ for determining a detainee’s access to programs and privileges within the detention centre.<sup>203</sup> The Commission was told that ‘all detainees have access to all programs’ but security classifications could affect how detainees participated in the programs. For example, those with a High security classification might do a program one-on-one rather than with the group of detainees with lower security classifications.<sup>204</sup>

Detainees’ security classifications were reviewed by a Classification Committee at different intervals and could change depending on their behaviour.<sup>205</sup> The former Superintendent of the current Don Dale Youth Detention Centre described the classification system as an ‘incentive-based system’:

*‘If detainees behave themselves then they are able to progress through the classification system and as they progress they are entitled to more privileges and so it encourages detainees to behave.’<sup>206</sup>*

He said the ‘main consequence of having a particular classification level’ was the different entitlements to telephone calls and visits and these ‘types of consequences [were] essential for the effective operation of the classification system as an incentive-based system focussed on managing behaviours within the centre.’<sup>207</sup>

The classification system was also part of the case management system.<sup>208</sup> Case management is discussed in Chapter 19 (Case management and exit planning).

Mr Vita was critical of the classification system he observed in 2015 during his review. He reported:

*In Darwin, it operates to a basic minimum standard and in Alice Springs is superficial in its implementation. In both cases it is not objective in its nature or consistently applied.’<sup>209</sup>*

Mr Vita was not called to give evidence and was not asked to explain his observations in further detail in writing. However, the Commission notes his experience in the development of the ‘objective classification system’ used in New South Wales.<sup>210</sup> Mr Vita recommended that the Northern Territory Government ‘introduce an effective and objective classification system that involves decision-making in a multidisciplinary team approach’.<sup>211</sup>

Territory Families confirmed that the recommendation was implemented as classification reviews are conducted by a multidisciplinary panel including case management staff, the shift supervisor and

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education staff. As a consequence, information provided by youth justice officers, education staff and case management staff is also referred to in the decision making process.<sup>212</sup>

Despite this change, the Commission heard evidence that the classification procedure was still not consistently applied. AF said:

*'In the new Don Dale, I didn't know how the classification worked because it didn't seem like they would change an inmate's classification even if they were behaved. I asked to go down a classification and I put in a request to speak to one of the guards to see if I could come down from a red shirt. They did speak to me about this once but I didn't get moved down.'*<sup>213</sup>

Further, while Case Managers responsible for administering the classification system gave evidence that they understood the classification system,<sup>214</sup> a review of security measures conducted in April 2017 identified that the Case Manager and the Superintendent involved in the incident the subject of the review 'appeared to have minimal working knowledge of the current classification directive'.<sup>215</sup>

To ensure a system is effective, it needs to be understood by children and young people and all staff members. In the time available the Commission was not able to investigate whether the classification system was operating effectively in relation to individual classification decisions. Territory Families has informed the Commission that the classification directive and manual is currently under review. Territory Families is reviewing the system in consultation with Danila Dilba Health Service and other stakeholders.<sup>216</sup> The review was ongoing at the time of publication. The following comments are provided to assist that process.

Chapter 28 (A new model for youth detention) sets out the approach to managing behaviour and security supported by the Commission supports. This approach includes:

- therapeutic interventions
- staff engaging positively with young people and modelling positive behaviour
- keeping young people occupied
- treating young people fairly, and
- use of a range of alternative behaviour management tools including an incentive system and requiring young people to model expected behaviours when they fail to exhibit them.

This approach to behaviour management and security must be the ultimate aim in youth detention facilities in the Northern Territory. The Commission acknowledges that it is a long-term aim. It will take time for the Northern Territory Government to develop the capacities needed to put this approach into practice effectively. Elements can and should be introduced incrementally, as the capacities of staff and systems are developed.

While the Northern Territory Government works towards this goal, a system for assessing and managing security risks within the detention facilities will be needed to protect the safety of detainees, staff and the community. The Superintendent of a detention facility has an obligation to 'ensure the safe custody and protection of all persons who are within the precincts of the detention centre'.<sup>217</sup>

The Commission considers that the focus of the review and modified system should be identifying and addressing risks to safety and security. The 'main function' of security classification is 'to indicate the level of risk a detainee poses to themselves, other detainees, centre staff and the community'.<sup>218</sup> The modified system should be consistent with the recommendations made in this report concerning management of detainees.

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Managing security risks will inevitably require imposing restrictions on those detainees who present a risk of aggressive or destructive behaviour. It is likely that these detainees will also be among those most in need of therapeutic assistance and support. The Commission is concerned that restrictions imposed for security reasons do not interfere with detainees' access to the individual care and support and the activities and programs that will help them to improve their behaviour and rehabilitate. It is recommended in Chapter 19 (Case Management and exit planning) that, regardless of security classification, every detainee has ongoing access to their case managers, case management programs and activities at all times.

The Commission's general view is that, to the greatest extent possible, restrictions imposed on detainees within a detention facility for security reasons should:

- be used only to address risks to the safety of detainees or staff or the security of the detention centre – they should not be used as punishment
- be used when no other alternative is reasonably available
- be 'the least restrictive' measures that are necessary to address the risk<sup>219</sup>
- be based on a comprehensive risk assessment that includes a range of relevant and reliable information, and
- be reviewed regularly and should not be in place any longer than is necessary to address the risk.

Restrictions on phone calls and visits should only be applied where this is reasonably necessary for security reasons.

It is also important that detainees see the system as fair. Research indicates that when young people perceive a system to be fair their behaviour tends to improve.<sup>220</sup> The Commission heard that some detainees considered that the classification system was applied unfairly.<sup>221</sup> The Children's Commissioner informed the Commission that during her time in that role since March 2015 (including time as acting Children's Commissioner) the '*most prevalent type of complaint*' to her office has included '*inadequate management and transparency of the classification assessment processes*'.<sup>222</sup> The Commission is not aware of the detail or outcome of those complaints, but the fact of the complaints is relevant.

This is because even if detainees were not actually treated unfairly, their perceptions of unfairness should not be ignored in assessing its effective operation. Perceptions of unfairness must be avoided as much as possible. While this always depends on detainees acting reasonably, managers and staff at detention facilities should do what they can to ensure the system is seen as fair, for example:

- exploring alternatives before imposing restrictions
- allowing detainees to be heard before decisions are made and, if necessary, to have support to communicate their views
- explaining decision-making processes and decisions clearly in a manner that detainees understand
- explaining to detainees what they need to do for the situation to change
- reviewing decisions at the earliest opportunity, and
- treating detainees with dignity and respect at all times.

The modified system that is put in place as a result of the current review should be reviewed every 12 months, so that adjustments can be made as detention facilities incrementally put into practice the approach to security that the Commission has recommended in Chapter 28 (A new model for youth detention).

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## TRANSFERS TO ADULT PRISONS

Children and young people in detention have particular needs and vulnerabilities which are very different from those of adult offenders. They have behavioural and emotional characteristics, and developmental issues which require specialised approaches. Importantly, the criminalisation of those issues must be prevented.<sup>223</sup>

For this reason, international human rights standards require the separation of children and young people from adults in detention. Article 37(c) of the CRC provides that *'every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so'*. This requirement is also reflected in other international instruments.<sup>224</sup> It is a fundamental rule because placing children and young people with adult prisoners compromises children and young people's basic safety, increases their chances of reoffending, and diminishes their chances of reintegrating into society.<sup>225</sup>

In the period covered by the Commission's Terms of Reference the legislative framework for youth detention in the Northern Territory has been amended to expand the discretion to allow children and young people to be held in adult prisons rather than reducing it.

When enacted, section 154 of the *Youth Justice Act* permitted the superintendent of a detention centre to apply to a magistrate to transfer a child to an adult facility where the superintendent was of the opinion that an *'emergency situation exists'* and that the detainee should be *'temporarily transferred to a prison to protect the safety of another person'*.<sup>226</sup> If the magistrate approved the transfer, the approval had to be recorded in writing as soon as practicable, and the transfer could be for a maximum period of 24 hours, subject to extension on further application.<sup>227</sup> Such transfers were entirely prohibited for children under the age of 15.<sup>228</sup>

This legislative framework is not consistent with the safeguards in Article 37(c) of the CRC which restricts such transfers unless they were considered to be in the child's best interest, as well as Article 10 of the International Covenant on Civil and Political Rights which provides that accused juvenile persons shall be separated from adults. The Commission notes that Australia has made a reservation to Article 10 that the obligation to segregate is accepted only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned.

This provision was replaced in 2014 with one that gave the superintendent of the detention facility a comparatively broad discretion to seek the temporary accommodation of detainees in adult prisons, for placements of up to 10 days.<sup>229</sup> Section 154 of the *Youth Justice Act* now provides that a superintendent of a detention centre may request a transfer if he or she *'considers it necessary'* to accommodate the child or young person at the adult facility. Detainees under the age of 15 may only be transferred if there is *'no practical alternative'*. However, this limit does not apply to older detainees.<sup>230</sup> The Commissioner for Correctional Services may approve a request for the child or young person to be held in an adult prison for up to 72 hours. A further extension of the placement can then be sought from a Local Court judge which enables the placement to continue for up to a total of 10 days. The amendments introduced an approval role for the Commissioner that had not existed previously, and the replacement provision tripled the period which could elapse before further approval for the adult placement had to be sought, from 24 hours to 72 hours.

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When this legislative amendment was introduced, Minister John Elferink said in the second reading speech that the earlier provisions were *'inflexible as they only allowed the transfer of an individual detainee, not groups, and only in cases where the safety of another person is or was threatened'*. The new process, he said, *'alleviates the administrative burden of having to return to court every 24 hours to have the transfer order confirmed, even if the circumstances have not changed'*.<sup>231</sup>

The Commission's investigations have revealed that, under both the former and the amended provisions, children and young people have been transferred to and housed in adult prisons on several occasions. Those transfers followed incidents such as escapes or attempted escapes, property damage, assaulting staff, threatening behaviour, and both the Boxing Day 2011 disturbance and the disturbance in the Behavioural Management Unit (BMU) on 21 August 2014 at the former Don Dale Youth Detention Centre.<sup>232</sup> It is noted that the Youth Justice Legislation Amendment Bill (NT)<sup>233</sup> proposes that section 154 of the *Youth Justice Act* now be repealed and replaced with a new provision which would provide that the CEO may, in accordance with an arrangement with the Sheriff agree to accommodate a youth who is in the custody of the sheriff at a detention centre.

During the relevant period departmental policies gave little guidance as to how superintendents were to apply section 154 of the *Youth Justice Act*.

A former executive director of youth justice in the Department of Correctional Services said that the elements considered in deciding whether to transfer a detainee may include whether:

- a detainee's behaviour has placed other detainees' and/or staff wellbeing at risk
- a detainee has seriously damaged part of a facility
- a detainee's behaviour has placed them at significant risk and it is believed they could be better managed in an adult facility
- the groupings of individual detainees within a facility has proven problematic and is identified as placing the security and good order of the centre at risk, and
- there has been a serious incident.<sup>234</sup>

Some transfers were made on the basis of incorrect information. In the cases of vulnerable witnesses AB and AC, the application for their transfer to the adult prison stated that they had participated in the incident on 21 August 2014, which was subsequently found to be incorrect.<sup>235</sup> The former commissioner, Mr Ken Middlebrook, conceded that they should not have been transferred to the adult facility.<sup>236</sup>

Notwithstanding the Department of Correctional Services' view that a transfer to an adult facility should not be driven by the lack of suitable detention centre infrastructure,<sup>237</sup> the underlying reason for other transfers was that detainees could not be managed properly due to the poor facilities. That may be inferred from Mr Middlebrook's concession that he was influenced to move the detainees to the adult facility because he could not discharge his responsibility of care to other detainees, staff and the community *'in being accommodated in failing or poor infrastructure'*.<sup>238</sup>

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## Underage transfers

Until the legislative amendments in 2014 transfers of young people under the age of 15 to an adult prison were entirely prohibited. Since the 2014 amendments, section 154(6) of the *Youth Justice Act* has had a carve-out to the prohibition such that children and young people under the age of 15 cannot be accommodated in an adult prison ‘*unless there is no practical alternative*’.

One young person aged under 15 is known to the Commission to have been transferred to an adult facility during the period of the Terms of Reference. Vulnerable witness AD was 14 years and five months old when he was transferred from the former Don Dale Youth Detention Centre to the Darwin Correctional Centre.<sup>239</sup> This followed an incident in the BMU. A magistrate’s approval was sought but, as this was before the 2014 amendments came into force,<sup>240</sup> the magistrate had no power to approve the transfer given AD’s age. Emails between the then Superintendent and the magistrate<sup>241</sup> revealed that AD’s age was not brought to the attention of the magistrate on the night the transfer was approved.<sup>242</sup>

Another detainee, vulnerable witness AS, was under 15 when he was transferred to the Darwin Correctional Centre.<sup>243</sup> This followed an incident where the detainee climbed onto the roof at the Holtze Youth Detention Centre in December 2014. The law at the time prohibited transfers of children under the age of 15 unless there was no practical alternative. The Holtze Youth Detention Centre was within the Darwin Correctional Centre during the period part of it was designated as a youth detention centre, and AS was transferred to the adult prison in the same precinct. It is not apparent to the Commission why Commissioner Middlebrook concluded that this transfer was the only ‘*practical alternative*’. Indeed, a youth justice officer found the decision ‘*surprising*’, ‘*because of [AS’s] age*’.<sup>244</sup> The Commission has not identified any written records of Commissioner Middlebrook’s decision explaining there was no practical alternative. This is despite the evidence Mr Middlebrook gave that:

... [for] any request to move a detainee from the youth detention centre to an adult correctional centre, I would have relied upon the reports and supporting documentation from the General Manager of Youth Detention and the Executive Director of Youth Justice.<sup>245</sup>

The detainee also gave evidence that he considered that ‘*there was a practical alternative because the time [he] got onto the roof before that, they put [him] in the isolation cells in the youth section and [he] couldn’t and didn’t get out of there*’.<sup>246</sup>

In an own motion investigation, the Northern Territory Children’s Commissioner analysed transfers made under section 154 of the *Youth Justice Act* in the period after September 2014 – that is, after the amendment – and found that ‘*the transfers that occurred during this period were justifiable*’, although her investigation did reveal deficiencies in recording the decisions and approvals.<sup>247</sup> Individual cases are not discussed in the report. The Commission is not able to determine conclusively whether it has identified all instances of underage transfers. The Commission identified another potential instance of an underage transfer from the material provided to it by the Northern Territory Government, but was told by the Northern Territory Government that no such transfer occurred and that the issue identified by the Commission arose because there had been errors in the information the Northern Territory had provided to the Commission.<sup>248</sup>

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The importance of respecting the universally accepted principle of separation should have given rise to the utmost care to ensure the discretion to transfer children into adult correctional facilities was exercised lawfully, appropriately and for reasons that were properly documented.

## Treatment of young people in adult prison

In order to meet the requirements of the *Youth Justice Act* that a detainee be kept separate from all other prisoners – including youth prisoners<sup>249 250</sup> – once in an adult centre, detainees were, on at least some occasions, placed in the adult isolation cells or separate cells in the adult High Security Unit.<sup>251</sup> Predictably, this was an unsettling experience. Children and young people gave evidence about feeling scared<sup>252</sup> and being placed in close proximity to adult prisoners in the prison.

*'I was worried about going into the adults section, because to get to my cell, I had to walk past a couple of adult prisoners who were mopping up and doing things around the cell. I was worried that they would run at me and bash me and that the guard who was taking me to the cell wouldn't do anything about it. I just kept my head down and tried not to look them in the eye. While I was there I was held in isolation and the guard told me that he would "slam" me if I made a clicking sound at him.'*

Vulnerable witness, AS's, recollection of how he felt in an adult prison<sup>253</sup>

When a child is in an adult facility, the provisions of the *Youth Justice Act* still remain in force. Two adult correctional officers who worked with young people held in adult prisons told the Commission that they did not know that the *Youth Justice Act* applied to young people in adult prisons, and in any event did not know what the *Youth Justice Act* required.<sup>254</sup> In a written submission to the Commission, the Northern Territory Government said that the fact that these officers did not know about the relevant legislation governing the treatment of juveniles 'went nowhere' and was 'hardly surprising' because those officers would have instead relied on directives and procedures which were based on the relevant legislation.<sup>255</sup> This submission is not accepted. One of those same officers who gave evidence to the Commission acknowledged that there were directives and procedures, but said that the directive had 'not a lot of information', that the procedures 'didn't contain a lot of specifics' and that they thought specific procedures needed to be introduced.<sup>256</sup>

## Use of spit hoods during a transfer from Berrimah Adult Prison

A former Superintendent said that during his time, detainees were removed from the former Don Dale Youth Detention Centre and transferred to adult prison by correctional officers.<sup>257</sup> When the detainees were returned to the detention centre they were wearing spit hoods, and the Superintendent was told that this was 'standard operating procedure'.<sup>258</sup> Some of these young people were not misbehaving before the transfer and at least three were not known spitters.<sup>259</sup> The version of the *Youth Justice Act* in force at the time did not permit the use of spit hoods as a matter of course when moving young people.

On 21 March 2017, the Supreme Court of the Northern Territory handed down its decision on claims



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for damages by four detainees for assault and battery, arising out of the gassing incident of August 2014.<sup>260</sup> Allegations included being placed in spit hoods, leg shackles and handcuffs by adult prison officers. The court awarded general and aggravated damages, for individual plaintiffs in some instances for acts of battery, including being placed in a spit hood while being transported to the medical area at the Berrimah Prison on 22 August 2014 and while travelling to the Holtze Youth Detention Centre on 25 August 2014.

The Northern Territory Government has advised that no youth detainees were transferred to or held in adult detention facilities between September 2016 and February 2017.<sup>261</sup> The Commission was also told that the Northern Territory Government has initiated a policy under which, despite the *Youth Justice Act* allowing a transfer under section 154 with authorisation of the Commissioner, the Northern Territory Government will only make a transfer after a successful application to a Local Court judge, and will only make such an application in an emergency circumstance – for example, in the event of a natural disaster or fire, or where accommodation blocks are damaged and there no alternative accommodation is available.<sup>262</sup>

While the policy change is to be welcomed, it is essential that the limits on the circumstances in which a child or young person can be transferred to an adult prison be located in legislation and therefore section 154 of the *Youth Justice Act* should be amended accordingly.

In the Commission's view, it is not sufficient that this matter is dealt with in policy without being the subject of legislation. Although statutory obligations have been repeatedly ignored by the Northern Territory Government during the relevant period, it is more likely that it will comply with a statutory obligation than one merely set out in a policy. As a consequence, it is the Commission's view that the current policy should be reflected in the *Youth Justice Act*.

## Findings

**Children and young people were transferred to, and held in, adult correctional centres during the relevant period. Some instances may have been avoided if correct information had been given to the decision-maker.**

- 1. The consequences of transfers have, at times, included the improper treatment of children and young people.**
- 2. Section 154 of the *Youth Justice Act* (NT) gives the management of a youth detention centre too wide a discretion to allow children and young people to be transferred to adult correctional facilities.**
- 3. Children under the age of 15 were transferred to and accommodated in an adult correctional facility.**

### **Recommendation 11.7**

Section 154 of the *Youth Justice Act (NT)* should be amended to the following effect:

- the transfer of a detainee to an adult facility occur only with the approval of a Judge, and
- for no more than five consecutive days unless a further order is subsequently sought within that five-day period to extend for a further five days and that multiple extensions are permitted.

### **Recommendation 11.8**

The *Youth Justice Regulations (NT)* be amended to require the superintendent of the youth detention centre at the time of transfer to ensure that the staff at the adult facility are made aware that the *Youth Justice Act (NT)* and its protections apply to the detainee.

### **Recommendation 11.9**

Section 148 of the *Youth Justice Act (NT)* should be amended to provide that if an adult facility is declared a youth detention centre that this declaration be for a period of no more than 7 days unless extended by a Judge.

## ENDNOTES

- <sup>1</sup> Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), tendered 11 October 2016, reg 21-25, 27.
- <sup>2</sup> *Youth Justice Act*, s 150.
- <sup>3</sup> Youth Justice Regulations, reg 65.
- <sup>4</sup> Exh.744.002, Annexure MP-2 to Statement of Mark Payne, 31 January 2017, tendered 25 July 2017, Attachment 15, para. 10.7(1) (Darwin); Exh.744.002, Annexure MP-2 to Statement of Mark Payne, 31 January 2017, tendered 25 July 2017, Attachment 2, para. 6.1(18) and (19) (Alice Springs); Exh.744.002, Annexure MP-2 to Statement of Mark Payne, 31 January 2017, tendered 25 July 2017, Attachment 17, para. 6.1(18) and (19) (Darwin) and the draft 2014 manual at Exh.744.321, Annexure MP-321 to Statement of Mark Payne, 31 January 2017, tendered 25 July 2017. Exh.741.000, Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, para. 65.
- <sup>5</sup> Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, paras 19, 36, 69; Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, paras 15-17; Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 15; Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 8; Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, para. 33; Exh.180.001, Statement of AQ, 14 February 2017, tendered 28 March 2017, paras 31 and 71-72; Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, paras 18-19; Exh.128.001, Statement of AU, 16 February 2017, tendered 23 March 2017, paras 25-26; Exh.251.001, Statement of BA, 17 February 2017, tendered 31 March 2017, para. 26; Transcript, BA, 31 March 2017, p. 7: lines 17 - 29; Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, paras 17 and 23; Transcript, BF, 13 March 2017, p. 3: line 40 – p. 4: line 7; Exh.068.001, Statement of BF, 23 February 2017, tendered 13 March 2017, para. 18; Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, paras 22-23; Exh.241.001, Statement of BV, 19 February 2017, tendered 31 March 2017, para. 20; Exh.365.000, Statement of CE, 21 February 2017, tendered 10 May 2017, para. 19; Exh.065.001, Statement of Jamal Turner, 21 February 2017, tendered 13 March 2017, para. 25; Transcript, BY, 16 March 2017, p. 1194: line 40 – 1195: line 7.
- <sup>6</sup> For example, a failure to comply with the rules on swearing could lead to time in the behavioural management unit, cf. Exh.064.074, 'Swearing charts and placements', 19 March 2012, tendered 30 March 2017.
- <sup>7</sup> Exh.094.001, Statement of Professor John Rynne, 1 March 2017, tendered 17 March 2017, paras 17, 23; Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para. 74; Exh.125.001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017, pp. 2, 5; Former youth worker justice officer, Louise Inglis, also told the Commission that the behaviour of children was often dependent on the staff that were working. She told the Commission that sometimes during her rostered shifts she felt that detainees were making progress and then she would have her rostered days off and upon her return often the young people would be in the cells or in 'red shirts' (high classification): Transcript, Louise Inglis, 24 March 2017, p. 1787: lines 31-46.
- <sup>8</sup> Exh.180.001, Statement of AQ, 14 February 2017, tendered 28 March 2017, para. 37.
- <sup>9</sup> Exh.180.001, Statement of AQ, 14 February 2017, tendered 28 March 2017, para. 31; Transcript, AQ, 28 March 2017, p. 3: lines 42-43.
- <sup>10</sup> Closed court transcript, AQ, 28 March 2017, p. 4: lines 1-9.
- <sup>11</sup> Exh.180.001, Statement of AQ, 14 February 2017, tendered 28 March 2017, para. 31.
- <sup>12</sup> Closed court transcript, AQ, 28 March 2017, p. 4: lines 11-16.
- <sup>13</sup> Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 15.
- <sup>14</sup> Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 17.
- <sup>15</sup> Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 75(8).
- <sup>16</sup> Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, para. 28.
- <sup>17</sup> Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, para. 28.
- <sup>18</sup> Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, para. 33.
- <sup>19</sup> *Youth Justice Act*, ss 150(1), 4(b).
- <sup>20</sup> Exh.283.229, Transcript, Russell Caldwell, 20141125 part 2, 24 November 2014, tendered 31 March 2017, p. 48: lines 31-35, 45-46.
- <sup>21</sup> Exh.053.028, Annexure 18 – Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre, 20 August 2015, tendered 14 December 2016, p. 50.
- <sup>22</sup> Exh.385.001, Email from Ms Musk to Commissioner Payne, 16 August 2016, tendered 12 May 2017.
- <sup>23</sup> Transcript, Amanda Nobbs-Carcuro, 12 May 2017, p. 3963: line 8 – p. 3964: line 9.
- <sup>24</sup> Exh.075.004, Annexure DT-3 to Statement of Derek Tasker, 16 February 2017, tendered 14 March 2017; Exh.741.303, Annexure MP-303 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017; Exh.741.304, Annexure MP-304 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017; Exh.741.305, Annexure MP-305 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017.
- <sup>25</sup> Exh.075.004, Annexure DT-3 to Statement of Derek Tasker, 16 February 2017, tendered 14 March 2017; Exh.741.304, Annexure MP-304 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017.
- <sup>26</sup> Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 227; Transcript, Michael Yaxley, 28 March 2017, p. 2071: line 23.
- <sup>27</sup> Transcript, Derek Tasker, 14 March 2017, p. 1060: lines 11-13; Exh.075.001, Statement of Derek Tasker, 16 February 2017, tendered 14 March 2017, para. 117.
- <sup>28</sup> Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 232; Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, para. 36; Exh.741.307, Annexure MP307 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017; Exh.741.308, Annexure MP-308 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017.

29 Transcript, Megan Mitchell, 11 October 2016, p. 55: lines 25-31; Transcript, Jeanette Kerr, 8 December 2016, p. 512: lines 11-26.

30 Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 18.

31 Exh.075.004, Annexure DT-3 to Statement of Derek Tasker, 16 February 2017, tendered 14 March 2017, p. 10; Exh.741.304, Annexure MP-304 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, p. 10; Exh.741.303 Annexure MP-303 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, p. 14.

32 Transcript, Leonard De Souza, 22 March 2017, p. 1617: lines 21-27.

33 Transcript, Derek Tasker, 14 March 2017, p. 1062: lines 10-13.

34 Transcript, Ken Middlebrook, 26 April 2017, p. 2961: lines 8-16.

35 Exh.075.004, Annexure DT-3 to Statement of Derek Tasker, 16 February 2017, tendered 14 March 2017, p. 4; Exh.741.303, Annexure MP-303 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, p. 2; Exh.741.304, Annexure MP-304 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, p. 2; Exh.741.305, Annexure MP-305 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, p. 2.

36 This appeared to be confirmed by Mr Tasker, who said that when he had a young person with those types of issues he would 'Mix them in with the other detainees, use the other detainees to help that particular detainee', and that they 'worked it out': Transcript, Derek Tasker, 14 March 2017, p. 1061: lines 16-25. See also Exh.026.001, Statement of Jody Barney, 9 October 2016, tendered 13 October 2016, para. 18.

37 Exh.153.001, Statement of Louise Inglis, 15 February 2017, tendered 24 March 2017, para. 82.

38 Transcript, Derek Tasker, 14 March 2017, p. 1060: lines 17-26; Transcript, Leonard De Souza, 22 March 2017, p. 1623: lines 21-27; p. 1623: lines 21-27; Exh.026.001, Statement of Jody Barney, 9 October 2016, tendered 13 October 2016, para. 18.

39 Transcript, Derek Tasker, 14 March 2017, p. 1113: lines 39-44.

40 Transcript, Derek Tasker, 14 March 2017, p. 1113: lines 36-37.

41 Exh.092.001, Statement of Christine Connors, 20 February 2017, tendered 16 March 2017, para. 26-27. This appeared also to be confirmed by Mr Tasker, who said when he had a young person with those types of issues he would 'Mix them in with the other detainees, use the other detainees to help that particular detainee', and that they 'worked it out', though he did recall detainees were taken to the hospital and Flynn Drive for hearing tests: Transcript, Derek Tasker, 14 March 2017, p. 1061: lines 16-25.

42 Transcript, Christine Connors, 16 March 2017 p. 1272: lines 2-22. Of the 20 or so detainees who had been screened in or about March 2017, three had failed the basic screen, with two having their audiology checked and returned normal results. Exh.092.001 Statement of Christine Connors, 20 February 2017, Tendered 16 March 2017, paras 26-27; Transcript, Derek Tasker, 14 March 2017, p. 1061: lines 6-25, though Mr Tasker recalled that detainees were taken to the hospital and Flynn Drive for hearing tests; Transcript, Louise Inglis, 24 March 2017, p. 1777: line 46 – p. 1778: line 2.

43 Transcript, Dr Damien Howard, 13 October 2016, p. 250: line 37 – p. 251: line 4.

44 Transcript, Jody Barney, 13 October 2016, p. 257: line 36 – p. 258: line 4.

45 Ms Barney recalled that she had worked with more than 10 boys in the former Don Dale facility: Transcript, Jody Barney, 13 October 2016, p. 263: line 12; Exh.026.001, Statement of Jody Barney, 9 October 2016, tendered 13 October 2016, para. 43.

46 Ms Barney recalled that she had worked with more than 10 boys in the former Don Dale facility, Transcript, Jody Barney, 13 October 2016, p. 263: line 12; Exh.026.001, Statement of Jody Barney, 9 October 2016, tendered 13 October 2016, para. 43.

47 Transcript, Jody Barney, 13 October 2016, p. 257: lines 42-44.

48 Transcript, Jody Barney, 13 October 2016, p. 261: lines 37-42. Ms Barney had visited the site of the current Don Dale facility when it was an adult correctional facility but not since it has been reopened as a youth detention facility: Transcript, Jody Barney, 13 October 2016, p. 264: lines 29-30.

49 Transcript, Dr James Paul Fitzpatrick, 8 December 2016, p. 536: lines 11-15.

50 Transcript, Barry Clee, 15 March 2017, p. 1138: lines 40-41.

51 Transcript, Barry Clee, 15 March 2017, p. 1138: lines 38 - 42.

52 Transcript, Amanda Nobbs-Carcuro, 12 May 2017, p. 3971: lines 7-20.

53 Transcript, Amanda Nobbs-Carcuro, 12 May 2017, p. 3971: lines 24-40.

54 Transcript, Louise Inglis, 24 March 2017, p. 1777: line 41 – p. 1778: line 2.

55 Transcript, Dylan Voller, 20 April 2017, p. 2671: lines 17-20.

56 Transcript, Barry Clee, 15 March 2017, p. 1138: lines 9-17; Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, paras 5.3, 5.5.

57 Policy: Youth detention – Admission of a young person YD-2-1, Department of Justice and Attorney General, Youth Justice, p. 2, <<https://publications.qld.gov.au/storage/f/2014-11-05T04%3A57%3A38.906Z/youth-detention-admission-of-a-young-person.pdf>>, accessed 31 October 2017.

58 Exh.738.000, Statement of Jeanette Kerr, 21 February 2017, tendered 25 July 2017, para. 54.

59 Transcript, Jeanette Kerr, 8 December 2016, p. 512: lines 35-38.

60 Transcript, Jeanette Kerr, 8 December 2016, p. 512: lines 35-38.

61 Transcript, Jeanette Kerr, 8 December 2016, p. 512: lines 42-46.

62 Transcript, Leonard de Souza, 22 March 2017, p. 1617: lines 11-19.

63 Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, paras 30, 32; Transcript, David Ferguson, 23 March 2017, p. 1706: line 33 – p. 1707: line 10; Transcript, David Ferguson, 23 March 2017, p. 1711: lines 29-34; Transcript, Derek Tasker, 14 March 2017, p. 1062: lines 1-13; Transcript, James Sizeland, 28 March 2017, p. 1985: lines 41-46; Transcript, Ken Middlebrook, 24 April 2017, p. 2961: lines 8-16.

- <sup>64</sup> Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, paras 27-32.
- <sup>65</sup> Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 29.
- <sup>66</sup> Exh.125.001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017, p. 2; Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 30; Transcript, Louise Inglis, 24 March 2017, p. 1788: lines 24-35.
- <sup>67</sup> Exh.125.0001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017 p. 2; Exh.064.119, RESPONSE TO FINDINGS AT ASJDC.doc, 16 November 2012, tendered 14 March 2017 p.1.
- <sup>68</sup> Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para. 33; Transcript, Leonard de Souza, 22 March 2017, p. 1633: line 36 – p. 1634: line 2; Exh.125.001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017, p. 2; Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 30.
- <sup>69</sup> Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para. 74. (Leonard de Souza was responsible for training for youth detention from January 2011).
- <sup>70</sup> Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, paras 38 and 48; Exh.192.001, Statement of Michael Yaxley, 28 March 2017, tendered 28 March 2017, para. 9; Exh.435.000, Statement of Phil Brown, 2 May 2017, tendered 12 May 2017, para. 69; Transcript, David Ferguson, 23 March 2017, p. 1708: lines 15-18.
- <sup>71</sup> Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para. 48.
- <sup>72</sup> Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para. 48.
- <sup>73</sup> Transcript, Leonard de Souza, 22 March 2017, p. 1632: lines 42-43.
- <sup>74</sup> Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, p. 16.
- <sup>75</sup> Exh.214.001, Statement of Salli Cohen, 23 March 2017, tendered 30 March 2017, para. 34.
- <sup>76</sup> Exh.125.001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017, p. 2.
- <sup>77</sup> Exh.264.001, Statement Kyla Raby, 16 February 2017, tendered 31 March 2017, para. 43.
- <sup>78</sup> Exh.024.024, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 13 October 2016, p. 13. The report noted that during the review, standard operating procedures had been introduced at the Holtze Youth Detention Centre and some of the standard operating procedures for the current Don Dale Youth Detention Centre at Berrimah had been finalised. The report recommended that the standard operating procedures at the Berrimah youth detention centre continue to be developed and implemented: pp. 21-22 and recommendation 6 at p. 18.
- <sup>79</sup> Exh.024.024, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 13 October 2016, p. 21.
- <sup>80</sup> Exh.024.024, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 13 October 2016, p. 18.
- <sup>81</sup> Exh.024.024, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 13 October 2016, p. 22.
- <sup>82</sup> Exh.187.001, RE: Operational overview week 1 – (in confidence), 2 May 2015, tendered 28 March 2017, p. 3.
- <sup>83</sup> Transcript, James Sizeland, 28 March 2017, p. 1999: lines 33-37.
- <sup>84</sup> Exh.311.131, 5.5 Vita Report Recommendations - not via CASS - APPENDIX A, 25 August 2016, tendered 28 April 2017, para. 5.
- <sup>85</sup> Exh.311.131, 5.5 Vita Report Recommendations - not via CASS - APPENDIX A, 25 August 2016, tendered 28 April 2017, para. 5; Transcript, Amanda Nobbs-Carcuro, 12 May 2017, p 3963: line 45 to p. 3964: line 5.
- <sup>86</sup> Exh.654.010, Review into Security Arrangements at Don Dale Youth Detention Centre, April 2017, tendered 30 June 2017, p. 5.
- <sup>87</sup> Transcript, Ken Davies, 30 June 2017, p. 5404: lines 24-32.
- <sup>88</sup> Exh.738.000, Statement of Jeanette Kerr, 21 February 2017, tendered 25 July 2017, paras 10-19.
- <sup>89</sup> Exh.034.002, Schedule A – “A Safer Noter Territory through Correctional Interventions” – Response to Recommendations – Youth Only, 2 December 2016, tendered 6 December 2016, para. 39.
- <sup>90</sup> Exh.094.001, Statement of Professor John Rynne, 1 March 2017, para. 17; Boin, A & Van Duin, M, 1995, ‘Prison riots as organizational failures: a managerial perspective’, *The Prison Journal*, vol. 75(3), pp. 357-379; Boin, A & Rattray, W, 2005, ‘Understanding prison riots: towards a threshold theory’, *Punishment & Society*, vol. 6(1), pp. 47-65; Carrabine, E, 2005, ‘Prison riots, social order, and the problem of legitimacy’, *The British Journal of Criminology*, vol. 45(6), pp. 896-913; Dias, CF & Vaughn, M, 2006, ‘Bureaucracy, managerial disorganization, and administrative breakdown in criminal justice agencies’, *Journal of Criminal Justice*, vol. 34(5), pp. 543-555.
- <sup>91</sup> Transcript, Leonard De Souza, 22 March 2017, p. 1617: line 23 - 27; Transcript, Greg Harmer, 24 March 2017, p. 1786: lines 31-43; Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, para. 69; Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para. 98; Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 22; Exh.273.001, Statement of AT, 27 February 2017, para. 28; Exh.067.001, Statement of BC, 23 February 2017, tendered 13 March 2017, para. 18; Exh.241.001, Statement of BV, 19 February 2017, tendered 31 March 2017, paras 20, 21, 33, 34, 45.
- <sup>92</sup> Exh.124.007, Annexure DF-6 to statement of Dave Ferguson, 17 February 2017, tendered 23 March 2017.
- <sup>93</sup> Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para. 74; Transcript, Leonard de Souza, 21 March 2017, 1624: lines 32-43.
- <sup>94</sup> Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para. 74. See also that this was raised in the Operations review of Alice Springs Juvenile Holding Centre: Exh.064.119, RESPONSE TO FINDINGS AT ASJDC.doc, 16 November 2012, tendered 14 March 2017; Exh.064.118, RESPONSE TO FINDINGS AT ASJDC.doc, 16 March 2012, tendered 14 March 2017.
- <sup>95</sup> Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, paras 36 and 53.
- <sup>96</sup> Exh.125.001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017, p. 2.
- <sup>97</sup> Exh.125.001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017, p. 5.
- <sup>98</sup> Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 31; Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, paras 98-101; Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, paras 32-33, 42 and 54; Exh.167.001, Statement of BQ, 17 February 2017, tendered 27 March 2017, para. 34.
- <sup>99</sup> Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 31.

- <sup>100</sup> Closed court transcript, Witness AG, 24 March 2017, p. 17: lines 44-45; Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 33.
- <sup>101</sup> Closed court transcript, Witness AG, 24 March 2017, p. 18: lines 1-3.
- <sup>102</sup> Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, para. 69.
- <sup>103</sup> Exh.241.001, Statement of BV, 19 February 2017, tendered 31 March 2017, para. 20.
- <sup>104</sup> Exh.068.001, Statement of BF, 23 February 2017, tendered 13 March 2017, para. 52.
- <sup>105</sup> Transcript, Eliza Tobin, 24 March 2017, p. 1785: lines 40-47; Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, p. 23. See also Transcript, Leonard de Souza, 22 March 2017, pp. 1618 – 1650.
- <sup>106</sup> Transcript, Eliza Tobin, 24 March 2017, p. 1785: line 40 – p. 1786: line 2.
- <sup>107</sup> *Youth Justice Act* (NT), s 4(h) and 4(j).
- <sup>108</sup> During Salli Cohen’s approximately two-year tenure as Executive Director (August 2013 – August 2015), there were 116 transfers of detainees between Alice Springs and Darwin: Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para. 243.
- <sup>109</sup> Transcript, Russell Caldwell, 29 March 2017, p. 2138: lines 25-35.
- <sup>110</sup> Exh.211.021, Annexure SC-20 to Statement of Salli Cohen, various dates, tendered 30 March 2017, p. 05770579.
- <sup>111</sup> Exh.198.001, Re: Incident reports for [REDACTED], 13 April 2014, tendered 29 March 2017, p. 2.
- <sup>112</sup> Transcript, James Sizeland, 28 March 2017, p. 2009: lines 15-20.
- <sup>113</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para. 239.
- <sup>114</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para. 239.
- <sup>115</sup> *Youth Justice Act* (NT), s 4 (h) and 4(j).
- <sup>116</sup> Transcript, Salli Cohen, 24 April 2017, p. 2867 lines 44-46, p. 2868 lines 1-2.
- <sup>117</sup> Transcript, Salli Cohen, 24 April 2017, p. 2867 lines 24-29.
- <sup>118</sup> Exh.1077.001, Letter from [Redacted] to Michael Yaxley, 23 August 2012, tendered 28 October 2017; Exh.1076.001, Email Correspondence between Michael Yaxley, Tanya Blakemore, Helen Sutton and Barrie Clee, Tuesday 13 November 2012, tendered 28 October 2017; Exh.1075.001, Eligible Transfer Notification to [Redacted], 15 November 2012, tendered 28 October 2017; Exh.1074.001, Email Correspondence between Karen Mcloughlin-Golstraw, Greg Donald and James Sizeland, 31 March 2014, tendered 28 October 2017; Exh.1078.001, Case Management File, tendered 28 October 2017; Exh.1079.001, Email Correspondence between Tanya Blakemore, Barrie Clee, Michael Yaxley, Renee Wallace, Derek Tasker, George Tetteh, Craig Turner, Marie-Rose Hyland, 26 March 2012, tendered 28 October 2017.
- <sup>119</sup> Exh.211.021, Annexure SC-20 to Statement of Salli Cohen, various dates, tendered 30 March 2017, p. 578.
- <sup>120</sup> Exh.051.001, Statement of Dylan Voller, 25 November 2016, paras 115-116; Exh.283.090, External Escorts\_JULY15, 1 April 2015, tendered 31 March 2017, p. 8.
- <sup>121</sup> Transcript, James Sizeland, 28 March 2017, p. 2004, lines 40-45 - p. 2005 lines 1-5; Exh.283.090, External Escorts\_JULY15, 1 April 2015, tendered 31 March 2017, p. 8.
- <sup>122</sup> Exh.283.090, 5 6 1 External Escorts\_JULY15, 1 April 2015, tendered 31 March 2017, p. 7.
- <sup>123</sup> Exh.419.007, Annexure JK-7 to Statement of Jeanette Kerr, 16 February 2017, tendered 12 May 2017; Exh.419.001, Statement of Jeanette Kerr, 16 February 2017, tendered 12 May 2017, para. 11.
- <sup>124</sup> Transcript, Derek Tasker, 15 March 2017, p. 1087: lines 10-12; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para. 231.
- <sup>125</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, paras 46, 48-49; Exh.067.001, Statement of BC, 23 February 2017, tendered 13 March 2017, paras 20-22; Transcript, Dylan Voller, 12 December 2016, p. 689: lines 5-25.
- <sup>126</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, paras 46, 48-49.
- <sup>127</sup> Exh.067.001, Statement of BC, 23 February 2017, tendered 13 March 2017, paras 20-22.
- <sup>128</sup> Exh.051.001, Statement of Dylan Voller, 25 November 2016, paras 115-121.
- <sup>129</sup> Exh.260.001, Statement of BW, 22 February 2017, tendered 31 March 2017, para. 16-20.
- <sup>130</sup> Exh.260.001, Statement of BW, 22 February 2017, tendered 31 March 2017, para. 24.
- <sup>131</sup> Exh.260.001, Statement of BW, 22 February 2017, tendered 31 March 2017, para. 24.
- <sup>132</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 47.
- <sup>133</sup> Exh.321.017, Annexure 16 to Statement of John Elferink, various dates, tendered 27 April 2017, pp. 60, 65.
- <sup>134</sup> In 2012, phone calls were restricted to 10–12 minutes and a child or young person had to wait three hours before making another call: Transcript, Derek Tasker, 15 March 2017, p. 1090: lines 4-11. Ian Johns commented that telephone calls or video link-ups are not sufficient for children and young people who come from Central Australia: Transcript, Ian Johns, 28 March 2017, p. 2050: lines 30-33.
- <sup>135</sup> Exh.311.051, signed Budget Cab Sub Youth Justice Framework Phase 1, 20 October 2014, tendered 28 April 2017, p. 7419-7420. Minister Elferink recommended to Cabinet that it approve the Alice Springs Youth Detention Centre being changed to the Alice Springs Holding Centre and the revocation of Aranda House as a holding centre.
- <sup>136</sup> Exh.311.051,p.3-5 signed Budget Cab Sub Youth Justice Framework Phase 1, 20 October 2014, tendered 28 April 2017, p. 7419-7420. The departments and agencies consulted were the Department of the Chief Minister, Department of Treasury and Finance, Department of Attorney-General and Justice, Department of Children and Families, Department of Education, Department of Health, Department of Housing, Department of Infrastructure, Northern Territory Police, Fire and Emergency Services, Office of the Children’s Commissioner, Officer of the Commissioner for Public Employment and the Office of the Information Commissioner.
- <sup>137</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2969: lines 20-45.
- <sup>138</sup> Exh.419.000, Statement of Jeanette Kerr, 16 February 2017, tendered 12 May 2017, paras 12-16; Exh.419.007, Annexure JK-7 to Statement of Jeanette Kerr, ‘Deputy CEO Memorandum re Transfer of Detainees between Detention Centres’, tendered 12 May 2017,



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- <sup>139</sup> Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, article 37(c).
- <sup>140</sup> Exh.006.005, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 31 July 1957, tendered 11 October 2016, reg 43, para. 3.
- <sup>141</sup> Exh.221.001, Standards Document, undated, tendered 30 March 2017, p. 3.
- <sup>142</sup> *Youth Justice Act*, ss 4(h) and 4(i).
- <sup>143</sup> Youth Justice Regulations, regs 46, 56.
- <sup>144</sup> Youth Justice Regulations, Part 5: Division 4.
- <sup>145</sup> Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 31.
- <sup>146</sup> Transcript, Megan Mitchell, 11 October 2016, p. 56: lines 1-15.
- <sup>147</sup> Exh.741.073, Statement of Mark Payne - Annexure MP-073, 23 February 2017, tendered 25 July 2017, section 16.2.
- <sup>148</sup> Exh.929.000, Statement of Tanya Blakemore, 22 August 2017, tendered 26 October 2017, para. 64.
- <sup>149</sup> Exh.051.001, Statement of Dylan Voller [Redacted], 25 November 2016, tendered 13 December 2016, para. 83.
- <sup>150</sup> Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 59.
- <sup>151</sup> Exh.102.001, Statement of BN, 14 February 2017, tendered 20 March 2017, para. 70.
- <sup>152</sup> Transcript, Derek Tasker, 15 March 2017, p. 1089: lines 9-12; see also: Exh.172.001, Statement of James Sizeland, 17 February 2017, tendered 27 March 2017, para. 50; Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 77.
- <sup>153</sup> Transcript, Derek Tasker, 15 March 2017, p. 1089: line 9 – p. 1090: line 16.
- <sup>154</sup> Exh.741.073, Statement of Mark Payne - Annexure MP-073 (Confidential Exhibit), 23 February 2017, tendered 25 July 2017, section 18.3.
- <sup>155</sup> Exh.741.073, Statement of Mark Payne - Annexure MP-073 (Confidential Exhibit), 23 February 2017, tendered 25 July 2017, section 18.3.
- <sup>156</sup> Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 19.
- <sup>157</sup> Exh.741.073, Statement of Mark Payne - Annexure MP-073 (Confidential Exhibit), 23 February 2017, tendered 25 July 2017, section 18.2; Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 58; Exh.741.328, Statement of Mark Payne - Annexure 328, Northern Territory Youth Detention Centres Procedures Manual, Detainee Classification, Version 1, February 2015, tendered 25 July 2017, pp. 6-10.
- <sup>158</sup> Youth Justice Regulations, reg 54; Exh.741.073, Statement of Mark Payne - Annexure MP-073 (Confidential Exhibit), 23 February 2017, tendered 25 July 2017, section 18.2.
- <sup>159</sup> Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 58.
- <sup>160</sup> Transcript, Dylan Voller, 12 December 2016, p. 680: lines 8-12.
- <sup>161</sup> Transcript, Derek Tasker, 15 March 2017, p. 1084: lines 43-45 – p. 1085: lines 1-10.
- <sup>162</sup> Transcript, Neil Morgan, 27 June 2017, p. 5137: lines 24-33.
- <sup>163</sup> Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, paras 48 and 71; Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, para. 88.
- <sup>164</sup> Exh.167.001, Statement of BQ, 17 February 2017, tendered 27 March 2017, paras 23-24.
- <sup>165</sup> Exh.741.073, Statement of Mark Payne - Annexure MP-073, 23 February 2017, tendered 25 July 2017, section 14.1; Exh.784.000 Statement of Mary Culhane-Browne, 16 August 2017, tendered 24 October 2017, paras 54, 60; Exh.375.003, Annexure 1 to Statement of CB, Outputs and Performance, 9 May 2017, tendered 11 May 2017.
- <sup>166</sup> Transcript, CA, 16 March 2017, p. 1217: lines 22-45.
- <sup>167</sup> Exh.375.000, Statement of CB, 10 May 2017, tendered 11 May 2017, para. 46.
- <sup>168</sup> *Youth Justice Act*, s 4(h).
- <sup>169</sup> Transcript, Derek Tasker, 15 March 2017, p. 1086: lines 38-47 – p. 1087: lines 1-12.
- <sup>170</sup> Transcript, Derek Tasker, 15 March 2017, p. 1087: lines 22-34.
- <sup>171</sup> Transcript, Derek Tasker, 15 March 2017, p. 1085: lines 21-23; Exh.211.021, Annexure SC-20 to Statement of Salli Cohen, 24 December 2013, tendered 31 March 2017, p. 579.
- <sup>172</sup> Exh.034.002, Schedule A – “A Safer Northern Territory through Correctional Interventions” – Response to Recommendations – Youth Only, 2 December 2016, tendered 6 December 2016, p. 8.
- <sup>173</sup> Exh.491.001, Statement of Karen Broadfoot, 1 June 2017, tendered 2 June 2017, para. 72.
- <sup>174</sup> Exh.741.319, Annexure MP-319 to Statement of Mark Payne, Department of Correctional Services, Northern Territory Youth Detention Centres Procedures Manual, Token Economy System, February 2015, tendered 25 July 2017, p. 2.
- <sup>175</sup> Exh.437.002, Annexure 2 to Statement of Michael Vita, January 2015, tendered 12 May 2017, p. 22.
- <sup>176</sup> Exh.741.213, Annexure MP-213 to Statement of Mark Payne, Youth Justice Detention Centre Standard Operating Procedure, Token Economy Purchase Items at the Alice Springs Youth Detention Centre, Procedure Number: 9.20, Issue 1, 16 June 2014, tendered 25 July 2017, section 6.0.
- <sup>177</sup> Transcript, Dylan Voller, 12 December 2016, p. 682: lines 24-30; Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, paras 190-191; Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 92; Exh.075.004, Annexure DT-3 to Statement of Derek Tasker, Detainee Information Book, Alice Springs Juvenile Detention Centre, tendered 14 March 2017; Exh.075.001, Statement of Derek Tasker, 16 February 2017, tendered 14 March 2017, para. 117.
- <sup>178</sup> Exh.741.307, Annexure MP-307 to Statement of Mark Payne, Copy of ‘Fines’ document, 23 February 2017, tendered 25 July 2017.
- <sup>179</sup> Exh.502.000, Statement of Michael Yaxley (Responsive to CA), 18 April 2017, tendered 19 May 2017, para. 17; Exh.502.002, Annexure MY-2 to Statement of Michael Yaxley, Department of Justice Memorandum, 27 June 2012, tendered 19 May 2017, item 4; Exh.780.001, Audit – Token Economy, Don Dale Youth Detention Centre, 7 September 2015, tendered 22 August 2017, p. 1.
- <sup>180</sup> Exh.502.002, Annexure MY-2 to Statement of Michael Yaxley, Department of Justice Memorandum, 27 June 2012, tendered 19 May



- 2017, item 4.
- <sup>181</sup> Exh.741.319, Annexure 319 to Statement of Mark Payne, Department of Correctional Services, Northern Territory Youth Detention Centres Procedures Manual, Token Economy System, February 2015, tendered 25 July 2017, p. 4; Exh.780.001, Audit – Token Economy, Don Dale Youth Detention Centre, 7 September 2015, tendered 22 August 2017, p. 1.
- <sup>182</sup> Exh.437.002, Annexure 2 to Statement of Michael Vita, January 2015, tendered 12 May 2017, p. 23.
- <sup>183</sup> Rae Sinclair, 'To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada', Churchill Fellowship Report, 2011, pp. 17-18.
- <sup>184</sup> Rae Sinclair, 'To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada', Churchill Fellowship Report, 2011, pp. 15, 17.
- <sup>185</sup> Submission, Australian Psychological Society, October 2016, pp. 11-12.
- <sup>186</sup> Rae Sinclair, 2011, 'To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada', Churchill Fellowship Report, pp. 17-18.
- <sup>187</sup> Rae Sinclair, 2011, 'To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada', Churchill Fellowship Report, p. 18.
- <sup>188</sup> Rae Sinclair, 2011, 'To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada', Churchill Fellowship Report, p. 18.
- <sup>189</sup> Rae Sinclair, 2011, 'To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada', Churchill Fellowship Report, p. 17.
- <sup>190</sup> Transcript, Kelly Dedel, 29 June 2017, p. 5286: lines 22-35.
- <sup>191</sup> Transcript, Leilani Tonumaiepa, 12 May 2017, p. 3884: line 36 – p. 3885: line 3.
- <sup>192</sup> Exh.632.000, Precip of Dr Kelly Dedel, 15 May 2017, tendered 29 June 2017, para. 11.
- <sup>193</sup> Exh.075.004, Annexure DT-3 to Statement of Derek Tasker, Detainee Information Book, Alice Springs Juvenile Detention Centre, tendered 14 March 2017; Exh.075.001, Statement of Derek Tasker, 16 February 2017, tendered 14 March 2017, para. 117.
- <sup>194</sup> Exh.741.338, Annexure MP-338 to Statement of Mark Payne, December 2014, tendered 25 July 2017, pp. 2-3; Exh.929.001, Statement of Tanya Blakemore, 22 August 2017, tendered 26 October 2017, para. 31.
- <sup>195</sup> Exh.741.338, Annexure MP-338 to Statement of Mark Payne, December 2014, tendered 25 July 2017, p. 2; Exh.269.001, Statement of Victor Williams, 28 February 2017, para. 76; Exh.929.001, Statement of Tanya Blakemore, 22 August 2017, tendered 26 October 2017, para. 40.
- <sup>196</sup> Exh.033.001, Statement of Jeanette Kerr, 2 December 2016, tendered 6 December 2016, para. 52.
- <sup>197</sup> Transcript, Nate Balis, 26 June 2017, p. 4986: lines 28-46.
- <sup>198</sup> Exh.741.338, Annexure MP-338 to Statement of Mark Payne, December 2014, tendered 25 July 2017, p. 5.
- <sup>199</sup> Exh.269.001, Statement of Victor Williams, 28 February 2017, tendered 31 March 2017, paras 78, 83.
- <sup>200</sup> Exh.654.010, Review into Security Arrangements Don Dale Youth Detention Centre, 1 April 2017, tendered 30 June 2017, pp. 8-9.
- <sup>201</sup> Exh.269.001, Statement of Victor Williams, 28 February 2017, tendered 31 March 2017, para. 78; Exh.741.338, Annexure MP-338 to Statement of Mark Payne, December 2014, tendered 25 July 2017: a review into security arrangements conducted in April 2017 confirmed that the 2014 directive is the current directive for detainee security classifications: Exh.654.010, Review into Security Arrangements Don Dale Youth Detention Centre, 1 April 2017, tendered 30 June 2017, p. 5.
- <sup>202</sup> Exh.741.327, Annexure MP-327 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017.
- <sup>203</sup> Exh.741.338, Annexure MP-338 to Statement of Mark Payne, December 2014, tendered 25 July 2017, p. 2; Exh.929.000, Statement of Tanya Blakemore, 22 August 2017, tendered 26 October 2017, para. 31.
- <sup>204</sup> Exh.269.001, Statement of Victor Williams, 28 February 2017, para. 79.
- <sup>205</sup> Exh.269.001, Statement of Victor Williams, 28 February 2017, paras 88-91; Exh.929.000, Statement of Tanya Blakemore, 22 August 2017, tendered 26 October 2017, paras 34-38; Exh.748.000, Statement of Mary Caulhane-Brown, 16 August 2017, tendered 24 October 2017, para. 44.
- <sup>206</sup> Exh.269.001, Statement of Victor Williams, 28 February 2017, para. 76.
- <sup>207</sup> Exh.269.001, Statement of Victor Williams, 28 February 2017, paras 96-97.
- <sup>208</sup> Exh.929.000, Statement of Tanya Blakemore, 22 August 2017, tendered 22 August 2017, para. 31; Exh.784.000, Statement of Mary Caulhane-Brown, 16 August 2017, tendered 22 August 2017, para. 45.
- <sup>209</sup> Exh.437.002, Annexure 2 to Statement of Michael Vita, January 2015, tendered 12 May 2017, p. 24.
- <sup>210</sup> Exh.437.002, Annexure 2 to Statement of Michael Vita, January 2015, tendered 12 May 2017, p. 24.
- <sup>211</sup> Exh.437.002, Annexure 2 to Statement of Michael Vita, January 2015, tendered 12 May 2017, p. 18.
- <sup>212</sup> Exh.1173.000, Letter re classification and behaviour systems – update on reviews, tendered 3 November 2017, p. 1.
- <sup>213</sup> Exh.131.001, Statement of AF, 25 November 2016, tendered, 23 March 2017, para. 90.
- <sup>214</sup> Exh.784.000, Statement of Mary Culhane-Brown, 16 August 2017, tendered 24 October 2017, paras 38-40; Exh.929.000, Statement of Tanya Blakemore, 22 August 2017, tendered 22 August 2017, paras 31-44.
- <sup>215</sup> Exh.654.010, Review into Security Arrangements Don Dale Youth Detention Centre, 1 April 2017, tendered 30 June 2017, pp. 10-11.
- <sup>216</sup> Exh.1173.000, Letter re classification and behaviour systems – update on reviews, tendered 3 November 2017, p. 2.
- <sup>217</sup> *Youth Justice Act*, s 151(3)(c).
- <sup>218</sup> Exh.437.002, Annexure 2 to Statement of Michael Vita, January 2015, tendered 12 May 2017, p. 25.
- <sup>219</sup> Exh.437.002, Annexure 2 to Statement of Michael Vita, January 2015, tendered 12 May 2017, p. 25; Exh.221.001, Juvenile Justice Standards 2009, tendered 30 March 2017, p. 10. See also: Exh.311.050, Australasian Juvenile Justice Administrators Principles, October 2014, p. 1.
- <sup>220</sup> Transcript, Kelly Dedel, 29 June 2017, p. 5287: lines 33-44.
- <sup>221</sup> See, for example: Transcript, Terry Byrnes, 20 March 2017, p. 1498: lines 32-42.

- <sup>222</sup> Exh.016.001, Statement of Colleen Gwynne, 7 October 2016, tendered 12 October 2016, para. 31.
- <sup>223</sup> Australian Law Reform Commission, 1997, *Seen and Heard: Priority for Children in the Legal Process*, report 84, Australian Law Reform Commission, Sydney, paras 20.103–20.105.
- <sup>224</sup> Exh.006.005, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 31 July 1957, tendered on 11 October 2016, reg 11; Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, reg 29.
- <sup>225</sup> Australian Human Rights Commission, 2016, *Children's Rights Report 2016*, Australian Human Rights Commission, Sydney, p. 81; Exh.007.001, Committee on the Rights of the Child, General Comment 10 – Children's Rights in Juvenile Detention, 25 April 2007, tendered 11 October 2016, para. 85.
- <sup>226</sup> *Youth Justice Act*, s 154(1).
- <sup>227</sup> *Youth Justice Act*, ss 154(4)-(7).
- <sup>228</sup> *Youth Justice Act*, s 154(2).
- <sup>229</sup> *Correctional Services (Related and Consequential Amendments) Act (NT)* s 49.
- <sup>230</sup> *Youth Justice Act*, s 154(1). The section includes a non-exhaustive list of examples of situations where the superintendent might consider it necessary to make such a request, including that damage from a natural disaster leads to overcrowding at the detention centre, or to maintain order at the detention centre.
- <sup>231</sup> Second Reading Speech, *Correctional Services (Related and Consequential Amendments) Bill 2014*.
- <sup>232</sup> Exh.261.005, Annexure MC-4 to Statement of Mark Christopher, 1 February 2017, tendered 31 March 2017.
- <sup>233</sup> Introduced 23 August 2017.
- <sup>234</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para. 262.
- <sup>235</sup> Exh.064.195, Email chain between Caldwell, Middlebrook, Cohen and Sizeland, 2 September 2014, tendered 31 March 2017; Exh.139.001, Statement of AB, 1 March 2017, tendered 22 March 2017, paras 159–161, 168–169, 183–192; Transcript, Ken Middlebrook, 28 April 2017, p. 3384: lines 19–31.
- <sup>236</sup> Transcript, Ken Middlebrook, 28 April 2017, p. 3385: line 24.
- <sup>237</sup> Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para. 174.
- <sup>238</sup> Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para. 126.
- <sup>239</sup> Exh.043.001, Statement of AD, 22 November 2016, tendered 9 December 2016, para. 29. Confirmed by: Exh.261.005, Annexure MC-4 to Statement of Mark Christopher, 1 February 2017, tendered 31 March 2017, p. 7.
- <sup>240</sup> Amendments to section 154 of the *Youth Justice Act* [NT] commenced on 9 September 2014.
- <sup>241</sup> Exh.781.001, Emails between magistrate and Superintendent Caldwell, 21 August 2014, tendered 22 August 2017.
- <sup>242</sup> In her own motion investigation report, the Children's Commissioner found that this transfer breached the provisions of the *Youth Justice Act* prohibiting underage transfers and that there was no adequate explanation for it: Exh.053.028, Northern Territory Children's Commissioner, Own Initiative Investigation Report, *Services provided by the Department of Correctional Services at the Don Dale Youth Detention Centre*, August 2015, tendered on 14 December 2016, p. 23.
- <sup>243</sup> Exh.123.001, Statement of AS, 22 February 2017 tendered 22 March 2017, paras 29–30; Exh.261.005, Annexure MC-4 to Statement of Mark Christopher, 1 February 2017, tendered 31 March 2017, p. 7.
- <sup>244</sup> Exh.064.294, Synopsis of Interview with Danny Smith, 3 December 2015, tendered on 31 March 2017, p. 2.
- <sup>245</sup> Exh.316.001, Statement of Ken Middlebrook, 1 March 2017, tendered 26 April 2017, para. 59.
- <sup>246</sup> Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 30.
- <sup>247</sup> Exh.053.028, Northern Territory Children's Commissioner, Own Initiative Investigation Report, *Services provided by the Northern Territory Department of Correctional Services to Don Dale Youth Detention Centre/Alice Springs Youth Detention Centre*, Final Investigation Report, August 2016, tendered on 14 December 2016 p. 34.
- <sup>248</sup> Submission, Northern Territory Government, 28 August 2017 (in respect of Notice of Adverse Material 11), paras 32–33.
- <sup>249</sup> Explanation: Young persons over 15 years who are sentenced by a Court to a term of imprisonment, ie, in an adult gaol – *Youth Justice Act*, s 83(3).
- <sup>250</sup> *Youth Justice Act*, s 154(5).
- <sup>251</sup> Exh.139.001, Statement of AB, 1 March 2017, tendered 25 March 2017, para. 185.
- <sup>252</sup> Exh.043.001, Statement of AD, 22 November 2016, tendered 9 December 2016, para. 29.
- <sup>253</sup> Exh.123.001, Statement of AS, tendered 22 March 2017, para. 29.
- <sup>254</sup> Transcript, Michael Hughes, 20 April 2017, p. 2608: lines 18–35; Exh.301.001, Transcript, Office of the Children's Commissioner and Michael Hughes, 7 October 2016, tendered 20 April 2017, p. 6; Transcript, Darren Foreman, 20 April 2017, p. 2613: lines 12–14.
- <sup>255</sup> Submission, Northern Territory Government, 28 August 2017 (in respect of Notice of Adverse Material 11), para. 37(a).
- <sup>256</sup> Exh.301.001, Transcript, Office of the Children's Commissioner and Michael Hughes, 7 October 2016, tendered 20 April 2017, pp. 30 and 35.
- <sup>257</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered on 29 March 2017, para. 180.
- <sup>258</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered on 29 March 2017, para. 180.
- <sup>259</sup> Exh.283.087, Record of Interview – Conan Zamolo, 21 November 2014, tendered 31 March 2017, p. 49; Exh.283.086, Record of Interview – Benjamin Kelleher, 21 November 2014, tendered 31 March 2017, p. 58.
- <sup>260</sup> *LO v Northern Territory of Australia; EA v Northern Territory of Australia; KT (as Litigation Guardian for KW) v Northern Territory of Australia; LB (as Litigation Guardian for JB) v Northern Territory of Australia* [2017] NTSC 22.
- <sup>261</sup> Exh.419.000, Statement of Jeanette Kerr, 16 February 2017, tendered 12 May 2017, para. 22.
- <sup>262</sup> Exh.419.000, Statement of Jeanette Kerr, 16 February 2017, tendered 12 May 2017, para. 21; Exh.1080.001, ASP 6.9 - Code Orange, 10 August 2016, tendered 28 October 2017; Exh.1081.001, - DWN 6.9 - Code Orange – Evacuation, 10 August 2016, tendered 28 October 2017.



12

VERBAL ABUSE, EXCESSIVE  
CONTROL AND  
HUMILIATION



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# VERBAL ABUSE, EXCESSIVE CONTROL AND HUMILIATION

## INTRODUCTION

The Commission heard a large body of evidence about inappropriate conduct by youth justice officers directed towards detainees. The conduct took many forms and some of it could be characterised as abuses of power, excessive forms of control and humiliation. More specifically, the Commission received evidence of:

- verbal abuse and racist remarks
- controlling behaviour, such as withholding necessities like food, water and the use of toilets, and
- inciting or bribing detainees to engage in degrading and humiliating acts.

Much of the evidence was given by detainees or former detainees at the several detention centres. Most of it related to the latter part of the relevant period. That body of evidence in a general sense was supported by the evidence of some youth justice officers, including one or two against whom allegations had been made. Other youth justice officers denied that their behaviour had been inappropriate.

While some incidents which form the basis for the conclusions reached in this section were able to be investigated fully, others were not, largely due to time constraints and the temporal breadth of the Terms of Reference. The Commission is of the view that conclusions can be reached fairly based on this body of evidence with the qualifications that they do not relate to each detention centre over the whole 10-year period.

The acts described in this chapter were carried out on children, some as young as 13, by the very



people who were charged with their care – officers who had power and control over them day and night. This left them with no place to turn and further exacerbated their vulnerability to the impacts of the abuse.

Some of the youth justice officers recognised this power imbalance and abused it. Conan Zamolo, a former youth justice officer, made the observation that *'it's just a big power trip'* for a lot of staff.<sup>1</sup> Louise Inglis, a former youth justice officer, made a similar observation when she said:

*'... that sort of, you know, "I've got you there, I've got you right there and you're going to stay there, sonny" ... There were certainly a number of male officers who were – it seemed that their sole purpose for being there was to feel good about themselves and to wield their power over other people.'*<sup>2</sup>

## VERBAL ABUSE AND RACISM

Some of the language of youth justice officers included deliberate verbal abuse and racism.<sup>3</sup> For example, Mr Zamolo gave evidence that a female worker kicked a detainee *'in the guts and called her a fucking slut'*. Another youth justice officer, Ben Kelleher, who did not see the incident, was told by a shift supervisor that it had happened.<sup>4</sup> Mr Zamolo also said that another youth justice officer referred to a detainee as a *'stupid black cunt'*.<sup>5</sup> He explained: *'A kid may have been taking too long for a toilet break and he sort of, like, asked him to hurry up and then I think some words were exchanged. I think – I think the kid replied with, "You stupid white cunt" and then he would have replied it, "You stupid black cunt." I think that's how it went down.'*<sup>6</sup>

Examples given by detainees paint a similar picture, including that they were the subject of offensive slurs such as *'dumb black kid'*,<sup>7</sup> a *'dumb fuck'*<sup>8</sup> and a *'black cunt'*.<sup>9</sup> Another told a detainee, *'We don't give a fuck, it's our job'*.<sup>10</sup> Vulnerable witness BQ said that when guards swore at him, it would make him feel like he was not a human being.<sup>11</sup>

One youth justice officer was also filmed on camera using this sort of language. The handcam footage of 21 August 2014 recorded the following exchange from an unnamed youth justice officer: *'No, let the fucker come through because when he comes through he'll be off balance and I'll pulverise – I'll pulverise the little fucker. Oh shit, we're recording, hey'*.<sup>12</sup> In response to this evidence, the Northern Territory Government submitted that this language was used *'at a time which can by no means be characterised as mundane or representative of the day to day situation in the former DDYDC'*.<sup>13</sup> Even in extraordinary situations, there is no justification for using deliberately abusive language such as *'I'll pulverise the little fucker.'*

Eliza Tobin, a youth justice officer who had been employed at the former Don Dale Youth Detention Centre for four and a half years,<sup>14</sup> said that racist language was an *'everyday thing'*<sup>15</sup> and that it was accepted as part of the culture of Don Dale Youth Detention Centre.<sup>16</sup> A training officer at the former Don Dale Youth Detention Centre experienced youth justice officers name calling, swearing at detainees and making racist remarks.<sup>17</sup> He, too, was a long-time employee.<sup>18</sup> Saki Muller, another youth justice officer also recounted that staff members made racist comments about detainees.<sup>19</sup>

## Finding

**Detainees were frequently subjected to verbal abuse and racist remarks.**

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## CONTROL OF BASIC HUMAN NEEDS SUCH AS FOOD, WATER AND THE USE OF TOILETS

There were other specific and disturbing examples in which youth detention centre workers abused their power over the children in their care. One was to control the fulfilment of basic human needs, such as access to toilets, food and clean drinking water. Article 31 of the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules) states that juveniles in detention should be afforded access to facilities and services that meet all the requirements of health and human dignity.<sup>20</sup> Article 34 of these rules requires access to sanitary installations of a sufficient standard to enable every juvenile to fulfil their physical needs in privacy, cleanliness and decency,<sup>21</sup> while Article 37 mandates that every detention facility must ensure that youth detainees be given access to suitable food, and that clean drinking water be available to detainees at any time.<sup>22</sup> Article 37(c) of the *United Nations Convention on the Rights of the Child* provides that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person.

These rights are generally embodied in section 151(2) of the *Youth Justice Act* (NT), which provides that the superintendent of a detention centre has a general obligation to encourage the improvement of the welfare of detainees.

There is considerable evidence before the Commission that detainees were denied access to water and toilets by youth justice officers. This sort of behaviour was made possible because the architecture of the facilities at the former Don Dale Youth Detention Centre meant that when detainees were in cells, when they were at risk and when they were in the Behavioural Management Unit (BMU) or 'back cells' they had no access to toilets. Some of these rooms had no access to water, or the water was hot and of poor quality. As a result, at times detainees were reliant on youth justice officers for water or for access to toilets.<sup>23</sup> The rooms in the Alice Springs Youth Detention Centre also had no toilet facilities or access to water, and in order to obtain water or go the toilet, they would have to press a button and wait for youth justice officers to let the detainees out.<sup>24</sup>

The Commission heard evidence about a youth justice officer who deliberately made detainees wait to go to the toilet. Greg Harmer, another youth justice officer who observed this, said that the youth justice officer in question:

*'Told me that he treated detainees that way so that, "they wouldn't come back to Don Dale". He said, "Why should we make it a nice experience for them, when they have caused hardship to people on the outside".'*<sup>25</sup>

Louise Inglis said that other youth justice officers simply turned off the intercom buttons in the rooms so detainees could not communicate from their cells. She said:

*'There were people who turned off the intercom buttons, so that staff couldn't hear them ringing, because they – they were, "The little fucker's just trying to get attention". Not, "The little fucker might have just wet his pants or pooped in his bed".'*<sup>26</sup>

The Commission heard evidence from 12 separate witnesses about detainees being deprived of water or access to toilet facilities.

Vulnerable witness AU stated:

*'There was no water to drink in the room. You would be busting for the toilet or a drink of water. When you wanted water or the toilet, you had to press a button. Sometimes the guards would make you wait for a really long time and I would just keep pressing the button. They gave you water in a small cup.'*<sup>127</sup>

Vulnerable witness AS gave evidence that guards were:

*'[a]lways egging us on about things, not giving us what we want, like a cup of water or something, wanted a cup so we could drink out of the tap in our room, they wouldn't give it to us and was making us angry, so ... can get sent down the back.'*<sup>128</sup>

Vulnerable witness AS gave an example of when he asked for water from the guards, they did not bring him any and he kicked the door, and was assaulted by guards as a result.<sup>129</sup> An IOMS report in relation to this incident stated that youth justice officers 'approached the room to speak with the Detainee. Detainee [AS] has immediately become irate demanding that we "bring him a cup as we are here to serve him when he calls". I have informed the detainee that things don't work like that and that he should calm down as he will only make things worse for you. The detainee has then stated "if you don't get me a cup I will kick this door down you cunt".'<sup>130</sup>

Vulnerable witness BW said of his time in Alice Springs Youth Detention Centre:

*'I remember one boy called [REDACTED] who was inside his cell asking for water and a guard went up to his door and just kicked it and told him to "shut the fuck up". I was in the cell across from [REDACTED] so I saw this. I didn't know why the guard wouldn't just help him or ask what he needs instead of swearing at him.'*<sup>131</sup>

Vulnerable witness BA stated:

*'I asked the guards at night to open my hatch and give me water but they said, "No, we don't give a fuck about you". I just waited all night until the next morning before I drank anything.'*<sup>132</sup>

BA also said:

*'The padded cells were all yellow and soft. There was no button for intercom and no toilet. I had to ask them for everything. I was only allowed out for 30 mins or an hour a day. I had to choke myself or piss outside the door or block the camera or play dead to get them to come so I could go to the toilet or get a drink. Sometimes they didn't let us out. They'd say, "don't give a fuck, you can just shit right here."'*<sup>133</sup>

Vulnerable witness AF said:

*'The water in those isolation cells was disgusting and tasted like metal. Usually the bubbler wouldn't work well when you pushed the button for water. I could not drink it so I had to ask some of the guards to bring in a cup of regular water. Sometimes the guards would do this, sometimes they would not.'*<sup>134</sup>

Vulnerable witness AY said:

*'Sometimes we would press the buzzer to get the guards to give us water but they would ignore us and not come and see us. They would say things like, "We'll be there soon," and we would have to buzz them heaps of times. Sometimes to get their attention we would block the cameras with wet toilet paper. It was like we had to make a scene to get listened to.'*<sup>135</sup>

Vulnerable witness BR stated:

*'You could only leave your room during lockdown to go to the toilet or drink water. Some officers would let you go straight away when you asked, but some would make you wait.'*<sup>136</sup>

Vulnerable witness BE gave evidence that in the back cells, where there was no tap to drink from:

*'An officer would come around with a small cup of water about once a day.'*<sup>137</sup>

Vulnerable witness BQ stated when he was in the back cells:

*'The guards brought meals to the rooms. They threatened us with not giving us food, like, "If you don't stop yelling, we won't give you food". They said that about water too.'*<sup>138</sup>

Another detainee gave evidence about her experience when she was in an at-risk room:

*'It was kind of hard, like if you used the buzzer sometimes they would click on the reject button so it could reject you for 30 minutes, two hours, however long they felt like rejecting your calls. So, if you had any leftovers or toilet paper you'd wet it and chuck it up on the camera, and they would buzz you up, and yeah, they – you pretty much had to ask for cold water.'*<sup>139</sup>

The detainee said:

*'Yeah, and then if they wasn't too, like, still – still coming attend to me or something to give me cold water, like I'd have to kick the door and then I'll get in trouble for doing that.'*<sup>140</sup>

She also told the Commission that:

*'Only some of the guards give you water.'*<sup>41</sup>

Vulnerable witness BR stated:

*'In the back cells my memory is that I had to ask for water from the officers. I can't remember seeing a sink or not. But I do remember asking for water and feeling thirsty there. Some officers would get water straight away, but sometimes, the officers would say we needed to wait until the officers who came on the next shift. When that happened, I remember feeling thirsty.'*<sup>42</sup>

Vulnerable witness AX said about his time in the BMU:

*'I would ask for water and I would not get any for about 20 minutes. Sometimes I would have to wait for up to an hour.'*<sup>43</sup>

In response to this allegation, the Northern Territory Government referred to a Security Cell Placement Journal which suggests that AX was placed in the BMU at the former Don Dale Youth Detention Centre on one occasion for 45 minutes in 2011.<sup>44</sup> The Northern Territory Government has submitted that AX does not have an accurate recollection, or is exaggerating the position.<sup>45</sup> The Commission does not consider that this evidence affects AX's credibility as a witness, particularly in circumstances where his evidence is consistent with other detainee's complaints. Other explanations are also possible – the BMU records may not be reliable – some have been shown not to be – and AX was also housed for two days in the 'High Security Unit' (rather than the BMU) in a bedroom that did not have access to water.<sup>46</sup>

Vulnerable witness BV stated:

*'When I asked the guard for cold water, he said, "No, it's lock down". I was really angry about this, and I remember that I started carrying on by swearing at him. I know this was the wrong thing to do but he was standing next to the water and it would have been easy for him to get me some. It is not hard for a guard to get us cold water when we ask for it, and it is their job to look after us and make sure we have enough to drink. As it is hot in the cells, you need to drink a lot of water to stop getting headaches.'*<sup>47</sup>

Two youth justice officers gave very similar and candid evidence of these types of occurrences. Ben Kelleher said that he recalled one youth justice officer who, if asked by a child for some water, would only give the child a partially filled cup, and that he did this to show that he was in control of how much water the child would get.<sup>48</sup> Mr Zamolo recalled a similar situation:

*'A youth justice officer was like, "No, you'd have to wait now till after lockdown so you can have a bit of water". So I've, I've told him go get him more water. And he came back with half a cup of water instead of a full cup. When I'd say, like, "give the kid a cup of water...", instead of filling it up, he'll fill it to there, you know. Well, there's no point. You're just, you're just, you're just being an arsehole.'*<sup>49</sup>

The Commission also heard that youth justice officers denied children food or threatened that they would deny them food, although this evidence was less widespread than the denial of water. Vulnerable witness BQ stated when he was in the back cells:

*'The guards brought meals to the cells. They threatened us with not giving us food – like, "If you don't stop yelling, we won't give you food". They said that about water too.'*<sup>50</sup>

In Alice Springs, vulnerable witness AV gave evidence that:

*'Guards would punish me and other detainees by not giving us food at dinner time when we were locked in our cells, sometimes making us wait as long as an hour. If you had a smart mouth with a guard they might not feed you at all.'*<sup>51</sup>

In response to this evidence, Derek Tasker, a youth justice officer, said that he had never seen a youth justice officer not giving a detainee food at dinner time.<sup>52</sup>

In relation to these allegations concerning the denial of food, water and the use of toilets, the Northern Territory Government repeatedly submitted that the reliability of the detainees' evidence was undermined because of alleged inaccuracies in other parts of their statements to the Commission, which were not related to these specific allegations.<sup>53</sup>

However, given the number of separate complaints from unassociated children and young people in detention of similar conduct, and the corroborating evidence from youth justice officers, the Commission accepts the evidence of the detainees on this issue.

## Finding

**At times, youth justice officers deliberately withheld detainees' access to basic human needs such as water, food and the use of toilets. This conduct was inconsistent with the basic human right contained in Article 37(c) of the *United Nations Convention on the Rights of the Child* that a child be treated with humanity and respect for the inherent dignity of the human person, as well as the specific rights contained in the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, namely:**

- **Article 31, which states that juveniles in detention should be afforded access to facilities and services that meet all the requirements of health and human dignity,**
- **Article 34, which mandates access to sanitary installations of a sufficient standard to enable every juvenile to fulfil their physical needs in privacy, cleanliness and decency, and**

- **Article 37, which mandates that every detention facility must ensure that youth detainees be given access to suitable food and that clean drinking water be available to detainees at any time,**

**all of which the Superintendent had a responsibility under section 151 (2) of the Youth Justice Act (NT) for the physical, psychological and emotional welfare of the detainees.**

In relation to this finding, the Northern Territory Government submitted that *'the implication that such things were "deliberately withheld" takes no account of any operational reasons (related to safety or security of the centre), and does not link to any improper motivations on the part of individual officers.'*<sup>54</sup> If it is to be suggested by the Northern Territory Government that there may be 'safety' or 'security' reasons for withholding water, food and the use of toilets, that suggestion should be rejected. No attempt was made to identify any safety or security reason, nor was this possible explanation put to any of the youth justice officers by counsel for the Northern Territory Government. There is no justification for denying a child access to basic human necessities such as these under the guise of 'safety' or 'security'. This submission also ignores the fact that the Havana Rules clearly states that clean drinking water be available for a child detainee at any time.

## INCITING OR BRIBING DETAINEES

They would say, *'What happens in Don Dale, stays in Don Dale.'*<sup>55</sup>

Article 87 of the Havana Rules mandates that the staff of juvenile detention centres must respect and protect the human dignity and fundamental rights of all juveniles and prohibits harsh, cruel, inhuman or degrading treatment.<sup>56</sup> The Commission heard disturbing examples of uses of control in contravention of these principles. Youth justice officers dared detainees, or offered bribes to detainees, to carry out degrading and potentially harmful acts on themselves and on each other. These acts included eating things like insects and animal faeces. The Commission has heard five separate accounts of this type of behaviour having occurred.

Vulnerable witness AY stated that when they were bored and wanted to amuse themselves, the youth justice officers referred to as *'the boys' club'* would dare detainees to eat bird shit and cockroaches in return for rewards such as chocolates and Coke. AY gave evidence that he had eaten rat faeces in exchange for drinks and chips, and he had witnessed another detainee do the same thing, both at the instigation of the youth justice officers.<sup>57</sup> AY also gave evidence that in his opinion, detainees would accept the dares because they were bored and there was not enough to occupy them, and that the guards would treat the detainees who carried out the dares more favourably while also making fun of them.<sup>58</sup> Mr Zamolo, Mr Kelleher and Jon Walton (who AY identified as being part of *'the boys club'*, which in total comprised about eight people<sup>59</sup>) all denied that they incited detainees to do such things.<sup>60</sup>

Two detainees said that another detainee was dared to eat *'bird shit'* for chocolate and Coke, and these sorts of acts were filmed by youth justice officers.<sup>61</sup> Footage of this or a similar incident was tendered in the Commission's public hearings. Another anonymous detainee told the Children's Commissioner that youth justice officers subjected six detainees to similar incidents.<sup>62</sup>



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Vulnerable witness AM alleged that he had been told by other detainees that guards would bribe detainees to do disgusting things like eat insects in exchange for Coke and chocolates, and that the guards who made those offers would usually watch from a distance.<sup>63</sup>

A detainee told the Children’s Commissioner that:

*He saw the YWs [youth justice officers] making [REDACTED] eat a full cockroach. He saw YWs making [REDACTED] eat Conan’s snot ... Saw YWs making [REDACTED] and other boys mentioned eat bird shit. YWs dared him to try and drink a carton of milk while they filmed it (they said it couldn’t be done) so he tried to do it while they filmed him, but he then discovered that they had loaded the milk up with salt. Ben Kelleher once made him eat shaving cream and toothpaste mixed together in order to receive some chips ... “YWs wouldn’t force the kids to eat those things, but bribed them with chocolate and chips, stuff the YWs really knew the kids wanted so they did it.”<sup>64</sup>*

Another detainee told the Children’s Commissioner that in April or May 2015, he was told, along with other detainees, by a guard that if they ate dead insects they would be given a can of Coke. The detainee said that he saw two other detainees eat the insects and they were each given a Coke by the guards.<sup>65</sup>

The youth justice officers named by the detainees (Conan Zamolo, Ben Kelleher and Jon Walton) all denied these allegations.<sup>66</sup> However, given the number of separate complaints of similar conduct as well as objective evidence that this occurred on at least one occasion (in the form of a video, recording played by the Commission in which a detainee was urged by Mr Zamolo to eat a ‘little bit of shit’ in the presence of other youth justice officers), the Commission accepts that evidence of the detainees on this issue.

## Finding

**At times, youth justice officers dared detainees, or offered bribes to detainees, to carry out degrading, humiliating and/or harmful acts. This conduct was inconsistent with the basic human rights:**

- contained in Article 37(c) of the *United Nations Convention on the Rights of the Child*, which requires that a child be treated with humanity and respect for the inherent dignity of the human person, and
- contained in Article 87 of the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, which require staff of juvenile detention centres to respect and protect the human dignity and fundamental rights of all juveniles, and prohibits harsh, cruel, inhuman or degrading treatment.

**These obligations are generally embodied in section 151(2) of the *Youth Justice Act (NT)* which required the superintendent to be responsible for the physical, psychological and emotional welfare of detainees and in section 151(3)(b) which required the Superintendent to encourage the social development and improvement of the welfare of the detainees.**

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## INCITING OR BRIBING DETAINEES TO CONDUCT PHYSICAL VIOLENCE

The Commission also heard evidence that youth justice officers bribed or induced detainees to fight or assault each other. This conduct is likely to have breached human rights standards and the criminal law. Human rights instruments require that all appropriate measures be taken to protect children from physical violence and abuse.<sup>67</sup> Section 12(1)(c) of the *Criminal Code Act* (NT) extends liability for common assault to every person who counsels or procures another to commit the offence of assault.<sup>68</sup>

On occasions, detainees agreeing to fight were rewarded with chocolates, chips and soft drinks or promises of money or promises that youth justice officers would write favourable incident reports for them. The Commission heard from at least nine separate detainees who described this sort of behaviour occurring.

- Vulnerable witness AT stated that he was asked by Mr Kelleher and Mr Zamolo on numerous occasions to bash other kids in return for chocolates.<sup>69</sup> This is denied by both Mr Kelleher<sup>70</sup> and Mr Zamolo.<sup>71</sup>
- Vulnerable witness AU gave evidence that he was bashed by another detainee. AU said that later, that detainee told AU that two guards, Mr Kelleher and another guard, told him to bash AU for chips and soft drinks.<sup>72</sup> That detainee did not give evidence to the Commission. This is denied by both Mr Kelleher<sup>73</sup> and the other youth justice officers.<sup>74</sup> The Northern Territory Government submitted that five separate contemporaneous IOMS reports and a daily journal confirm that Mr Kelleher was not present during the incident (which occurred at approximately 6:30pm, following dinner), and suggested that the incident did not occur as described by AU.<sup>75</sup> However, the fact that Mr Kelleher was not present during the incident is not conclusive evidence that he did not ask the detainee beforehand to physically assault AU.
- BA told the Commission that Mr Kelleher told other boys in a prison van that if they fought BA, they would get chocolates and money on the outside, and Mr Kelleher would write favourable incident reports for them.<sup>76</sup> This is denied by Mr Kelleher.<sup>77</sup>
- Vulnerable witness BA also told the Commission, *'Just after they moved us out of Holtze and to the new Don Dale, the guard Jesse Palu set up a fight between me and [REDACTED]. He said he would give me chocolates. This was in the old G Block before it burned down [BA also said that G Block had no CCTV coverage]. Another guard named [REDACTED] was watching at the door and asked us to stop and put our shirts back on if he saw someone coming. There were other detainees watching, like [REDACTED]. He saw the whole thing. After the fight ended up happening, he gave me a big block of white chocolate... I like white chocolate. He also gave me a full pack of smokes and a box of matches. He gave chocolates to [REDACTED] as well, but not as many because I won the fight.'*<sup>78</sup> This is denied by Jesse Palu.<sup>79</sup>
- Vulnerable witness BN also gave evidence that guards, including Jesse Palu and another guard, would ask him to fight people for food and drinks. He also told the Commission that one such fight allegedly instigated by these youth justice officers occurred in G Block.<sup>80</sup> Mr Palu has denied these allegations.<sup>81</sup>

- A detainee told the Children’s Commissioner that Mr Zamolo and Mr Kelleher allowed two detainees to throw a full cup of hot water over Dylan Voller while he was locked in his cell in ‘H’ block, and they also let other boys spit on him.<sup>82</sup> This is denied by Mr Kelleher<sup>83</sup> and Mr Zamolo<sup>84</sup>. Vulnerable witness AY stated that youth justice officers would try to bribe detainees to bash other detainees for reward, and that Mr Walton asked him and vulnerable witnesses AA and AO to ‘beat up’ Dylan Voller.<sup>85</sup> This is denied by Mr Walton.<sup>86</sup>
- Vulnerable witness BQ stated that Gavin Johns organised fights between detainees.<sup>87</sup> Mr Johns has denied this allegation.<sup>88</sup>
- Vulnerable witness AX said, ‘When I was at Don Dale, the guards would sometimes offer one inmate some food or something like that for bashing another inmate’.<sup>89</sup>
- Vulnerable witness AM gave evidence that in his observation ‘if guards wanted someone beaten up they would let people fight in the showers’.<sup>90</sup>
- Vulnerable witness BR said: ‘Sometimes guards would tell kids to fight other kids to get drinks or chocolates. When I was older, a guard said to ‘sort that bloke out’. The guard wanted me to fight a young fella who was smaller than me. I just said no, I didn’t want to. It wasn’t worth it. I can’t remember which guard it was who asked me.’<sup>91</sup>

In an interview with Northern Territory police officer Kirsten Engels in March 2016, Mr Zamolo admitted that he knew that such acts were occurring. He stated:

*‘I’ve never ever played any part of setting up fights. I’ve heard about it and I’m pretty sure I know who the guard was that was doing it, but I’ve never ever, ever played any part of setting up fights.’<sup>92</sup>*

In that interview, Ms Engels did not ask Mr Zamolo who that person was. Ms Engels explained the reasons for this as follows:

*‘None of these alleged fights were particularised by any person spoken with and Mr Zamolo spoke about this and may have been prepared to offer more information about these matters however this was not discussed further as the criminal element in this behaviour was not evident.’<sup>93</sup>*

Mr Zamolo also gave a statement to the Commission in which he said, ‘I have heard that certain guards would allow detainees to ‘sort out their differences’ by fighting in the showers, where there were no CCTV cameras. I was never a witness to this but I have been told that it did happen on occasions, however this was not confined to Mr Voller and relates to other detainees.’<sup>94</sup>

When Counsel Assisting asked Mr Zamolo who told him this, he said that he ‘heard about it through the grapevine’ and could not remember who told him about it and he also said that he might have mentioned it to a supervisor but could not be sure.<sup>95</sup>

The Northern Territory Government has contended that the detainees’ accounts must be doubted for reasons of inconsistency, lack of credit or other unreliability. The Commission notes that having regard to the nature of the allegations made, there is unlikely to be any objective evidence such as

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CCTV footage or any records in IOMS.<sup>96</sup>

Notwithstanding that all of the specific allegations are denied by those said to have been involved, there are consistent themes to the allegations:

- four detainees (AT, AU, BA and a fourth detainee) stated that Mr Kelleher engaged in this behaviour
- two detainees (BA and BN) told the Commission that Mr Palu engaged in this behaviour, and the fights occurred in G block where there were no cameras
- two detainees (AT and another detainee) stated that Mr Zamolo (in one case, with Mr Kelleher) engaged in this behaviour, and
- one detainee (AX) and Mr Zamolo told the Commission that fights occurred in the showers where there were no cameras.

Having regard to the range of evidence received by the Commission of this type of conduct, it is likely that youth justice officers from time to time engaged in such acts.

## Finding

**At times, some youth justice officers dared detainees, or offered bribes to detainees to carry out acts of physical violence on each other. This conduct was in breach of section 12(1)(c) of the *Criminal Code Act* (NT) and of the superintendent's responsibility under section 151(2) of the *Youth Justice Act* (NT) for the physical, psychological and emotional welfare of detainees. This conduct was also in breach of Article 87 of the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, which requires that staff of juvenile detention centres must respect and protect the human dignity and fundamental rights of all juveniles, and prohibits harsh, cruel, inhuman or degrading treatment.**

## THE USE OF MOBILE PHONES

The Commission received evidence that youth justice officers used mobile phones in inappropriate, humiliating and potentially harmful ways.

There was a policy in force during the relevant period that mobile phones were not permitted within the secure perimeter of youth detention centres without written permission from the Director of Correctional Services.<sup>97</sup> The policy stated that staff members should either secure phones in their vehicles before entering the centre or place them in a safe storage area that was not within the prisoner management areas of the institution. A breach of that policy could result in disciplinary action.<sup>98</sup>

Further, recording of detainees on a mobile phone without consent may breach human rights to privacy. For example, Article 16 of the *United Nations Convention on the Rights of the Child* states that, 'no child shall be subjected to arbitrary or unlawful interference with his or her privacy'.<sup>99</sup>

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Several vulnerable witnesses gave evidence that they saw guards using a mobile phone while on duty including using social media and watching videos.<sup>100</sup> One youth justice officer in particular, Mr Zamolo, gave unchallenged evidence that he knew the use of mobile phones within the centre was prohibited, but that he, along with 'a lot' of other guards, still took their phones into the centre.<sup>101</sup>

These breaches of policy<sup>102</sup> led to the potential for phones to be used to infringe on children and young people's privacy in the Don Dale Youth Detention Centre.

Dylan Voller said that he remembered Snapchat photos having been taken of him by various youth justice officers. He recalls that one photo was taken while he was in an escort vehicle and included the caption 'look at these crims sitting here'.<sup>103</sup> The youth justice officers who escorted Mr Voller denied this.<sup>104</sup>

The Commission received evidence of a particularly disturbing instance of the use of a mobile phone. Between February and April 2014, Mr Zamolo used his mobile phone to make video recordings of detainees in the former Don Dale Youth Detention Centre.<sup>105</sup> Four such recordings warrant particular attention.

## Incident 1

One video was made by Mr Zamolo as he entered a toilet area through a closed door and located a boy who was standing in a cubicle, the door to which was open. He pointed his camera at the back of this boy who turned such that his face can be seen on the recording. The boy appeared to be urinating and understandably appeared uncomfortable with the intrusion. Mr Zamolo accepted that there was no possible justification for him recording a child in a toilet. He also expressed the opinion that if anybody had seen him recording this incident, he would not have been disciplined for it.<sup>106</sup>

## Incident 2

The second recording is of two detainees who were in bed at night apparently asleep,<sup>107</sup> and the following exchange occurred:

*Mr Zamolo: "Oi, you wanna ... Who wants to suck my dick?"*

*Detainee: "Fuck off you prick."*

*Mr Zamolo: "Come suck my dick you little cunt."*

*Detainee: "Motherfucker."*

Mr Zamolo described his conduct in this incident as him saying 'goodnight' to the boys, that it was done in jest, that he had a 'good relationship' with the boys and he would not have done it if he thought that the boys would be offended. Mr Zamolo also accepted that the assumption that supported this was 'quite callous' and that this sort of behaviour would be utterly unacceptable in the circumstances of any other adult putting a child to bed.<sup>108</sup> Mr Zamolo's interaction with the detainees demonstrated a lack of understanding of his position of authority and the significant power he held over them.

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## Incident 3

A detainee, surrounded by other detainees, was urged to eat an unidentified small pellet.<sup>109</sup> Mr Zamolo's voice can be heard on the recording saying, 'Go, go, go; eat that shit, eat that little bit of shit'. There were 'a lot of kids there'.<sup>110</sup> The boy proceeded to eat the item. While refusing to acknowledge that he knew precisely what the pellet was, Mr Zamolo accepted that what the detainee ate was 'disgusting' because he gave the detainee some Coke to wash his mouth out after.<sup>111</sup>

In an interview with police, Mr Zamolo stated that there were 'six or seven' other youth justice officers present during this incident.<sup>112</sup> When he came to give evidence approximately one year after the interview, he stated that there were three or four other officers there at the time the video was recorded. However many were there, none of the other adults present appeared to do anything to intervene. The event was loud and conspicuous. No-one in the vicinity could have been under any misapprehension as to that which was occurring. Mr Zamolo made no secret of the fact that he was recording the incident. Subsequently, not a single person present reprimanded him or even spoke to him about his actions. This is indicative of a major cultural problem and the manifest willingness of others to tolerate the conduct leaves open the question of how widespread this sort of behaviour was. Then, to compound his misconduct, Mr Zamolo put the recording on Snapchat, an action he did 'to share with others' as a source of amusement.<sup>113</sup>

That this act occurred in the open and with other responsible adults around is indicative of failure in leadership.

The Northern Territory Government submitted that this Commission ignores the evidence regarding the various oversight mechanisms operating within the detention centres.<sup>114</sup> However, for this incident to have occurred in such an open way in the presence of other responsible adults is illustrative of a clear failure of any oversight mechanisms which operated in the Don Dale Youth Detention Centre at that time.

The Northern Territory Government has also not accepted that this evidence amounted to a 'major cultural problem'. The Northern Territory Government submitted that it was an 'extraordinary, isolated incident'.<sup>115</sup> It is concerning that at no point did the Northern Territory Government in its submissions even accept that this conduct was abhorrent or take any responsibility for it occurring.

## Incident 4

Mr Zamolo was also involved in an incident involving actual or simulated filming of some of the male detainees while they were showering, one of whom was said to be masturbating.<sup>116</sup>

The evidence the Commission received about this issue is summarised as follows:

- On 30 April 2014, vulnerable witness AT made a phone call to his girlfriend on the prisoner telephone system. He was recorded as having said, 'Aw 'cus, they videoed a video, sent it to one, fucking all the people on the Instagram, me wanking in the shower. Conan videoed me'.<sup>117</sup> A file note of a discussion with an Audit and Investigation Officer of the Professional Standards Unit and a Prison Officer of the Corrections Intelligence Unit on 19 May 2014 with AT in the company of two caseworkers stated, 'It was Detainee AT's belief that Conan did not film him and that it was

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*just boys talking shit.*<sup>118</sup> In a later interview with police, which was given in the form of a statutory declaration after AT was released from Don Dale Youth Detention Centre, AT stated that he was in the shower masturbating and Mr Zamolo ‘walked in and pulled out his phone and started recording it ‘cause he thought it was funny, ‘cause we were standing on our tippy toes.’<sup>119</sup> AT stated that he saw Mr Zamolo’s phone, at the time, and on it could see his ‘[a]rse and I was standing on my tippy toes and facing the window’.<sup>120</sup> AT further stated that Mr Zamolo said he was going to ‘show everyone’ and put it on Snapchat, and after this, Mr Zamolo said he deleted it.<sup>121</sup>

- The Commission notes that the file note prepared by the Professional Standards Unit (PSU) and a prison intelligence officer, which was not signed by AT and related to an interview when AT was in detention, is inconsistent with his later statutory declaration to the police which was given after he was released. In these circumstances the Commission considers that the file note should not be preferred over AT’s statutory declaration. Another detainee told police that he saw on Mr Zamolo’s phone AT on his tippy toes with his ‘arse’ in view<sup>122</sup> and he also gave evidence that Mr Zamolo showed Mr Kelleher the image at the time.<sup>123</sup>
- A third detainee stated that he saw Mr Zamolo pointing his phone in the direction of AT.<sup>124</sup> This detainee said that Mr Zamolo met up with Mr Kelleher directly after the incident.<sup>125</sup> Mr Kelleher was not interviewed by police about this, but in evidence denied that he was shown the image, or had any knowledge of Mr Zamolo recording inmates.<sup>126</sup> This evidence is noted, but acceptance of the evidence of AT and these two detainees does not depend on a decision as to whether Mr Kelleher was shown an image or not.
- A fourth detainee gave evidence that he witnessed Mr Zamolo recording detainees in the shower on more than one occasion.<sup>127</sup> That detainee, when interviewed by the police earlier, could not recall the event occurring. He also gave evidence that he did not see detainees being bribed to eat inappropriate things.<sup>128</sup> However, in his later evidence to the Commission, the detainee stated:

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

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

*At the time, the police came to see me, I had been [REDACTED]. It was hard. I was staying quiet about Don Dale and I was not comfortable talking about it. I thought that if I spoke to lawyers about what happened to me, I would be known as a snitch or a dog.’<sup>129</sup>*

The Northern Territory Government submitted that there were inconsistencies in the detainees’ accounts of this event. These included inconsistencies as to precisely who else was in the showers at the time and the colour of Mr Zamolo’s phone.<sup>130</sup>

The Commission does not consider an inconsistency in recalling a minor detail necessarily affects the credibility of a child providing evidence about a traumatic incident.<sup>131</sup>

Mr Zamolo denied that he recorded children in the showers. He accepted that he may have



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pretended to record a child in the shower, by holding his phone in a position to make it look as if he was recording, in an effort to hurry the child up.<sup>132</sup> In the circumstances, this may be a convenient response to the allegations. While no recording of the incident was found on Mr Zamolo's mobile phone, this phone does not show whether a recording was made and deleted.

The investigating officer from the Northern Territory Police believed there was no basis to suspect the boys colluded on this issue.<sup>133</sup> Mr Zamolo's acceptance that he may have 'held up' his phone is a glib response to the objective unlikelihood that these boys could independently have contrived a detailed account of his behaviour, including seeing the images on the phone.

Further, the fact that more than one person indicated that they saw images on Mr Zamolo's mobile phone of the incident and that there is no reason that their otherwise evidently truthful account of the incident should not be accepted, supports the conclusion that it is likely that Mr Zamolo recorded vulnerable witness AT while he was naked in the shower. It is also likely that the recording was deleted from Mr Zamolo's mobile phone, and beyond the assertion that it was shown to Mr Kelleher,<sup>134</sup> there is insufficient evidence to conclude that it was otherwise published.

The fact that a child or children were recorded in these circumstances while under the care and control of Mr Zamolo represented a gross and deliberate invasion of privacy and an affront to the children's dignity and may amount to a contravention of section 125B of the *Criminal Code Act (NT)* (concerning the production of child abuse material). Even if Mr Zamolo's account were accepted and no recording occurred, the behaviour of pretending to record a young person while naked in the shower was indefensible.

## Findings

### The Commission finds that:

- mobile phones were used in the Don Dale Youth Detention Centre in breach of policy
- Conan Zamolo, a youth justice officer, filmed detainees on at least three occasions inappropriately and stored the recordings on his mobile phone
- Conan Zamolo held his phone up in the air in the bathroom of the Don Dale Youth Detention Centre to signal to the boys in the bathroom who were showering at the time, one of whom was masturbating, that he was filming them, and
- it is likely that Conan Zamolo made a recording of a detainee while he was in the shower.

**This conduct was in breach of Article 87 of the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* and in breach of the superintendent's responsibility under section 151(2) of the *Youth Justice Act (NT)* for the physical, psychological and emotional welfare of detainees.**



## ENDNOTES

- <sup>1</sup> Exh.098.001, Record of Interview of Conan Zamolo, 21 November 2014, tendered 20 March 2017, p. 81.
- <sup>2</sup> Transcript, Louise Inglis, 24 March 2017, p. 1784: lines 32-36.
- <sup>3</sup> Section 18C of the *Racial Discrimination Act 1975* (Cth) prohibits offensive behaviour based on race, colour or ethnic origin that is likely to 'offend, insult, humiliate or intimidate another person'. Some of the conduct referred to in this chapter may have been in breach of section 18C.
- <sup>4</sup> Exh.098.001, Record of Interview of Conan Zamolo, 21 November 2014, tendered 20 March 2017, pp. 68-69. Benjamin Kelleher gave evidence that he heard about the same incident: Transcript, Benjamin Kelleher, 21 March 2017, p. 1547: lines 35-45.
- <sup>5</sup> Exh.098.001, Record of Interview of Conan Zamolo, 21 November 2014, tendered 20 March 2017, p. 81: line 16.
- <sup>6</sup> Transcript, Conan Zamolo, 20 March 2017, p. 1397: lines 1-6.
- <sup>7</sup> Transcript, Jamal Turner, 13 March 2017, p. 942: lines 32-33.
- <sup>8</sup> Transcript, Jamal Turner, 13 March 2017, p. 943: lines 25-27.
- <sup>9</sup> Transcript, Leonard de Souza, 22 March 2017, p. 1654: lines 35-37.
- <sup>10</sup> Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 46.
- <sup>11</sup> Closed court transcript, BQ, 27 March 2017, p. 10: lines 27-28.
- <sup>12</sup> Transcript, James Sizeland, 27 March 2017, p. 1912: lines 30-35.
- <sup>13</sup> Northern Territory Government, Submissions in response to Notice of Adverse Material 8/17, 24 August 2017, para. 16.
- <sup>14</sup> Exh.154.001, Statement of Eliza Tobin, 8 February 2014, tendered 24 March 2017, para. 5.
- <sup>15</sup> Transcript, Eliza Tobin, 24 March 2017, p. 1782: lines 32-34.
- <sup>16</sup> Transcript, Greg Harmer, 24 March 2017, p. 1783: lines 20-25.
- <sup>17</sup> Exh.064.154, Email from Leonard de Souza to Russell Caldwell, 17 October 2013, tendered 22 March 2017.
- <sup>18</sup> Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, paras 14 and 61.
- <sup>19</sup> Transcript, Saki Muller, 24 March 2017, p. 1794: line 7.
- <sup>20</sup> Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), Article 31.
- <sup>21</sup> Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), Article 34.
- <sup>22</sup> Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), Article 37.
- <sup>23</sup> Exh.152.001, Statement of Saki Muller, 10 February 2017, tendered 24 March 2017, para. 27.
- <sup>24</sup> Transcript, Dylan Voller, 12 December 2016, p. 680 lines: 40-46.
- <sup>25</sup> Exh.151.001, Statement of Greg Harmer, 3 February 2017, tendered 24 March 2017, para. 37.
- <sup>26</sup> Transcript, Louise Inglis, 24 March 2017, p. 1784: lines 30-32.
- <sup>27</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 28.
- <sup>28</sup> Closed court transcript, AS, 22 March 2017, p.20: lines 43-46.
- <sup>29</sup> Closed court transcript, AS, 22 March 2017, p. 21: lines 14-46.
- <sup>30</sup> Exh.140.014, IOMS Report 29513, 6 November 2015, tendered 23 March 2017, p. 1.
- <sup>31</sup> Exh.260.001, Statement of BW, 22 February 2017, tendered 31 March 2017, para. 32. BW did not give evidence in person before the Commission.
- <sup>32</sup> Exh.251.001, Statement of BA, 17 February 2017, tendered 31 March 2017, para. 49.
- <sup>33</sup> Exh.251.001, Statement of BA, 17 February 2017, tendered 31 March 2017, para. 33.
- <sup>34</sup> Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para. 82.
- <sup>35</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 9.
- <sup>36</sup> Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para. 28.
- <sup>37</sup> Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 36.
- <sup>38</sup> Exh.167.001, Statement of BQ, 17 February 2017, tendered 27 March 2017, para. 44.
- <sup>39</sup> Closed court transcript, AF, 24 March 2017, p. 10: lines 10-14.
- <sup>40</sup> Closed court transcript, AF, 24 March 2017, p. 10: lines 29-31.
- <sup>41</sup> Closed court transcript, AF, 23 March 2017, p. 26: lines 46-47.
- <sup>42</sup> Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para. 48.
- <sup>43</sup> Exh.111.001, Statement of AX, 17 February 2017, tendered 21 March 2017, para. 18.
- <sup>44</sup> Exh.114.015, Security Cell Placement Journal for AX March 2011, tendered 21 March 2017.
- <sup>45</sup> Northern Territory Government, Submissions in response to Notice of Adverse Material 8/17, 24 August 2017, para. 23(l).
- <sup>46</sup> Exh.114.013, Bed History for AX (2005 - 2012), tendered 21 March 2017, p 7; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 98.
- <sup>47</sup> Exh.241.001, Statement of BV, 19 February 2017, tendered 31 March 2017, paras 50-51.
- <sup>48</sup> Transcript, Benjamin Kelleher, 21 March 2017, p. 1543: lines 14-19; Transcript, Conan Zamolo, 20 March 2017, p. 1396: lines 33-34.
- <sup>49</sup> Exh.098.001, Record of Interview of Conan Zamolo, 21 November 2014, tendered 20 March 2017, p. 9: lines 20-23, p. 81: lines 13-15.
- <sup>50</sup> Exh.167.001, Statement of BQ, 17 February 2017, tendered 27 March 2017, para. 44.
- <sup>51</sup> Exh.065.001, Statement of AV, 21 February 2017, tendered 15 March 2017, para. 49.
- <sup>52</sup> Exh.076.001, Statement of Derek Tasker (responsive to AV), 12 March 2017, tendered 14 March 2017, para. 18.
- <sup>53</sup> Northern Territory Government, Submissions in response to Notice of Adverse Material 8/17, 24 August 2017, para. 23(a), (b), (d), (e), (f), (g), (h), (i).
- <sup>54</sup> Northern Territory Government, Submissions in response to Notice of Adverse Material 8/17, 24 August 2017, para. 34(b).

- 55 Exh.927.001, Statement of AP, 18 March 2017, 26 October 2017, paras 84-89.
- 56 Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), Article 87.
- 57 Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 17; Closed court transcript, AY, 9 May 2017, p. 10: lines 4-43.
- 58 Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 17.
- 59 Closed court transcript, AY, 9 May 2017, page 11: lines 1-11.
- 60 Exh.274.001, Statement of Jon Walton, 21 March 2017, tendered 31 March 2017, para. 18; Exh.097.001, Statement of Conan Zamolo, 16 March 2017, tendered 20 March 2017, paras 52-55; Transcript, Benjamin Kelleher, 19 April 2017, p. 2483: lines 24-30. Transcript, Benjamin Kelleher, 21 March 2017, p. 1553: lines 9-13.
- 61 Exh.064.291, Letter from the Northern Territory Children's Commissioner to Ken Middlebrook, 27 October 2015, tendered 31 March 2017.
- 62 Exh.064.291, Letter from the Northern Territory Children's Commissioner to Ken Middlebrook, 27 October 2015, tendered 31 March 2017.
- 63 Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, q. 14.
- 64 Exh.064.291, Letter from the Northern Territory Children's Commissioner to Ken Middlebrook, 27 October 2015, tendered 31 March 2017, p. 2.
- 65 Exh.064.291, Letter from the Northern Territory Children's Commissioner to Ken Middlebrook, 27 October 2015, tendered 31 March 2017.
- 66 Exh.097.001, Statement of Conan Zamolo, 16 March 2017, tendered 20 March 2017, paras 46, 56; Exh.274.001, Statement of Jon Walton, 21 March 2017, tendered 31 March 2017, paras 18-19; Transcript, Benjamin Kelleher, 19 April 2017, p. 2483: lines 24-32.
- 67 Exh.005.001, Convention on the Rights of the Child, Article 18 requires parties to take all appropriate measures to protect the child from physical violence, abuse, maltreatment and exploitation; Exh.311.050, The Australasian Juvenile Justice Administrators' Principles October 2014, Section 9.1 states that custodial environments must be safe and secure.
- 68 *Criminal Code Act (NT) S 12.*
- 69 Exh.064.276, Transcript of Conversation with AT, 23 September 2015, tendered 31 March 2017, pp. 102, 105- 106.
- 70 Exh.106.001, Statement of Benjamin Kelleher, 16 March 2017, tendered 21 March 2017, para. 60.
- 71 Exh.97.001, Statement of Conan Zamolo, 16 March 2017, tendered 20 March 2017, para. 50.
- 72 Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, paras 48-52.
- 73 Exh.106.001, Statement of Benjamin Kelleher, 16 March 2017, tendered 21 March 2017, para. 60.
- 74 Exh.498.000, Statement of Joseph Ingles (Responsive to AU), 12 April 2017, tendered 19 May 2017, para. 17.
- 75 Northern Territory Government, Submissions in response to Notice of Adverse Material 8/17, 24 August 2017, para. 45(b); Exh.498.001, Annexure JI-1 to Statement of Joseph Ingles, IOMS report, tendered 19 May 2017; Exh.498.002, Annexure JI-2 to Statement of Joseph Ingles, IOMS report, tendered 19 May 2017; Exh.498.003, Annexure JI-3 to Statement of Joseph Ingles, IOMS report, tendered 19 May 2017; Exh.498.004, Annexure JI-4 to Statement of Joseph Ingles, IOMS report, tendered 19 May 2017; Exh.498.005, Annexure JI-5 to Statement of Joseph Ingles, IOMS report, tendered 19 May 2017; Exh.498.006, Annexure JI-6 to Statement of Joseph Ingles, Daily Journal Record, tendered 19 May 2017.
- 76 Exh.251.001, Statement of BA, 17 February 2017, tendered 31 March 2017, paras 28-31.
- 77 Exh.106.001, Statement of Benjamin Kelleher, 16 March 2017, tendered 21 March 2017, para. 60.
- 78 Exh.251.001, Statement of BA, 17 February 2017, tendered 31 March 2017, paras 35-36.
- 79 Exh.755.000, Statement of Jesse Palu, 28 April 2017, tendered 25 July 2017, paras 5-17.
- 80 Exh.102.001, Statement of BN, 14 February 2017, tendered 20 March 2017, paras 44-51.
- 81 Exh.248.001, Statement of Jesse Palu, 23 March 2017, tendered 31 March 2017, paras 8-11.
- 82 Exh.064.291, Letter from the Northern Territory Children's Commissioner to Ken Middlebrook, 27 October 2015, tendered 31 March 2017, p. 2; Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, para. 214.
- 83 Exh.106.001, Statement of Benjamin Kelleher, 16 March 2017, tendered 21 March 2017, para. 19.
- 84 Exh.97.001 Statement of Conan Zamolo, 16 March 2017, tendered 19 April 2017, para. 48.
- 85 Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 18; Closed court transcript, AY, 9 May 2017, p. 11: lines 13-26.
- 86 Exh.274.001, Statement of Jon Walton, 21 March 2017, tendered 31 March 2017, para. 20.
- 87 Ex.167.001, Statement of BQ, 17 February 2017, tendered 27 March 2017, para. 39.
- 88 Exh.730.000, Statement of Gavin Johns, 13 April 2017, tendered 25 July 2017, paras 17-21.
- 89 Exh.111.001, Statement of AX, 17 February 2017, tendered 21 March 2017, para. 21.
- 90 Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 14.
- 91 Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para. 59.
- 92 Exh.64.301A, Transcript of Interview with Conan Zamolo, 15 March 2016, tendered 20 March 2017, p. 23: lines 27-29.
- 93 Exh.347.001, Statement of Kirsten Engels, 22 March 2017, tendered 9 May 2017, para. 68.
- 94 Exh.97.001, Statement of Conan Zamolo, 16 March 2017, tendered 20 March 2017, para. 50.
- 95 Transcript, Conan Zamolo, 20 March 2017, p. 1399: lines 1-20.
- 96 On the basis that it is alleged that these incidents took place in areas where was no CCTV coverage, or on the basis that it is highly unlikely that youth justice officers would admit such conduct in their reports.
- 97 Exh.064.049, Directive 2.2.12 Mobile Telephone in Correctional Centres, 30 June 2011, tendered 31 March 2017.

- <sup>98</sup> Exh.064.049, Directive 2.2.12 Mobile Telephone in Correctional Centres, 30 June 2011, tendered 31 March 2017.
- <sup>99</sup> Exh.005.002, United Nations Convention on the Rights of the Child, Art 16; see also Exh.005.001, International Covenant on Civil and Political Rights, Article 17 which prohibits the arbitrary or unlawful interference with the privacy of a person; Exh.006.001 Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), Article 87 states that all detention personnel should respect the right of the juvenile to privacy and safeguard all confidential matters concerning juveniles; Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), Article 8 mandates that a juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him.
- <sup>100</sup> Exh.273.001, Statement of AT, 27 February 2017, tendered 31 March 2017, para. 20; Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, paras 113-114. Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 64. Exh.717.000, Supplementary statement of Dylan Voller, 8 April 2017, tendered 25 July 2017, paras 95-96. Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, para. 57.
- <sup>101</sup> Exh.64.301A, Transcript of Interview with Conan Zamolo, 15 March 2016, tendered 20 March 2017, pp. 15-16; Transcript, Conan Zamolo, 20 March 2017, p. 1405: lines 5-45.
- <sup>102</sup> This policy prohibited phones within detention centres without the permission of the Director of Correctional Services: Exh.064.049, Directive 2.2.12 Mobile Telephone in Correctional Centres, 30 June 2011, tendered 31 March 2017.
- <sup>103</sup> Exh.051.001, Statement of Dylan Voller [Redacted], 25 November 2016, tendered 13 December 2016, Exh.717.000, Supplementary statement of Dylan Voller, 8 April 2017, tendered 25 July 2017, paras 94 - 99, 155.
- <sup>104</sup> Exh.292.001, Statement of Jesse Palu, 28 February 2017, tendered 19 April 2017, paras 39-42; Exh.405.001, Statement of Riley Kirwin, 3 February 2017, tendered 12 May 2017, paras 8-16.
- <sup>105</sup> Exh.064.299, Case Note: Analyse Conan Zamolo's phone for evidence, 7 March 2016, tendered 31 March 2017.
- <sup>106</sup> Transcript, Conan Zamolo, 20 March 2017, pp. 1407-1409.
- <sup>107</sup> Exh.101.001, Bed incident video, tendered 20 March 2017.
- <sup>108</sup> Transcript, Conan Zamolo, 20 March 2017, pp. 1409-1411.
- <sup>109</sup> Exh.099.001, Eating incident video, tendered 20 March 2017.
- <sup>110</sup> Transcript, Conan Zamolo, 20 March 2017, p. 1403: line 15.
- <sup>111</sup> Transcript, Conan Zamolo, 20 March 2017, pp. 1403-1404,
- <sup>112</sup> Exh.064.301A, Transcript of Interview with Conan Zamolo, 15 March 2016, tendered 20 March 2017, p. 6: line 41.
- <sup>113</sup> Transcript, Conan Zamolo, 20 March 2017, pp. 1406-1407.
- <sup>114</sup> Northern Territory Government, Submissions in response to Notice of Adverse Material 8/17, 24 August 2017, para. 11.
- <sup>115</sup> Northern Territory Government, Submissions in response to Notice of Adverse Material 8/17, 24 August 2017, para. 71.
- <sup>116</sup> Exh.273.001, Statement of AT, 27 February 2017, tendered 31 March 2017, para. 20; Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 66; Exh.064.292A, Transcript of Interview with [REDACTED], 29 October 2015, tendered 31 March 2017, pp. 5-11; Exh.064.279A, Transcript of Interview with [REDACTED], 26 September 2015, tendered 31 March 2017, pp. 3-5.
- <sup>117</sup> Exh.064.173, Signed file note [REDACTED], 15052014, 19 May 2014, tendered 31 March 2017.
- <sup>118</sup> Exh.064.173, Signed file note [REDACTED], 15052014, 19 May 2014, tendered 31 March 2017.
- <sup>119</sup> Exh.064.276, Transcript of Conversation with [REDACTED], 23 September 2015, tendered 31 March 2017, p. 3.
- <sup>120</sup> Exh.064.276, Transcript of Conversation with [REDACTED], 23 September 2015, tendered 31 March 2017, p. 47.
- <sup>121</sup> Exh.064.276, Transcript of Conversation with [REDACTED], 23 September 2015, tendered 31 March 2017, pp. 48, 51, 54.
- <sup>122</sup> Exh.064.279A, Transcript of Conversation with [REDACTED], 26 September 2015, tendered 31 March 2017, p. 17.
- <sup>123</sup> Exh.064.279A, Transcript of Conversation with [REDACTED], 26 September 2015, tendered 31 March 2017, pp. 20-21.
- <sup>124</sup> Exh.064.292A, Transcript of Conversation with [REDACTED], 29 October 2015, tendered 31 March 2017, pp. 4-6.
- <sup>125</sup> Exh.064.292A, Transcript of Conversation with [REDACTED], 29 October 2015, tendered 31 March 2017, p. 11.
- <sup>126</sup> Exh.106.001, Statement of Benjamin Kelleher, 16 March 2017, tendered 21 March 2017, para. 62; Transcript, Benjamin Kelleher, 19 April 2017, p. 2483: lines 19-22; Transcript, Ben Kelleher, 21 March 2017, p. 1553: lines 23-27.
- <sup>127</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 64.
- <sup>128</sup> Exh.064.281, Audio statement [REDACTED], tendered 31 March 2017, pp. 2, 10.
- <sup>129</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, paras 93-95.
- <sup>130</sup> Northern Territory Government, Submissions in response to Notice of Adverse Material 8/17, 24 August 2017, para. 74(b), (e).
- <sup>131</sup> In this regard, the Commission notes the observations of the Royal Commission into Institutional Responses to Child Sexual Abuse, which made the following comment in evaluating how evidence is elicited from complainants of child sexual abuse: Royal Commission into Institutional Responses to Child Sexual Abuse, August 2016 Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, "An evaluation of how evidence is elicited from complainants of child sexual abuse", (accessed on 28 September 2017). <<http://www.childabuseroyalcommission.gov.au/getattachment/b1d4119a-fee6-45e4-9543-9f2b110737ec/An-evaluation-of-how-evidence-is-elicited-from-com>>.
- <sup>132</sup> Transcript, Conan Zamolo, 20 March 2017, p. 1411: lines 12-39.
- <sup>133</sup> Exh.064.276, Transcript of Conversation with [REDACTED], 23 September 2015, tendered 31 March 2017.
- <sup>134</sup> Exh.064.279A, Transcript of Interview with [REDACTED], 26 September 2015, tendered 31 March 2017, pp. 20-21.



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USE OF FORCE





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# USE OF FORCE

## INTRODUCTION

In any youth detention centre, occasions may arise that require a staff member to make physical contact with a detainee. Physical contact, including the use of force and restraints on a detainee, is governed and regulated by law, including the criminal law. In the Northern Territory the *Youth Justice Act (NT)* and the *Youth Justice Regulations (NT)* provided the specific legislative framework for the permissible application of force throughout the relevant period.

The Commission has received evidence from numerous detainees about the circumstances in which they recall physical force being used during the relevant period. Very little of that evidence is accepted by the Northern Territory Government. Other parts of the evidence are contested, including by the youth justice officers involved. For the reasons given in this Chapter, the Commission accepts the likelihood that most, if not all, of the descriptions given by detainees of the use of force are substantially correct.

The Commission concludes that physical force was used during the relevant period against detainees in ways that were inappropriate and sometimes dangerous to the detainees. Many of the detainees who found themselves the subject of physical force were very young, and often physically small. The Commission believes that the use of physical force against detainees must be the subject of express regulation to ensure that all officers clearly understand both the purposes for which force may be applied and the appropriate method of applying limited force in those circumstances. The Commission concludes that existing legislative provisions require amendment to ensure this goal is achieved.

### The power to use force on a detainee

The intentional application of force by a person against another may involve a trespass to the person, a tort of assault or battery unless authorised.<sup>1</sup> The law recognises that an individual may have the right to use physical force to protect him or herself from physical violence and to act in the defence

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of others. This can include the pre-emptive use of force.<sup>2</sup> An act may be authorised if it is done in conformity with a law.<sup>3</sup>

This authorisation particularly applies to law enforcement agencies, but these entities rightly have limits placed upon the exercise of their powers. Within the secure environment of a prison or detention centre, maintaining security or the safety of detainees by the use of force may, on occasion, be necessary. In these institutions, being closed, it is of paramount importance that the power be strictly described and circumscribed. The vulnerability of children and young people to physical and psychological control by adults imposes a special responsibility on legislatures, communities and staff within youth detention centres to be alert to restricting the permission to resort to force to situations where it is truly necessary.

There are many international human rights instruments concerning children which are discussed elsewhere in this report. It is sufficient to refer here only to the *Declaration on the Rights of the Child* adopted by the General Assembly of the United Nations in 1959 that:

*the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection ...*<sup>4</sup>

The United Nations Committee on the Rights of the Child has set out in detail the treatment and conditions that are applicable to the use of force against children:<sup>5</sup>

*Restraint or force can be used only when the child poses an **imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted** ... It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violations of the rules and standards should be punished appropriately. [Emphasis added]*

Under the *Youth Justice Act*, the superintendent of a detention centre is to maintain order and ensure the safe custody and protection of all persons who are within the precincts of the detention centre, whether as detainees or otherwise.<sup>6</sup> The superintendent has all the powers necessary or convenient to perform his or her functions.<sup>7</sup>

While the obligation to maintain order and ensure the safe custody and protection of persons detailed in section 151 of the *Youth Justice Act* is couched in general terms, the *Youth Justice Act* sets out more specific functions and powers of the superintendent in relation to the use of force, restraints and isolation within detention centres.<sup>8</sup>

Under section 153 of the *Youth Justice Act*, a superintendent of a detention centre must maintain discipline at the detention centre and may use force that is reasonably necessary in the circumstances.<sup>9</sup> However, the power in section 153 is expressly limited, in that reasonably necessary force does not include the following:

- striking, shaking or other form of physical violence
- enforced dosing with a medicine, drug or other substance
- compulsion to remain in a constrained or fatiguing position, and
- handcuffing or use of similar devices to restrain normal movement.<sup>10</sup>

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The restriction on handcuffing or the use of similar devices to restrain normal movement does not apply when there is an emergency and a detainee needs to be temporarily restrained to protect that detainee or the safety of another person. In those circumstances, that detainee may be restrained with handcuffs or a similar device until the emergency no longer exists.<sup>11</sup> In August 2016, this exception was expanded to allow a detainee to be restrained if it would reduce the risk to the good order or security of the detention centre. That is, it became no longer necessary for there to be an emergency before restraining a detainee.

Another exception to the restrictions on use of force concerns escorting a detainee. Until August 2016, a detainee could be restrained with handcuffs or a similar device when being escorted outside the detention centre.<sup>12</sup> This exception was expanded on 1 August 2016 to allow a detainee to be restrained with approved restraints, such as handcuffs, when being escorted inside and outside a detention centre.

In addition to the power to use force on and restrain a detainee, a detainee may be searched, including strip searched.<sup>13</sup> A detainee can be directed to undergo a search if the superintendent believes, on reasonable grounds, that it is necessary in the interests of the security or good order of the detention centre or a detainee may have in their possession any article that is not permitted.

The powers of the superintendent could be and, from time to time were, delegated to staff members of the detention centres.<sup>14</sup>

The Commission discusses below the experiences of detainees in relation to the use of force, restraints and strip searches, and whether those powers are appropriate in all the circumstances, including whether they comply with relevant human rights standards.<sup>15</sup>

There is some controversy surrounding the extent of the power the *Youth Justice Act* gives youth justice officers to use force on a detainee. If use of force is authorised only as set out in section 153 of the *Youth Justice Act*, express statutory limitations apply. But if the use of force for other purposes than those set out in section 153 is also authorised by the grant of general powers under sections 151 and 152, then that use of force, for those purposes, is not subject to the express limits set out in section 153.

Section 151(3) provides that, among other duties, the superintendent *‘must maintain order and ensure the safe custody and protection of all persons who are within the precincts of the detention centre’*.

Section 152(1) provides that *‘The superintendent of a detention centre has the powers that are necessary or convenient for the performance of his or her functions’*.

The power afforded by section 152 is a general power. The use of force is not mentioned, but the power does not, in terms, exclude the use of force. No limitation on the use of force, or guidance in relation to the possible use of force, appears within section 152.

Section 153, however, provides a specific power to use force to *‘maintain discipline at the detention centre’*. This is a particular duty of the superintendent under section 153(1). Section 153(2) limits that force, to force which is *‘reasonably necessary’*, and the use of force is subject to the limits in section 153(3). Section 153 expresses in unambiguous language the intention of the legislature to authorise force against a detainee and, as a result, authorise what otherwise would, amongst other things, constitute an assault or battery against a detainee.

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Other circumstances in which the legislature has expressly authorised the use of force in the *Youth Justice Act* include the following:

- A police officer may use reasonable force when assisting the medical practitioner or dentist to carry out an intimate or non-intimate procedure (sections 30(10) and 31(11))
- A police officer may use reasonable force when carrying out an identifying procedure (section 33(9))
- a person authorised to take a sample may use force that is reasonably necessary to ensure a sufficient buccal swab sample is obtained (section 159) or sample of blood, breath or urine is obtained for alcohol or illicit drug testing (section 160), and
- a person taking a sample and staff of a detention centre assisting the person may use force that is reasonably necessary to ensure that a sufficient sample of blood or bodily secretion or excretion is obtained for a medical sample (section 175).

That the legislature has seen fit to specify expressly the circumstances in which force may be used elsewhere in the *Youth Justice Act* but particularly in Part 8 which concerns Youth Detention Centres (sections 159, 160 and 175), may tend to support a construction that force was intended to be used only where expressly provided.

Further, when the legislature explicitly gives a power and prescribes the mode in which that power shall be exercised, including the conditions and restrictions which must be observed, it generally excludes the operation of a power expressed in general terms that might otherwise have been relied upon for the exercise of the same power.<sup>16</sup> Thus, unless the power afforded by section 153 is a different power to that in section 152, the general power must give way to the specific. That is because the specific power detailed in section 153 contains limits on the use of force absent from the general power described in section 152.

On its face, in the context of sections 151 and 152, the power bestowed under section 153(2) is not a different power. Section 153(2) is a subset of the obligation under section 151(3)(c) and power under section 152(1) to ‘*maintain order and ensure the safe custody and protection of all persons who are within the precincts*’. The duty to maintain discipline is arguably a necessary attribute of the more general duties set out in section 151(3). It arguably constitutes a code governing the use of force in Division 2 of Part 8, such that no separate authority to use force may be found in section 152.

While, in the Commission’s view, the provisions of the *Youth Justice Act* set out above tend to support the conclusion that section 153 alone authorises the use of force on detainees, the Commission recognises that a different interpretation has been taken by the Supreme Court of the Northern Territory. In *Edwards v Tasker* [2014] NTSC 56,<sup>17</sup> the Court held that:

- section 153 authorised the use of reasonable force to maintain discipline at the detention centre and was not concerned with the use of force for purposes other than maintaining discipline,<sup>18</sup> and
- section 151 required the superintendent to ensure the safe custody and protection of all persons within the detention centre, ‘*a separate non-discipline obligation*,’ and section 152(1) gave all the powers that are necessary or convenient for the performance of that function.<sup>19</sup>

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In *LO v Northern Territory of Australia* [2017] NTSC 22, a differently constituted Court agreed that there were two separate powers.<sup>20</sup>

This approach focuses upon the purpose for which the officer used force. If the purpose of the use of force is not to maintain discipline at the detention centre but to maintain order and ensure the safe custody and protection of a detainee, then the restrictions on the use of force in section 153 will not apply.<sup>21</sup> While section 152 provides a superintendent with the powers that are ‘*necessary and convenient for the performance of his or her functions*’, the Court read in a further requirement that it also be ‘*reasonable*’.<sup>22</sup> That is, if force is authorised by section 152, it must not only be necessary and convenient, but also reasonable.

The Commission believes that the approach to construction of section 152 by the Northern Territory Supreme Court gives rise to practical difficulties. The purposes for which force may be required are rarely clearly demarcated between disciplinary and non-disciplinary functions.

The Commission considers that statutory clarification is desirable. It is desirable that the circumstances in which force may be used against children be clearly defined, and that limitations upon the use of force be consistent, easily understood and not easily sidestepped. It is also desirable that these limitations be set out in legislation.

The Northern Territory Government has submitted that the legal position in the Northern Territory is that declared by the Supreme Court. That proposition is, of course, correct. But the Commission’s Terms of Reference require it to inquire into the failings of the youth detention system, whether the treatment of detainees was in breach of the law and if so what remedial measures ought to be adopted. This undoubtedly permits discussion of the legislative regime and a recommendation for law reform.

For the application of force on a detainee to be a lawful use of force, if section 153 of the *Youth Justice Act* is a code for the use of force, it must be reasonably necessary in the circumstances and not constitute physical violence. On the alternative purposive approach, the application of force on a detainee to maintain the order and ensure the safe custody and protection of all persons must be necessary or convenient and also reasonable.

## Procedures relating to the use of force

The Youth Justice Regulations, detention centre manuals, determinations and the rules of the detention centres are not a source of power to use force under the *Youth Justice Act*. However, they set out circumstances in which force may be used. They must be consistent with the *Youth Justice Act*.

The general procedures and instructions manual at the former Don Dale Youth Detention Centre from at least 2006, and at Aranda House from at least 2009 set out procedures to be followed for a disruptive incident, which is defined as:

*... any incident where the behaviour of a youth creates or has the potential to create disruption to the daily routine; incites other detainees to be non-compliant; or in extreme cases, creates a dangerous situation for the youth, other youths, staff or potential to cause damage to property.*<sup>23</sup>

Those manuals recognised that young people will generally conform to routine unless there are social, emotional and stressful incidents perceived by the young person to be outside their control.



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The procedure for a disruptive incident included contacting the detainee in as gentle a manner as possible and redirecting bystanders away from the detainee. A senior youth worker and a youth worker would then manage any conflict by talking down the detainee, if possible without physical contact, and placing the detainee in a cooling down environment where they would be given counselling on alternative strategies for dealing with the problem.<sup>24</sup>

In 2011, a youth justice officer drafted an updated manual for use in the former Don Dale Youth Detention Centre, but it was not until 2014 that the General Manager of the former Don Dale Youth Detention Centre made that manual available on the intranet. The updated manual provided that the principles taught during Professional Assault Response Training (PART), discussed below, were to be applied when using force or restraints.<sup>25</sup>

In 2015, the general procedures for the detention centres were again amended.

A directive issued in April 2015 on the use of force<sup>26</sup> provided that youth justice officers may have justification to use force for the purposes of matters including search and seizure, preventing escape, defence, to protect him/herself and others, to avoid imminent attack, to prevent a detainee from injuring him/herself, to ensure detainee compliance with a lawful order, or the maintenance of discipline, which cannot otherwise be adequately controlled, move if refusing to move from a location, control if acting in defiant manner, avoid violent and destructive behaviour, quell riot or disturbance, and seize an article of evidence where a youth justice officer believes it may be destroyed or lost.

The directive also provided that:

*If practicable, the initial response to any incident is to be an attempt to control and defuse the situation by means of verbal persuasion. Additional assistance MUST be requested at this stage, and before any physical intervention occurs.*

In January 2016, new directives were issued, which included a directive on the use of force.<sup>27</sup> This appears to have been the first directive on the use of force that sought to rely on section 151(3)(c) of the *Youth Justice Act*. The January 2016 use of force directive provided for the use of force in maintaining order and ensuring the safe custody and protection of all persons, or maintaining discipline. That directive specifically referred to using force where necessary for '*maintaining order and ensuring the safe custody and protection of all persons*'.<sup>28</sup>

The Commission is not aware of any other instrument prior to the release of these directives that specifically delegated to youth justice officers the superintendent's powers with respect to the use of force set out in section 151(3)(c) of the *Youth Justice Act*. Under the Youth Justice Regulations, staff members had the power to use force to manage incidents of misbehaviour and for physical restraint for the protection of detainees, other detainees or other persons.<sup>29</sup> However, as discussed above, this appears to have been subject to the limitations set out in section 153 of the *Youth Justice Act*.

A further directive, issued in September 2016,<sup>30</sup> sought to qualify the way force was to be used in a detention centre. In particular it provided that:

- force '*must be applied as humanely as possible with minimum discomfort to the youth detainee, in a manner which respects the dignity of the detainee and for the minimum period of time reasonable in the circumstances to accord with the United Nations Convention on the Rights of the Child, while still meeting the duty of care obligations of NTDCS*'

- youth justice officers are to consider, having regard to all the circumstances, that their decision to use force is necessary – for example, having regard to a hierarchy of responses which can include verbal de-escalation, and
- *‘only staff members who have satisfactorily completed the nationally recognised training in safely engaging a detainee and assisting the detainee to de-escalate his or her behaviour may apply use force in relation to a detainee’.*

## Training framework

Between 2006 and 2015, the program known as PART was used to train youth justice officers in the use of force and manual restraint.<sup>31</sup>

PART training emphasised the principles of applying problem-solving to potentially dangerous situations and avoiding physical restraint. PART’s basic premise was that employees who had developed a systematic approach to predicting, understanding and managing aggressive/assaultive behaviours were less likely to injure or to be injured than those who had not.<sup>32</sup> PART training also provided that it was not appropriate that a youth justice officer resort merely to traditional self-defence techniques, as youth justice officers were professionals who were obliged to protect not only themselves but also the detainees from avoidable injury.<sup>33</sup>

The training program provided observations on common problem behaviours of adolescents. For example, for children aged between 11 and 15, it noted that intentional provocation of adults and fighting among peer groups were not uncommon. It also noted that adolescents aged 16 to 18 were able to channel most violent impulses into various sorts of competition, such as sports.<sup>34</sup>

The training also recognised that environments can sometimes affect behaviour. It taught that assaultive behaviour can be seen as a product of the circumstances under which it occurs. Relevant circumstances can involve physical conditions such as lighting, heat, cold, crowding, lack of privacy, noise, a lack of structure, failure to adhere to routines, and staff performance including a lack of structure, inconsistency, lack of training, broken promises, poor communication and a lack of respect.<sup>35</sup> The Commission has dealt with the facilities being inadequate for the detention of children and young people in Chapter 10 (Detention facilities).

When responding to an assaultive incident, PART gave guidance on what amounts to reasonable use of force:

1. *When the observed behaviour constitutes threat to assault, the reasonable force necessary is nil. Crisis communication should be sufficient.*
2. *When the observed behaviour constitutes assault, reasonable force is evasion. Evasion, combined with crisis communication, should be sufficient.*
3. *When the observed behaviour constitutes threat to cause serious injury, response options include high level crisis communication to de-escalate the client’s behaviour, evasion, and where an organisation policy exists, restraint. Where restraint is not used, evacuation procedure should be followed and emergency assistance called for.*

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4. When the observed behaviour constitutes threat to cause serious injury or assault causing serious injury, reasonable force may include restraint. Crisis communication continues and evasion may or may not be used prior to restraint.<sup>36</sup>

The term 'crisis communications' refers to de-escalation techniques used to avoid the need for physical contact. PART stated that:<sup>37</sup>

*Matching our response to the level of danger presented by the client's behaviour is a necessary part of our job. Crisis communication will almost always fit within the definition of reasonable force. It is hard to imagine how gentle, yet firm, instructions to stop fighting could be viewed as excessive force. Further, staff members who can consistently communicate effectively to avoid assault are extremely valuable to their employers. They are not as likely to injure or be injured when they are required to respond to assaultive behaviour. Crisis communication is also preferable from a clinical standpoint.*

*Communicating is better than fighting. Staff members who talk their way out of difficult circumstances are modelling safe behaviour for their clients. Crisis communication also preserves the dignity of clients and staff members.*

As an overarching principle manual restraint was the option of last resort, and was only to be used in circumstances where there was a risk of great and immediate danger, and if it was to be used, it must be the least intrusive and least restrictive option relevant to the behaviour.<sup>38</sup>

PART training also advised against the use of manual restraints in the following circumstances:<sup>39</sup>

- to cause injury, harm or discomfort
- as a punishment
- in response to client disruption, non-compliance or refusal of service
- to maintain 'good order'
- when there were no trained staff available, and
- to protect property.

There is evidence before the Commission that from around 2015, it was intended that a different training program known as Maybo was to be offered to youth justice officer trainers. However, the extent to which this training package was rolled out is not clear. Nor is the extent to which it was given to officers already trained in previous methods.<sup>40</sup>

The Commission also notes that around this time, an adult correctional officer was released by the Commissioner to work in the current Don Dale Youth Detention Centre to 'mentor' youth justice officers.<sup>41</sup> There are a number of complaints relating to this particular adult correctional officer (Youth Justice Officer A), which are discussed further below.

## The evidence

The Commission heard from a large number of detainees and former detainees about the use of force on them by youth justice officers. There are consistent themes to the allegations, which included:

- controlling the head and neck areas
- the use of ‘ground stabilisation’ by restraining, throwing or tackling the detainee to the ground, and
- applying body weight pressure to the detainee while restrained on the ground, and
- the use of inappropriate contact, including applying force or pressure to a child’s genital areas, colloquially known as the ‘wedgie’.

The Northern Territory Government has contended that few of the examples cited by the Commission stand up to close scrutiny when all of the documentary evidence, most of it prepared by the youth justice officers concerned, is taken into account. They argue that generally the detainees’ accounts of what happened to them must be doubted for reasons of inconsistency, lack of credit or other unreliability. The Commission has considered those views, as well as the contemporaneous evidence.

It is important to bear in mind that the Commission is not a criminal court which must be satisfied of an outcome beyond reasonable doubt, nor even to the civil standard of more likely than not. It cannot, of course, be capricious or plainly unreasonable in its preference for certain evidence over other evidence. The Commission’s purpose is to carry out its Terms of Reference and to investigate the failings in the youth detention system and make recommendations informed by its investigations.

For the reasons given below and throughout this Chapter, the Commission has concluded that the objections of the Northern Territory Government to the evidence given by individual detainees do not affect the overall likelihood that the conduct occurred. In particular, the Commission notes that some of the conduct has been captured by closed circuit television cameras and in those cases the description given by the detainee in question proved to be accurate. The fact that excessive or inappropriate use of force was not recorded by individual youth justice officers in incident reports is plainly not determinative of whether or not such force was used. Medical reports in some cases are consistent with the conduct described by detainees. The inherent improbability that the detainees who spoke to the Commission corroborated in relation to their evidence in small detail has also been considered by the Commission when reaching its generalised conclusions in relation to the use of force during the relevant period.

## PHYSICAL CONTACT WITH THE NECK AND HEAD AREA

The Commission heard evidence from a number of detainees that youth justice officers made physical contact with the neck and head area of detainees when using force. In some instances, detainees gave evidence that youth justice officers grabbed them around the head or neck, or put them in ‘chokeholds’ or headlocks.

A chokehold refers to the action of a hold that involves strong choking pressure applied to the neck of another.<sup>42</sup>

A headlock is a hold that involves wrapping an arm around the neck.<sup>43</sup>

If grabbing a detainee around the head or neck, or using a chokehold or headlock, is used to maintain discipline, and section 153 of the *Youth Justice Act* is a code for the use of force, the use of those manoeuvres must be reasonably necessary in the circumstances and not constitute physical violence. If, on the purposive approach, the force is used to maintain order and ensure the safe custody and protection of persons, those manoeuvres must be necessary or convenient and also reasonable.

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PART training, which included training in techniques of physical restraints, did not include the technique of a person holding the neck area of a detainee.<sup>44</sup> According to Martin Unger of MTU Training Concepts Pty Ltd, who has presented PART in Australia since 1990 and whose firm has provided PART training to the Northern Territory Department of Corrections, PART training specifically advised against *'touching, making contact with or holding neck and head area'*.<sup>45</sup>

The Northern Territory Government has submitted that the evidence of Mr Unger cannot be relied upon to establish that PART advised against such techniques, because, it submitted, Mr Unger had no qualifications as an expert in the subject matter of PART training. In making this submission, the Northern Territory Government ignored that Mr Unger's name appears on the front cover of PART manuals produced by the Northern Territory Government, and those manuals clearly state Mr Unger's expertise: *'...Martin Unger, Director, MTU Training Concepts, has been presenting the PART material across Australia since 1990, to a range of health, welfare, education and service industries.'* Two witnesses (a youth justice officer and a former youth justice officer trainer) also said that Mr Unger specifically trained them in PART.<sup>46</sup>

Whether or not force can be reasonably necessary can be informed by whether it conforms with training under PART, as that training sets out steps youth justice officers ought to follow. To the extent those manoeuvres did not comply with PART training, then exceptional circumstances would be needed to justify the departure from PART training.

## Evidence from detainees at the current and former Don Dale Youth Detention Centres

The Commission heard evidence from seven separate detainees, who were in detention in Darwin at various times between 2008 and 2016, that they were, or observed others, restrained around the neck by force, or that they had force applied to their head or neck areas. In two of those cases, CCTV footage was retained.

### BR

BR, who spent time at the former Don Dale Youth Detention Centre at various times from when he was aged 12 until he was aged 17, told the Commission that he saw:

*'... officers 'choke slamming' other boys. They used to hold boys in a choke hold on the neck to restrain them. And then they would slam them on the ground, put their body weight on them, before picking them up and dragging them off. I remember seeing this happen to [redacted], after he had been in a fight with [redacted] ... I was also held in a chokehold on my neck many times because I was running amuck. This was happening more when I was younger. Usually, it was after I had backchatted the guards ...'*<sup>47</sup>

In his oral evidence, BR said that he only saw *'choke slamming'* (which he said was the practice of grabbing someone by the throat and throwing them down) happen once during the fight he referred to in his statement.<sup>48</sup> The Northern Territory Government submitted that the *'divergence'* in BR's evidence means that his evidence should be rejected entirely. The Commission does not accept the proposition that imprecision as to the use of the plural means that his specific evidence about

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the incident he could remember should be rejected. BR's evidence is that he saw one incident of this occurring, and that it also happened to him. The occurrence of the fight is documented.

The Northern Territory Government referred to one incident report which mentioned the fight between the two detainees. That incident report did not refer to any youth justice officer using force to a detainee's neck, but instead refers to *"manually restraining" one of the detainees, and then that same detainee also being "restrained on the floor"*. It does not provide any detail of the restraint techniques used.<sup>49</sup> The other detainee involved is described as running out of his room and then punching the other detainee, before being locked in his room. However, there is no description of how the second detainee came to return (or be returned) to his cell after punching the first detainee. It is likely that some force would have been used to return him to his cell, but there is no detail of any force being used in the incident report.

BR also gave evidence that he saw Trevor Hansen, a former youth justice officer, grab detainees by the back of the neck and hold detainees by the throat and that he remembered this happening a lot. BR also said that Mr Hansen held him by the throat as well.<sup>50</sup> BR said:

*'The worst officer that I remember was one called Yogi, a white guy. He had no tolerance. He would grab us by the back of our necks or hold us at the front of our throats and swear at us. He grabbed me like that sometimes. At the time, I just thought that was the right thing for him to do. When he grabbed me, I would usually end up in the back cells.'*<sup>51</sup>

Mr Hansen, who was shift supervisor at the former Don Dale Youth Detention Centre from approximately 2010 to 2014, has denied this.<sup>52</sup> However, as other incidents described in this Chapter demonstrate, there is consistency amongst many detainees in their recollection of Mr Hansen's conduct in this regard.

## **Dylan Voller**

Dylan Voller said that, in October 2010 at the former Don Dale Youth Detention Centre, youth justice officer Harold Morgan:

*'... lifted me up by my neck, carried me into my cell and threw me maybe two metres, so that I landed face first on my bed. After he assaulted me, I lay on the ground in my cell in pain and started crying.'*<sup>53</sup>

Images from CCTV footage in relation to this incident are available. They are consistent with Mr Voller's recollection. They show Mr Morgan carrying Mr Voller by the neck and then throwing him onto a bed.





In submissions to the Commission, Mr Morgan stated that he did not use force excessively in this instance. His submission states:

*Mr Morgan had an inmate pushed out to him from the dining area. He was expecting that he would be assisted in moving Mr Voller to the cell. This did not happen. Mr Voller was spitting in his face.*

Mr Morgan also submitted that he had been supervising detainees in the kitchen who may have had access to knives, and this should be considered in terms of the urgency of his actions. His submission further states that:

*The distance from which Mr Morgan threw Mr Voller to the mattress was possibly 1 metre to 1.5 metre. The camera angle and lens distorts the distance but that distance is obvious from the measurements of the cells that the Royal Commission possess ... Mr Morgan was faced with little to no choice once he had to put Mr Voller in the cell by himself. If he just put him down he would have, fairly assumed, that Mr Voller would spit in his face again. He threw Mr Voller a short distance onto a mattress thus stopping him from spitting in his face again.<sup>54</sup>*

The Commission notes criminal proceedings were brought against Mr Morgan for this conduct –



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however, the Court struck out the proceedings because of its construction of the time limitations set out in the *Youth Justice Act*. Accordingly, the issue of whether this conduct was otherwise lawful was not considered by the Court.<sup>55</sup> The response of management to this incident is discussed in Chapter 22 (Detention system oversight).

The Children's Commissioner investigation into this incident analysed Integrated Offender Management System (IOMS) reports written by the youth justice officers involved and compared them against CCTV. The Children's Commissioner stated:

*'I am concerned that the four officers' reports appear to be inaccurate when compared to the CCTV footage. The inaccuracies appear to uniformly emphasise [name] challenging behaviours, and to minimise the use of force by YWA.'*<sup>56</sup>

Mr Morgan's IOMS report does not mention making contact with Mr Voller's neck. His IOMS report stated:

*I turned to see detainee Voller slamming the door into YW Clee at that time Detainee Voller became aggressive towards me (YW Morgan) saying he wanted to flog me and calling me a Mother Fucker, Cunt and many other offence words. At that time Detainee Voller was in my face and spat on my shirt and face. I then deflected detainee Voller placed him in a restraint holding his jocks and shirt placed him in the security lounge and shut the door*<sup>57</sup>.

This account is inconsistent with the CCTV footage.

The Commission also notes that a Children's Commissioner report records that the Northern Territory Government accepted that excessive force was used during this incident.<sup>58</sup>

The Commission accepts that Mr Voller was restrained in the neck area and was forcibly thrown onto a mattress.

## **BQ**

BQ stated that he was choked by a youth justice officer in his room on two occasions.<sup>59</sup> The youth justice officer named has denied that these incidents occurred and has stated that he has never placed any detainees in a chokehold, or that he ever had reason to physically restrain BQ at all.<sup>60</sup> No independent evidence of the incident was provided to the Commission.

## **AY**

AY stated that in the former Don Dale Youth Detention Centre he was tackled to the ground and put in a headlock. He said:

*'When I gave up, the guards put me in a headlock, which made it hard for me to breathe.'*<sup>61</sup>

Two officers gave evidence about the incident. Mr Walton denied using excessive force.<sup>62</sup> Jamie Clee stated that he could not recall, but did not deny, any staff member placing AY in a headlock, and relied on two incident reports written by himself and another officer. Those incident reports alleged that AY had broken off a piece of an aerial, with which he was threatening to stab other

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officers.<sup>63</sup> However, in relation to the restraint itself, the reports provide minimal detail and do not refer to a headlock. For example, Mr Clee's report stated that *'I immediately restrained him ...'*<sup>64</sup>

The other officer's report also refers to AY threatening staff with a piece of an aerial, and states that *'Jamie Clee bear hugged AY to de-escalate the situation ...'*<sup>65</sup>

The Northern Territory Government has submitted that because there is no reference to a headlock in the IOMS reports, a headlock did not occur.<sup>66</sup> The Commission rejects that submission. The written evidence of the incident is not inconsistent with the possibility that a headlock was used during restraint. The Commission has received objective evidence that children were restrained by the neck on three other occasions - in the case of Mr Voller and Mr Morgan as described above, and in the cases of Mr Voller and Mr Tasker and Mr Hansen and a female detainee as discussed below. The Commission notes that on those occasions, when there can be no doubt that a headlock or similar restraint was used, the contemporaneous incident reports and use of force registers do not refer at all to restraint or even contact with the neck area.

## BY

BY told the Commission that in 2012 at the former Don Dale Youth Detention Centre, during an incident where another detainee picked up a fire extinguisher and sprayed it around the cells, he was told to put his hands through the doors to be handcuffed. He did not resist but said:

*'once I had the handcuffs on the guards came into my cell and one of them grabbed me behind from around the neck. I couldn't breathe he didn't stop.'*

BY said he thought he passed out but he was not sure.<sup>67</sup>

In response to this allegation, the Northern Territory Government referred to a report of the incident which stated that *'we started individually handcuffing and removing the Detainees, at all times using minimal force necessary, to the basketball area.'*<sup>68</sup>

The incident report refers to the existence of chemicals discharged from the fire extinguishers. BY gave evidence that whilst he was in his cell, he could not breathe because of the chemicals.<sup>69</sup> The Northern Territory Government submitted that if BY fainted, this occurred as a consequence of the chemicals, and not as a consequence of the actions of anyone else, and this *'inconsistency'* means that BY should not be believed. The Commission rejects that submission. BY gave specific evidence about how he was restrained in oral evidence:

*'So that's when the adult prison guards came?---Yes. And they took us out one by one. They asked us to put our hands through the hatch, they handcuffed us, and we had to walk out of the door while they opened it. And one guard grabbed my arms and the other one was standing sort of behind me, put his arm around my neck, like in a head lock. Then when I got out into the basketball court area, I think I fainted, dropped to the ground. And then they picked me up and they handcuffed me to the fence.'*<sup>70</sup>

BY may have fainted because of the inhalation of the chemicals, but it does not follow that he was lying about being put in a headlock. A headlock, in combination with the exposure to the chemicals, could have been a contributing factor to BY fainting.

## A female detainee

The Northern Territory Government produced records of an incident in 2012 involving an alleged headlock used by Senior Youth Justice Officer Trevor Hansen on a 15-year-old<sup>71</sup> female detainee. This detainee did not give evidence before the Commission, but the PSU investigated the incident and prepared a report.

The report stated that on that day:

*female detainees who were exercising in the external yard area were given verbal instruction by staff to move inside to commence their showers. Several detainees including [redacted] refused to comply with these instructions and when detainee [redacted] threatened to climb on top of the school demountable roof she was restrained and placed in the HDU [high dependency unit].<sup>72</sup>*

On the same day, the detainee submitted a written complaint to the Acting General Manager, alleging amongst other things that she was grabbed by Senior Youth Justice Officer Hansen for no reason, suffered bruising to her arms and legs and was choked.<sup>73</sup>

The PSU investigation into this matter concluded that:

*Given the level of resistance and assaultive behaviour displayed throughout the incident by the detainee, the force used to control her is not considered to have been excessive, however not all of the restraint techniques applied or attempted to be applied were consistent with restraint procedures in the current PART manual.<sup>74</sup>*

Stills from the CCTV footage show the following<sup>75</sup>:



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Medical records stated: 'ATSP urgently, today regarding an alleged assault by one of the Don Dale staff two days ago. According to the patient she was standing, by herself minding her own business, when one of the staff approached her. She stated that the staff member grabbed her by the upper arms and forced her into a room, she also stated that then the staff member put her into a head lock and forced her down to the ground...'<sup>76</sup>

In relation to the alleged restraint, the incident report only contains the following detail:

*Detainee [REDACTED] was yelling, abusing and damaging her room and as I had to deal with the other detainees she was moved to HDU 2 to keep her under camera observation.*

*Whilst moving detainee she was moved utilising part escort. Once in HDU 2 she was constantly swinging at officers and coming out of the door. She was placed on the ground in a leg lock and then officers exited the room.'*<sup>77</sup>

The incident does not contain any reference to a headlock and appears to have understated the force used.

The PSU report concluded that:

*The available CCTV footage does not show any staff actions where choking may have occurred, as was alleged to have occurred in the detainee's complaint.'*<sup>78</sup>

Mr Hansen was not cross-examined about this manoeuvre. However, having regard to the footage, the Commission notes that Mr Hansen's arm appears to be wrapped around the detainee's head in a headlock manoeuvre. Whilst this may not have involved 'choking', it still appears to have involved forceful contact with the neck area of the detainee.

## **BN**

BN, who was in the current Don Dale Youth Detention Centre, said that he was put in a chokehold on two separate occasions. He said:

*'I can't remember which guards did that. The first time was after I had been in a fight. I was tackled to the ground. I was put in a chokehold and I couldn't breathe. The second time was when I was in the back cells for six weeks.'*<sup>79</sup>

The Commission was not provided with any independent evidence of this incident.

The Commission also heard evidence from other detainees about force being applied to the head area by other means.

## **AG**

AG told the Commission that she observed that Mr Sizeland, a youth justice officer, tackled AJ and then 'stomped' on his head.<sup>80</sup> This alleged incident occurred in June 2014. Mr Sizeland, as well as other youth justice officers involved, have denied that this occurred and have relied on contemporaneous incident reports.<sup>81</sup> Those reports contain detailed information about what led to the

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need for physical intervention, but in relation to the use of force itself, the reports only refer to ground stabilisation and restraint without any further details.

According to Mr Sizeland he and a caseworker conducted a case management review with AJ in the H Block court yard. After Mr Sizeland informed AJ that he would continue to be classified as high security, AJ became hostile. Mr Sizeland ceased the interview and instructed AJ to return to his accommodation but AJ refused. Mr Kelleher and Mr Zamolo instructed AJ to move and attempted to persuade him to comply with the instructions. AJ then made threats towards Mr Sizeland and the other staff members present. Mr Sizeland said

*'[AJ] moved from his seat and made a fast movement towards myself in the action that he was going to strike me. With the immediate assistance from YJO Kelleher and Zamolo [AJ] was ground stabilised and code amber was announced. Handcuffs were applied and [AJ] was relocated back to his accommodation.'*

AJ was stabilised again inside his cell. According to Mr Sizeland, apart from bruising to himself, there were no injuries recorded to staff or AJ.<sup>82</sup>

Mr Zamolo's incident report records that in H block courtyard, AJ was restrained by Mr Kelleher and Mr Sizeland.<sup>83</sup> Mr Zamolo called a code amber and assisted with escorting AJ to his cell. AJ was extremely non-compliant and was restrained again once he was in his cell. Mr Zamolo's report also states that all footage of the incident was caught on camera and there were no further issues.

Mr Kelleher's incident report states that:

*After swearing, being non compliant and abusive [AJ] was asked by AGM Sizeland to go back to his room. YJO Zamolo spoke to [AJ] and got him to stand up and walk on his own, but as he walked away he fainted [sic] a punch at AGM Sizeland. At this point AGM Sizeland reacted and restrained [AJ] to the ground with YJO Kelleher's assistance. C Zamolo called a code amber at this point.<sup>84</sup>*

After this Mr Kelleher stated that AJ was handcuffed and escorted to the BMU. Once inside his cell, Mr Kelleher again restrained AJ who was extremely non compliant.<sup>85</sup>

The caseworker's incident report states that he and Mr Sizeland informed AJ about the continuation of his management regime. After this AJ began swearing aggressively at Mr Sizeland. Mr Sizeland gave AJ the opportunity to calm down but AJ became more aggressive and raised his voice at Mr Sizeland. Mr Kelleher and Mr Zamolo requested him to stand up and walk to the BMU. The caseworker's report states:

*At this point [AJ] stood up and lunged with a clenched fist at AGM Sizeland in what appeared to be an attempt to strike AGM Sizeland with force in the head. At this point AGM Sizeland, YJO Conan Zamolo and YJO Ben Kelleher restrained [AJ] and escorted him to the BMU for secure placement. [AJ] was extremely aggressive and abusive towards officers involved.<sup>86</sup>*

AG told the Commission that she was in the 'rec room in J Block' and through the window saw AJ, Mr Sizeland, Mr Zamolo and Mr Kelleher in the H Block yard. AG said she saw AJ punch Mr Sizeland in the head and the other two guards grabbed AJ but they did not get him to the ground,

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so Mr Sizeland tackled AJ to the ground and stomped on AJ's head. Afterwards AJ was taken to the BMU.<sup>87</sup> AG's account is consistent with the incident reports, except that the incident reports do not refer to AJ punching Mr Sizeland and the subsequent alleged stomping. There is no suggestion that AG had access to the IOMS reports before she prepared her statement.<sup>88</sup> AJ is deceased.

The Northern Territory Government submitted that the youth justice officers denied AG's allegation and that numerous IOMS reports of an incident involving AJ and Mr Sizeland are inconsistent with the allegation made by AG.<sup>89</sup>

The Northern Territory Government also submitted that the lack of a contemporaneous record of an injury or the provision of treatment to AJ 'renders AG's account completely implausible'.<sup>90</sup> AG gave evidence of seeing AJ's injuries after the incident. She said that a few days after the incident she saw that AJ had 'scratches on his chin and arms' and 'scratches on his knees, a sore neck, back and head'.<sup>91</sup>

The Commission has identified the following contemporaneous medical records:<sup>92</sup>

- a Department of Health record which identifies that a 'medical request' for AJ was lodged at 2:25pm that day with the notation 'Lump on back of head', and
- a Don Dale Medical Request form signed by 'J.B' and dated 11 June 2014 which states that AJ '[i]s complaining about a lump on the back of his head on the left side.'

It appears that AJ had not received medical attention three days later, when AJ entered the adult prison from court (by way of a 'Return to Prison' check). Medical notes record that the consultation went for only two minutes and '[n]il issues identified or voiced'.<sup>93</sup>

Having regard to the contemporaneous medical records, it appears likely that force was used. The Commission does not make any findings as to the manner in which that force was applied and by whom. Whilst the Commission did not investigate this matter further, it is concerned that on the documentary records available, it appears that AJ did not receive immediate treatment after he complained about a lump to the back of his head after the encounter which, on any view, involved considerable handling and force.

## Evidence from detainees at the Alice Springs Youth Detention Centre

The Commission heard evidence from three detainees who were incarcerated in the Alice Springs Youth Detention Centre and/or Aranda House that they were choked. These detainees named Youth Justice Officer Derek Tasker. Mr Tasker denied all these allegations.<sup>94</sup> One of these detainees alleged that Mr Tasker followed him into the toilet and choked him. The Commission notes that there were no cameras in the toilet area of the Alice Springs Youth Detention Centre.<sup>95</sup> On one of the occasions described below, Mr Tasker was captured on CCTV footage making contact with a detainee's neck.

### AX

AX said that at the Alice Springs Youth Detention Centre:

*'I had an incident with another kid, and then I was asked about it and put into the – I was asked to be – to go into the toilet. As I entered into the toilet ... Tasker asked me to do a strip, and then I ended up stripping, after I stripped I was standing naked, he come up to me and choked me.'*<sup>96</sup>

Mr Tasker denied this allegation.<sup>97</sup>

The Northern Territory Government submitted that the following is not an account of choking:<sup>98</sup>

*'How did he choke you? --- He came up to me and put me against the wall and held my throat.'*

Transcript of AX dated 21 March 2017, P-5, lines 44-45.

The Northern Territory Government referred to an IOMS report from another youth justice officer that does not refer to the alleged choking.<sup>99</sup> The Northern Territory Government also submitted that the incident report does not support an allegation that AX was strip searched before he was allegedly choked.

However, the search registers for this particular date are missing, and are missing for the entire period between 30 June 2010 to 5 November 2011.<sup>100</sup>

The Northern Territory Government also submitted that because AX waited until much later to speak to the police about it, he should not be believed: *'To make an allegation that this occurred is serious. It seems improbable that it occurred and was simply forgotten about.'*<sup>101</sup> AX explained the delay in making the complaint by saying *'I was let out free from the detention centre and I forgot all about it, because I was young, and a lot of things was on my mind.'*<sup>102</sup>

## AV

AV described an incident:

*'The first day I arrived at Aranda House, I was taken in by Derek Tasker. As I was walking through the hallway at the entrance to the Centre, I put my hand through a small cage to pat a dog. Derek screamed something at me, I can't remember what. He then grabbed me around the throat with both of his hands, lifted me up off the ground and pinned me against a wall. I was quite small at the time and I couldn't breathe. I felt really scared at the time. When I went back to my room I remember feeling like I wanted to cry but it was like I was too shocked. I couldn't sleep that night. I was still sore the next day and there were red marks still around my neck. I sometimes think about it now and it makes me feel angry.'*<sup>103</sup>

Mr Tasker denied this allegation. He stated *'I did not place my hands around AV's neck. I have dealt with AV many times after this occasion and I have not heard this allegation before.'*<sup>104</sup> Mr Tasker stated that there was an occasion where AV came to the centre, it was not AV's first admission and Mr Tasker already knew him. The dog in question was Office in Charge Barrie Clee's dog. Mr Tasker



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claimed that AV kicked the dog and he *'strongly told AV off'*.<sup>105</sup>

In his oral evidence, AV stated that the incident occurred on his second or third admission.<sup>106</sup> The Northern Territory Government submitted that AV's evidence was that *'a person unknown to him (it being his first occasion in detention) engaged in what would have been an essentially unprovoked attack on him.'* This mischaracterises AV's evidence. AV and Counsel Assisting had the following exchange:

*'The dog that you said that you patted, had you seen that dog before?---Yes, I used to put – like feed the dog. Chuck biscuits in its bowl. Fill up water for it.*

*This is before this incident?---Yes, before this incident. That's why I went back then, I went – on the way in, I went to pat the dog. He thought I was trying to escape, and he choked me up against the wall.'*<sup>107</sup>

This exchange makes it clear that it was not AV's first time in detention, because he had interacted with Officer in Charge Barrie Clee's dog before. Nowhere in AV's evidence does he say that Mr Tasker was a *'person unknown to him'* at that point.

The Northern Territory Government also submitted that *'AV had no qualms about raising minor ailments or matters within detention, and yet he made no report of this very serious incident'*. The Commission rejects the proposition that merely because a child does not raise a complaint at the time they should not be believed. There are many reasons – including the fear of reprisals because the youth justice officer who is the subject of complaint has control over the child, or being labelled a snitch or a dog – which could explain why a child might not wish to come forward immediately whilst in detention.

## **Dylan Voller**

Dylan Voller also gave evidence that Mr Tasker *'used to grab the back of my neck a lot at a pressure point. He also choked me and other boys a lot'*.<sup>108</sup>

Mr Tasker denied this allegation and stated:

*'I deny the allegations that I have either choked or grabbed Mr Voller by the neck – and the suggestion that I have done the same thing to any other detainee and that I did so 'a lot'. Also, I have not been trained in pressure points. I do not know what or where they are.'*<sup>109</sup>

Under questioning, when he gave evidence before the Commission, Mr Tasker conceded that he *'grabbed him [Voller] by the neck to control his neck, to stop him from spitting'*.<sup>110</sup>

CCTV footage of one specific incident involving Mr Tasker making contact with Mr Voller's neck was produced to the Commissioner and played in a public hearing.<sup>111</sup> Mr Voller was 13 years old at the time. Stills from the CCTV footage of the incident are shown on the next page.



The 'incident report' prepared for this incident, as well as the use of force register, make no reference at all to Tasker restraining Mr Voller by the neck.<sup>112</sup>

The Commission notes that Mr Tasker was prosecuted in relation to the above incident but was found not guilty, on the grounds that the force used was reasonably necessary. In the judgment, it was noted that *'the actions of Tasker at this point are consistent with removing a spitting risk.'*<sup>113</sup> The magistrate found that it:

*'... was reasonable and prudent for Tasker to take hold of Voller in the head area and turn his head away from him, and use sufficient force to keep his head pointing away.'*<sup>114</sup>

Mr Voller had also threatened self-harm shortly before this incident and refused to put on his at-risk gown. As a result, emergency procedures dictated that his clothing needed to be removed.

On appeal to a single judge of the Supreme Court of the Northern Territory, the Court found that this action constituted low-level *'physical violence'*,<sup>115</sup> but was part of Mr Tasker's overall conduct that was engaged in for the purposes of ensuring the safe custody and protection of Mr Voller.

Immediately after this, Mr Tasker ground stabilised Mr Voller and removed his clothing as part of the 'at-risk' procedures.<sup>116</sup> On appeal, the Court agreed with the magistrate's observation that the actions of the respondent, which were described as Mr Tasker having:

*'... approached DV front on, and cupped the palm and fingers of his right hand around the left side and to the back of DV's head, at about ear level, while at the same time he used his thumb to put pressure on DV's left side jaw to push DV's face to DV's right and the respondent's left ...'*

were consistent with preventing Mr Voller from spitting at the respondent.<sup>117</sup>

The Court found that the purpose of this conduct was not to maintain discipline at the Alice Springs Youth Detention Centre, but was rather for ensuring the safe custody and protection of Mr Voller.<sup>118</sup> The Court's description of the CCTV footage from 20:51:39 hours was:

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*Tasker walks in briskly towards DV, DV throws the cards to his left and lowers his hands, Tasker places his right hand to the back of DV's neck and turns DV's head to the right, Clee enters holding a gown.<sup>119</sup>*

The Children's Commissioner also inquired into this matter, and engaged an expert, Martin Unger, who as noted above has been providing PART training in Australia since 1990, to provide an opinion on the level of risk that such actions could pose to detainees. In October 2014, the Children's Commissioner completed investigations and referred to the conclusions of Mr Unger:

*In relation to the restraint techniques observed, none of the techniques were consistent with any PART techniques or principles. The interventions were abhorrent and presented a greater level of danger to the young person than to the staff ... Specifically, PART Training warns against ... touching, making contact with or holding neck and head area.<sup>120</sup>*

The Alice Springs Detention Centre Juvenile Detention and Remand Centres – Procedures and Instructions Manual in force at the time does not appear to have been put before the magistrate. That manual provides that when placing a detainee in the 'at-risk' observation room, youth justice officers are to endeavour to calm the detainee and inform him or her of the at-risk procedures. It also provides that the youth justice officers should ask the detainee if they require anything, and staff members should spend as much time as possible comforting the detainee depending on the needs of the detainee and the needs of the shift.<sup>121</sup> Further, the Court did not have the benefit of any expert evidence as to the at-risk procedure and what force was reasonable in the context of a youth justice officer exercising his duties in a detention setting with PART training.

The Northern Territory Government also submitted that:

*'Mr Unger seems to have been unaware of, or to have entirely misunderstood, the statutory requirements applicable to the circumstances in which the force was used, and which compelled the officers to remove Mr Voller's clothing. His opinion as to the propriety of the restraint techniques used was clearly coloured by this. No weight could properly be given to his 'expert' opinion.'<sup>122</sup>*

This submission ignores the fact that the Court said that there was a 'paucity of evidence' that Mr Voller was even properly declared at-risk in the first place.<sup>123</sup>

Appropriate alternative measures, such as the application of protective wear by youth justice officers themselves, alternative restraint techniques using the shoulders or body of the child, or de-escalation techniques are to be considered under PART training. Such measures may, depending on the circumstances, negate the need to employ force. This incident is the subject of civil proceedings brought by My Voller against the Northern Territory Government. The Commission does not make any finding as to whether, in the circumstances, it was reasonable to use the force used by Mr Tasker was reasonable.

## Conclusions in relation to the evidence of detainees

Other than as set out above, the Commission does not make individual findings in relation to each of these cases. Nor is the probative evidence of sufficient extent or quality to make a general finding of

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a regular practice overall or during any of the relevant period that unnecessary force was applied to the head and neck area of detainees. However the evidence does permit the Commission to conclude that during the relevant period force was applied by officers on more than one occasion to the head and neck areas of detainees.

The Commission notes that in the case of Mr Morgan, where CCTV footage was available, a Children’s Commissioner report records that the Northern Territory Government accepted that excessive force was used during this incident.<sup>124</sup> Four of the other cases involved either denials by named youth justice officers or reliance on IOMS reports which had little to no detail about the actual restraints used. One other case was unchallenged, but the detainee could not remember the names of the guards.

In relation to these five cases, there was no CCTV footage to dispute or support either account. In relation to each of these cases, there was also no suggestion that these detainees had collaborated to say similar things. Given the number of separate complaints from unassociated children and young people in detention of similar conduct involving restraint using the application of force to the head and neck areas, the Commission finds that this occurred in the current and former Don Dale Youth Detention Centre and the Alice Springs Youth Detention Centre during the relevant period, but cannot conclude that there was a regular practice of doing so.

Excessive force to the head and neck area may be a breach of the criminal law. The Commission considers that it will rarely be the case that the application of force to the head and neck areas of a child can be justified. The Commission acknowledges that in some cases, a youth justice officer may need to make contact, rather than force, with a child’s neck or face – for example, to support the head during a prone restraint technique – or may need to use force in emergency situations of self-defence or defence of another.

The possibility that an adult can use force on a child’s neck or head area, or restrain the head or neck area, raises significant concerns regarding the physical safety of a child. In these circumstances, there is a significant potential for injury where force is applied to these areas, having particular regard to the fact that PART training specifically advises against contact to these areas.

## Finding

**The Commission finds that children were restrained by using force to their head and neck areas, including putting them in chokeholds, at the current and former Don Dale Youth Detention Centre and the Alice Springs Youth Detention Centre. This conduct was inconsistent with PART training.**

**The Commission is satisfied that, having regard to the similarity of the detainee’s accounts, Derek Tasker put his hand or hands around the throat of detainees on three occasions. Two of these occasions involved Mr Tasker engaging in these activities in the toilet area where there were no CCTV cameras. These incidents were not consistent with PART training. The Commission notes that in the incident on 9 December 2010, the Supreme Court of the Northern Territory has found that the force used was reasonably necessary.**

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## GROUND STABILISATION

The Commission heard from detainees about youth justice officers using force to ground stabilise them, including by throwing or tackling detainees to the ground.

For the ground stabilising of a detainee to be a lawful use of force it must be reasonably necessary.

PART training specifically teaches a 'floor-assisted prone restraint' as a technique of manual restraint.<sup>125</sup> 'Ground stabilisation' is a common term used for a floor-assisted prone restraint and is the action of laying a detainee face down on the ground, holding their legs, arms and shoulders.<sup>126</sup> A youth justice officer described the exercise as follows:

*'There would be an officer either side, an officer by the detainee's legs, and another by their head. We would then lift the detainee up, take them into a kneel position, face down, moving their head to the side.'*<sup>127</sup>

Whether or not force can be deemed reasonably necessary can be informed by whether it conforms with training under PART, as such training sets out steps that youth justice officers ought to follow. The PART manual<sup>128</sup> requires the following principles be adhered to when engaging in this ground stabilisation:

- **Use weight and leverage, not strength:** This includes a direction that 'to get to the floor, the client's balance can be disrupted in several ways: by using a knee buckle, a hip roll, or the assistance of additional people securing the client's legs below the knees'.
- **Avoid pain:** This includes the direction: 'After disrupting balance, continue to support the torso of the client with the hands of the inside arms. Release the client's arms or guide them to the floor so the client can catch himself'.

However, the Commission heard from detainees that youth justice officers ground stabilised detainees in circumstances which did not appear to conform to the above principles. In particular, they told the Commission of being forcefully thrown to the ground from a height onto hard surfaces, and in some cases gave evidence that their heads made violent contact with the ground. This sometimes occurred in conjunction with detainees being handcuffed.

The Commission notes that the Australian Capital Territory specifically prohibits restraining juvenile detainees in the prone position.<sup>129</sup>

Youth justice officers received informal training, in addition to, or as a substitute to, PART. This included training in relation to 'take downs' which were used in adult prisons, and which were not authorised for use in youth detention. A takedown is the name for a manoeuvre in which a person is forcefully thrown to the ground.<sup>130</sup> A former training officer gave evidence that:

*'... sometime after James Sizeland started in the role I saw him demonstrating take downs and cell extractions with youth justice officers at Don Dale. The techniques he was showing them were from the adult prison and to my knowledge had not been authorised for use in youth detention. I was very concerned about this because I did not think it was right that staff were receiving what I perceived to be unauthorised training while not being given time off to attend the training organised by the Department. I told*

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him I thought he shouldn't be doing that sort of training and his response was words to the effect that, "I have been a commander of security in Darwin and Alice Springs [adult] jails. I am going to continue with this training, this is what I have always done before".<sup>131</sup> [emphasis added]

Mr Sizeland admitted to providing informal training, because he had concerns of the level of training that staff had received and he 'took the initiative' to deliver it.<sup>132</sup> He told the Commission that he thought it was 'consistent with a lot of the PART training... the training that I was trying to do, I think, was probably a little bit more broader, but it certainly was in line with de-escalation techniques, low level restraints, handcuffing'.<sup>133</sup>

The Commission also heard from a detainee that youth justice officers who had backgrounds in martial arts or professional fighting used fighting techniques in youth detention centres.

AY identified a number of guards who told him they:

*'... had titles for Australia in Muay Tai and kickboxing or something like that. They would talk about the sort of moves they could do and it seemed like they would use their moves on us when doing 'take downs' (when they restrained us by putting us on the floor). **This is because when they did them it felt really different to the way other guards did it. They really hurt.**'<sup>134</sup> [Emphasis added.]'*

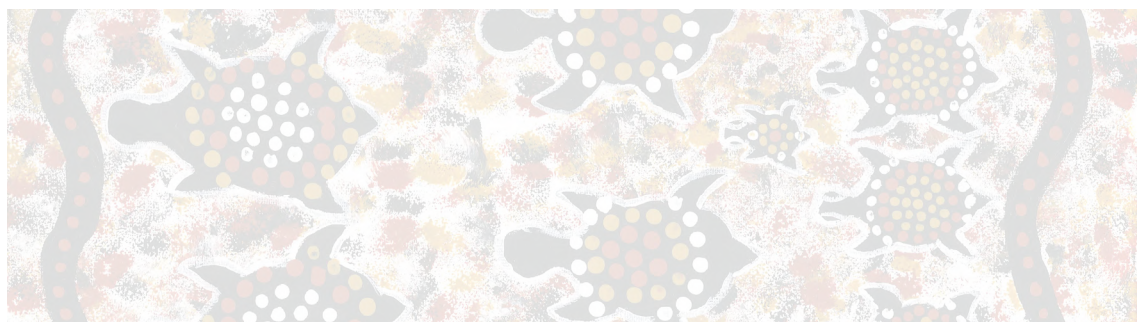
Youth Justice Officer Ben Kelleher, who had a kickboxing background, denied using mixed martial arts techniques such as 'grappling' or 'take downs' on children and young people.<sup>135</sup> Mr Kelleher said:

*'But there were no training techniques, aside from grab the kids' wrists and, as I mentioned before, that doesn't fly when the kid's throwing punches or threatening to spit or gouge your eyes out. It doesn't really work.'*<sup>136</sup>

He further said that he thought:

*'... that any time there was a take down used on the detainees, given their riled-up nature, and what they were doing, the guys just did the best they could with what limited training they had. And if that meant tackling a kid like a rugby tackle around the ankles, to tie his legs up, then he was copying a rugby league tackle.'*<sup>137</sup>

In addition to Mr Kelleher, Youth Justice Officer Jamie Clee also had a martial arts background.<sup>138</sup> Mr Clee was not called to give oral evidence before the Commission.





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## Evidence from detainees

The Commission heard from eight detainees from Don Dale Youth Detention Centre across the relevant period who alleged that they were ground stabilised or tackled forcefully, in some cases with the result that their heads made violent contact with the ground, or that they had observed that conduct taking place.

### **BR**

BR, who was at the former Don Dale Youth Detention Centre at various times during the relevant period, gave evidence to the Commission that:

*'I do remember seeing a friend of mine ... being picked on by the guards. I saw guards tackling him and treating him like a man. They would bring him to the ground the way the guards tackle people in adult prison.'*<sup>139</sup>

The Northern Territory Government did not provide questions for examination or seek leave to cross-examine BR on this issue.

### **BE**

BE, who was in the former Don Dale Youth Detention Centre four times, said that on one occasion after he swore at a youth justice officer, he was tackled to the ground.<sup>140</sup> The youth justice officer involved did not recall that this event occurred, and disputed the allegation.<sup>141</sup>

In response, the Northern Territory Government tendered two IOMS reports in relation to this incident.<sup>142</sup> One of the IOMs reports stated:<sup>143</sup>

*Today at approx 1555 when walking to the JJO Office I noticed BE climbing onto the walkway roof. I ran over and asked him to get down but he said he was getting his muesli bar. (earlier when JJO [REDACTED] handed out the muesli bars BE was not happy with the one he had received and threw it on the roof). When I asked him to get down he continued to climb up, I grabbed a hold of his t-shirt and called JJO [REDACTED] for assistance.*

*I advised BE that he had a room placement and asked him to walk over with myself and JJO [REDACTED]. At first he refused but when we asked again he walked. Once entering room 6 he started kicking the window louvers. Myself and [REDACTED] had to enter the room for BE to stop doing so. I notified SS [REDACTED] of the situation and that we were bringing up BE to the BMU.*

*We asked BE to walk up with us but he refused this direction. I advised BE that if he did not walk up compliantly he would have to be restrained and carried up. He still refused to walk up after asking him again. Myself and [REDACTED] held one arm each as per P.A.R.T and started to walk up with him. During this time he kept trying to put his feet in the door ways. When we approached the airlock BE tried to jump out of our grip and managed to kick the light which was above us. Myself and [REDACTED] placed him*



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on the ground until [REDACTED] came and assisted opening up the gates and doors. During this time he started to abuse staff saying he will "break our noses". The light was not broken.

BE was escorted to BMU 3 and advised us that he was not hurt during the restraint. SS [REDACTED] advised myself that he has a 24hr BMU placement approved and will be regressed to MAX classification.

Both IOMs reports state that the youth justice officers 'placed [him/the detainee] on the ground'.<sup>144</sup>

## **AB's observations of another detainee**

AB, observed that:

*'... on or around [REDACTED] all of the boys were in the rec room and [one detainee] was being smart to the guards. Then one of the guards ... slammed him. It was as if the guard rugby tackled [him] to the ground. He ended up on his back. [The detainee] was then taken to the back cells (the BMU) in a rough way ...'*<sup>145</sup>

In response to this allegation, Youth Justice Officer Walton stated, '... there has never been an instance where I would have tackled or slammed ... any ... detainee to the ground in the manner described'.<sup>146</sup>

The Northern Territory Government referred to a series of incident reports from three youth justice officers (including Mr Walton).<sup>147</sup> Mr Walton's incident report states:

*At approximately 1405 I YJO Walton was asked by SS [REDACTED] to escort detainee [REDACTED] to the BMU. When attending H block YJO [REDACTED] came with me to room 8 to assist in escorting [REDACTED] to the BMU. As we were walking through the dining room [REDACTED] became non-compliant and attempted to kick YJO [REDACTED]. With the assistance of YJO [REDACTED] detainee [REDACTED] was placed on the ground and restrained. During this restraint detainee [REDACTED] head butted me twice in the mouth. YJO [REDACTED] swapped with YJO [REDACTED] in assisting with the restraint.*

*SS [REDACTED] attended and swapped with YJO [REDACTED] in assisting with the restraint. YJO [REDACTED] arrived with the handcuffs and placed them on [REDACTED]. Whilst being restrained on the ground [REDACTED] stated ' I don't give a fuck cunts, I'm going to kill myself, I don't care about my own life '. With the assistance of SS [REDACTED] detainee [REDACTED] was escorted to BMU 2. [REDACTED] was placed on the ground of BMU 2 then YJO [REDACTED] swapped with SS [REDACTED] in assisting to remove all clothing as he was being placed AT RISK. All staff exited the BMU safely with no further issue.'<sup>148</sup>*

The other Youth Justice Officer who Mr Walton said the detainee attempted to kick also provided an incident report. That incident report did not refer to any kicking and stated:

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YJO [REDACTED] assisted by YJO [REDACTED] entered the H block to escort detainee [REDACTED] to the BMU for a placement. Detainee [REDACTED] then became noncompliant and YJO [REDACTED] then went hands on and restrained the detainee in the dining room of H block. I instructed all detainees to return to their rooms and to be locked down until the incident had been resolved.<sup>149</sup>

The Shift Supervisor also provided an incident report. That report also did not refer to any kicking, and stated: ‘...I advised YJO Walton to escort him to the BMU for some time out away from the other detainees. Detainee [REDACTED] was being non-compliant and was restrained. He was handcuffed and escorted to BMU.’<sup>150</sup>

## Youth Justice Officer Harmer’s observations of a detainee

Youth Justice Officer Greg Harmer gave evidence to the Commission that he overheard two youth justice officers bragging about how they handcuffed a detainee and ‘threw him to the ground’.<sup>151</sup>

### AM

Witness AM said in a statement to the Commission that at the current Don Dale Youth Detention Centre:

*‘The guards were being rough with me when they were taking me to the cells so I tried to my [sic] wriggle and thrust my way out of their grip. While this was happening, Corrections guards said I headbutted them. The guards then picked me up and tackled me to the ground and dropped me on my head ...’<sup>152</sup>*

AM did not give oral evidence before the Commission. The police investigated the matter, and requested CCTV footage, but were advised (it is not clear by whom) that there was no CCTV coverage of this particular area.<sup>153</sup>

AM was also treated by a nurse after this incident, who made the following observations: ‘Seen in clinic following altercation this morning. Incident this morning resulting in [REDACTED] being tackled to the ground, no LOC [loss of consciousness]. Obvious bruising to right side of face, cheek bone and near ear.’<sup>154</sup>

The Northern Territory Government relied on incident reports by four youth justice officers.<sup>155</sup> One of the youth justice officer’s reports stated:

*During the two man escort to C WING, AM started to try and break free of our hold, and started to head butt [redacted] where he made obvious contact, he also had his elbows raised where he was trying to elbow us in the head. CO [REDACTED] and I then put an arm each up over AM shoulder and gently tilted him forward as per my PART TRAINING. AM was thrashing himself from side to side in an extreme aggressive manner, when the three of us were becoming a bit off balance. At this stage our momentum was moving forward and down towards the ground very fast. We had no choice but to ground stabilise the detainee. During that process I found myself falling forward towards the ground onto my knees, where I the writer have tried my hardest*

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*to protect AM head, where I sustained a big graze to my right elbow and write [sic] knee.<sup>156</sup>*

AM was found guilty of headbutting the youth justice officer. AM was legally represented but the description of the 'tackle to the ground' described in his statement was not included in any contemporaneous document or, it seems, advanced to the court. AM and the youth justice officers were not called to give oral evidence before the Commission.

## **BA**

### **Incident 1**

The Commission heard evidence from BA that at the current Don Dale Youth Detention Centre, Youth Justice Officer Jessie Palu dropped BA on his head.

BA said that after getting into a fight with another detainee:

*'Jesse Palu grabbed me. He full on picked me up and slammed my head on the concrete. I was dizzy in the head and he took me down to the back cells... I think I had concussion because I was dizzy in the head. They didn't take me to hospital. Just left me in C Block back cells.'*<sup>157</sup>

In response, the Northern Territory Government tendered an IOMS report and a Don Dale Youth Detention Centre Daily Journal. The IOMS report stated that during lunchtime BA became aggressive and started abusing another detainee, and began throwing punches, but not connecting. The report stated:

*'[Youth justice officer] [REDACTED] and I entered H Block. I approached the detainees and requested they break it up. I asked both detainees to walk to their rooms. When I got to detainee BA I began to escort him to his room. Detainee [REDACTED] was compliant and ceased fighting. Detainee BA did not. During the escort back to detainee BA's room, detainee BA continued to display aggressive behavior and attempted to keep fighting. Detainee BA verbally abused me and threatened to head butt me if I didn't let the fight continue. As a result of continually trying to fight, I had to ground stabilize detainee BA.'*<sup>158</sup>

The report does not provide any further circumstances on the nature of the ground stabilisation. The entry in the use of force register which was completed by Mr Palu records that BA was 'ground stabilised'. The Deputy General Manager commented 'more information required account of and nature of force used'.<sup>159</sup> The Commission considers that this comment is important as it indicates a recognition by management that the use of force entry in this particular instance did not provide enough detail to assess the use of force used. It appears that while BA said that he was not taken to hospital, he did receive medical attention that day and no head injuries were observed or recorded as having been complained about.<sup>160</sup>

### **Incident 2**

BN gave evidence about a separate incident in which Mr Palu did a similar thing to BA on the same day that a fight occurred between BA and another detainee. He said that Mr Palu picked up BA and

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*'dropped him on his head and hit him with the bin'.<sup>161</sup> The fight on that same day was alleged to have occurred in G Block, where there were no cameras.<sup>162</sup>*

An IOMS report of the incident confirms that a fight between BA and another detainee occurred around the time alleged by BN and that following the fight Mr Palu ground stabilised BA.<sup>163</sup> The entry in the use of force register completed by Mr Palu also indicates that this incident occurred in the G Block.<sup>164</sup> Mr Palu denied that BA suffered any injury as a result of this incident.<sup>165</sup>

Mr Palu has denied that these two incidents occurred and stated that he has never dropped a detainee on the head.<sup>166</sup>

## **BN**

BN recalled that he was:

*'... often tackled to the ground. If you had a shirt on they would use your shirt to throw you to the ground. If you had no shirt on they would tackle you to the ground ... One time after I was tackled to the ground my arm had a piece of wire in it and it swelled up.'<sup>167</sup>*

In response to this statement, the Northern Territory Government tendered medical documents which suggested that BN had placed the wire on his arm to make it look like he had stuck it in his arm.<sup>168</sup> No contemporary notes or reports mention this 'tackle', nor the swelling to the arm.

## **BH**

BH gave evidence of an incident that occurred in December 2016:

*'As I was waiting for my new cell to be sorted, I was pacing around, upset and crying. One of the guards approached me. I didn't want to talk to him. I think I might have pushed him away but I can't remember exactly. I don't remember them saying anything to me. The next thing I remember, I was being forced down onto the concrete floor. I blacked out. When I came to, the guards were on my back holding me down, pushing my face into the concrete. They were yelling at me, 'stop resisting' but I wasn't resisting and they kept pushing me back down ... I was put in a cell where I waited for the nurse. Sometime later the nurse came to see me and I was taken to medical and an ambulance was called. When I was waiting for the ambulance, I vomited. I remember being dizzy and having blurred vision ... I was taken to hospital by ambulance... I vomited again at hospital.'<sup>169</sup>*

Footage of this incident was played during the Commission's public hearings. The footage shows two youth justice officers grabbing a detainee, lifting him up into a horizontal position, and then forcing him down onto a concrete floor from approximately shoulder height. All of this occurred in the space of less than five seconds. In the stills of this incident, shown below, the time difference between the first and the third image was approximately 2.4 seconds.



In response to this allegation by BH, the Northern Territory Government relied on two incident reports. The incident report made by the first youth justice officer, known as Youth Justice Officer A, stated:

*I approach [sic] BH and told him to cease his actions and to calm down. As I approached BH he told me to 'fuck off'. I ask BH what was wrong to which he did not reply. I tried to inform BH that I had got a room with a TV and fan set up for him in an attempt to de-escalate the situation when he slapped a football from my hand. Without warning BH then lunged at me grabbing me by the collar of my shirt and attempting to strike at me with his clenched fist. Senior YJO [REDACTED] then came in to assist me in ground restraint. Due [sic] the movement I was pull [sic] off balance by BH which made my momentum roll forward on top of him. BH was then controlled on the ground with his arms behind his back. BH complained of a sore head indicating to the rear of his head.<sup>170</sup>*

The second youth justice officer's incident report stated:

*'Detainee BH then grabbed SCO [REDACTED] by the collar of the shirt and attempted to strike him. I have then assisted SCO [REDACTED] in restraining detainee BH, during the restraint, detainee BH, SCO [REDACTED] and I have fallen to the ground, detainee BH still had a hold of SCO [REDACTED] shirt and during the momentum of the fall SCO [REDACTED] was pulled on top of detainee BH. Detainee BH was then controlled on the ground with his arms behind his back. Detainee BH indicated that he had a sore head from the fall.'<sup>171</sup>*

A third officer's incident report describes BH punching a football out of a youth justice officer's hand, and then details that the officer ran over to assist. The report stated:

*'When I arrived at the situation at hand, detainee BH had already been restrained by SCO [REDACTED] and SS [REDACTED] and was on the ground on his belly, SS [REDACTED] then instructed me to call medical so detainee BH could be assessed.'<sup>172</sup>*

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The youth justice officers' incident reports place emphasis on BH's behaviours leading up to the ground restraint exercise. They do not mention their actions of lifting BH up and forcing him to the ground from shoulder height in a very short space of time and, instead use the term 'ground restraint' without any detail. Those reports suggest that BH made contact with the ground because the two youth justice officers lost their balance. However, the CCTV footage shows that the two youth justice officers grabbed BH and appear to be in control and BH was then lifted into a horizontal position and forced from approximately shoulder height down to the ground. The two youth justice officers appear to lose balance after BH hits the ground, not before. This manoeuvre appears to be similar to a 'spear tackle' in rugby league and rugby union.<sup>173</sup>

The Northern Territory Government submitted that *'there is absolutely nothing in the footage or the stills, or indeed in any evidence before the Commission,'* that shows either officer *'lifted BH up and forced him to the ground from shoulder height.'*<sup>174</sup>

The Commission reviewed the following medical records for BH:

- a referral letter stated: *'Thank you for seeing BH who is a [REDACTED] boy BIBA from corrections has had a mild posterior headstrike during restraining at corrections. He had LOC [loss of consciousness] for few seconds and 2 vomits (1 in corrections 1 in ED nil blood), no further vomits after ondansetron.'*
- the observation notes stated *'Noted by RAN to have swelling tender over occipital region [back of the head] and also noted to slight trickling of blood from his nose. Had brief LOC suspected.'*<sup>175</sup>

## BA

BA gave evidence that two youth justice officers lifted him *'head first to the ground while they were restraining me and scraped my face on the concrete floor.'*<sup>176</sup> This occurred after he damaged property because there was no water in his room.<sup>177</sup> The allegation was denied by one of the youth justice officers involved. This youth justice officer said he recalled *'holding his [the detainee's] arms, leaning him forward and putting him on the ground.'*<sup>178</sup>

Youth Justice Officer A was also involved in the incident involving BH in December 2016 described above. There are similarities between the allegations of BA and BH. Both claim that they were lifted and then forced head first to the ground. Youth Justice Officer A denied intentionally scraping BA's face against the ground but said that given the size of the detainee and the manner in which he resisted, it was possible that BA could have scraped his face on the floor.<sup>179</sup> He stated:

*'The technique that was used in ground stabilising [BA] does not involve any lifting and I deny that I lifted [BA] head first into the ground. Force was applied to the back of [BA]'s arms so as to lower him toward the ground. While I do not recall seeing [BA] scraping his head on the ground in the course of the ground stabilisation, it is possible that he did so.'*<sup>180</sup>

Youth Justice Officer A further stated that:

*'Whenever I am required to ground stabilise a detainee, I do my best to prevent any sort of injury occurring in the process. However, when the detainee is struggling,*



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*kicking, punching and headbutting, as detainee BA was, this can be very difficult.*<sup>181</sup>

In response, the Northern Territory Government also tendered an incident report from this officer which stated:<sup>182</sup>

*[Youth justice officer] [REDACTED] and I entered the muster room to escort BA to his room. BA then departed to the main yard stating "Come on Dog, come and get me." I instructed BA to comply with my instruction and stand by his room. BA was non-compliant to my direction and continued to evade me. I again instructed BA to stand by his room to be secured. BA stated in an aggressive manner "Let's go then" in an attempt to incite an altercation. I told BA to stand down and again to comply.*

*I took hold of BA in a single hand escort hold to take him to his room, at this point BA became aggressive and stated "I'm going to cave your head in cunt." BA began to resist me so I took hold of him with two handed escort hold and told him to calm down. [Youth justice officer] [REDACTED] took hold of BA's other arm to assist in controlling him. BA stated, "Fuck you [REDACTED]", and head butted [youth justice officer] [REDACTED] to the side of the face. BA was then restrained on the ground to prevent further assault. I informed BA he will be going into a de-escalation room due to his actions.*

*BA was resisting while restrained on the ground and [youth justice officer] [REDACTED] assisted in controlling BA's head as he began to spit at Staff.*

*The assistance of more Officers was required to control and secure BA with handcuffs. Once control was maintained BA was removed to Room 29 De-escalation.*

*... Detainee BA stated he had injuries to his face. A graze to the right cheek could be seen. Taken to medical to be assessed at approx. 1400hrs.*

The Northern Territory Government submitted that it was also possible that BA's graze to his right cheek could have been caused by the other youth justice officer controlling BA's head as he allegedly spat on staff.<sup>183</sup>

## Conclusions in relation to the evidence of the detainees

Two of the above cases were unchallenged (although the Northern Territory Government submitted that the detainees did not provide enough information for the allegations to be responded to). The remainder were either denied by named youth justice officers, or reliance was placed on IOMS reports, which again appeared to have little to no detail about the actual actions which constituted 'ground stabilisation'. In relation to all but one case, CCTV footage was not retained.

The Commission notes that the similarity in many of these accounts supports a finding that ground stabilisation which involved detainees being forcefully thrown onto the ground occurred during the relevant period. Medical evidence of the incident involving BH, and the CCTV footage of the incident, is consistent with the detainee's account. The Commission notes that these accounts spanned a period between 2010 and 2016 and took place in Darwin.



The Commission also notes that there was no suggestion on the part of the youth justice officers adversely named or the Northern Territory Government that these detainees had collaborated to say similar things.

## Findings

**‘Ground stabilising’ children and young people by throwing them forcefully onto the ground (in some cases causing forceful contact to be made between their heads and hard surfaces) occurred between 2010 and 2016 at the Don Dale Youth Detention Centre.**

**These actions were inconsistent with PART training.**

## APPLICATION OF BODY WEIGHT TO VULNERABLE AREAS

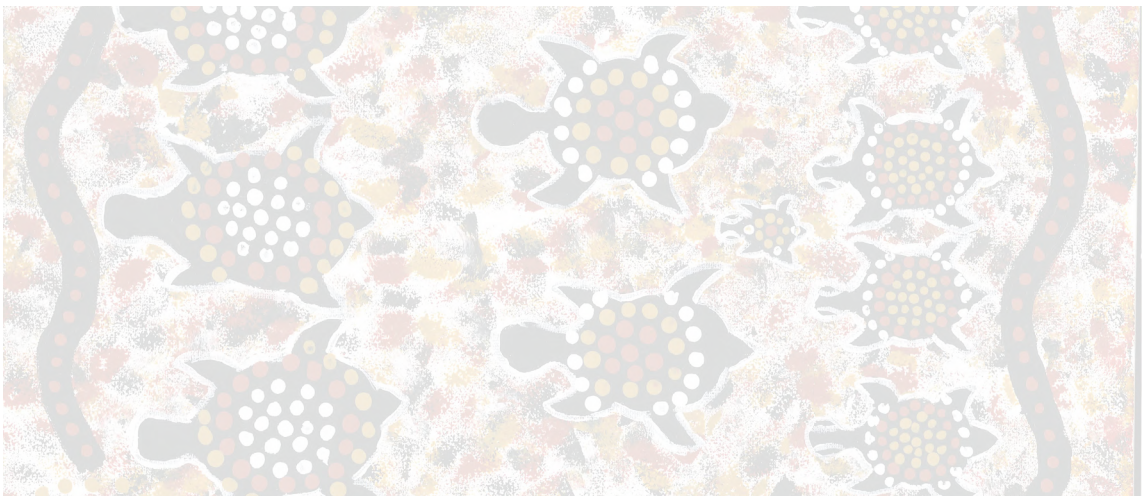
The Commission heard from a number of detainees about youth justice officers using force that involved placing their body weight on the detainee in areas that were at risk of serious harm.

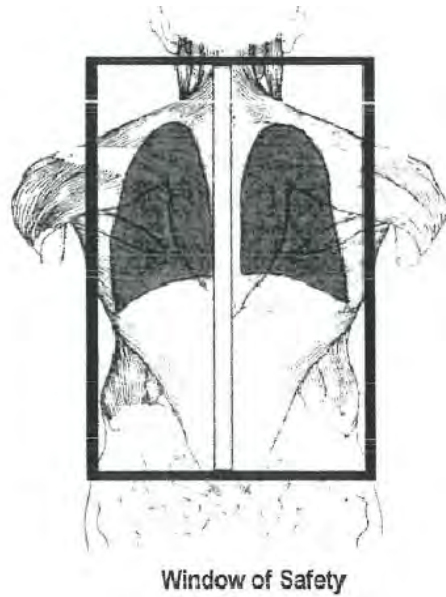
The rules of the detention centre do not refer to the application of the body weight to a detainee. Rather, the more general procedures for the use of force apply, which are set out above.

PART training clearly refers to the dangers of placing weight or pressure on areas of a detainee’s body that can affect breathing or circulation. The manual warns that *‘[v]irtually every death in restraint can be attributed to restriction of breathing or circulation’*. PART training includes a specific direction not to touch the *‘window of safety’* in circumstances where a detainee is placed in a prone restraint.<sup>184</sup>

Whether or not force can be reasonably necessary can be informed by whether it conforms with training under PART, as that training sets out steps youth justice officers ought to follow. To the extent those actions did not comply with PART training, there would need to be exceptional circumstances justifying departure from PART.

The area of the body described as the *‘window of safety’* is identified in the PART manual as shown below:<sup>185</sup>





However, the Commission has heard evidence of the use of force, and in some cases the use of body weight, being applied to a detainee's window of safety once that detainee was restrained. The Commission heard evidence from eight detainees, from both Alice Springs Youth Detention Centre and the Don Dale Youth Detention Centre, who alleged that they were mistreated in this way. Two instances were captured on CCTV.

## Dylan Voller

CCTV footage was played of an incident that occurred on 9 December 2010 which showed a youth justice officer, Mr Tasker, placing his knee over Mr Voller's back. Prior to this, Mr Voller had been declared 'at risk' as a result of threatening self-harm, and had refused to take off his clothes and put on a non-rip gown, as required by the emergency at-risk procedures in force at the time.<sup>186</sup> The physical restraint of Mr Voller was in order to remove his clothing and clear the room of debris.<sup>187</sup> Stills of the video footage are shown below.



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This conduct occurred during the same incident for which Mr Tasker was prosecuted, and for which he was found not guilty (discussed above).

In relation to the above conduct, the judgment states that Mr Tasker ‘was *mindful of his weight when he was holding Voller down*’, as well as the ‘*window of safety*’.<sup>188</sup> The magistrate ultimately found:

*‘When Voller was initially held down on the mattress the force applied did not appear to be excessive. It appears that Tasker has a fair bit of his weight being borne by his own left knee, and he is then leaning over Voller. Further, the level of force used was such that Voller was able to squirm and get his right knee up level with his hip. In my view, this is a clear indication that the level of force at this point was not excessive. Given the way that Voller had moved his right leg, I do not consider it unreasonable that additional force needed to be applied in order to put Voller’s legs back into a more neutral position. He chose to do this by applying his right knee to the right hip/buttock area of Voller.’<sup>189</sup>*

As noted above, on appeal, the Supreme Court found that this action (being part of a series of actions which involved Tasker taking hold of Voller, taking him to the ground and restraining him) constituted, objectively, low-level ‘physical violence’,<sup>190</sup> but was conduct engaged in for the purposes of ensuring the safe custody and protection of Mr Voller.<sup>191</sup>

While the Commission is respectful of the legal outcome, it is nonetheless concerning that the right hip area is within the area of the window of safety referred to in the PART manual. It should also be noted that the image above suggests that Mr Tasker’s knee may have been placed higher than Mr Voller’s hip area and appears to be placed over his mid-back. The Commission also notes that, according to the judgment, at the time of the above incident, Mr Tasker weighed 110–115 kilograms.<sup>192</sup> Regardless of how much force was applied to Mr Voller’s right hip area, there is a significant potential for injury in these circumstances.

The Northern Territory Government submitted that the right hip area is not within the window of safety referred to in the PART manual.

As noted above, the Children’s Commissioner also inquired into this matter, and engaged an expert, Mr Unger, to provide an opinion on the level of risk that such actions could pose to detainees. We note that the Court did not have the benefit of any expert evidence when it handed down its judgment in relation to this matter. Mr Unger stated that:

In relation to the restraint techniques observed, none of the techniques were consistent with any PART techniques or principles. The interventions were abhorrent and presented a greater level of danger to the young person than to the staff ...

*Specifically, PART training warns against:*

- *putting pressure on the window of safety*
- *one on one restraint*
- *straddling a client to restrain*
- *placing pressure on joints, eg legs and neck*
- *not medically checking on a client post restraint.*<sup>193</sup>

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CCTV footage of an incident on 16 March 2012 involving Dylan Voller and youth justice officer, Barrie Clee, was also played to the Commission. Mr Clee denied that he placed the whole of his weight on Mr Voller and stated that he did not place his knee in the centre of Mr Voller's back.<sup>194</sup> Stills from the footage are shown below.



As noted above, Mr Unger stated that PART training warned against one on one restraint.<sup>195</sup>

A former training officer agreed that a single person conducting a prone restraint technique was not an authorised PART technique.<sup>196</sup> He said that this technique was one that was employed in adult corrections and had nothing to do with PART training.<sup>197</sup>

## A female detainee

The Northern Territory Government produced records of an incident in 2012 involving an alleged use of body weight by Senior Youth Justice Officer Trevor Hansen on a 15 year old<sup>198</sup> female detainee. This detainee did not give evidence before the Commission, but the PSU investigated the incident and prepared a report. This incident, which also involved an alleged headlock, was considered in the previous section.

The report stated that on that day:

*'female detainees who were exercising in the external yard area were given verbal instruction by staff to move inside to commence their showers. Several detainees including [redacted] refused to comply with these instructions and when detainee [redacted] threatened to climb on top of the school demountable roof she was restrained and placed in the HDU [high dependency unit].'*<sup>199</sup>

On the same day, the detainee submitted a written complaint to the Acting General Manager, alleging amongst other things that she was grabbed by SJO Hansen for no reason, suffered bruising to her arms and legs and was *'unable to breathe after being restrained with bent legs and SJO Hansen's body weight was upon her back.'*<sup>200</sup>

The PSU report in relation to this incident noted that *'SJO Hansen used his body weight upon her*

lower back and applied a leg lock. This restraint allowed all staff to then exit the room without the detainee being able to immediately get up and attempt to exit the room.<sup>201</sup>

The incident report does not refer to the action of placing bodyweight on the detainee, and states:

*Whilst moving detainee she was moved utilising part escort. Once in HDU 2 she was constantly swinging at officers and coming out of the door. She was placed on the ground in a leg lock and then officers exited the room.<sup>202</sup>*

Medical records stated: 'detainee was then thrown to the ground both legs were crossed & locked behind her buttocks knee was placed on legs to keep feet locked together elbow/forearm was place on detainees back detainee states that she couldn't breathe properly detainee has bruising to her middle of her ribs R side also R knee& foot great toe pad metatarsal on the inner foot on the heel towards the arche of the foot there is bruising under both arms where she was held.'<sup>203</sup>

The PSU investigation into this matter concluded that 'Given the level of resistance and assaultive behaviour displayed throughout the incident by the detainee, the force used to control her is not considered to have been excessive, however not all of the restraint techniques applied or attempted to be applied were consistent with restraint procedures in the current PART manual.'<sup>204</sup>

The stills from the CCTV footage show the following:<sup>205</sup>



PART training advises that 'One-on-one situations have proven very dangerous and should be avoided', and that problems with one-on-one restraint include:

- an inability to see the client's face, which is necessary to check for proper breathing and circulation
- restricting breathing by compressing the torso, and
- triggering an individual, especially one with a history of sexual trauma, by making unavoidable contact with sexual areas and by unintentionally stimulating a re-experiencing of past sexual abuse. While reliving past trauma, the client may perceive the staff member as the abuser.<sup>206</sup>

In relation to prone restraint, PART training also advises that individuals who have been sexually abused in a face-down position may re-experience their trauma when restrained on the floor in that position.<sup>207</sup>

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The Commission is particularly disturbed about the potentially traumatic nature of an adult male restraining a female youth in the face down position as depicted in the CCTV stills above.

## AP

AP, who was in the former and current Don Dale Youth Detention Centre, told the Commission of an incident where he was directed to come down from the roof. He thought he would be taken to the back cells if he complied with the direction, but when he did he was 'slammed' on the ground and he felt two knees on his shoulders. AP said it '*felt like they were standing on top of [me]. It really hurt*'.<sup>208</sup> Neither AP nor any youth justice officers gave oral evidence about this incident.

## AG

At the former Don Dale Youth Detention Centre, AG told the Commission that she was pulled from a roof by youth justice officers directly to the ground. She said, '*As I was climbing up to get onto the roof they pulled me down and threw me straight onto the ground and jumped on my head and my back*'.<sup>209</sup> The Northern Territory Government relied on a number of incident reports. One of the incident reports stated:<sup>210</sup>

*'Whilst prison officers were getting ready, myself and YJO [redacted] noticed detainee AG halfway in the ceiling, we immediately opened the door and pulled AG down from the ceiling restraining her on the ground then I quickly moved over the [other detainee] and restrained her on the ground with assistance of the prison officers.'*

## AS

AS told the Commission that during a major incident at the current Don Dale Youth Detention Centre, which involved detainees lighting a fire, he became scared and wanted to give himself up. He told a guard of his intention to give up and then dropped to the ground, shortly after adult corrections guards arrived. AS said that those guards squashed their shields against his back while he was on the ground.<sup>211</sup> The Northern Territory Government relied on a bundle of incident reports dated 4 January 2015. While the reports record the detainees' actions in detail, limited information is provided of how AS was restrained. The incident reports only state that AS was part of a group of detainees who were '*restrained and accounted for*' or were '*ground stabilised*'.<sup>212</sup>

## BH

At the current Don Dale Youth Detention Centre, BH gave evidence that after he refused to submit to a strip search he was slammed to the ground by youth justice officers. He said:

*'The next thing I remember I was being slammed onto the concrete really hard and having four or five guards on top of me ... there was a knee on the back of my neck. I felt like there was heaps of weight on me and I couldn't breathe. I started coughing and I said, 'Get off me, get off me, I can't breathe' and I was trying to scratch their hands with my nails.'*<sup>213</sup>

The Northern Territory Government relied on a number of incident reports in relation to an incident that occurred at the current Don Dale Youth Detention Centre.<sup>214</sup> One of the officers involved in this incident was Youth Justice Officer A, who was the subject of two other complaints already discussed.



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One of those reports stated:

*'On arriving to S Block, B Wing room 1 I noticed detainee BH was causing damage to his room with an aluminium louver that had removed from a window.*

*SS [REDACTED] and I entered the detainee's room, where we placed BH in a two person hold and escorted him to HSU.*

*Once in HSU myself SCO Youth Justice Officer A, CO [REDACTED], CO [REDACTED] escorted BH to placement room 4.*

*CO [redacted] said to BH that a universal search will need to be conducted.*

*BH started to resist and refuse to go in placement room 4.*

*BH became aggressive and was ground stabilised by myself [REDACTED] and [REDACTED].*

*BH was picked up and carried to room 4 and placed gently on the floor, staff exited placement room 4 with no further issues.*

*I received small scratches [sic] to my hand by detainee BH's finger nails.<sup>215</sup>*

Contemporaneous medical records from a day after this incident state *'presented for review after being involved in an altercation with prison officers for resisting.'* It further notes that BH had *'mild tenderness over L eyebrow: no swelling, bruising, redness'* and *'mild tenderness R upper cheek: minor swelling; no bruising or discolouration'* and *'IMP [impression]: minor soft tissue contusion'.<sup>216</sup>*

In December 2016, after BH was ground stabilised, he was also restrained while he was on the ground. This incident and stills from the CCTV footage are discussed in detail in the previous section. The CCTV footage showed that after this, he was placed in a prone restraint by the two youth justice officers involved. BH recalled the following when questioned:

*You remember being on the ground then a bit later, not very long later, but you're on the ground. Do you remember being asked, or being told anything by the guards that were on top of you?*

*Stop resisting.*

*You're on the ground. How many guards do you think were on top of you at that point?*

*Two.*

*And was there any pressure you could feel on you?*

*My neck.*

*On your neck?*



And my back.  
And your back?

The back of my legs.

Were you on your stomach or on your back?

On my stomach.

And you could feel pressure on your neck and your back. Do you know what that pressure was from, a body or a knee or an elbow or something?

Knees.<sup>217</sup>

BH said that he was 'a lot of pain' in his neck area.<sup>218</sup>

## BV

In February 2016 at the current Don Dale Youth Detention Centre, BV stated that he was:

*'... chucked on the floor. I can remember that both guards were on top of me and my head was being pushed into the floor. It felt like one of the guards was using his leg or foot to push my face into the floor but I do not really know what happened. I remember finding it hard to breathe because of the pressure from the guards.'*<sup>219</sup>

Youth Justice Officer B who was involved in the previous incident with BH, was also involved in this incident.

The Northern Territory Government relied on three incident reports dated 10 February 2016 in response.<sup>220</sup> One of the reports stated:

*'At approximately 1745hrs detainee BV had used the intercom numerous times demanding to know where dinner was. I advised detainee BV that dinner was on its way every time his call came through the intercom. On the last call through the intercom I advised detainee BV that I would remove his TV from his room if he continued to use the intercom. At this stage he started to swear over the intercom at myself. I then stated to detainee BV that I would be coming to his room to remove his TV. Once YJO's [redacted] and [redacted] had finished issuing C wing detainees their dinners I went with them into B wing to address detainee BV in room 13. Once at the room I advised detainee BV to move to the back of the room. He refused this order and stood leaning on the door and in a raised voice 'I want my fucking dinner bruss, your ripping me off'. Again I instructed detainee BV to move to the rear of the room and again he refused this order. I then advised him that I was entering his room to remove his TV due to his behaviour. Once inside the room detainee BV started to swear at myself and then attempted to intimidate me by not moving out of the way so I could remove the TV. I then instructed him to move away and as he did so he used his shoulder to move me. **As soon as this happened I stabilised detainee BV on the ground on his back.***

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**He then took to swings at me as if to attempted to assault me. I instructed him to stop resisting. He then ceased his actions and I then advised him to get to his feet as he seemed to have calmed down.** [Emphasis added.] Once to his feet he picked up the fan in an attempt to throw it at me. I instructed him to put the fan down and he threw it on the ground and broke it. **Again detainee BV was stabilised on the ground.** [Emphasis added.] He began swearing again at staff, at this point YJO [redacted] handed YJO [redacted] handcuffs which were applied.<sup>221</sup>

In examination, BV said that:

*'There was another incident with me and a guard because I was asleep and I buzz up because it was, like, afternoon and come around dinner because we have our dinner early, 5 o'clock and I didn't know what was happening but we was all locked down all day and I buzzed up and I don't know, the guards start coming in, walking in, and they got my TV and then they never explained it to me why, you know, why got my TV off me, and that's the only thing that keep me occupied in there, because we had no fan or nothing and it's really hot, and I got pissed off and I just started swearing, **and they tackle me to the ground, I got my head slammed to the ground by the guard and he was really big ...*** [Emphasis added.]<sup>222</sup>

BV remembered that he picked up the fan 'and was going to strike him with it but then I didn't try and I put it down and he just grabbed me'.<sup>223</sup>

## BN

BN gave evidence that a guard:

*... slammed my head into the door. He also put a boot in my back and stood on my ankles. [Someone] dragged me to the back cells. When we got to the cell I was told to lie down. I couldn't move because of the restraint behind my back and because my head was being pushed down. They lifted my feet and slammed my head on the ground.*<sup>224</sup>

Three officers, including Youth Justice Officer B, were said to have been involved in this incident.

One of the other youth justice officers named said that he did not work any shifts during the period which the allegation occurred.<sup>225</sup> Youth Justice Officer B said that 'If a detainee was being restrained on the ground, again, this would be undertaken by two to three staff, ideally with one officer on each arm and one officer holding the detainees legs (which were tucked back toward the detainees buttocks).'<sup>226</sup>

The Northern Territory Government relied on three incident reports.<sup>227</sup> One of the reports stated:

*'At approximately 1400hrs myself and CO [redacted] entered yard one to give BN his clothing and towel to have a shower. Once we got to the door we noticed that BN had placed his mattress against the door. After a discussion with BN he stated to officers to fuck off and leave me alone. He then stated that any officer who came into the room that he would slash them up. As we couldn't see into the room I decided to try and look into the room from the back window. As I could not see in from the back window*

I returned to the office and was advised by CO [redacted] that there was blood in his room on the floor. I immediately radioed CCO [redacted] SS[youth justice officer] [redacted] [senior youth justice officer] [redacted] to attend HSU [High Security Unit]. Superintendent [redacted] and Deputy Superintendent [redacted] attend HSU. After a brief of the incident it was agreed to extract BN from room one and place him into room two. Negotiations with Detainee BN to try and get him to comply with instructions broke down and the **decision was made to enter the room with shields to control of BN. BN was ground stabilised and handcuffs placed on him.** [Emphasis added.] He was then transferred to room two, restraints removed and officers exited the room.<sup>228</sup>

## The evidence of detainees

Of the nine cases referred to above, three were captured on CCTV, and the remainder were either denied, or the Northern Territory Government relied on incident reports which did not specifically refer to body weight or pressure being placed on the window of safety.

The similarity in many of these accounts supports a finding that body weight or pressure was applied to the window of safety in disregard for the clear requirements of PART training, by some youth justice officers during restraint during the relevant period. On the occasions when CCTV footage was available, the detainee's recollection or contemporaneous account was consistent with the footage.

The Commission also notes that there was no suggestion on the part of youth justice officers adversely named or the Northern Territory Government that these detainees had collaborated to say similar things.

The Commission notes that two of the officers who were the subject of complaints (Youth Justice Officer A and Youth Justice Officer B) were adult correctional officers.<sup>229</sup> At the

## Finding

**Between 2010 and 2016, placing pressure or body weight to the area known as the 'window of safety' while children and young people were in a prone restraint occurred on occasions at both the former Don Dale Youth Detention Centre and the Alice Springs Youth Detention Centre. This was in contravention of PART training and potentially dangerous.**

## THE USE OF PRESSURE POINTS

The Commission has also heard evidence from two detainees that youth justice officers either knew of the existence of pressure points, and/or applied force to the pressure points of detainees. The extent of the use of pressure points is not apparent to the Commission.

AY said that the group of youth justice officers trained in mixed martial arts 'knew where our pressure points were and did different locks and holds on us'.<sup>230</sup> Dylan Voller gave evidence that Mr Tasker commonly applied force to a pressure point on his neck.<sup>231</sup> Mr Tasker denied this, and stated that he had not been trained in the use of pressure points, and said that he did not even know where

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pressure points were.<sup>232</sup>

The Maybo training material provided to the Commission from 2015, which appears to have been introduced after the above alleged incidents, included a slideshow about pressure point areas and the presentation refers to different types of pressure points and their effects. For example, in relation to the application of force to one particular pressure point, *'expected effects include medium to high intensity pain, immediate signs of submission, probable cessation of all intentional motor activity'*.<sup>233</sup> This material was attached to Ms Cohen's statement to the Commission, in the context of a paragraph relating to training Youth Justice Officers. However, the Northern Territory Government has distanced itself from this material, and has submitted that *'there is no evidence that 'pressure point' training was in fact implemented with youth justice officers, and asserts that it was not and that if it were it occurred after these two described incidents.'*<sup>234</sup>

No conclusion can be made about use of pressure points by youth justice officers but the potential for misuse is there and the Northern Territory ought to follow Western Australia and the Australian Capital Territory, where policies applicable to youth detention centres specifically prohibit the application of force to pressure points.<sup>235</sup>

## INAPPROPRIATE CONTACT

The Commission heard that a number of detainees, both male and female, were restrained by the application of force to their clothing, specifically by grabbing the back of detainee's shorts or underpants, which resulted in physical pressure to their genital areas. This was colloquially known by both staff and detainees as a 'wedgie'. Detainees gave evidence that this conduct was demeaning and caused physical pain.

The 2004 edition of the PART training manual referred to the following principle relating to the 'escort procedure':

*'get a grip ... For a more secure grip, move inside arm under client's arms and encircle client's back. Grasp client's clothing as far around as staff reach permits.'*

However, the manual also clearly stated:

*'Staff members take positions that avoid contact with sexual areas.'*<sup>236</sup>

This prohibition is also contained in the 2010 manual.<sup>237</sup> PART's escort procedure is not a 'wedgie' but it was the approved manner of performing a single person escort and warned against the risk of contact with sexual areas and that is a real likelihood if the 'wedgie' technique is used.

Mr de Souza gave evidence that he saw more than one youth justice officer misuse that technique in circumstances where it caused discomfort to a person. Mr de Souza said that the technique was used before he became a training officer in 2009.<sup>238</sup>

## AX

AX gave evidence that:

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*'... in both Don Dale and the Alice Springs Youth Detention Centre, the guards would give wedgies out to the inmates. This happened to me twice, but it happened a lot to the inmates. Sometimes it would happen when the guard would want us to do something and we would say no, and then the guard would then give us a wedgie to try and make us do what they wanted us to. Sometimes the guards would go up to an inmate and do it out of the blue.'*<sup>239</sup>

## BQ

BQ described how:

*'... the guards would give us wedgies and punch us. It was a joke to them. They thought it was fun. The guard Yogi gave me a wedgie in the dining room two times. Yogi was short and white and had glasses. Other guards would say to Yogi, 'Do the wedgie', and laugh.'*<sup>240</sup>

## AY

AY said:

*'I remember seeing some of the smaller kids being carried around by their underpants. I would see Yogi (one of the guards) do this. Yogi was his nickname. He would pick up a kid by his underpants and give him a wedgie with one hand, and push his head down with the other. Yogi would lift up and carry the kid like that for a while, sometimes right across to the BMU [Behaviour Management Unit] and then dump him on the ground or in his cell. I saw this happen a lot. It happened to me too. It would hurt, especially when you got thrown in to the cells.'*<sup>241</sup>

## AN

AN, who was a female detainee, recalled that Mr Hansen:

*'... picked me up from my shorts and bra strap. This was how they would often grab me when I was in trouble. They would lift me up from the back of my shorts so that the bottom of my shorts dug in hard between my legs and they would put their hand under my bra strap so it pulled tight on my chest. This hurt and was shame job. They would hold me in the air like that and take me where they wanted.'*<sup>242</sup>

The Northern Territory Government referred to two incident reports in relation to an incident with AN. One of these incident reports is written by Mr Hansen, and the other by Mr de Souza. The reports state that Mr de Souza was supervising detainees in the meal area and called for Jamie Clee to assist. Mr Hansen responded then escorted AN to the cell areas.

Mr Hansen's report stated he:

*'...held her right wrist and put it behind her back to secure her. I then started to walk her to the cell area and was met by SYW Clee. Due to the low number of staff due to*

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*supervision requirements and meal breaks this was the only escort available. On the way to the cell area detainee [AN] was abusive and threatening.*<sup>243</sup>

The Northern Territory Government submitted that Mr Hansen's evidence shows that Mr Clee and Mr de Souza were present and would have observed Mr Hansen's escort technique.<sup>244</sup> However, Mr Hansen could have executed a wedgie on the way from the meal area to AN's room and this would not have been visible to Mr de Souza, who was likely to have stayed in the meal area because he had supervisory duties. This would account for Mr de Souza not referring to the escort technique in his incident report. However there are other aspects of AN's account which raise a doubt about the clarity of her recollection as a result of which the Commission cannot make a finding that the conduct occurred as she alleged.

## AQ

AQ said:

*'I remember an officer who we called Yogi. He would grab the boys by the jocks, ripping them up the back and placing other hand around the neck, 'frog marching' them around. I remember many boys being frog marched this way during my time at Don Dale.'*<sup>245</sup>

No details about this manoeuvre were elicited from AQ when Mr Hansen's denials were put to him.

## Dylan Voller

Dylan Voller also alleged that Mr Hansen performed this action on him, which resulted in his underwear being roughly pulled into the area between his buttocks.<sup>246</sup>

There is evidence before the Commission that Mr Hansen was the guard referred to as 'Yogi' in relation to these allegations.<sup>247</sup>

Mr Hansen has denied all of these allegations.<sup>248</sup> Mr Hansen admitted to using an escort technique, which involved grabbing a detainee's shorts. Mr Hansen said:

*'The idea is to grab the shorts so that you could hold them and then push forward. If the shorts rise up a little bit, but you would not try to use too much force to push them through, only what is required to move them in a forward direction. It is – says it's a one man escort.'*<sup>249</sup>

He said that he was aware of other staff referring to the manoeuvre as a 'wedgie' but rather described it as *'holding [the detainee's] shorts and the top of their sleeve, if not the sleeve their arm, and then guiding them to the front forward direction.'*<sup>250</sup>

It can be seen from Mr Hansen's description of the method he used that the recipient of this mode of escort might experience discomfort:

*'This method of control involved the holding of the back of the detainee's shorts with a slight upward control and directing them to the required area.'*<sup>251</sup> (emphasis added)

It was not suggested to Mr Hansen that the technique might cause discomfort. However the

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possibility is supported by Dylan Voller's statement in response to Mr Hansen's statement.<sup>252</sup>

The Northern Territory Government has contended that Mr Voller ought not be accepted on this because no complaint about receiving an escort wedgie is to be found in his numerous complaints to the Children's Commission about his treatment in detention. On this matter, the Commission accepts Mr Voller as a reliable witness.

Another youth justice officer, Mr Tasker, gave evidence that the procedure was similar to a 'one arm escort, you would hold the arm then hold the back of the pants where you had control of the pants'. He recalled that it was 'commonly known' as a 'wedgie' and was referred to by its colloquial name in PART training.<sup>253</sup> No other witness made this 'normalisation' of the 'wedgie' manoeuvre. It was understood to be at the least uncomfortable and demeaning.

## Finding

**The Commission finds that Mr Trevor Hansen used the restraint technique colloquially known as the 'wedgie' on detainees in a manner that caused discomfort to the detainees and resulted in pressure or force being exerted through clothing on their genital areas. This conduct was in contravention of PART training – which stated that staff members should take positions that avoid contact with these areas – and may have been in breach of section 153(2) of the Youth Justice Act which limits the force which may be used on a detainee.**

## USE OF RESTRAINT DEVICES

A restraint device is any device which is designed to immobilise a child or restrict their freedom of movement.<sup>254</sup>

The Commission heard of various restraint devices being used during the relevant period –handcuffs, 'zip-ties', shackles and restraint chairs.

During the relevant period, sections 153(4) and 155 of the *Youth Justice Act* provided expressly for the use of restraints: prior to 1 August 2016, reference was made to the use of 'handcuffing or similar devices'; from 1 August 2016 to 1 March 2017 reference was made to the use of 'approved restraints' that were to be approved by the Commissioner; and from 1 March 2017 reference is made to approved restraints which was expressly defined as handcuffs, anklecuffs and waist restraining belts.<sup>255</sup>

Section 153(4) permitted the use of handcuffs or a similar device to restrain a detainee if the superintendent was of the opinion that an emergency situation existed and a detainee needed to be temporarily restrained, to protect that detainee or the safety of another person. That detainee could be restrained until the emergency situation no longer existed.<sup>256</sup> In August 2016, that power was expanded to allow a detainee to be restrained if it would reduce the risk to the good order or security of the youth detention centre. That is, from 1 August 2016, it was no longer necessary for there to be an emergency situation before restraining a detainee.

Section 155 provides that when escorting a detainee, a detainee could be restrained with handcuffs



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or a similar device when being escorted outside of the detention centre.<sup>257</sup> This exception was expanded on 1 August 2016 to allow a detainee to be restrained with approved restraints, such as handcuffs, when being escorted both inside and outside of a detention centre.

Section 151(3)(c) of the *Youth Justice Act* provided that a Superintendent must maintain order and ensure the safe custody and protection of all persons in the detention centre and under section 152 the superintendent was given all the powers that are necessary or convenient for the performance of these functions.

As with the power to use force more generally, in issue is whether sections 153 and 155, which prescribe the circumstances in which restraints may be used, excludes the operation of a general power under section 151 and 152.

As with the use of force provisions, which are considered above, the Commission considers that there remains doubt as to the existence of a separate general power under section 151 and 152.

If section 153 and 155 prescribe when restraints may be used:

- until 1 August 2016, restraints were only authorised for use:
  - in an emergency to restrain a detainee to protect that detainee or another person or
  - while escorting a detainee outside the detention centre, and
- from 1 August 2016, restraints were authorised for use:
  - in an emergency or to reduce the risk to the good order or security of the detention centre or
  - while escorting a detainee inside or outside a detention centre.

If however section 151 and 152 are a more general source of power, the use of restraints to maintain order and ensure the safe custody and protection of another person must be necessary or convenient and also reasonable.

The Commission is of the view that statutory clarification is desirable.

While the amendments in August 2016 also introduced new provisions for the appropriate use of restraints – which stipulated that they only be used in the least restrictive or invasive way reasonable in the circumstances, and for the minimum amount of time reasonable – those limitations will need to be monitored vigilantly.

International human rights instruments, to which Australia is a party, state that restraints should be used only in exceptional circumstances, provided that all other control methods have been exhausted and failed, and only as explicitly authorised by law. Restraints should also only be used for the shortest possible period of time, can be used to prevent the child from inflicting self-injury, injuries to others or serious destruction of property.<sup>258</sup> These human rights standards – to the extent that they provided that restraints should only be used in exceptional circumstances – were embodied in section 153 of the *Youth Justice Act* prior to its amendment in August 2016, which only authorised restraints in emergency situations. Following the amendments in August 2016, there are questions as to the compatibility of section 153 of the *Youth Justice Act* with the relevant human rights standards. As the discussion which follows demonstrates, there are questions about the extent to which practices in the Northern Territory during the relevant period were consistent with those

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human rights standards. The Association of Juvenile Justice Australian (AJJA) principles similarly state that instruments of restraint are only to be used on a child or young person in response to an unacceptable risk of escape or immediate harm to themselves or others, and/or in accordance with legislation, and should only be used the shortest possible period of time.<sup>259</sup>

Between 2006 and May 2015 detention manuals and directives dealt with the use of restraints to protect a detainee or other person or prevent or minimise injury, which is directed to the exception under section 153(4) of the *Youth Justice Act* for the use of force, and for external escort purposes, such as to or from Court.<sup>260</sup> The Commission is not aware of any internal directives during that time issued by the Commissioner that specifically dealt with the use of restraints inside detention centres more generally.

A directive issued in May 2015<sup>261</sup> authorised the use of restraints as an emergency intervention when necessary for justifiable self-defence, protection of others, and protection from self-harm, protection of property, to restore order and to prevent escapes. However, the directive also stated that restraints could be used when deemed necessary for the maintenance of the security and good order of a detainee, a youth detention centre or other persons. It expressly referred to section 151(3)(c) as a source of its authority and thereby circumvented the restrictions contained within sections 153 and 155.

The May 2015 directive also approved these restraints for use during the routine movement of a detainee from one point to another inside a youth detention centre. This was repeated in the June 2015 directive.<sup>262</sup> The directive specifically stated that the use of restraints in this way would 'not be considered to be a use of physical force' and would not be required to be entered into the use of restraints register or IOMS. This also applied to the use of restraints during the transportation of a detainee for court matters and while a detainee was an inpatient in hospital or a medical clinic. This directive was revoked and replaced with a further directive concerning the use of restraints issued in January 2016.<sup>263</sup>

If the code approach to the use of force is adopted and to the extent the directive sought to authorise restraints for internal escorts, the direction is invalid.

A further directive dated January 2016 concerning the High Security Unit provided that handcuffs, leg shackles or any other approved restraint equipment would be used for all movements of a detainee outside of the High Security Unit.<sup>264</sup> Again, if the code approach to the use of force is adopted and to the extent it sought to authorise the use of restraints for all such movements, the direction is invalid.

In August 2016, changes to the *Youth Justice Act* expanded the circumstances in which restraints could be used on detainees under the code approach to permit the use of restraints to reduce the risk to the good order or security of the detention centre and for escorts inside a detention centre.

On 1 March 2017, further changes were made to the *Youth Justice Act* which expressly authorised what restraints may be used. Between 1 August 2016 and 1 March 2017, the Commissioner could determine the approved restraints. That legislative change omitted the use of a restraint chair and spit hood. As such, under the current legislative regime, and regardless of whether a code approach or purposive approach is adopted, the use of a restraint chair or spit hood is not authorised for use.

The Commission notes that the determination currently issued by the Commissioner states that the use of restraints on young people in detention as routine centre management is not a reasonable,

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proportionate or appropriate use of restraints.<sup>265</sup> The Commission supports this determination. The Commission also notes that since 1 August 2016, the *Youth Justice Act* specifically requires the use of all restraints to be recorded in a register.

## Evidence from detainees

The Commission heard from detainees of restraints being used during this period in the following ways:

1. for routine escort purposes inside the detention centre
2. while at hospitals and medical clinics
3. for extended period of times, including while detainees were placed in the Behaviour Management Unit
4. behind their backs in circumstances where they were also subject to a ground restraint and subject to physical force, and
5. in one case, while a detainee was unconscious.

## Routine internal escort purposes inside the detention centre

The Commission received evidence that handcuffs were used for escort purposes inside the detention centre, such as going to and coming from visits, the basketball court and school:<sup>266</sup>

- AG said, *'AJ was always handcuffed on the way to and from court and during visits.'* AG also said that she was handcuffed *'a couple of times before and after visits'*.<sup>267</sup> AS similarly told the Commission that she was also handcuffed on some occasions before and after visits, and said, *'I was sometimes handcuffed during visits, which lasted anywhere between 30 minutes to an hour'*.<sup>268</sup>
- BZ said, *'Sometimes AJ was brought up for a visit he was handcuffed up until the point that he would sit down, and then the cuffs were removed. On one or two occasions, he was handcuffed for the entire visit and we weren't told why.'*<sup>269</sup>
- AF told the Commission that at the former Don Dale Youth Detention Centre, *'They also handcuffed us each time we went to school. Two guards would come into our block and make sure that we had our thongs on and then would put handcuffs on each of us and then get us to walk in a line to school.'*<sup>270</sup>
- AF also said, *'We were also handcuffed when we went to and from the basketball court.'*<sup>271</sup>
- BH said, *'In the past we were handcuffed when moving from block to block. Now we are handcuffed ... if we are taken to HSU [High Security Unit].'*<sup>272</sup>

The Commission also received similar evidence of restraints being used inside detention centres for weeks after a major incident. BH gave evidence that:<sup>273</sup>

*'After some boys escaped from Don Dale ... all of us got shackled. I think it was*

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*all kids in all the blocks got shackled, even those of us who were in orange shirts in [REDACTED] block which was medium security. We would be shackled around our legs when being taken from the block. One time we came back from Court, [REDACTED] and we go shackled and handcuffed all together in a big line once we got back to Don Dale. We had to walk like that, joined together at our arms and legs into Don Dale. We walked past some NT police .... I remember the NT police were laughing at us. Being shackled really hurt and the metal would cut into our legs. We asked to wear socks so it wouldn't hurt as much but the Guards wouldn't let us. The shacking went on for about 3 or 4 weeks. Once I remember one guard saying 'Why are we putting shackles on juveniles?*

*Being shackled made me feel like an animal. It didn't feel right.'*

The handcuff register was introduced in July 2014.<sup>274</sup> Until 1 August 2016, restraints were only authorised for use internally in an emergency to restrain a detainee to protect that detainee or another person. Entries in the registers do not necessarily specify whether there was an emergency.

The Commission reviewed the handcuff register for instances of internal handcuffing at the Don Dale Youth Detention Centre and the Alice Springs Youth Detention Centre from 2014 to 1 August 2016. Where such instances were identified, the Commission reviewed contemporaneous documents including IOMS reports to identify whether there were surrounding circumstances that could be seen to be an emergency situation and so authorise the use of handcuffs.

In particular, the Commissions review process involved:

- a review of the handcuff register, in order to identify entries which appeared on their face to relate to routine or internal movements (for example, "A Block visits");
- a review of the corresponding use of force register for the date of that entry, and
- a review of the IOMS database for incidents involving that offender on or prior to the date on which the handcuffs are used.

Where the Commission was able to locate a corresponding entry in the use of force register or an IOMS report which suggested that an emergency situation had occurred, that particular entry in the handcuff register was excluded.

The table identifies that on two occasions handcuffs were applied weeks after a major incident. The table also indicates that incidents of internal handcuffing at the Alice Springs Youth Detention Centre were inconsistently classified in the register as 'internal' and 'external' movements.

**Table 13.1: Incidents of internal handcuffing at Don Dale Youth Detention Centre and Alice Springs Youth Detention Centre 2014-2015**

Date	VW	Entry in hand cuffing register	Detention Centre
2/7/2014	Detainee	'legal visit to A Block' <sup>275</sup>	Alice Springs Youth Detention Centre
3/7/2014	Detainee	'legal visit to A Block' <sup>276</sup>	Alice Springs Youth Detention Centre
16/7/2014	Two detainees	'escort to A Block re visit' <sup>277</sup>	Alice Springs Youth Detention Centre
17/7/2014	Two detainees	'A block escort for professional visit' (external) <sup>278</sup>	Alice Springs Youth Detention Centre
21/7/2014	Detainee	'Escort to A block for legal visit' (external) <sup>279</sup>	Alice Springs Youth Detention Centre
24/7/2014	Detainee	'Escort to A block for professional visit' (external) <sup>280</sup>	Alice Springs Youth Detention Centre
30/7/2014	Detainee	'visit to A Block' (external) <sup>281</sup>	Alice Springs Youth Detention Centre
1/8/2014	Detainee	'escort to A block' (external) <sup>282</sup>	Alice Springs Youth Detention Centre
5/8/2014	Detainee	'A Block, speak with lawyer' (external) <sup>283</sup>	Alice Springs Youth Detention Centre
9/9/2014	Two detainees	'escort to A Block for professional visit' (external) <sup>284</sup>	Alice Springs Youth Detention Centre
7/10/2014	Detainee	'A Block Visit' (internal) <sup>285</sup>	Alice Springs Youth Detention Centre
24/10/2014	Detainee	'A Block visit' (external) <sup>286</sup>	Alice Springs Youth Detention Centre
4/11/2014	Detainee	'A block visit' (external) <sup>287</sup>	Alice Springs Youth Detention Centre
3/12/2014	Detainee	'A Block Visit – Professional' (external) <sup>288</sup>	Alice Springs Youth Detention Centre
22/12/2014	Detainee	'A Block – Professional visit' (external) <sup>289</sup>	Alice Springs Youth Detention Centre
28/12/14	AD	'internal escort (visit) <sup>290</sup>	Don Dale Youth Detention Centre
25/12/14	AT	'internal escort – visit' <sup>291</sup>	Don Dale Youth Detention Centre
20/01/2015	Detainee	'escort from C Block to Admissions for VLU DYJC' <sup>292</sup>	Don Dale Youth Detention Centre
22/01/2015	Detainee	'A block visit' (internal) <sup>293</sup>	Alice Springs Youth Detention Centre
23/01/2015	BN	'C block to visits. visits to c block' <sup>294</sup> *Involved in major incident on 4/01/2015	Don Dale Youth Detention Centre
23/01/2015	Detainee	'escort from c block to visits area. Visits area to C block' <sup>295</sup> *Involved in major incident on 4/01/2015	Don Dale Youth Detention Centre
23/01/2015	Detainee	'escort to visit area' <sup>296</sup> *Involved in major incident on 4/01/2015	Don Dale Youth Detention Centre
3/02/2015	Whole of C Block	'Moving C block to education building' <sup>297</sup>	Don Dale Youth Detention Centre

Date	VW	Entry in hand cuffing register	Detention Centre
28/02/2015	Five detainees including BA	'all these detainees were escorted to H Block without incident' <sup>298</sup>	Don Dale Youth Detention Centre
10/07/2015	AM	'internal escort from C Block to Admissions' <sup>299</sup>	Don Dale Youth Detention Centre
13/7/2015	AS	'internal escort from C block to Admission for court' <sup>300</sup>	Don Dale Youth Detention Centre
13/07/2015	BL	'internal escort to medical' <sup>301</sup>	Don Dale Youth Detention Centre
16/07/2015	Detainee	'internal escort to medical' <sup>302</sup>	Don Dale Youth Detention Centre
16/07/2015	Detainee	'internal escort to medical' <sup>303</sup>	Don Dale Youth Detention Centre
21/09/2015	K Block	'Internal Movements' <sup>304</sup>	Don Dale Youth Detention Centre
24/09/2015	K Block	'Internal Movements' <sup>305</sup>	Don Dale Youth Detention Centre
26/09/2015	K Block	'Internal Movements' <sup>306</sup>	Don Dale Youth Detention Centre

Further, a PSU audit dated 3 September 2015 reviewed a sample of eleven events in the 'Use of Restraints Register' of the current Don Dale Youth Detention Centre. The audit noted that:

*Two incidents were recorded for a use of handcuffs as part of routine detainee movements within the centre. These moves, although authorised under section 5.4 of the Directive, they did not need to be recorded in the register and maybe inconsistent with the Youth Justice Act...<sup>307</sup>*

As noted above, prior to 1 August 2016 and under the code approach, the use of restraints for routine movement within a youth detention centre, where no emergency situations existed, may be a breach of section 153 of the *Youth Justice Act*. To the extent that the May 2015 directive sought to authorise the use of restraints for internal escorts, that directive may have been invalid.

Regardless of whether a code or purposive approach is adopted, the use of restraints in this way was in contravention of human rights standards for restraints on children, because there was no risk of inflicting self-injury or injury to others.<sup>308</sup>

The fact that the use of restraints in routine centre management breaches human rights standards has been acknowledged by the Northern Territory Government's own policies. The current determination in force states, under a section titled *Human Rights Guidance for the Use of Restraints*, that using restraints on young people in detention as routine centre management is not a reasonable, proportionate or appropriate use of restraints.<sup>309</sup>

However, it was recently drawn to the Commission's attention that handcuffs have been used for internal escorts at the Don Dale Detention Centre of detainees:

- to the visitors area
- from the school to the recreation area and
- when moving the detainee between different areas.

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On 1 September 2017, the Commission wrote to the Northern Territory Government requesting confirmation of whether handcuffs had been used for the above purposes since the introduction of the current determination in November 2016.<sup>310</sup>

On 12 October 2017, the Northern Territory Government wrote to the Commission and advised that handcuffs had been used for these purposes since November 2016, and this conduct did not comply with the current determination. The current determination (which is discussed in detail in the section below titled '*Legislative amendments from August 2016*'), states that youth justice officers are only authorised to use approved restraints for achieving a lawful purpose and only when:

- protecting the detainee or other persons from a reasonable and immediate risk to their personal safety
- an emergency situation causes a reasonable and immediate risk to the security of the youth justice facility
- it is necessary to restrain a detainee to immediately prevent serious property damage or
- when escorting a detainee and there is an unacceptable risk that the detainee will attempt to abscond.

The Northern Territory Government also advised that the determination had not been consistently applied by senior management, including that they had not been ensuring the recording of the use of restraints. Senior management had also not been providing monthly reports to the Children's Commissioner as required by the determination.<sup>311</sup>

The Northern Territory Government further advised that on 1 August 2017, an e-mail was sent to all staff from the then Acting Deputy Superintendent, which stated that there was to be no further use of handcuffs for internal escorts.<sup>312</sup>

## Findings

**Restraints were used from time to time internally within detention centres in situations that were not emergencies.**

**This conduct was contrary to the human rights standards in Article 64 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which required that restraints should only be used in exceptional circumstances and which were embodied in section 153 of the *Youth Justice Act* (NT) prior to its amendment in August 2016, which only authorised restraints in emergency situations.**

## Handcuffs for external escort purposes and while at hospitals and medical clinics

During the relevant period, restraining children and young people for external escort purposes, including while detainees were inpatients at hospitals or medical clinics, was authorised by s. 155 of the *Youth Justice Act*.

A directive dated May 2012 in relation to handcuffing detainees for escort purposes stated that handcuffs should be assessed on a case-by-case basis to take into account the age of the detainee,



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their physique and the potential to overpower the detainee, the nature of the offence and any previous escape history.<sup>313</sup> The May 2012 directive also required that any use of restraints in these circumstances be recorded in a register.

The May 2015 directive did not contain the requirement to assess the use of handcuffs on an individual basis for external court escorts, although it did provide for individual assessment where a detainee was an in-patient at a hospital. This was also the position until January 2016.<sup>314</sup>

The Commission heard that detainees felt shame and humiliation by being handcuffed in these circumstances. Three young people told the Commission about their experience being escorted in handcuffs during transfers between Alice Springs and Darwin. BK described his experience, saying he 'had to walk through Alice Springs Airport with guards, in handcuffs. Everyone could see. I felt shame'.<sup>315</sup> At the time of the transfer, records indicate that BK was a high security detainee and had recently engaged in an assault on another detainee.<sup>316</sup> BW, who had a recorded history of previous escapes<sup>317</sup> had a similar account:

*'Each time I was sent to Don Dale and came back to Alice Springs I had to go through the Alice Springs and Darwin airport with handcuffs. I was by myself and usually had two guards with me. My hands were not covered up and I had to go through the main part of the airport. There were lots of people staring at me and it made me feel shame.'*<sup>318</sup>

BK and BW did not give oral evidence to the Commission.

AF told the Commission that on one occasion she was placed in handcuffs during her entire time at hospital, including the transfer to and from hospital. Documents record that AF had attempted to assault another detainee in the days prior to this.<sup>319</sup> AN similarly recounted that she was often in handcuffs and shackles when she was taken to hospital. She recalled that on one occasion at the hospital:<sup>320</sup>

*... the Doctor told the guards to take the handcuffs and shackles off me. She said, 'Can't you see the state she is in, she can barely move.' But the guards wouldn't take them off.*

The Commission notes that the directive which was in force at the time of the incidents involving AN provided that restraints may be removed at the request of a health practitioner while a detainee is being treated, examined or during a consultation subject to the direction of the superintendent.<sup>321</sup> It does not appear that this occurred in AN's case. There are no records supporting her recollection of the doctor's request, but there is no reason why there should be and that is no reason to doubt the request was made. Because the youth justice officers were not called to explain why AN was handcuffed, the Commission does not propose to make any findings about this issue. However it is difficult to understand what the explanation might be if it occurred as AN stated.

The Commission heard that on one occasion, a senior youth justice officer was reprimanded for removing AN's handcuffs prior to her being placed in an ambulance. The youth justice officer removed the handcuffs from AN's recently injured arm on her request as she said it was hurting.<sup>322</sup> The Superintendent (Mr Sizeland) at the time gave evidence that he was 'extremely annoyed' with that youth justice officer for not following escort procedures requiring the handcuffs to remain on for the escort to the hospital.<sup>323</sup> The youth justice officer (who was less senior than Mr Sizeland)

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explained that he removed the handcuffs because he had a rapport with AN and therefore knew that he could appropriately handle the situation.<sup>324</sup> Mr Sizeland said that *'as per the escorting guidelines, the handcuffs were to remain on.'*<sup>325</sup> Those guidelines stated that the use of handcuffs would be assessed on a case-by-case basis and take into account factors such as *the age of the detainee, the physique of the detainee and the potential to overpower the escort, the nature of the offence and any previous escape history.'*<sup>326</sup> At that time, documents record that AN's history included a previous serious self-harm attempt whilst being escorted without handcuffs, as well as escape attempts during escorts.<sup>327</sup>

The Commission acknowledges that handcuffs or similar restraints may be necessary for external escorts if the detainee is a flight risk and a security concern,<sup>328</sup> and that the examples identified above would have been justified with the exception of the incident involving AN above where a request by a medical practitioner to remove handcuffs appears to have been refused.

The Commission notes that the determination currently issued by the Commissioner states that restraints can only be used when escorting a detainee when there is an unacceptable risk that the detainee will attempt to abscond. In these circumstances:

- youth justice officers must seek approval from the Officer in Charge prior to using restraints on a detainee, and
- prior to seeking approval youth justice officers must consider the level of risk and recommend the most appropriate and least restrictive type of restraint to be used.<sup>329</sup>

The Commission also notes that since 1 March 2017, the *Youth Justice Act* specifically requires the use of all restraints to be recorded in a register.

## Restraints used for extended periods of time

The Commission heard that detainees were restrained for extended periods of time while placed in the Behaviour Management Unit.

For example, AG told the Commission that she and other young people were left in handcuffs or zip ties for 'hours' in the Behaviour Management Unit. She said:

*'When I was restrained in the Behavioural Management Unit, I would often be left in the handcuffs or zip ties for hours and sometimes they would not be removed until the next day.'*<sup>330</sup>

After an incident, AG and the other detainees involved were placed in the Behaviour Management Unit. AG recalled:<sup>331</sup>

*'While we were in the BMU ... we were very board [sic] and because of this, we did not behave. The guards became so furious during this time that they restrained us all. I was also restrained with zip-ties with my hands at the front of my body and I was left like this until the next day. The boys were also restrained with zip-ties. When I walked passed [sic] their cells for my time out of my cell I could see that they were made to sit with their legs bent and their arms zip-tied under their legs. After a while the boys started yelling out things like 'I want to go to the fucking toilet' and they asked me to use my intercom to ask the guards if they could be unzipped to use the toilets. The guards told me that they could wait a few more hours.'*

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Notwithstanding AG's assessment of 'hours' in hand restraints, the Northern Territory Government produced documents which record that handcuffs were removed from AG when she was placed in the Behaviour Management Unit at this time.<sup>332</sup>

However, AY, who was also in the Behaviour Management Unit at the same time as a result of his involvement in the same incident, said:<sup>333</sup>

*'In [REDACTED], I was handcuffed while sitting down with my arms under my bent knees. They left me like this for half an hour. This was after [REDACTED] but it also happened other times.'*

The manner in which the detainee was restrained, by zip ties and handcuffs on their hands under their bent legs in a sitting position, meant that they were confined to one position, preventing movement and the ability to go to the toilet.

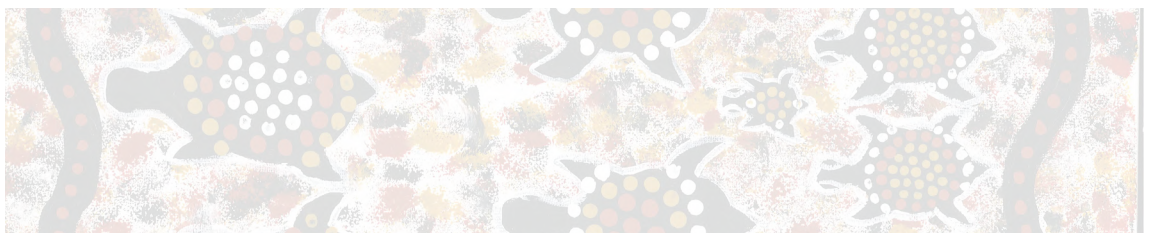
The Northern Territory Government referred to an incident report which stated:

*At approximately 15.10 hrs whilst attending to other incidents in the BMU area I noticed that detainee AY had tied his shirt around his neck I advised detainee AY to remove the shirt from his neck to which he did not comply. Staff were then instructed by SS [redacted] to enter BMU 2 to remove the shirt, my self, SYJO [redacted], YJO [redacted], [redacted], and [redacted] entered the BMU due to detainee AY's behaviour escalating he was ground stabilized, I then attempted to remove the shirt from his neck with no success as the knot was tied too tight, I then advised other staff attending to retrieve the hoffman tool from the office, my self and SYJO [redacted] both attempted to remove the shirt with the hoffman tool after several attempts we were successful, flexi cuffs were then applied and detainee [AY] was restrained on the ground for a period of time until his behaviour de-escalated, all staff then exited the BMU safely.*

*The flexi cuffs were left on for a period of time until detainee [AY] became compliant. Myself along with AGM [redacted] and YJOs [redacted] and [redacted] attended to remove the flexi cuffs, detainee AY had settled and was now compliant.<sup>334</sup>*

The incident report does not state the extent of time that the flexi cuffs were left on. The Commission also notes that a very similar incident occurred with another detainee on the same day. That detainee also attempted to self-asphyxiate with a torn up shirt. The use of force register records the following: 'Ground stabilised + removed all clothing + bedding. Given AT RISK clothing.'<sup>335</sup>

It is not clear why AY was restrained with flexi cuffs and left alone in the BMU in circumstances where he could have been given at-risk clothing.



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## Findings

Restraints were used on a detainee while he was in the Behaviour Management Unit and no emergency situation existed to justify their continued use on a detainee alone in a cell. This was not authorised by the *Youth Justice Act*.

This conduct may have been contrary to the human rights standards in Article 64 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which stipulated that:

- restraints should only be used in exceptional circumstances,
- that restraints should only be used for the shortest possible period of time,

and which were embodied in section 153 of the *Youth Justice Act* prior to its amendment in August 2016, which only authorised restraints in emergency situations and only allowed the restraint to be used until the emergency situation no longer existed.

### Handcuffs used on a female detainee while unconscious

As noted in Chapter 17 (Girls in detention), CCTV footage from 2015 showed AN being restrained and surrounded by numerous male officers in relation to a self-harm incident. AN was handcuffed behind her back while being restrained on the ground on a mattress by many officers. She was unconscious at the time.<sup>336</sup>

The Commission notes that the Children's Commissioner considered the actions of placing handcuffs on AN in these circumstances was a breach of section 153 of the *Youth Justice Act*, because the detainee was contained on a mattress within a secure area, and she was unconscious and unable to cause self-harm.<sup>337</sup> The Northern Territory Government criticised the Commission for not investigating this matter beyond reviewing the CCTV footage and considering the Children's Commissioner's finding. The Commission does not accept that criticism. The CCTV footage is determinative and clearly establishes that handcuffs were used in circumstances where there was no emergency situation.

### Finding

The use of restraints on AN while she was unconscious may have been contrary to the human rights standards in Article 64 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which required that that restraints should not be used when there was no risk of inflicting self-injury or injury to others and which were embodied in section 153 of the *Youth Justice Act* prior to its amendment in August 2016, which only authorised restraints in emergency situations and only allowed the restraint to be used until the emergency situation no longer existed.

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## Handcuffing behind the back

The directive of May 2015,<sup>338</sup> and subsequent directives which applied until January 2016,<sup>339</sup> stated that handcuffs should be applied with arms together in front of the body, but allowed for handcuffs to be used behind the back where a detainee was high-risk or known to behave in a violent manner.<sup>340</sup> There is also evidence that detainees were transported in vehicles with handcuffs behind their backs, for a short period of time not exceeding half an hour.<sup>341</sup>

A number of instances of handcuffing behind the back were considered in a recent Supreme Court decision relating to events following the 21 August 2014 incident.<sup>342</sup> The Court found that it was reasonable and necessary for handcuffs to be placed on detainees after they were removed from the Behaviour Management Unit area. It was also considered reasonable and necessary for handcuffs to continue to be placed on wrists behind the backs of the detainees during the short time that they were transferred to the adult prison, a distance of approximately 500 metres, given the circumstances that the detainees had come from.<sup>343</sup> Even though it was later revealed, through CCTV footage, that two detainees were compliant during the incident, those involved in handcuffing the two detainees did not know this then, and the Court concluded that the youth justice officers had a genuine belief at the time that the detainees were a security risk because those two detainees had also escaped with weapons some two weeks earlier.<sup>344</sup> The Court found that it was not reasonable for handcuffs to be placed behind the backs of detainees once they were in the secure confines of the adult prison.<sup>345</sup>

The directives plainly recognise the limited circumstances in which cuffing behind the back may be used because this places the person in an extremely vulnerable position. When they are handcuffed behind their back, they are more vulnerable to physical force because they cannot defend themselves. The Commission heard from two detainees who were subject to physical force, including a ground restraint, while they were handcuffed behind their back.

AV stated that two youth justice officers restrained him:

*'with handcuffs and pushed my face up against the wall. They handcuffed my hands behind my back. One of the guards pushed his elbow against – hard against my back and it really hurt.'*<sup>346</sup>

The two youth justice officers alleged to have been involved in this incident have denied inflicting unnecessary harm but not the mode of handcuffing.<sup>347</sup> The Northern Territory Government also referred to an incident report which stated that AV was 'individually handcuffed' and escorted to a secure vehicle.<sup>348</sup> The Commission notes that PART training specifically advised once a detainee is restrained against a hard surface (including a wall), there must be no pressure on the detainee's window of safety.<sup>349</sup>

BN said that guards:

*'handcuff us behind our backs and hold our head and face to ground so we have no control over our body.'*<sup>350</sup>

The Northern Territory Government produced documents which indicate that BN's management plan, which was introduced in September 2016, required that his 'internal movements to be

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under strict controls including handcuffs'. The documents produced do not describe how BN was handcuffed.<sup>351</sup> The documents record that BN had serious behaviour problems.

Two instances of handcuffing being used in conjunction with physical force were considered by the Supreme Court in *LO v NT* [2017] NTSC 22.

One detainee alleged that on two separate occasions, he was ground stabilised and also restrained with zip ties. In both cases, it was found that it was reasonable and necessary for the youth justice officers to do this as a response to the detainee attempting to assault the officers. This conduct was also authorised as a measure of self-defence, as well as under sections. 151(3)(c) and 152.<sup>352</sup>

The same detainee also alleged that he was kept down on the ground for half an hour in circumstances where his legs were crossed and bent behind him towards his buttocks and arms restrained behind his back. The detainee claimed that he was restrained in this position for half an hour, although the Court found that it was likely that it occurred for a period of about fifteen minutes. The evidence of the youth justice officers that they allowed the detainee up and escorted him to the cell as soon as it was safe to do so, was accepted by the Court. The judgment stated *'in those circumstances, it was entirely up to [redacted] how long he spent face down on the ground. All he had to do in order to be allowed up was to stop struggling, thrashing about, tossing his head, kicking his legs and threatening the YJOs.'*<sup>353</sup> Irrespective of legislative authorisation, the Commission notes the possible serious consequences which may flow from the use of prone restraints.

A NSW Government Safety Notice in July 2016 warns that there have been instances of sudden patient death occurring during restraint in the prone position, and these events can occur without warning such that a high level of vigilance is required. In the clinical setting this will typically occur when a disturbed patient is being restrained so that medication may be injected. The risk of harm is described as 'significant' which manifests as sudden, severe cardiorespiratory deterioration and death.

Two specific kinds of patients are identified as particularly at risk – those who have engaged in physically exhausting combative struggle for longer than two minutes and those who suddenly cease struggling or indicate difficulty in breathing. Additional care is required for populations who are vulnerable to physical or psychological harm, including children and young people, Aboriginal and Torres Strait Islander people, people with a history of trauma/detention who may be re-traumatised by the episode of restraint, people with intellectual disability or cognitive impairment.<sup>354</sup> The Northern Territory Government should ensure that this risk is well understood by its detention workforce.

The Commission notes that directives since 1 January 2016 have provided that handcuffs should always be placed with the detainee's arms together in front of the body.<sup>355</sup>

Similarly, an Advisory Note from the Chief Psychiatrist of Victoria, in the context of mental health services, recommends that the use of the prone restraint should be avoided, and if it is necessary, then it must cease as soon as practicable and not exceed 3 minutes.<sup>356</sup>



## Finding

The practice of applying a restraint and then forcing into a prone restraint position for an extended period of time whilst a child or young person is struggling is potentially dangerous and may breach the law.

This practice is also contrary to the human rights standards in Article 64 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which stipulates that:

- restraints should only be used in exceptional circumstances, and
- that restraints should only be used for the shortest possible period of time,

and which were embodied in section 153 of the Youth Justice Act prior to its amendment in August 2016, which only authorised restraints in emergency situations and only allowed the restraint to be used until the emergency situation no longer existed.

### Use of the 'hog-tie' or similar position

The Commission was told by two detainees of being placed in the 'hog tie' position. The 'hog tie' position involved being placed in a prone restraint, handcuffing the arms together behind the back and having the legs pushed behind the back. A more usual use of the restraint described as 'hog-tied' involves both the arms and legs mechanically held behind the boy often connecting both with a belt or similar.

Dylan Voller alleged that a youth justice officer on one occasion placed his hands behind his back and put his legs behind his back, with both his legs and wrists handcuffed. The named youth justice officer involved denied that this occurred.<sup>357</sup> Mr Voller stated that this youth justice officer was commonly involved in *'placing me down on the ground with other workers and pushing my legs up and back to my buttocks, pushing them down against my body. This caused a great deal of pain and this is while I was handcuffed generally to the wrists.'*<sup>358</sup> No further specificity was given.

AS described being subjected to treatment which involved being pushed onto the floor on his stomach in the corner of his cell. He was then handcuffed with his arms behind his back and had his legs held up in the air such that they were almost touching his shoulders.<sup>359</sup> An incident report states *'the detainee was restrained with wrist restraints to the rear of his body and then walked out of his room.'* Once relocated, the report states that AS was placed on his stomach and the restraints were removed.<sup>360</sup>

The state of the evidence before the Commission is such that no conclusion can be reached as to whether these detainees were restrained as described by them. No other examples came to the Commission's attention.

We note, however, that the recent Queensland Independent Review into Youth Detention, which identified a number of examples of hog-tying being used on detainees in that jurisdiction, recommended that youth justice policies and procedures be amended to specifically prohibit the use of restraints to 'hog-tie', or restrained by means of a similar description a young person.<sup>361</sup> It



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alternatively recommended that using restraint techniques in particular combinations should be strictly regulated.<sup>362</sup>

The Commission considers that the following practices have significant risks of injury or death:

- the application of force or bodyweight while an individual is handcuffed behind the back in a prone position;
- allowing a detainee to struggle in a prone position for a period of time; and
- hog-tying, or the similar practices of pushing the legs against the back whilst a child is handcuffed behind the back in a prone restraint.

There are significant risks when physical and mechanical restraints, such as handcuffs and ground stabilisation, are used in combination with each other.

## Legislative amendments from August 2016

On 1 August 2016, significant amendments to the *Youth Justice Act* came into force regarding the use of restraints. These amendments were proposed in April 2016, passed on 25 May 2016 and given assent on 8 June 2016, prior to the airing of the ABC's Four Corners program.

Section 153 of the *Youth Justice Act* was amended to provide that approved restraint devices could be used if the Superintendent was of the opinion that:

- an emergency situation existed, or
- restraining a detainee would reduce a risk to the good order or security of the detention centre.

Prior to August 2016, this section only permitted the use of restraints in emergency situations.

This amendment, which allows restraints to be used to deal with good order and security, does not sit comfortably with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty which provides that instruments of restraint and force

*can only be used in exceptional cases, where all other control methods have been exhausted and failed...they should not cause humiliation or degradation...used for the shortest possible period of time...such instruments might be resorted to...to prevent... self-injury, injuries to others or serious destruction of property*<sup>363</sup>

Section 151AA does add a safeguard that the restraint must be used in the least restrictive or invasive way and for the minimum amount of time reasonable in the circumstances. However, the power can arguably apply to situations where there is no immediate risk of self-injury, injury to others or serious destruction of property. The use of restraints in this way, which may be used to prevent or de-escalate incidents leading to emergency situations is, effectively, contrary to the principle that using restraints should only occur as a last resort once all other options have failed.

There were two further amendments which appear to replicate the powers that the courts have determined the superintendent already has in section 151 and 152 to do all things necessary to maintain order and ensure safe custody of persons in youth detention centres, namely to use approved restraint devices to protect a detainee from self-harm, or to protect the safety of another person, section.152(1A) and approved restraint devices could be used while the detainee was being

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escorted whether inside or outside the centre, section.155.

The August 2016 amendments also inserted a definition of *'approved restraint devices'*, which comprised any mechanical device that the Commissioner for Correctional Services had approved.

The amendments in August 2016 also limited the use of handcuffs to *'appropriate use'*. Appropriate use<sup>364</sup> means using the restraint:

- in the least restrictive or invasive way reasonable in the circumstances;
- for the minimum amount of time reasonable in the circumstances and
- in accordance with a *'determination'* made by the Commissioner under the Youth Justice Regulations in relation to the use of approved restraints.

The determination,<sup>365</sup> which was issued under the *Youth Justice Act* in tandem with these changes, states that youth justice officers are only authorised to use approved restraints for achieving a lawful purpose and only when:

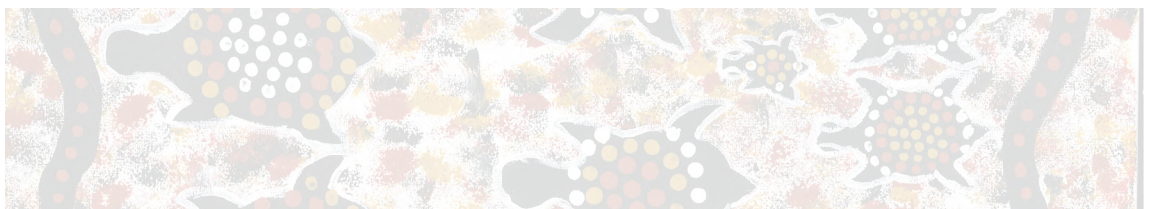
- protecting the detainee or other persons from a reasonable and immediate risk to their personal safety
- a emergency situation causes a reasonable and immediate risk to the security of the youth justice facility
- it is necessary to restrain a detainee to immediately prevent serious property damage or
- when escorting a detainee and there is an unacceptable risk that the detainee will attempt to abscond.

Further amendments were made to the definition of *'approved restraints'* to limit the definition to handcuffs, ankle cuffs, and waist restraining equipment, which commenced on 1 March 2017. The earlier provisions, in force from 1 August 2016 to 1 March 2017, which referred to any other mechanical devices approved by the Commissioner were repealed.

The legislation permits the use of restraints to *'reduce a risk to the good order or security of the detention centre'* and the use of the restraints in those circumstances appears to be restricted to the above purposes only by operation of the Determination. The Commission supports this narrowing of the power for the purposes of *'good order or security'*, but this clarification should be replicated in the legislation.

As identified above by the Commission in relation to the use of handcuffs for internal escorts, even after the introduction of the determination in November 2016, routine handcuffs were still being used for internal escorts. This illustrates the need for legislative clarification.

As noted above, the Commission does not support authorising the use of restraints for the *'good order and security'* of the centre as a general power, and considers that the legislative regime which it replaced was adequate to achieve appropriate protective purposes.



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## OTHER MEASURES (SPIT HOODS, RESTRAINT CHAIRS AND TEAR GAS)

During the relevant period, the Commission also heard of three other devices or measures used on detainees. These measures were controversial and received significant media attention. They were spit hoods, restraint chairs and CS gas, or tear gas. These measures are different from routine restraint devices referred to in the previous section.

Their use was never expressly authorised by the *Youth Justice Act*.

Until 1 August 2016, section 153(3) of the *Youth Justice Act* provided that reasonably necessary force did not include handcuffing or the use of similar devices to restrain normal movement. Handcuffs and similar devices may be used to protect the detainee or other persons under section 153(4). To the extent that a restraint chair can be seen as a similar device, it is on the extreme end as it prevents all movement of the detainee. Arguably a restraint chair is not a device that is similar to a handcuff. A spit hood cannot be seen as a similar device to handcuffs. It in no way restricts movement of a detainee with the exception that it may restrict sight and breathing. While a spit hood may protect staff from spittle, to the extent that it is to be applied to the detainee, it is open to doubt as to whether it was authorised by section 153(4) and whether it could be seen otherwise as reasonable force under s 153. Under a code approach to section 153, the use of a restraint chair or spit hood was not authorised. Any directive purporting to authorise on that approach was/is beyond power.

There was a brief period, between 1 August 2016 and 1 March 2017, when the terms of section 153(3) may have authorised the use of the restraint chair and the spit hood, though the Commission is not aware of the application of the restraint chair or the spit hood during that period.

Section 153(3) provides that force that is reasonably necessary does not include the enforced dosing of a substance. If section 153 is not given a narrow reading, and given its purpose, it should not, it does not authorise the use of tear gas to maintain discipline at the detention centre. Section 153(4) contemplates restraints being applied for protective purposes, but is limited to approved handcuffs or similar devices. Tear gas is not a similar device. To the extent that section 153 is a code for the use of force, it did not authorise the use of tear gas.

The use of these measures appears to have been based on the purposive approach to the powers, which requires that their use be convenient or necessary and also reasonable to maintain order and ensure the safe custody and protection of all persons who were within the detention centre.<sup>366</sup> In those circumstances, sections 151 and 152 authorised the use restraint chairs, spit hoods and tear gas, and the directives below are valid, provided their use was necessary or convenient and also reasonable in their application to the particular circumstances.

These measures were used predominantly either after detainees were transferred to an adult prison or, in the case of tear gas, administered by an adult prison officers who was trained under directives which applied to adult prisoners. As referred to in Chapter 11 (Detention centre operations), the Commission heard evidence which suggested that some prison officers were not aware either of the ongoing application of the *Youth Justice Act* to detainees held by or subject to the control of prison officers, or, if they were, were not aware of the relevant provisions of the *Youth Justice Act*. It followed that they were not aware, for example, of the limitations on the use of force and restraints. In those circumstances, it is apparent that even if the use of tear gas, spit hoods or restraint chairs were generally authorised, there were serious compliance issues in relation to their use.

## Spit hoods

A spit hood is a device which is made of a breathable fabric and is used to prevent the transfer of diseases from spitting and biting. The spit hood is placed over the head and is held in place with elastic. If improperly used, the risk of inadequate ventilation and even a risk of asphyxiation is increased.<sup>367</sup>

The photograph below, taken of detainees from the current Don Dale Youth Detention Centre at the Berrimah adult prison, shows spit hoods in use. The Commission is not aware of the context in which the photograph was taken.



A Standard Operating Procedure issued by the Commissioner in 2012 referred to the use of spit hoods in the context of Behaviour Management Unit placements.<sup>368</sup> The Standard Operating Procedure stated that if a detainee threatened to spit, or spat on a staff member, then the detainee was to be ground stabilised using the minimum force required, and handcuffed, and then a spit hood could be applied. Once in the Behaviour Management Unit, the spit hood should be removed.

This directive did not refer to the specific provisions of the *Youth Justice Act* authorising the use of the spit hood. However, a later directive, in May 2015,<sup>369</sup> expressed to be issued in part under sections 151(3)(c), 153 and 155 of the *Youth Justice Act*, referred to a 'Tranzport Hood' as an approved 'miscellaneous equipment' device. A Tranzport Hood is a particular commercial brand of spithood.<sup>370</sup>

There is evidence that the directive was introduced as a result of increasing occurrences of staff being spat on by detainees, and their concerns included the risk of transmission of diseases through contact with saliva.<sup>371</sup> Former Commissioner of Corrections, Mr Middlebrook, said that he approved their use in response to the rising number of incidents of spitting from a single detainee.<sup>372</sup> Ms Cohen (who was the Executive Director of Youth Justice from August 2013) told the Commission that prior to seeing the image of Mr Voller in a spithood when reviewing a draft Children's Commissioner report, she was not aware of their use. She said that spit hoods were not a component of the PART training course, and the subject did not otherwise arise in conversations with management and staff about incidents. She did recall conversations that many staff had been spat on and were increasingly upset by it.<sup>373</sup>

Nonetheless, after this directive was introduced, the evidence suggests that spit hoods were not

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commonly used, despite these concerns. Mr Yaxley could not recall an instance where a spit hood was used during the period when he was Assistant General Manager or General Manager.<sup>374</sup> One youth justice officer said,<sup>375</sup> *'I am only aware of spit hoods ever being used on two detainees at ASYDC.'* A Don Dale Youth Detention Centre Superintendent said that he never saw youth justice staff using spit hoods on detainees, and he never received a request for one to be used.<sup>376</sup> A number of other youth justice officers gave similar evidence that they had never used spit hoods themselves.<sup>377</sup>

There was also evidence that a particular manager did not know that policies or directives existed in relation to their use. In an interview with the Children's Commissioner in November 2014,<sup>378</sup> Mr Sizeland said that he did not think there was a policy or Standard Operating Procedure regarding the use of spit hoods. He said that even though they were not commonly applied, there *'absolutely'* should have been some sort of operational procedure on it.

The Commission notes that few staff members used, or even felt the need to use, spit hoods in youth detention centres. One youth justice officer said that he had been spat on, but he had *'never used anything'*, and that spithoods were not available at the Don Dale Youth Detention Centre and needed to be brought over from the adult prison.<sup>379</sup> Another said, in relation to Mr Voller, that

*'Dylan spat on a lot of people, and so I can – I can see why they may have felt it necessary, and given that Dylan makes threats all the time about spitting and stuff, but none of the other kids have – have a history of that.'*<sup>380</sup>

Another youth justice officer said that he had never, in his entire time at Don Dale Youth Detention Centre, been spat on.<sup>381</sup>

Spit hoods were applied to detainees on one occasion in August 2014 in the context of transfers from the adult prison back to the youth detention centre, and detainees had had spit hoods applied on them while within the secure confines of the adult prison.

These incidents were considered in recent Supreme Court proceedings. The Court heard that the detainees were taken to a medical appointment on the day after they were taken to the adult prison, where each of them was handcuffed, shackled and wearing a spit hood. When they were returned to adult prison, they were also handcuffed, shackled and had spit hoods applied. The Northern Territory Government admitted in the litigation that it was not reasonable or necessary for the detainees to have been shackled or to wear a spit hood in these circumstances.<sup>382</sup>

One of the detainees said that *'it made him feel like an animal to be walked to the medical area with handcuffs, shackles, spit mask and holding his arms behind his back – in front of everyone. He said it was humiliating.'*<sup>383</sup>

A detainee was asked what it was like wearing a spit hood, he said: *'Scary. Just feels weird ... it's just real strange to have on your head.'*<sup>384</sup>

This is consistent with expert evidence. Mr Hamburger stated that:

*'There's pretty strong evidence, which I think we can all appreciate, if somebody puts a spit hood over your head and you are a bit claustrophobic, it's quite bit distressing and it's a pretty inhumane practice. So it was very unusual to find that was occurring when it has been longstanding practice, certainly in adult corrections, to have protection for staff rather than put spit hoods on young people.'*<sup>385</sup>

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It is also consistent with the conclusions of the Children’s Commissioner, who stated in August 2015 that *‘the use of a spit hood/mask is a particular concern which has the potential to be inhumane and cause harm to young persons.’*<sup>386</sup> The Children’s Commissioner recommended that in circumstances where spit hoods are placed on children by staff in adult prisons that Correctional Services develop a policy which includes the appropriate use of spit hoods, the length of time in which they may be used, any alternatives to their use, and appropriate record keeping.<sup>387</sup>

In the above examples, the spit hood was used in combination with other forms of restraint. This potentially had the result of exacerbating discomfort and distress.<sup>388</sup>

In July 2016, in the immediate aftermath of the images of Dylan Voller in a spit hood and a restraint chair being aired on the Four Corners TV program, the Northern Territory Government announced to the media that spit hoods would be *‘temporarily banned’* at least until the end of this Commission.<sup>389</sup> Mr Voller’s experiences in the restraint chair with a spit hood on are described in the following sections of this chapter.

The Commission notes the recent report into behaviour management practices at Banksia Hill Detention Centre in Western Australia. In that youth detention centre, spit hoods were also prohibited after the Four Corners images were revealed, and no risk assessment was conducted before their use was prohibited.<sup>390</sup> The Banksia Hill report noted that in the absence of spit hoods, in one case staff members had resorted to a *‘make shift’* spit hood by placing a T-shirt over the head of a detainee.<sup>391</sup> The Report also stated that *‘the unfortunate reality is that some offenders do spit at staff, and staff need protection.... There are only two means of protection: either staff wear protective gear or a hood is used on the young person spitting’.*<sup>392</sup> It further found that:

*‘Since removing the hoods, the onus has been on officers to wear a face shield, much like a doctor’s mask with a clear plastic segment that covers the officer’s eyes. However, staff advised us that the shield is fiddly and takes time to put on. This can delay the time it takes to respond to an incident. The shield is not designed to be folded to fit in a pocket and will wear and crack over time, so many staff are not carrying them. The shield does not cover the officer’s ears or any other part from bodily fluid contact.’*<sup>393</sup>

In light of these concerns, the report recommended that the relevant department review its responses to young people who spit and consider if spit hoods should be re-introduced, or to implement mitigation strategies to address the adverse consequences of spit hood removal.

The Commission understands that the last recorded use of a spit hood was at a youth detention centre in the Northern Territory was on 2 June 2015.<sup>394</sup>

## Findings

**Spit hoods have the potential to cause distress to young persons, particularly when used in combination with other forms of restraint. After their introduction in November 2012, spit hoods were used on occasions on children and young people, sometimes in conjunction with restraint devices. Spit hoods were not used on a regular basis.**

## Recommendations 13.1

The use of spit hoods should continue to be prohibited.

If spitting by detainees is a concern for staff numbers at youth detention centres, other practical alternatives should be investigated to prevent exposure.

### Restraint chairs

A restraint chair is a mechanical restraint device intended to control potentially violent detainees, including detainees at risk of self-harm. Restraint chairs can include straps to hold a detainee at various points, including the ankles, wrists and the neck. The still image below, from video footage, shows Dylan Voller strapped to the restraint chair with a spit hood over his head at the adult Alice Springs Correctional Facility on 4 March 2015.



During the relevant period, the use of restraint chairs were not expressly referred to in youth detention legislation.

A May 2015 directive,<sup>395</sup> issued by the Commissioner under sections 151(3)(c), 153 and 155 of the *Youth Justice Act*, approved the use of an 'emergency restraint chair' in certain circumstances, including:

- as a last resort only, to protect a detainee from self-harm or threatening harm to others
- under constant direct supervision, and
- on the proviso that the restraint equipment be reviewed, at a minimum, every 15 minutes by the General Manager or a delegate.

The Commission notes that this directive was issued after the use of the restraint chair on 4 March 2015, which is depicted above.

The Commission received evidence that the restraint chair was used on two detainees in adult facilities during the relevant period.<sup>396</sup> The restraint chair was never used in a youth detention facility during the relevant period.<sup>397</sup> Dylan Voller told the Commission he was put in the restraint chair on



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three occasions in two adult correctional facilities.<sup>398</sup> Another young person confidentially gave evidence of being placed in the chair while held at an adult facility.

The Commissioner at the time gave evidence that the restraint chair was originally introduced in Alice Springs to manage an individual situation where an adult banged his head against the wall. Mr Middlebrook said:<sup>399</sup>

*'I was concerned that we had occasionally young people that were at risk of self-harm to themselves, and it's very difficult to get some professional support, especially at 2 o'clock in the morning ... It's also very difficult for staff, especially staff we haven't trained well, to have to deal with somebody threatening to self-harm or trying self-mutilate in the early hours in the morning, and you can't do much with that. Now, yes, the restraint chair is not a good thing, but to prevent somebody from self-harming for a period of time until they settle down, it's all we really had.'*

However, in the case of Mr Voller, the Children's Commissioner found that the restraint chair was not used for this purpose. Those investigations found that a journal entry recorded that he was placed in the restraint chair because he had failed to comply with instructions. The Children's Commissioner also heard that he was already handcuffed and the restraint chair 'was utilised to give him a chance to calm down'.<sup>400</sup> Staff members told the Children's Commissioner that 'he wasn't out of control', and the threat of harm was considered to be 'flippant'.<sup>401</sup> In this instance, the Children's Commissioner considered that the restraint chair had not been used in an emergency circumstance, and its use was in breach of section 153 of the *Youth Justice Act*.

The Children's Commissioner did not consider whether sections 151 or 152 of the *Youth Justice Act* could have justified the use of the restraint chair in this circumstance. Staff members involved in that incident appear to have relied on an interpretation of the May 2015 directive which authorised the use of the restraint chair when necessary for the security and good order of a detainee, and no emergency assessment was made by staff.<sup>402</sup>

Mr Voller described being put in the restraint chair as 'one of the ... scariest things' that had happened to him. He told the Commission of feeling 'defenceless' during the restraint:<sup>403</sup>

*'There was [sic] times when I would panic, and I just wanted to get out of there, so I would try and do anything I can [sic] to get out if. Try and pull myself out, but as anyone realises [there's] no way that you can pull yourself out of it, no matter how strong you are.'*

While he was in the chair, Mr Voller said that he told the prison officers the restraint was hurting and asked to be let out, or at least for the spit hood to be taken off.<sup>404</sup> The handycam footage confirms that he repeatedly asked for the spit hood to be removed because he wanted to vomit.<sup>405</sup> He told the Commission that he ended up vomiting in his mouth a few times, but had to keep it in his mouth because of the spit hood.<sup>406</sup>

At one point, he asked if he could have some water sprayed on him because he was 'getting dizzy from panicking a lot'.<sup>407</sup>

The Northern Territory Government has submitted that Mr Voller's claims that he vomited in his mouth and swallowed it and that he was dizzy from panicking a lot cannot be objectively ascertained. They submitted that:

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*'These allegations are self-serving, gratuitous, and must be balanced in consideration of the serious doubts as to Mr Voller's credit and reliability.'*

The Commission does not need to make a finding as to whether Mr Voller accurately recounted his experiences but has no reason to doubt that he did, noting his reference to wanting to vomit heard on the audio on the handycam.

Mr Voller said that he urinated on himself while in the chair after staff members refused to let him out to go to the toilet.<sup>408</sup> One of the prison officers involved said that he did not see evidence that this occurred,<sup>409</sup> and it is not visible on the video footage but it was not apparently running continuously.<sup>410</sup>

The officer who placed the spit hood over Mr Voller conceded that he put it on incorrectly. This meant that the elastic part of the hood went around his neck rather than over his nose.<sup>411</sup> Mr Voller described how his feelings of panic and resistance eventually turned into despair and resignation:<sup>412</sup>

*' ... there was a point where I got sick of fighting and asking to come out, that I couldn't do anything by just sit there, and I couldn't even cry ... I was just sobbing and at the end of it I couldn't even hardly talk. My body just shut down, I couldn't be bothered fighting anymore, so I just sat there.*

...

*I couldn't drink water. My mouth was going dry, getting dizzy again, I was getting dehydrated. I was getting to the point where I thought they was [sic] going to leave me there for all night, to the next day. That's why I just gave up on asking to be let out of it. '*

In May 2016, amendments to the *Youth Justice Act* were passed by the legislature to define an 'approved restraint' to include 'safety equipment', as well as any mechanical device which the Commissioner had approved for restricting the movements of detainees. These amendments came into effect on 1 August 2016. However, in the intervening period, the images of Mr Voller in the restraint chair were released to the media, and in late July 2016, the Northern Territory Government announced a temporary ban on the use of restraint chairs.<sup>413</sup>

In December 2016 further changes were passed by the legislature to amend the *Youth Justice Act*, which defined an 'approved restraint' as limited to handcuffs, ankle cuffs and waist belts, thereby prohibiting the use of a restraint chair by its omission from the definition. Those provisions commenced on 1 March 2017.

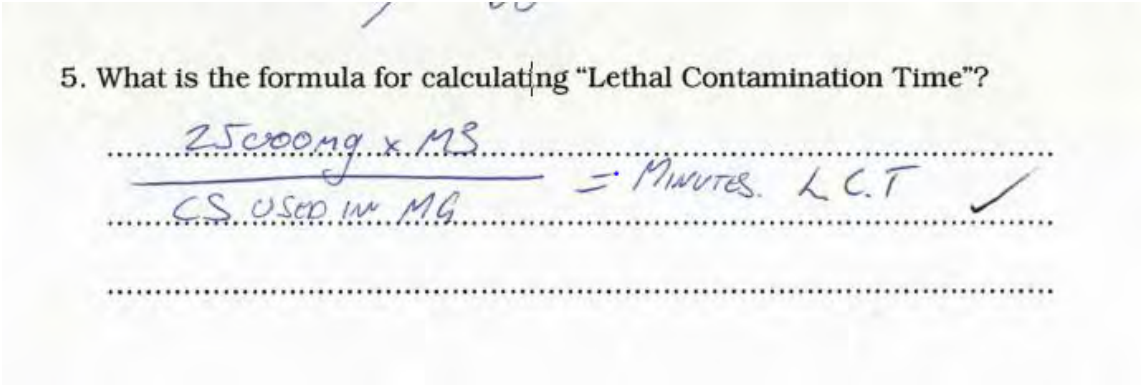
## **Recommendations 13.2**

**The restraint chair should continue to be prohibited.**

### **Use of tear gas**

CS gas, also known as tear gas, is commonly used by law enforcement agencies to subdue individuals, for riot control, and dealing with hostage and siege situations. Exposure to CS gas can cause eye pain, a burning sensation in the throat and nose, chest tightness, coughing and retching.

These effects can develop within 20 seconds of exposure and will start to wear off after 15 minutes once exposure has ceased.<sup>414</sup> Scientific literature in relation to the effects of CS gas on children is limited, and prolonged exposure to tear gas in closed quarters may be lethal.<sup>415</sup> Training material produced by the Northern Territory Government on the use of CS gas in adult corrections refers to a 'Lethal Contamination Time', which is a calculation of how long an adult individual can survive being exposed to CS gas in a confined space.<sup>416</sup> An image from the training material is extracted below:



The Commission was not provided with any calculations of lethal contamination time applicable to children or young people, as opposed to adults.

The Commission has considered the Report and Recommendations concerning the Handling of Incidents such as the Branch Davidian Standoff in Waco Texas by Professor Alan Stone of Harvard University. The Northern Territory Government criticised the Commission's consideration of that Report on the primary basis that it is an 'old' study. The report was submitted to the United States Government in 1993. As that Report noted, there are very few examples in history where gas has been used on children deliberately.

The Commission has also had the benefit of a more recent 2003 scientific study on the physical effects of exposure of young adults to CS gas in a confined space in law enforcement circumstances. The use of CS gas in Waco was prolonged and in a confined space. As is well known, many infants and toddlers died although it was not established that their asphyxiation was as a consequence of the exposure to the gas.

The 2003 study showed short term but no long term effects of the exposure on young adults. Without up to date scientific analysis as to its safety when used on children and young people, it is not a control mechanism which the Commission could endorse.

The Commission is aware of tear gas being used on one occasion on detainees in youth detention centres in the Northern Territory, on 21 August 2014, in response to a now well-known incident in the Behaviour Management Unit. Commissioner Middlebrook, in the presence of Superintendent James Sizeland, authorised the release of CS gas into the Behaviour Management Unit area of the former Don Dale Youth Detention Centre, where a number of detainees were housed. The release of the CS gas was undertaken with the assistance of adult prison officers.

This incident was considered in recent Supreme Court proceedings. The Court found that pursuant to the powers of the Superintendent to maintain order and the protection of persons in the detention centre under sections 151(3)(c) and 152(1) of the *Youth Justice Act* it was permissible, as well as

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reasonable and necessary, to use CS gas in those specific circumstances.<sup>417</sup> The Court adopted the purposive approach to the powers to use force and restraints. The Court did not consider that the use of gas amounted either to 'discipline' or 'enforced dosing' under section 153 of the Youth Justice Act.<sup>418</sup>

The Commission is not aware of any directives which applied to the use of CS gas in juvenile detention centres. A directive existed in relation to the use of gas in the adult prison.<sup>419</sup> It states that General Managers (Superintendents) are authorised to use approved chemical agents, while performing statutory duties, in order to ensure compliance with a lawful order or when deemed necessary for the maintenance of the security and good order of the institution, including the threat to personal safety. According to that directive, CS gas must only be applied in adult custodial operations by individuals trained in its use. The directive also states that:<sup>420</sup>

- a proclamation is required to be read out giving an opportunity to surrender
- decontamination procedures are required to be carried out 'as soon as practicable'; and
- medical assistance should be sought after decontamination, including the examination and if necessary, treatment of any prisoner(s) and any staff exposed to the chemical agent.

Training for adult correctional officers in relation to the use of CS gas included the following:

- gas should not be used where detainees 'are compliant or physically restrained' or 'otherwise under control', and
- CS gas must not be used when it is known by the officers that detainees have respiratory problems or conditions which would make the use of chemical agents dangerous, unless it is necessary to prevent loss of life or serious bodily injury.<sup>421</sup>

Two detainees were compliant during the incident on 21 August 2014 in the former Don Dale Youth Detention Centre although this was not known to management at the time that the gas was deployed. Expert opinion was led in the civil litigation that when gas is deployed, it will often also necessarily affect other people who are either restrained or not non-compliant or both. An example given was a hostage situation where gas is deployed to incapacitate temporarily the hostage taker and rescue the hostage or hostages who will also, inevitably, be affected by the gas.<sup>422</sup> The judgment stated that '*...I do not think that the fact that it was inevitable that the gas would also affect the detainees who were restrained in their cells would render it unreasonable.*'<sup>423</sup>

The Commission is concerned that, other than directives which apply to adult corrections, there are currently no legislative or policy safeguards which apply to the use of CS gas against children and young people in detention.

## Finding

**CS gas was used on 21 August 2014 on children in circumstances where there were no guidelines, legislative or policy safeguards, specific to youth detention, which regulated its use and no research results available as to the lethal contamination time in relation to children.**

## Recommendations 13.3

The use of CS gas in youth detention centres should be prohibited.

### BODY SEARCHES

The Commission heard from detainees and former detainees and examined the records about the circumstances and frequency of body searches carried out at the detention centres.

A number of methods for searching a child's person are used in youth detention centres. These include pat or frisk searches, which involve searching a person's clothing and body while clothed. A strip search is a more invasive procedure, which involves a person being required to remove all clothing.

Searches are authorised under the *Youth Justice Act* in two situations:<sup>424</sup>

- where the superintendent of a detention centre believes on reasonable grounds that it is necessary in the interests of the security or good order of the detention centre. The superintendent may direct a detainee to submit to a search of the detainee's clothing and person, including a strip search, and
- where the superintendent believes on reasonable grounds that a detainee may have in his or her possession any article that is not permitted. The superintendent may direct the detainee to submit to a search of the detainee's clothing and person, including a strip search

Any search must be conducted in accordance with the Youth Justice Regulations.

The Youth Justice Regulations<sup>425</sup> provide that, pursuant to the above powers in the *Youth Justice Act*, a superintendent or staff member may search a detainee in the following circumstances:

- when the detainee is admitted to the detention centre
- on the detainee temporarily leaving, and returning to, the detention centre
- on the detainee being transferred from the detention centre to a custodial correctional facility or another detention centre, and
- on other occasions, and in the manner, directed by the superintendent as he or she considers necessary.

The Youth Justice Regulations contain the following requirements:

- the search must be conducted having regard to the detainee's dignity and self-respect
- a member of staff may only search the detainee in the presence of another member of staff
- if the search involves stripping the detainee of clothing, the search must be conducted by not less than 2 members of staff of the same gender as the detainee
- a detainee must not be stripped of clothing and searched except by a direction of the superintendent under the above provisions of the *Youth Justice Act*, and
- a detainee must not be stripped of clothing and searched:

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- in the sight or presence of a person of the opposite gender, or
  - in the presence of another detainee, unless it is impracticable to move either the detainee to be stripped or the other detainee.

The Youth Justice Regulations also required that the superintendent keep a search register recording details of the search including the reason and the results.<sup>426</sup>

Various policies during the relevant period also dictated when and how searches were to be conducted. These largely replicated the Youth Justice Regulations, although from August 2013, all detainees who had received a family visit could be randomly subject to an unclothed search.<sup>427</sup>

The *United Nations Convention on the Rights of the Child* also states that no child shall be subjected to arbitrary or unlawful interference with his or her privacy and every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.<sup>428</sup>

The *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Mandela Rules) provide that intrusive searches, including strip searches, should be undertaken only if absolutely necessary, and should only be conducted in private and by trained staff of the same gender as the prisoner.<sup>429</sup> Searches should not be used to harass, intimidate or unnecessarily intrude upon a person's privacy. These standards also require that appropriate records be kept of searches, and the reasons for undertaking them, for purposes of accountability.<sup>430</sup>

A previous inquiry in the United Kingdom observed that there are potentially sensitive issues when adults in positions of authority who have the power to strip search children, in circumstances where many children sent to detention centres have previously suffered sexual abuse.<sup>431</sup> The inquiry also heard an example in one centre of alternative measures such as pat downs and metal detector searches being used instead of strip searches, and the Inquiry was told that the lack of strip-searching had not had any negative impact on safety or security.<sup>432</sup>

The Commission has reviewed the body search registers for the Don Dale Youth Detention Centre for the period between January 2007 and June 2015.<sup>433</sup> The Commission has identified that a total of 4898 strip searches were conducted. Of those 4898 strip searches, only 29 strip searches resulted in contraband being found.<sup>434</sup>

The Commission has also reviewed the body search registers for the Alice Springs Youth Detention Centre for the period between November 2008 and August 2016. The Commission has identified that a total of 1478 strip searches were conducted. Of those 1478 strip searches, only 12 strip searches resulted in contraband being found.<sup>435</sup>

The Commission did not review other records that might be available in relation to these searches.

The breadth of power given to the Superintendent to conduct strip searches for 'good order' and 'security' is such as to enable a general compliance regime, and do not have regard to specific individual circumstances and risks<sup>436</sup> notwithstanding the words of limitation 'on reasonable grounds' and 'necessary'.

A number of former detainees, both male and female, told the Commission about their experiences of being strip searched. They were strip searched on the following occasions:

- on admission
- when placed in the 'back cells'
- before and after attending court and hospital
- after attending personal visits, and
- when items went missing from the school.

One of the detainees described the experience of being strip searched as uncomfortable, humiliating and embarrassing.<sup>437</sup>

*'The strip search was a full strip search: you would take all of your clothes off, put your arms out, bend over and cough. I felt it was humiliating as they did not let us cover our private parts. I remember when I first went into custody I was really scared of being stripped naked and not being allowed to cover myself.'*

The Commission heard the following accounts:

AG told the Commission that she 'got sick of being strip searched ... all the time' and felt that strip searches were being unnecessarily performed.<sup>438</sup> The Northern Territory Government produced documents which indicate that following a pat search it was found that AG had a pencil and on another occasion, on admission she was in possession of a prohibited item. The Commission has reviewed the body search registers relating to AG, and it appears that AG was strip searched 22 times during a period of 13 months over a three year period.<sup>439</sup> From these 22 searches, entries in the register revealed contraband was located on AG after a strip search on 1 occasion.<sup>440</sup> The strip searches were conducted on admission, before and after court appearances and twice when AG received visits. AG was also subjected to many other searches of her cell where forbidden items were found.

Another detainee spoke of being strip searched every time after personal visits and before and after going to court.<sup>441</sup> The Commission has reviewed the body search register relating to this detainee, and it appears that the detainee was strip searched 57 times during the times when he was in detention over a 7 year period.<sup>442</sup> From these 57 searches, the register records that contraband was located on one occasion after a strip search.<sup>443</sup> The register also records that this detainee was strip searched multiple times a day.<sup>444</sup> Over a three day period the register records that this detainee was strip searched 15 times: 4 times on the first day, 7 times the next, and a further three times the day after. No contraband was found as a result of these searches. The reason provided is 'admission'. AS told the Commission that his dad stopped visiting him to avoid AS being subjected to a strip search after visits.<sup>445</sup> The Commission has reviewed the search register relating to this detainee, and it appears that the detainee was strip searched 29 times during the times he was in detention over 4 year period.<sup>446</sup> AS was strip searched on one occasion after a visit.<sup>447</sup> The register does not record contraband being found on AS after a strip search.

Some detainees told the Commission that youth justice officers often did not explain the process of the strip search, nor why they were being searched.<sup>448</sup> The Commission has reviewed the search register relating to BK, AB, AV and AN.

- BK was strip searched 7 times during the 5 months he was in detention over a 3 year period. The register records that contraband was not located.<sup>449</sup>
- AV was strip searched 25 times during the time he was in detention over a 3 year period.<sup>450</sup> AV was strip searched after a visit on 5 occasions.<sup>451</sup> The register records that contraband was found



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on AV on one occasion.<sup>452</sup>

- AB was strip searched 19 times during the time he was in detention over a 2 year period. The register records that contraband was never found on AB after a strip search.<sup>453</sup>
- AN was strip searched 21 times during the periods she was in detention over 5 years. The register records that contraband was not found on AN after a strip search.<sup>454</sup>

The Commission has also reviewed the search register relating to BH, and it appears that the detainee was strip searched 27 times during the 9 months he was in detention over a 2 year period. These searches revealed contraband was not located on BH after a strip search.<sup>455</sup>

BN gave evidence that he was woken up at 6:00am for a strip search while in the High Security Unit, and when he asked to see the Superintendent about why it was being conducted, his request was refused.<sup>456</sup> Documents produced by the Northern Territory Government indicate that BN was strip searched due to information that he was in the possession of contraband but none was found.<sup>457</sup> The body search register reveals that around the time that BN said that this occurred BN was strip searched at 9:00am and no reason is recorded in the register,<sup>458</sup> contrary to the requirement in the Youth Justice Regulations.

Whilst the underlying reasons for every search referred to in this section were not able to be investigated fully, the evidence from the search register supported by the detainees as to the frequency of these searches suggests that strip searches were being used frequently, in circumstances where detainees appear to have been strip searched after personal visits and before and after external transfers. This observation was not tested with detention centre managers who gave evidence to the Commission but even allowing for evidence of hiding 'weaponised' items in their cells or other similar conduct by some of the above discussed detainees the frequency of strip searches seems very high.

The Commission also notes that a policy, dated August 2013, stated that *all* detainees who had received a family visit could be randomly subject to an unclothed search.<sup>459</sup> The application of such a rule to all detainees could not have satisfied the requirements of section 161 for the superintendent to form a belief on reasonable grounds that a strip search was necessary in respect of each individual detainee.

Strip searches include practices such as squatting and coughing while naked. A policy or practice that applies the most intrusive search as a matter of course where there are other less intrusive options available for searching a detainee cannot be reasonable.

## Finding

**The practice of requiring all detainees who had received a family visit to be randomly subject to an unclothed search may not have complied with section 161 of the *Youth Justice Act* (NT), which required the Superintendent to form a belief on reasonable grounds in respect of each individual detainee.**

**This practice may not have been in conformity with rules 50 – 53 of the *United Nations Standard Minimum Rules for the Treatment of Prisoners* which required that strip searches should be undertaken only if absolutely necessary, and that they should not be used to intrude unnecessarily upon a person's privacy, and Article 87 of the *Rules for the Protection of Juveniles Deprived of their Liberty* which prohibits degrading treatment, and which are embodied in section 161 of the *Youth Justice Act* (NT).**

## Use of force in relation to strip searches

The Commission also heard one example of the use of force by youth justice officers when a detainee refused to undergo a strip search.

BH recounted that at the current Don Dale Youth Detention Centre when he refused to submit to a strip search, he was 'slammed onto the concrete really hard', at which point he said that youth justice officers and guards from the adult prison tried to pull his shorts off him. He said he started crying and screaming, and after he felt bodyweight on him and he could not breathe, he tried to scratch their hands with his nails<sup>460</sup>

This incident and the youth justice officer's response are considered fully in the above section regarding the application of bodyweight to vulnerable areas. As noted above, one of the IOMS reports stated:

*'On arriving to S Block, B Wing room 1 I noticed detainee BH was causing damage to his room with an aluminium louver that [sic] had removed from a window.*

*SS [REDACTED] and I entered the detainee's room, where we placed BH in a two person hold and escorted him to HSU.*

*Once in HSU myself SCO [Youth Justice Officer A], CO [REDACTED], CO [REDACTED] escorted BH to placement room 4.*

*CO [REDACTED] said to BH that a universal search will need to be conducted. BH started to resist and refuse to go in placement room 4.*

*BH became aggressive and was ground stabilised by myself [REDACTED] and [REDACTED].*

*BH was picked up and carried to room 4 and placed gently on the floor, staff exited placement room 4 with no further issues.*

*I received small scratches [sic] to my hand by detainee BH's finger nails.<sup>461</sup>*

The term universal search refers to a search which is not a strip search, but involves the detainee being instructed to, amongst other things, remove their footwear, untuck their shirt, run their fingers through their hair, and open their mouth.<sup>462</sup>

## Strip searches conducted in view of other detainees

The Commission heard from a male detainee, AY, that sometimes the detainees could see girls being strip searched in the admissions area from the middle cells of the Behaviour Management Unit at the former Don Dale Youth Detention Centre.<sup>463</sup> In response, the Northern Territory Government produced a floor plan of the Behaviour Management Unit cells from the former Don Dale Youth Detention Centre to demonstrate that this would not be correct.<sup>464</sup> The floor plan shows a glass

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window pane directly opposite the middle cells of the Behaviour Management Unit, which look into the Intake Discharge Room area. Although the plan shows a compactus in between the glass panes and the intake discharge room, AY said:

*'And you could see – was there a wall between – obviously there couldn't have been a wall. Was there something in between the toilets and where the middle cells were? There was a glass. And – but there was a cabinet behind the glass with files.'  
Yes?--But sometimes it would be left open.*

AY recalled another incident where he was able to see other detainees stripped naked:<sup>465</sup>

*'The other time I remember seeing kids stripped naked was sometime in [redacted]. Some of the kids (including me) had been throwing toilet paper at the cameras in the BMU. We did this because we had been in the BMU for a while and we wanted to know what was happening to us.*

*After we threw the toilet paper, the guards came in and stripped us. They made us all come out and lie on the floor in the open area in front of the cells. They handcuffed our hands behind our back and we had to stay there like that naked on the floor in front of the guards. I don't know how long we were there for but they put us back in the BMU cells again after a while.'*

This event was not further investigated.

The Commission also heard of strip searches being conducted on females by male staff members, in breach of the Youth Justice Regulations. This evidence is discussed in detail in Chapter 17 (Girls in Detention). In addition to the evidence identified in that section, AP told the Commission that he heard two girls say that they had been strip searched by males.<sup>466</sup> AP did not give oral evidence before the Commission.

Other jurisdictions in Australia have adopted legislation which is more restrictive in relation to the circumstances in which strip searches can be employed. For example, Queensland legislation provides that searches involving the removal of clothes can only occur where there is a reasonable belief that the search is necessary for the security of detention centre employees or children in the detention centre,<sup>467</sup> rather than the good order of the detention centre.

Queensland legislation requires that the child be given the opportunity to remain partly clothed during the search – for example, by allowing the child to dress their upper body before being required to remove items of clothing from the lower part of the body.<sup>468</sup> This is colloquially referred to as a 'half and half search'.

One detainee, AB, told the Commission that when he was detained in a different centre, the half and half searches were less intrusive and afforded more privacy:<sup>469</sup>

*'I didn't really think the way they did the strip searches was wrong at the time but now I realise how wrong it was because I have been in detention in [redacted] and they don't make you squat and cough, and they let you put your shirt on when you have to take your pants off for some privacy.'*

There is evidence that the half and half search was introduced in the former Don Dale Youth Detention Centre in late 2016.<sup>470</sup> However one youth justice officer said that at the time of giving evidence in March 2017, he had not yet received any training in this method of strip searching.<sup>471</sup> The Commission notes that half and half searches are used in Western Australia and in New South Wales in lieu of full strip searches.<sup>472</sup>

The Commission notes that adult prisons use equipment such as Body Orifice Security Scanners which allow a prisoner to sit and be scanned while fully clothed, in lieu of a strip search.<sup>473</sup>

## CONCLUSION AND GENERAL RECOMMENDATIONS

This chapter has identified a number of inappropriate methods or ways of physically handling detainees which harmed them, exposed them to high risk of serious injury, and made them feel degraded, shamed and humiliated.

Children and young people told the Commission of being subject to the following conduct:

- having force and/or restraint to the head and neck areas, including being put in choke holds and headlocks<sup>474</sup>
- when being ‘ground stabilised’, being thrown or tackled to the ground forcefully, or having their heads make contact with hard surfaces<sup>475</sup>
- when they were restrained on the ground, having the bodyweight of an adult, for example, by feet, knees or elbows, applied to the ‘window of safety’ area<sup>476</sup>
- being escorted in ways that involved the application of force or pressure to their genital areas through their clothing<sup>477</sup>
- having restraints placed on them for routine escort and management purposes within the secure confines of the detention centre<sup>478</sup>
- one detainee spoke of having restraints placed on him when he was already in the Behaviour Management Unit<sup>479</sup>
- one detainee was placed in restraint chair for almost two hours, with a spit hood on, after having been handcuffed, for being non-compliant, and ‘to calm down’<sup>480</sup> and
- being strip searched frequently, as part of a general compliance regime.<sup>481</sup>

Although many of the accounts were denied by the youth justice officers who gave evidence to the Commission and many contemporaneous reports did not describe the specific allegations made, the Commission nevertheless accepts that it is more likely than not that most, if not all, of the incidents referred to in this chapter occurred in the manner described by the detainees who gave evidence to the Commission. The absence of contemporaneous reports by officers of misconduct or breaches of the applicable rules or guidelines is unsurprising. The Commission notes that where CCTV footage has been available it has tended to support the detainees’ accounts over the more general description of the relevant manoeuvre in the report. The accounts given to the Commission are generally consistent and there is no suggestion of collaboration. As a result, the Commission is satisfied that the material it has considered entitles it to reach the conclusions drawn in this Chapter.

The Commission makes no express finding as to whether or not the use of force described in this Chapter may constitute, on occasion, a breach of the applicable laws of the Northern Territory. Whether or not the law had been broken concerning the use of force, the Commission is satisfied that

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physical force was resorted to far too often instead of utilising the negotiating skills which training ought to have imparted to the youth justice officers to manage the detainees. The Commission does not doubt that many of them were challenging and very difficult to control, but other jurisdictions which are discussed elsewhere have been able to do so.

Regardless of what approach is adopted to the use of force, restraints and strip searches under the *Youth Justice Act*, the conduct complained of by the detainees fell short of human rights standards. On these occasions, children were not treated with humanity, with dignity, or in a manner that took into account their needs and vulnerabilities as children.<sup>482</sup> Australia ratified these human rights standards, and during the relevant period, its government had a clear duty to ensure that all Australian children had the protection of those rights.<sup>483</sup>

It is particularly concerning that many of these principles were included in the training courses that existed during the relevant period. If human rights standards and PART training had been adhered to, then these actions might never have occurred.

PART training stated that restraints must only be used in circumstances where there is a risk of great and immediate danger, and if restraint is to be used, it must be the least intrusive and least restrictive option relevant to the behaviour.<sup>484</sup> PART training also specifically prohibited the very conduct that the detainees were subjected to, such as the application of force to the head, neck and the application of body weight to the 'window of safety'.

PART training also stated that youth justice officers:

*'... should not use any more force to protect themselves from the attacker than the attacker is threatening or using against them. It is not appropriate for professionals in a work setting to resort to the use of traditional self-defence techniques. **As professionals, we are obliged to protect not only ourselves, but also our clients from avoidable injury.**'*<sup>485</sup>

In 2015, the Children's Commissioner investigations into incidents in 2010 and 2011 concluded that PART techniques were not well understood or uniformly followed in youth detention centres. Youth justice officers admitted adopting their '*own intuitive approach or methods to managing detainee behaviours and protecting the welfare of detainees*'.<sup>486</sup>

This is consistent with the evidence the Commission heard.

A youth justice officer trained in mixed martial arts said that normal training '*doesn't fly when the kid's throwing punches or threatening to spit or gouge your eyes out*'.<sup>487</sup> A Superintendent with experience in adult corrections took it upon himself to deliver informal training which had not been authorised in youth detention, merely because he considered that the current staff were not adequately trained.<sup>488</sup>

One detainee spoke of guards who talked about using mixed martial arts moves and used them on children. He said, '*It felt really different to the way other guards did it. They really hurt.*'<sup>489</sup> The Children's Commissioner also remarked that there was a culture of tolerance towards inappropriate uses of force.<sup>490</sup> The evidence before the Commission confirms that this was the case.

Staff members who knowingly ignore or disregard principles of training should be held accountable

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for their actions, and disciplined appropriately. However, where legislation and procedures in relation to the use of force and restraint are broad and involve subjective judgements, this can also lead to results that contravene human rights standards. This can also lead to the abuse of power over vulnerable children who are often physically small and very young.

The legislation permits the use of restraints to ‘reduce a risk to the good order or security of the detention centre’ and states that restraints can only be used ‘appropriately’. Appropriate use is defined as any use that is in accordance ‘with a determination made by the Commissioner under the Youth Justice Regulations in relation to the use of approved restraints.’<sup>491</sup> Appropriate also means using the restraint in the least restrictive or invasive way reasonable, and for the minimum amount of time reasonable in the circumstances.<sup>492</sup> Approved restraints are limited to hand cuffs, leg cuffs and waist restraining belts.<sup>493</sup>

The current determination<sup>494</sup> sets the bar for the use of restraints higher than merely ‘good order or security’, and states that restraints must only be used:

- to protect the detainee or other persons from a reasonable and immediate risk to their personal safety
- if an emergency situation causes a reasonable and immediate risk to the security of the youth justice facility
- when it is necessary to restrain a detainee to immediately prevent serious property damage, or
- when escorting a detainee and there is an unacceptable risk that the detainee will attempt to abscond.

As noted above, the Northern Territory Government has told the Commission that this determination has not been complied with in recent times.

The Commission considers that a higher bar than merely ‘good order or security’ is appropriate. Rather than do so in a directive, it ought to be included in the legislation to ensure there is no confusion as to the extent of the power. There is a risk that restraints could be used in circumstances that do not meet the threshold of the determination, but still meet the ‘good order and security’ test in the Youth Justice Act.

Other jurisdictions have specifically warned against legislation that permits the use of force to maintain broad concepts such as ‘good order’ and ‘discipline’.

In the United Kingdom, this recommendation came in the wake of the deaths of two juvenile detainees as a result of the excessive use of force. In 2008, the Joint Committee on Human Rights in the UK stated that:

*‘... the phrase ‘good order and discipline’ is imprecise, over-broad and inherently subjective. Far from achieving clarity about the circumstances in which physical restraint can be used on a child, as recommended by the coroner in the [name] case, instead it brings confusion. Recent events show that the use of force can lead to tragic results. It is therefore of paramount importance that the Rules governing its application leave no room for doubt.’<sup>495</sup>*

The Joint Committee observed that such a power:

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*'... will lead to the use of restraint, not only when staff must take steps to protect others (whether other staff or young people), but where there is no danger to others or risk of escape. Indeed, this was demonstrated by the actual example given to us in evidence by the YJB, in which restraint was used on four boys who were not causing or threatening harm to themselves or others but were refusing an instruction to go to bed. In our view, the use of force in such widened circumstances is unacceptable and unlawful, and in breach of both ECHR standards given domestic effect by the HRA and international human rights standards contained in the UNCRC.'*<sup>496</sup>

The Commission considers that the current legislation, to the extent that it permits any use of force or restraint for the preservation of good order, suffers from the same problems that the Joint Committee on Human Rights identified in 2008.

Other jurisdictions in Australia, such as the Australian Capital Territory and Queensland, have enacted legislation which provides specific safeguards on the use of force.

The Commission notes that Queensland prohibits physical contact to discipline a child, and instead only allows physical force to protect other children, persons or property. This legislation is in line with the CRC principles, which state that restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others.

These jurisdictions also legislate further safeguards in relation to the use of force<sup>497</sup>:

- Queensland legislation authorises the use of force only where the staff member has completed physical intervention training, and where that staff member reasonably believes the child, person or property cannot be protected in another way. Australian Capital Territory legislation similarly requires that the use of force must be used only as a last resort, and only if all other measures cannot be employed.
- Queensland legislation authorises the use of force only to protect a child, other persons or property, and in no other circumstances.
- Queensland legislation also requires that when managing behaviour, staff take into consideration the reasons for the child's behaviour, as well as any known history of trauma and vulnerability that may have contributed to the child's actions. The Australian Capital Territory has similar requirements to consider the detainee's age, physical and mental health and developmental capacity.
- ACT legislation requires that a verbal warning be given to detainees prior to use of force being used, and the detainee is given a reasonable period of time to comply, unless exceptional circumstances arise.
- ACT legislation further requires that the officer in charge ensure that a detainee is visited by a doctor or nurse after the use of force is applied.

The Commission acknowledges that some of the principles discussed above are contained in the current use of force directive, which has been operative since September 2016.<sup>498</sup> These include:

- 'reasonably necessary' force means force that the officer reasonably believes that, the purpose for which the force is used, could not reasonably be achieved in another practical way and the nature and amount of force used is reasonable and proportionate in the circumstances.
- that staff must consider the physical, psychological and emotional welfare of the individual youth detainee, and the behaviour he or she is displaying, or security risk he or she presents, and



- use of force must not be used as punishment.

However, from all the evidence discussed above, it appears that policy and training are not enough. Specific legislative obligations must be placed on individuals to ensure compliance and to remove uncertainty between legislation and policy.

The Commission supports specific and targeted legislative amendments that clarify exactly when force can be used, but which still give youth justice officers the tools they need to do their job. This approach is consistent with acknowledging the warnings from the United Kingdom, that any subjectivity, or confusion, in the purposes for which force can be used, can lead to tragic results. We agree with the Joint Committee on Human Rights in the UK that it is of paramount importance that legislation and policy governing the application of the use of force leave no room for doubt.

The Commission is also concerned with reliance on the powers of the Superintendent under sections 151 and 152 of the *Youth Justice Act*, to do all things necessary or convenient to maintain order and ensure the safe custody and protection of all persons. This power has been used to justify extraordinary measures such as the use of CS gas against detainees in the Behaviour Management Unit in August 2014, without any defined legislative or policy safeguards regulating its use in youth detention.

The Commission acknowledges that a Superintendent must have powers necessary to discharge his or her obligations to maintain order and safe custody. The Commission also acknowledges that this power is also already limited to actions that are reasonably necessary for that purpose.

However, the Commission is concerned that this power may in the future be used to justify other extraordinary measures that have not been contemplated by legislation or policy.

To safeguard against this possibility, the Commission recommends that this power be qualified to be subject to any limitations contained elsewhere in the *Youth Justice Act* relating to the use of force, restraint or any other control measure.

### **Recommendation 13.4**

**The Youth Justice Act (NT) and the Youth Justice Regulations (NT) be amended to the following effect:**

- **to prohibit expressly force or restraint being used for the purposes of maintaining the “good order” of a youth detention centre or to “discipline” a detainee, and**
- **to ensure that specific constraints on the circumstances and manner in which force, restraint, isolation and searches may be used under the *Youth Justice Act* (NT) cannot be avoided by section 152 of the *Youth Justice Act*(NT).**

### **Recommendation 13.5**

The Youth Justice Act (NT) and the Youth Justice Regulations (NT) be amended to have the following effect in relation to the use of force:

- use of force be permitted only in circumstances where all other measures have failed
- the use of force be permitted only to protect a detainee, another detainee, or another person from physical injury
- the use of force be applied only by persons trained and holding a current qualification in physical intervention techniques on children and young people
- the use of force be proportionate in the circumstances, and take into account the detainee's background, age, physical and mental circumstances
- mandate that a verbal warning be given before force is used, and the detainee given a reasonable period of time to comply, except in emergency circumstances, and
- the superintendent ensure any detainee injured by use of force is examined by a treating doctor or nurse and clinical notes be recorded.

### **Recommendation 13.6**

Section 152(1A) of the *Youth Justice Act* (NT) be repealed and section 153(4) be amended to have the effect that restraints only be used to protect a detainee from self-harm, to protect the safety of another person, or to protect serious damage to property and an emergency situation exists.

### **Recommendation 13.7**

The *Youth Justice Act* (NT) and Youth Justice Regulations (NT) be amended to regulate the use of strip searches to the following effect:

- provide that strip searches only be conducted where there is a reasonable belief that the search is necessary to prevent a risk of harm to detainees or staff of the youth detention centre
- stipulate that any strip search be conducted by two members of staff of the same gender as the detainee
- stipulate that a detainee must not be stripped of clothing and searched in the presence of another detainee, unless it cannot be avoided, and
- stipulate that the strip search be conducted having the detainee remove the top half of his or her clothing for the inspection and then re-dress before removing the bottom half of his or her clothing, colloquially known as the 'half and half'.

### **Recommendation 13.8**

Territory Families investigate the provision of body scanners, including their suitability for use on children and young people to limit or eliminate reliance on strip searches, including their suitability for use on children and young people.

### **Recommendation 13.9**

Territory Families investigate the use of pat down searches in conjunction with metal detector wands as an alternative to strip searches.

## ENDNOTES

- <sup>1</sup> *Criminal Code Act* (NT), ss 23, 187 and 188.
- <sup>2</sup> *LO v Northern Territory of Australia* [2017] NTSC 22 at [360].
- <sup>3</sup> *Criminal Code Act* (NT), s. 26.
- <sup>4</sup> Exh.005.002, Convention on the Rights of the Child GA resolution 44/25 1990, tendered 11 October 2016, Preamble.
- <sup>5</sup> Exh.007.001, Committee on the Rights of the Child: General Comment 10 – Children’s Rights in Juvenile Justice.
- <sup>6</sup> Youth Justice Act (NT), s 151(3)(c).
- <sup>7</sup> Youth Justice Act (NT), s 152.
- <sup>8</sup> Youth Justice Act (NT), ss 153 and 155.
- <sup>9</sup> Youth Justice Act (NT), ss 153(1) and (2).
- <sup>10</sup> Youth Justice Act (NT), s 153(3).
- <sup>11</sup> Youth Justice Act (NT), s 153(4).
- <sup>12</sup> Youth Justice Act (NT), s 155.
- <sup>13</sup> Youth Justice Act (NT), s 161.
- <sup>14</sup> Youth Justice Act (NT), s 157. Further, under section 216, the Minister or Director may delegate in writing to a person any of his or her powers and functions under this Act.
- <sup>15</sup> For example Exh.006.001, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, December 1990, tendered 11 October 2016, Article 66.
- <sup>16</sup> See *Anthony Hordern & Sons Ltd v Amalgamated Clothing and Allied Trades Union of Australia* [1932] HCA 9; (1932) 47 CLR 1 per Gavan Duffy CJ and Dixon J (at 7); *Minister for Immigration and Multicultural and Indigenous Affairs v Nystrom* [2006] HCA 50; (2006) 228 CLR 566 per Gummow and Hayne JJ at [59] and [61].
- <sup>17</sup> [2014] NTSC 56.
- <sup>18</sup> [2014] NTSC 56 at [31] and [33].
- <sup>19</sup> [2014] NTSC 56 at [32].
- <sup>20</sup> [[2017] NTSC 22 at [134] and that the limitations of force do not apply to the powers under section 153 of the Youth Justice Act (NT).
- <sup>21</sup> [2014] NTSC 56 at [35].
- <sup>22</sup> [2014] NTSC 56 at [35].
- <sup>23</sup> Exh.741.020, Annexure MP-20 YDRC – Procedures and Instructions Manual, December 2009, tendered 25 July 2017, 10.5.  
Exh.741.002, Annexure MP-2 YDRC – Procedures and Instructions, para. 10 ‘Security and Discipline’, 2009, tendered 25 July 2017;  
Exh.741.027, Annexure MP-27, YDRC – Procedures and Instructions, paras 10.3-12.2 to the Statement of Mark Payne 23 February 2017, tendered 25 July 2017
- <sup>24</sup> Exh.741.020, Annexure MP-20, YDRC – Procedures and Instructions Manual, December 2009, tendered 25 July 2017, 10.5;  
Exh.741.002, Annexure MP-2, YDRC – Procedures and Instructions Manual, para. 10 ‘Security and Discipline’, 2009, tendered 25 July 2017; Exh.741.027, YDRC – Procedures and Instructions Manual, paras 10.3-12.2 to the Statement of Mark Payne 31 January 2017, tendered 25 July 2017.
- <sup>25</sup> Exh.741.073, Annexure MP-73 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017; Transcript, Leonard de Souza, 22 March 2017, page 1632: lines 5-30.
- <sup>26</sup> Exh.741.011, Annexure MP-11, NTDCS Youth Justice Centres Procedure, April 2015, to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, pp.2-3.
- <sup>27</sup> Exh.742.104, Annexure MP-510, NTDCS Directive 3.2.2, January 2016, to Statement of Mark Payne, 7 March 2017, tendered 25 July 2017.
- <sup>28</sup> Exh.742.104, Annexure MP-510, NTDCS Directive 3.2.2, January 2016, to Statement of Mark Payne, 7 March 2017, tendered 25 July 2017, p. 1.
- <sup>29</sup> Youth Justice Regulations (NT), regs 70 and 71.
- <sup>30</sup> Exh.269.002, Annexure VW-1 to the Statement of Victor Williams, 28 February 2017, tendered 31 March 2017.
- <sup>31</sup> Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para. 10.
- <sup>32</sup> Exh.824.001, 3 – Part 2004 Edition – Predict Assess & Respond To Aggressive Challenging Behaviour – Participant Manual, tendered 24 October 2017, Introduction, pp. 2-3.
- <sup>33</sup> Exh.824.001, 3 – Part 2004 Edition – Predict Assess & Respond To Aggressive Challenging Behaviour – Participant Manual, tendered 24 October 2017, Introduction, p. 0573.
- <sup>34</sup> Exh.825.001, 9 – Part – Predict Assess & Respond To Aggressive Behaviour – Participants Manual 3 Day Course – 2011 Edition, tendered 24 October 2017, pp. 59-60.
- <sup>35</sup> Exh.825.001, 9 – Part – Predict Assess & Respond To Aggressive Behaviour – Participants Manual 3 Day Course – 2011 Edition, tendered 24 October 2017, p. 64.
- <sup>36</sup> Exh.825.001, 9 – Part – Predict Assess & Respond To Aggressive Behaviour – Participants Manual 3 Day Course – 2011 Edition, tendered 24 October 2017, p. 76.
- <sup>37</sup> Exh.825.001, 9 – Part – Predict Assess & Respond To Aggressive Behaviour – Participants Manual 3 Day Course – 2011 Edition, tendered 24 October 2017, p. 84.
- <sup>38</sup> Exh.825.001, 9 – Part – Predict Assess & Respond To Aggressive Behaviour – Participants Manual 3 Day Course – 2011 Edition, tendered 24 October 2017, pp. 112, 114.
- <sup>39</sup> Exh.825.001, 9 – Part – Predict Assess & Respond To Aggressive Behaviour – Participants Manual 3 Day Course – 2011 Edition, tendered 24 October 2017, p. 112.

- <sup>40</sup> Exh.212.001, Statement of Salli Cohen, 8 March 2017, tendered 30 March 2017, paras 39-41. The current youth justice trainer, Jennifer Gannon, gave evidence to the Commission that youth detention centres have now moved to a different training package known as Intercept, Stabilise and Respond (ISR): Exh.746.000, Statement of Jennifer Gannon, 5 April 2017, tendered 25 July 2017, para. 29(c).
- <sup>41</sup> Exh 318.022, Appendix 18, 3 March 2017, tendered 26 April 2017 at page 0647.
- <sup>42</sup> Merriam Webster, Dictionary, viewed on 4 October 2017, <<https://www.merriam-webster.com/dictionary/choke%20hold>>
- <sup>43</sup> Oxford English Dictionary, 'Headlock', viewed on 16 October 2017, <<http://www.oed.com/view/Entry/340167?rskey=iHUox0&result=2#eid>>
- <sup>44</sup> Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para. 53.
- <sup>45</sup> Exh.053.027, Annexure 17 – Final Investigation Report: Complaints Relating to Services Provided by NTDCS Juvenile Detention to Dylan Voller (Confidential Exhibit), 12 February 2015, tendered 14 December 2016, p. 45.
- <sup>46</sup> Transcript, Leonard de Souza, 22 March 2017, p. 1663: line 32; Transcript, Derek Tasker, 19 April 2017, p 2534 lines 8- 11.
- <sup>47</sup> Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, paras 63-64.
- <sup>48</sup> Closed court transcript, BR, 21 March 2017, page 5: lines 29-36.
- <sup>49</sup> Exh.861.001, 08 Incident Report, tendered 24 October 2017.
- <sup>50</sup> Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para. 19; Closed court transcript, BR, 21 March 2017, page 5 lines 1 - 18 and page 8 lines: 14-20.
- <sup>51</sup> Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para. 19
- <sup>52</sup> Exh.109.001, Statement of Trevor Hansen – Responsive to BR, 13 March 2017, tendered 21 March 2017, para. 8.
- <sup>53</sup> Exh.051.001, Statement of Dylan Voller 2 of 2, 25 November 2016, tendered 13 December 2016, para. 227.
- <sup>54</sup> Submissions on behalf of Harold Morgan, paras 22-28; see also Exh.408.000, Statement of Harold Morgan (Responsive to Dylan Voller), 21 February 2017, tendered 12 May 2017.
- <sup>55</sup> Exh.330.002, Transcript of proceedings – Harold Morgan, 9 September 2012, tendered 28 April 2017.
- <sup>56</sup> Exh.053.027, Children's Commissioner Confidential Report relating to youth detention practices, 12 February 2015, tendered 14 December 2017, p. 18.
- <sup>57</sup> EXH.1030.001, IOMs reports, tendered 28 October 2017, p. 3951
- <sup>58</sup> Exh.053.027, Children's Commissioner Confidential Report relating to youth detention practices, 12 February 2015, tendered 14 December 2017, p. 17.
- <sup>59</sup> Exh.167.001, Statement of BQ, 17 February 2017, tendered 27 March 2017, para. 33.
- <sup>60</sup> Exh.275.001, Statement of Scott Barlow, 27 March 2017, tendered 31 March 2017, para. 9 and 11.
- <sup>61</sup> Exh.341.001, Statement of AY, 28 February 2017, 9 May 2017, paras 44-45.
- <sup>62</sup> Exh.274.001, Statement of Jon Walton (Responsive to AY), 21 March 2017, tendered 31 March 2017, para. 23.
- <sup>63</sup> Exh.345.000, Statement of Jamie Clee (Responsive to AY), 15 March 2017, tendered 9 May 2017, para. 16; Exh.345.001, Annexure JC-14 to Statement of Jamie Clee, 15 March 2017, tendered 9 May 2017; Exh.345.002, Annexure JC-15 to Statement of Jamie Clee, 15 March 2017, tendered 9 May 2017; Exh.345.003, Annexure JC-16 to Statement of Jamie Clee, 15 March 2017, tendered 9 May 2017.
- <sup>64</sup> Exh.345.000, Statement of Jamie Clee (Responsive to AY), 15 March 2017, tendered 9 May 2017, Annexure JC-15.
- <sup>65</sup> Exh.345.000, Statement of Jamie Clee (Responsive to AY), 15 March 2017, tendered 9 May 2017, Annexure JC-16.
- <sup>66</sup> Submission, Northern Territory Government Response to Notice of Adverse Material 19, 15 September 2017, para 60.
- <sup>67</sup> Exh.084.001, Statement of BY, 21 February 2017, tendered 16 March 2017, para 49; Transcript, BY, 16 March 2017, p. 1205 lines 15- 16.
- <sup>68</sup> Exh.086.005, IOMS Report, tendered 16 March 2017, p. 2.
- <sup>69</sup> Transcript, BY, 16 March 2017, p. 1204 lines 42-46.
- <sup>70</sup> Transcript, BY, 16 March 2017, p. 1205 lines 8- 13.
- <sup>71</sup> Transcript, Trevor Hansen, 13 March 2017, p. 959, line: 14.
- <sup>72</sup> Exh.064.132, Discipline – 1, 3 December 2012, tendered 13 March 2017, p. 1819.
- <sup>73</sup> Exh.064.132, Discipline – 1, 3 December 2012, tendered 13 March 2017, p. 1849.
- <sup>74</sup> Exh.064.132, Discipline - 1, 3 December 2012, tendered 13 March 2017, p. 1820.
- <sup>75</sup> Exh.1142.001, Stills of CCTV Footage (Confidential Exhibit), tendered 6 November 2017.
- <sup>76</sup> Exh.064.132, Discipline – 1, 3 December 2012, tendered 13 March 2017, p. 1840.
- <sup>77</sup> Exh.064.132, Discipline – 1, 3 December 2012, tendered 13 March 2017, p. 1824.
- <sup>78</sup> Exh.064.132, Discipline – 1, 3 December 2012, tendered 13 March 2017, p. 1820.
- <sup>79</sup> Exh.102.001, Statement of BN, 14 February 2017, tendered 20 March 2017, para. 67.
- <sup>80</sup> Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 78; Exh.146.001, Supplementary Statement of AG, 25 November 2011, tendered 24 March 2017, para. 4.
- <sup>81</sup> Exh.169.001, Statement of James Sizeland, 10 February 2017, tendered 27 March 2017, para. 9; Exh.169.002, Annexure JS-7 to Statement of James Sizeland, 10 February 2017, tendered 27 March 2017; Exh. 169.003, Annexure JS-8 to Statement of James Sizeland, 10 February 2017, tendered 27 March 2017; Exh.169.004, Annexure JS-9 to Statement of James Sizeland, 10 February 2017, tendered 27 March 2017; Exh.169.005, Annexure JS-10 to Statement of James Sizeland, 10 February 2017, tendered 27 March 2017.
- <sup>82</sup> Exh.169.002, Annexure JS-7 to Statement of James Sizeland, 10 February 2017, tendered 27 March 2017.

83 Exh.169.004, Annexure JS-9 to Statement of James Sizeland, 10 February 2017, tendered 27 March 2017; Submission, Northern Territory Government Response to Notice of Adverse Material 10, Use of Force, 15 September 2017, para 76.

84 Exh.169.003, Annexure JS-8 to Statement of James Sizeland, 10 February 2017, tendered 27 March 2017.

85 Exh.169.003, Annexure JS-8 to Statement of James Sizeland, 10 February 2017, tendered 27 March 2017.

86 Exh.169.005, Annexure JS-10 to Statement of James Sizeland, 10 February 2017, tendered 27 March 2017.

87 Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para 78.

88 Submissions of AG, 23 May 2017, para 7.

89 Submissions in response to Notice of Adverse Material 19: Use of Force, 15 September 2017, paras 72-78.

90 Submissions in response to Notice of Adverse Material 19: Use of Force, 15 September 2017, para 71.

91 Exh.146.001, Statement of AG, 20 March 2017, tendered 24 March 2017, para 4.

92 Exh.1031.001, Medical record, AJ, 11 June 2014, tendered 28 October 2017, pp. 1, 3.

93 Exh.1031.001, Medical record, AJ, 11 June 2014, tendered 28 October 2017, p. 2.

94 Transcript, Derek Tasker, 15 March 2017, p. 1110: lines 15-25; Exh.113.001, Statement of Derek Tasker (Responsive to AX), 13 March 2017, tendered 21 March 2017, paras 29-31.

95 Transcript, Jamal Turner, 13 March 2017, p. 930: lines 34-35.

96 Closed court transcript, AX, 21 March 2017, p. 5: lines 38-45; Exh.111.002, Annexure A to Statement of AX, 17 February 2017, tendered 21 March 2017.

97 Exh.113.001, Statement of Derek Tasker, 13 March 2017, tendered 21 March 2017, para 31.

98 Submission, Northern Territory Government Response to Notice of Adverse Material 19, para 96(a).

99 Exh.114.001, IOMS report, undated, tendered 21 March 2017.

100 Exh.311.145E, Letter from SFNT to Commission about documents not yet located 3 December 2016, 3 December 2016, tendered 28 April 2017.

101 Submission, Northern Territory Government Response to Notice of Adverse Material 19, para 96(b).

102 Closed court transcript, AX, 21 March 2017, p. 6 lines 17-19.

103 Exh.065.001, Statement of Jamal Turner, 21 February 2017, 13 March 2017, para. 40.

104 Exh.282.001, Statement of Derek Tasker, 12 March 2017, tendered 31 March 2017 para 9; Transcript of Derek Tasker, 15 March 2017, p. 1109, lines 36-40.

105 Exh.282.001, Statement of Derek Tasker, 12 March 2017, tendered 31 March 2017, paras 7-9.

106 Transcript, Jamal Turner, 13 March 2017, p.923 lines 20-22.

107 Transcript, Jamal Turner, 13 March 2017, p. 923 lines 28-33.

108 Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 12 December 2016, para. 139.

109 Exh.290.001, Statement of Derek Tasker, 10 February 2017, tendered 19 April 2017, para 30.

110 Transcript, Derek Tasker, 15 March 2017, p. 1115: lines 13-14.

111 Exh.074.001, Dylan Voller CCTV Footage, tendered 14 March 2017.

112 Police v Tasker [2014] NTMC 2 (unreported, 5 February 2014), at [39-40].

113 Police v Tasker [2014] NTMC 2 (unreported, 5 February 2014), at [61].

114 Police v Tasker [2014] NTMC 2 (unreported, 5 February 2014), at [72-73].

115 Edwards v Tasker [2014] NTSC 56 at [23].

116 Edwards v Tasker [2014] NTSC 56 at [35].

117 Edwards v Tasker [2014] NTSC 56 at [20].

118 Edwards v Tasker [2014] NTSC 56 at [35].

119 Edwards v Tasker [2014] NTSC 56 at [18].

120 Exh.053.027, Children's Commissioner Confidential Report relating to youth detention practices, 12 February 2015, tendered 14 December 2017, p. 34.

121 Exh.741.020, Annexure MP-20 YDRC – Procedures and Instructions Manual, December 2009, tendered 25 July 2017, Part 5.3 and 11.4.

122 Submission, Northern Territory Government Response to Notice of Adverse Material 19, para 136(c).

123 Police v Tasker [2014] NTMC 2 (unreported, 5 February 2014), at [42]-[44]. Despite the paucity of evidence the Court proceeded on the basis that Mr Voller had been properly declared 'at-risk' because this was the prosecution case or an assumed and uncontested fact in the prosecution case: Edwards v Tasker [2014] NTSC 56 at [14].

124 Exh.053.027, Children's Commissioner Confidential Report relating to youth detention practices, 12 February 2015, tendered 14 December 2017, p. 17.

125 Exh.820.001, PART Manual 2 2, 2010, tendered 24 October 2017, Chapter 9.

126 Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para. 53.

127 Exh.151.001, Statement of Greg Harmer, 3 February 2017, 24 March 2017, para. 29.

128 Exh.820.001, PART Manual 2 2, 2010, tendered 24 October 2017, Chapter 9.

129 Children and Young People (Use of Force) Policy and Procedures 2015 (No.1), <<http://www.legislation.act.gov.au/ni/2015-400/current/pdf/2015-400.pdf>>

130 'Takedown' was described as 'forcefully throwing the plaintiff on the ground' in O'Connell v 1<sup>st</sup> Class Security Pty Ltd [20120] QDC 100, para [20].

131 Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para. 95.

132 Transcript, James Sizeland, 28 March 2017, p. 1962: lines 30-37.

133 Transcript, James Sizeland, 28 March 2017, p. 1962 lines 31-34.

134 Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 15.

<sup>135</sup> Transcript, Benjamin Kelleher, 21 March 2017, p. 1568: lines 30-35.  
<sup>136</sup> Transcript, Benjamin Kelleher, 21 March 2017, p. 1569: lines 15-20.  
<sup>137</sup> Transcript, Benjamin Kelleher, 21 March 2017, p. 1568: lines 40-45.  
<sup>138</sup> ABC News, Darwin boxer Jamie Clee prepares for hometown United Fighting Championship bout, 20 March 2015, accessed October 2017: <<http://www.abc.net.au/news/2015-03-20/jamie-clee-mixed-martial-arts-boxing-fight-darwin/6332894>>  
<sup>139</sup> Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para. 66.  
<sup>140</sup> Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 21.  
<sup>141</sup> Exh.276.001, Statement of Jamie Clee (Responsive to BE), 17 March 2017, tendered 31 March 2017, paras 5, 8.  
<sup>142</sup> Exh.178.001, IOMS Report (CLEE), Exh.178.002, IOMS Report 13724 (ZAMOLO), tendered 27 March 2017.  
<sup>143</sup> Exh.178.001, IOMS Report (CLEE), tendered 27 March 2017.  
<sup>144</sup> Exh.178.001, IOMS Report (CLEE), Exh.178.002, IOMS Report 13724 (ZAMOLO), tendered 27 March 2017.  
<sup>145</sup> Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, para. 109.  
<sup>146</sup> Exh.147.001, Statement of Jon Walton, 21 March 2017, 24 March 2017, para. 10.  
<sup>147</sup> Exh.1099.001, IOMS Report, tendered 28 October 2017; Exh.1100.001, IOMS – Officer’s Report – Incident [Redacted] – [Redacted], [Redacted], [Redacted], [Redacted], [Redacted]; Exh.1101.001, IOMS – Officer’s Report – Incident [Redacted] – [Redacted], [Redacted], [Redacted].  
<sup>148</sup> Exh.1101.001, IOMS – Officer’s Report – Incident [Redacted] – [Redacted], [Redacted], [Redacted].  
<sup>149</sup> Exh.1099.001, IOMS Report – 1, 3 November 2013, tendered 28 October 2017.  
<sup>150</sup> Exh.1100.001, IOMS – Officer’s Report – Incident [Redacted] – [Redacted], [Redacted], [Redacted], [Redacted], [Redacted], tendered 28 October 2017.  
<sup>151</sup> Exh.151.001, Statement of Greg Harmer, 3 February 2017, tendered 24 March 2017, para. 68.  
<sup>152</sup> Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 44.  
<sup>153</sup> Exh.1033.001, Case Note: Youth Detention Task Force Review, 20 October 2016, tendered 28 October 2017  
<sup>154</sup> Exh.1056.001, Medical Records of AM, tendered 28 October 2017.  
<sup>155</sup> Exh.727.039, IOMS Report, tendered 25 July 2017; Exh.727.040, IOMS Report , tendered 25 July 2017; Exh.727.041, IOMS Report, tendered 25 July 2017; Exh.727.042, IOMS Report, tendered 25 July 2017; Exh.727.043, IOMS Summary Report, tendered 25 July 2017.  
<sup>156</sup> Exh.727.039, IOMS Report, tendered 25 July 2017.  
<sup>157</sup> Exh.251.001, Statement of BA, 17 February 2017, tendered 31 March 2017, para. 70.  
<sup>158</sup> Exh.252.050, IOMS Report, undated, tendered 31 March 2017.  
<sup>159</sup> Exh.1055.001, Extract of use of force register re BA, tendered 28 October 2017.  
<sup>160</sup> Exh.755.008, Annexure JP-8 to Statement of Jesse Palu, 28 April 2017, tendered 25 July 2017; Exh.755.009, Annexure JP-9 to Statement of Jesse Palu, 28 April 2017, tendered 25 July 2017.  
<sup>161</sup> Exh.102.001, Statement of BN, 14 February 2017, tendered 20 March 2017, paras 44- 45.  
<sup>162</sup> Transcript, BA, 31 March 2017, p. 10: lines-9-20. Exh.755.004, Annexure 4 to Statement of Jesse Palu, 28 April 2017, tendered 25 July 2017.  
<sup>163</sup> Exh.755.004, Annexure 4 to Statement of Jesse Palu, 28 April 2017, tendered 25 July 2017.  
<sup>164</sup> Exh.755.005, Annexure JP-5 to Statement of Jesse Palu, 28 April 2017, tendered 25 July 2017.  
<sup>165</sup> Exh.755.000, Statement of Jesse Palu, 28 April 2017, tendered 25 July 2017, para 16.  
<sup>166</sup> Exh.755.000, Statement of Jesse Palu, 28 April 2017, tendered 25 July 2017, paras 15-17, 23; Exh.248.001, Statement of Jesse Palu, 23 March 2017, tendered 31 March 2017, paras 5-7.  
<sup>167</sup> Exh.102.001, Statement of BN, 14 February 2017, tendered 20 March 2017, paras 68-69.  
<sup>168</sup> Exh.245, Responsive Bundle to Statement of BN, tendered 31 March 2017, Tab. 12.  
<sup>169</sup> Exh.118.001, Statement of BH, 12 February 2017, 22 March 2017, paras 23-25.  
<sup>170</sup> Exh.141.015, IOMS Report, tendered 23 March 2017.  
<sup>171</sup> Exh.141.016, IOMS Report, tendered 23 March 2017.  
<sup>172</sup> Exh.141.017, IOMS Report, tendered 23 March 2017.  
<sup>173</sup> See IRB issues statement on ‘spear tackle, accessed 5 October 2017: <<https://www.rugby.com.au/news/2016/02/10/irb-issues-statement-on-tip-or-spear-tackle>>.  
<sup>174</sup> Submission, Northern Territory Government Response to Notice of Adverse Material 10, Use of Force, 15 September 2017, para 228(g).  
<sup>175</sup> Exh.1057.001, Medical records BH, 12 December 2016, tendered 28 October 2017, pp. 1, 4.  
<sup>176</sup> Exh.251.001, Statement of BA, 17 February 2017, tendered 31 March 2017, para. 47.  
<sup>177</sup> Exh.251.001, Statement of BA, 17 February 2017, tendered 31 March 2017, para. 47.  
<sup>178</sup> Exh.733.000, Statement of Martinho Tchong, 13 April 2017, tendered 25 July 2017, para. 25.  
<sup>179</sup> Exh.736.000, Statement of a Guard, 2 May 2017, tendered 25 July 2017, para. 24.  
<sup>180</sup> Exh.736.000, Statement of a Guard, 2 May 2017, tendered 25 July 2017, para. 24.  
<sup>181</sup> Exh.736.000, Statement of a Guard, 2 May 2017, tendered 25 July 2017, para. 23.  
<sup>182</sup> Exh.252.019, IOMS Report Bundle, tendered 31 March 2017.  
<sup>183</sup> Submission, Northern Territory Government Response to Notice of Adverse Material 19: Use of Force, 15 September 2017, para 234.  
<sup>184</sup> Exh.820.001, PART Manual 2 2, 2010, tendered 24 October 2017.  
<sup>185</sup> Exh.825.001, 9 – Part – Predict Assess & Respond To Aggressive Behaviour – Participants Manual 3 Day Course – 2011 Edition, tendered 24 October 2017, p. 116.  
<sup>186</sup> Edwards v Tasker [2014] NTSC at [11]-[12].



<sup>187</sup> Edwards v Tasker [2014] NTSC at [16].  
<sup>188</sup> Police v Tasker [2014] NTMC 2 (unreported, 5 February 2014), [59].  
<sup>189</sup> Police v Tasker [2014] NTMC 2 (unreported, 5 February 2014), [76].  
<sup>190</sup> Edwards v Tasker [2014] NTSC at [23].  
<sup>191</sup> Edwards v Tasker [2014] NTSC at [35].  
<sup>192</sup> Police v Tasker [2014] NTMC 2 (unreported, 5 February 2014), [37].  
<sup>193</sup> Exh.053.027, Annexure 17 – Final Investigation Report: Complaints Relating to Services Provided by NTDCS Juvenile Detention to Dylan Voller [confidential], 12 February 2015, tendered 14 December 2016, p. 34.  
<sup>194</sup> Transcript, Barrie Clee, 20 April 2017, p. 2600: line 14, p. 2601: line 33.  
<sup>195</sup> Exh.053.027, Annexure 17 – Final Investigation Report: Complaints Relating to Services Provided by NTDCS Juvenile Detention to Dylan Voller [confidential], 12 February 2015, tendered 14 December 2016, p. 34.  
<sup>196</sup> Transcript, Leonard de Souza, 22 March 2017, p. 1667: lines 10-20.  
<sup>197</sup> Transcript, Leonard de Souza, 22 March 2017, p. 1667: lines 9-13.  
<sup>198</sup> Transcript, Trevor Hansen, 13 March 2017, p. 959, line:14  
<sup>199</sup> Exh.064.132, Discipline – 1, 3 December 2012, tendered 13 March 2017, p. 1.  
<sup>200</sup> Exh.064.132, Discipline – 1, 3 December 2012, tendered 13 March 2017, p. 1.  
<sup>201</sup> Exh.064.132, Discipline – 1, 3 December 2012, tendered 13 March 2017, p. 4.  
<sup>202</sup> Exh.064.132, Discipline – 1, 3 December 2012, tendered 13 March 2017, p. 1824.  
<sup>203</sup> Exh.064.132, Discipline – 1, 3 December 2012, tendered 13 March 2017, p. 1824.  
<sup>204</sup> Exh.064.132, Discipline – 1, 3 December 2012, tendered 13 March 2017, p. 1823.  
<sup>205</sup> Exh.1250.001, CCTB stills, tendered 6 November 2017.  
<sup>206</sup> Exh.825.001, 9 – Part – Predict Assess & Respond To Aggressive Behaviour – Participants Manual 3 Day Course – 2011 Edition, tendered 24 October 2017, p. 117.  
<sup>207</sup> Exh.825.001, 9 – Part – Predict Assess & Respond To Aggressive Behaviour – Participants Manual 3 Day Course – 2011 Edition, tendered 24 October 2017, p. 124.  
<sup>208</sup> Exh.927.001, Statement of AP, 18 March 2017, tendered 26 October 2017, paras 64-69  
<sup>209</sup> Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 48.  
<sup>210</sup> Exh.150.022, IOMS bundle, undated, tendered 24 March 2017.  
<sup>211</sup> Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, paras 33-36.  
<sup>212</sup> Exh.140.008, IOMS bundle, tendered 23 March 2017, p. 2, 13.  
<sup>213</sup> Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, para. 16.  
<sup>214</sup> Exh.141.003, Exh.141.004, Exh.141.005, Exh.141.006, Exh.141.007, Exh.141.008, Exh.141.010, IOMS Reports, undated, tendered 23 March 2017.  
<sup>215</sup> Exh.141.003, undated, tendered 23 March 2017. .  
<sup>216</sup> Exh.1032.001, Medical record, BH, tendered 28 October 2017.  
<sup>217</sup> Transcript, BH, 21 March 2017, page 9: lines 17-33.  
<sup>218</sup> Transcript, BH, 21 March 2017, page 10: line 2.  
<sup>219</sup> Exh.241.001, Statement of BV, 17 February 2017, tendered 31 March 2017, paras 40-41.  
<sup>220</sup> Exh.242, Responsive Bundle to Statement of BV, tendered 31 March 2017, Tabs 8, 9, 10, 11.  
<sup>221</sup> Exh.242, Responsive Bundle to Statement of BV, tendered 31 March 2017, Tab 8.  
<sup>222</sup> Transcript, BV, 31 March 2017, page 4: line 46 – page 5: line 8.  
<sup>223</sup> Transcript, BV, 31 March 2017, page 5: lines 29-30.  
<sup>224</sup> Exh.102.001, Statement of BN, 14 February 2017, tendered 20 March 2017, para. 63.  
<sup>225</sup> Exh.732.000, Statement of Andrew MaGee, 14 April 2017, tendered 25 July 2017, para. 10.  
<sup>226</sup> Exh.731.000, Statement of Youth Justice Officer B in response to BN, 3 May 2017, tendered 25 July 2017, para. 20.  
<sup>227</sup> Exh.245, Responsive Bundle to BN, tendered 31 March 2017, Tabs 5, 6, 7.  
<sup>228</sup> Exh.245, Responsive Bundle to BN, tendered 31 March 2017, Tab 5.  
<sup>229</sup> At the time of these complaints, Youth Justice Officer A had more than 15 years’ experience in adult corrections in Darwin and Alice Springs. In his statement to the Commission, he said that in about 2015 he was asked to be a ‘seconded’ at the current Don Dale Youth Detention Centre to ‘train and mentor’ staff members, and had a role there until January 2017: Exh.736.000, Statement of A Guard, 2 May 2017, tendered 25 July 2017, para. 5. Youth Justice Officer A appears to have been delivering training to youth justice officers during May 2015: Exh.212.001, Statement of Salli Cohen, 8 March 2017, tendered 30 March 2017, para. 44. Youth Justice Officer B was, during the period of the complaints, a correctional officer from the Darwin adult prison: Exh.731.000, Statement of Youth Justice Officer B in response to BN, 3 May 2017, tendered 25 July 2017, para. 6.  
<sup>230</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 15.  
<sup>231</sup> Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 12 December 2016, para. 139.  
<sup>232</sup> Exh.290.001, Statement of Derek Tasker, 10 February 2017, tendered 19 April 2017, para. 30.  
<sup>233</sup> Exh.212.010, Annexure SC-9 to Statement of Salli Cohen, 8 March 2017, tendered 25 July 2017, pp. 2117-2168.  
<sup>234</sup> Submission, Northern Territory Government Response to Notice of Adverse Material 19: Use of Force, 15 September 2017, para 321.  
<sup>235</sup> Exh.024.025, Australian Children’s Commissioners and Guardians: Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices, April 2016, tendered 13 October 2016, p. 36; Children and Young People (Use of Force) Policy and Procedures 2015 (No.1) <<http://www.legislation.act.gov.au/ni/2015-400/current/pdf/2015-400.pdf>>  
<sup>236</sup> Exh.824.001, 3 – Part 2004 Edition – Predict Assess & Respond To Aggressive Challenging Behaviour – Participant Manual,

tendered 24 October 2017, Introduction, p. 0626.

237 Exh.825.001, 9 – Part – Predict Assess & Respond To Aggressive Behaviour – Participants Manual 3 Day Course – 2011 Edition, tendered 24 October 2017.

238 Transcript, Leonard de Souza, 22 March 2017, p. 1694: lines 3-10.

239 Exh.111.001, Statement of AX, 17 February 2017, tendered 21 March 2017, para. 41.

240 Exh.167.001, Statement of BQ, 17 February 2017, tendered 27 March 2017, para. 34.

241 Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 40.

242 Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March, para. 34.

243 Exh.1102.001, Annexure TH-10 to Statement of Trevor Hansen, 13 March 2017, tendered 28 October 2017.

244 Submission, Northern Territory Government Response to Notice of Adverse Material 19: Use of Force, 15 September 2017, para 356.

245 Exh.180.001, Statement of AQ, 14 February 2017, tendered 28 March 2017, para. 53.

246 Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 12 December 2016, para. 134.

247 Exh.287.001, Statement of Trevor Hansen, 16 February 2017, tendered 19 April 2017, para. 20.

248 Exh.181.001, Statement of Trevor Hansen, 6 March 2017, tendered 28 March 2017, para. 8; Exh.278.001, Statement of Trevor Hansen (Response to BE), 13 March 2017, tendered 31 March 2017; Exh.279.001, Statement of Trevor Hansen (Response to BQ), 13 March 2017, tendered 31 March 2017, para. 9.

249 Transcript, Trevor Hansen, 13 March 2017, p. 961: lines 40-45.

250 Transcript, Trevor Hansen, 13 March 2017, p. 961: lines 20-25.

251 Exh.287.001, Statement of Trevor Hansen, 16 February 2017, tendered 19 April 2017, para 11.

252 Exh.717.000, Statement of Dylan Voller, 8 April 2017, tendered 25 July 2017, para 67.

253 Transcript, Derek Tasker, 15 March 2017, p. 1108: lines 1-5.

254 Exh.024.025, Australian Children’s Commissioners and Guardians: Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices, April 2016, tendered 13 October 2016, p. 37.

255 See section 153 and 153 of the Youth Justice Act (NT) as amended in 2016 and 2017 and s 151AB as inserted in 2016 and amended in 2017.

256 Section 153(4) of the Youth Justice Act (NT).

257 Section 155 of the Youth Justice Act (NT).

258 Article 64, United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990, A/Res/45/113).

259 Exh.283.232, AJJA principles, tendered 31 March 2017, standard 9.4.

260 Exh.741.000, Annexure MP-5 to the statement of Mark Payne dated 23 February 2017, tendered 25 July 2017.

261 See 741.037, Annexure MP-37 to Statement of Mark Payne, Directive 3.1.6: Use of Restraints, 6 May 2015, tendered 25 July 2017, para. 22.

262 Exh.741.131, Annexure MP-131 to the statement of Mark Payne dated 23 February 2017, tendered 25 July 2017.

263 Exh.741.014, Annexure MP-14 to the statement of Mark Payne dated 23 February 2017, tendered 25 July 2017.

264 Exh.741.043, Annexure MP-043 to the statement of Mark Payne dated 31 January 2017 ‘January 2016: NTDCS directive High Security Unit’, January 2016, tendered 25 July 2017.

265 Exh.033.004, Annexure C – Use of Restraints Determination, 30 November 2016, tendered 6 December 2016.

266 Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, paras 32, 79; Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 47; Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para. 62; Exh.136.001, Statement of BZ, 20 February 2017, tendered 23 March 2017, para. 48; Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, paras 55, 57; Closed court transcript, AF, 23 March 2017, p. 19: lines 40-45, p. 20: lines 1-35; Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, para. 48.

267 Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, paras 32, 79.

268 Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 47.

269 Exh.136.001, Statement of BZ, 20 February 2017, tendered 23 March 2017, para. 48.

270 Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, paras 55.

271 Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, paras 57.

272 Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, para. 48.

273 Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, paras 50-52.

274 Exh.842.001, Audit – YJ – Detention Centre Audits, tendered 24 October 2017, p. 1206.

275 Exh.1036.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.

276 Exh.1038.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.

277 Exh.1039.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.

278 Exh.1040.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.

279 Exh.1041.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.

280 Exh.1040.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.

281 Exh.1150.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 4 November 2017.

282 Exh.1152.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 4 November 2017.

283 Exh.1152.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 4 November 2017.

284 Exh.1042.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.

285 Exh.1043.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.

286 Exh.1044.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.

287 Exh.1045.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.

288 Exh.1046.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.

289 Exh.1047.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.  
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291 Exh.1048.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.  
292 Exh.1049.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.  
293 Exh.1050.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.  
294 Exh.1051.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.  
295 Exh.1051.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.  
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297 Exh.1052.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.  
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299 Exh.1053.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017.  
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301 Exh.1053.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017, p. 3316.  
302 Exh.1053.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017, p. 3317.  
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306 Exh.1054.001, Extract of Handcuff Register Alice Springs Youth Detention Centre, tendered 28 October 2017, 1216.  
307 Exh.283.137, Signed Memo – Audit – Use of Restraints – DDYDC –Sept 2015, 8 September 2015, tendered 31 March 2017.  
308 Exh.024.025, Australian Children’s Commissioners and Guardians: Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices, April 2016, tendered 13 October 2016, p. 39-40. International human rights standards, to which Australia is a party, state that restraints should be used only in exceptional circumstances, provided that all other control methods have been exhausted and failed, and only as explicitly authorised by law. Restraints should also only be used for the shortest possible period of time, can be used to prevent the child from inflicting self-injury, injuries to others or serious destruction of property: Article 64, United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990, A/ Res/45/113). The Association of Juvenile Justice Australian (AJJA) principles similarly state that instruments of restraint are only to be used on a child or young person in response to an unacceptable risk of escape or immediate harm to themselves or others, and/or in accordance with legislation, and should only be used the shortest possible period of time: Exh.283.232, AJJA principles, tendered 31 March 2017, standard 9.4.  
309 Exh.033.004, Annexure C – Use of Restraints Determination, 30 November 2016, tendered 6 December 2016.  
310 Exh.1061.001, Letter from Royal Commission to SFNT, 1 September 2017, tendered 28 October 2017.  
311 Exh.1062.001, Letter from SFNT to Royal Commission, 12 October 2017, tendered 28 October 2017.  
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313 Exh.741.005, Annexure MP-5 to Statement of Mark Payne, NTDCS Directive, 8 May 2012, tendered 25 July 2017.  
314 Exh.846.001, N8\_16.5 – Use of Restraints Directive, 26 June 2015, tendered 24 October 2017.  
315 Exh.872.001, Statement of BK, 17 February 2017, tendered 24 October 2017, para. 36.  
316 Exh.1095.001, [Redacted] – IJS [Redacted] – Part 2 Detainee File, tendered 28 October 2017; Exh.1098.001, 04 BK Tab [4] IOMS Report [Redacted], tendered 28 October 2017.  
317 Exh.1094.001, Escapes and Absconds July 2014 to date, tendered 28 October 2017.  
318 Exh.260.001, Statement of BW, 22 February 2017, tendered 31 March 2017, para. 24.  
319 Exh.1097.001, [Redacted] – Incident Reports, tendered 28 October 2017.  
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321 Exh.741.000, Annexure MP-5 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, 5.2; Exh.741.014, Annexure MP-14 to the Statement of Mark Payne, 23 February 2017 tendered 25 July 2017, 6.14.  
322 Exh.189.001, Statement of Ian Johns, 1 March 2017, tendered 28 March 2017, para. 46; Transcript, Ian Johns, 28 March 2017, p. 2044: lines 15-25.  
323 Transcript, James Sizeland, 28 March 2017, p. 1967: lines 35-40.  
324 Transcript, Ian Johns, 28 March 2017, p. 2044: lines 29-34.  
325 Transcript, James Sizeland, 28 March 2017, p. 1967 lines 39-41.  
326 Exh.741.000, Annexure MP-5 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, 5.2.  
327 Exh.1096.001, IOMS – Officer’s Report – Incident [Redacted] – [Redacted], tendered 28 October 2017.  
328 Mr Clee told the Commission that he thought that ‘handcuffs will always be needed in youth detention, especially on higher risk detainees, (either through past incidents or escape episodes). Detainees are often flighty and opportunistic. They mostly will seize the moment regardless of thinking about any consequence. Handcuffing is an integral part of incident management, and not only keeps staff safe, but also the detainees’: Exh.079.0001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para. 134.  
329 Exh.033.004, Annexure C – Use of Restraints Determination, 30 November 2016, tendered 6 December 2016.  
330 Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, paras 32  
331 Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para 47.  
332 Exh.150.005, 8 September 2013, tendered 31 March 2017; Exh.150.022, 14 September 2013, tendered 24 March 2017.  
333 Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para 39.  
334 Exh.1063.001, IOMS Report, AY, tendered 28 October 2017.  
335 Exh.1064.001, Extract of use of force register, tendered 28 October 2017.  
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- 337 Exh.053.029, Annexure 19 – Own Initiative Investigation Report: Services Provided to NT Department of Correctional Services to Don Dale Youth Detention Centre, Alice Springs Youth Detention Centre, to Statement of Dylan Voller [REDACTED], 25 November 2016, tendered 14 December 2016, Attachment A
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- 346 Exh.065.001, Statement of Jamal Turner, 21 February 2017, tendered 13 March 2017, paras 59-63.
- 347 Exh.076.001, Statement of Derek Tasker (Responsive to AV), 12 March 2017, tendered 14 March 2017, paras 20-25; Exh.280.001, Statement of Barrie Clee, 12 March 2017, tendered 31 March 2017, para. 14.
- 348 Ex 70.014, IOMS Report
- 349 Exh.825.001, 9 – Part – Predict Assess & Respond To Aggressive Behaviour – Participants Manual 3 Day Course – 2011 Edition, tendered 24 October 2017, p. 116.
- 350 Exh.102.001, Statement of BN, 14 February 2017, tendered 20 March 2017, para 62.
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- 360 Exh.140.014, IOMS Report, tendered 23 March 2017.
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- 364 Youth Justice Act (NT), s. 151AA.
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- <sup>453</sup> Exh.986.001, Don Dale Youth Detention Centre Body search register, tendered 28 October 2017, pp. 6634-6635, 6649, 6641; Exh.988.001, Don Dale Youth Detention Centre Body search register, tendered 28 October 2017, pp. 5847, 5851, 5853, 5858-5860, 5864-6865, 5868, 5870, 5875, 5877, 5890-5891.
- <sup>454</sup> Exh.986.001, Don Dale Youth Detention Centre Body search register, tendered 28 October 2017, pp. 6634-6635, 6649, 6641; Exh.988.001, Don Dale Youth Detention Centre Body search register, tendered 28 October 2017, pp. 5847, 5851, 5853, 5858-5860, 5864-6865, 5868, 5870, 5875, 5877, 5890-5891.
- <sup>455</sup> Exh.984.001, Don Dale Youth Detention Centre Body search register, tendered 28 October 2017, pp. 7070, 7096, 7099, 7101-7103, 7114, 7116, 7120-7121, 7132, 7137, 7142, 7145-7146, 7147-7148, 7160, 7162, 7181.
- <sup>456</sup> Exh.102.001, Statement of BN, 14 February 2017, tendered 20 March 2017, para. 66.
- <sup>457</sup> Exh.245.009, Exh.245.010, tendered 31 March 2017.
- <sup>458</sup> Exh.984.001, Don Dale Youth Detention Centre Body search register, tendered 28 October 2017, p. 7191.
- <sup>459</sup> Exh.741.195, Annexure 195 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017.
- <sup>460</sup> Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, para. 16; Transcript (closed session), BH, 21 March 2017, p. 14: lines 1-20.
- <sup>461</sup> Exh.141.003, undated, tendered 23 March 2017
- <sup>462</sup> Exh.741.101, Annexure MP-101 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017.
- <sup>463</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 34; Closed Court Transcript, AY, 9 May 2017, p. 14: lines 11-31.
- <sup>464</sup> Exh.342.017, Floor Plan of DDYDC, tendered 9 May 2017.
- <sup>465</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, paras 35-36.
- <sup>466</sup> Exh.927.001, Statement of AP, 21 March 2017, tendered 26 October 2017, para. 23.
- <sup>467</sup> Youth Justice Regulation 2016 (Qld) s. 25.
- <sup>468</sup> Youth Justice Regulation 2016 (Qld) s. 25.
- <sup>469</sup> Exh.139.001, Statement of AB, 1 March 2017, para 48; Closed Court Transcript, AB, 23 March 2017, p. 49: lines 44-46.
- <sup>470</sup> Transcript, Barrie Clee, 15 March 2017, p. 1137: lines 25-40.
- <sup>471</sup> Transcript, Barrie Clee, 15 March 2017, p. 1137: lines 25-30.
- <sup>472</sup> Exh.024.025, Australian Children's Commissioners and Guardians: Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices, April 2016, tendered 13 October 2016, p. 53.
- <sup>473</sup> See, for example <http://www.abc.net.au/news/2016-09-22/young-inmates-strip-searched-cleveland-youth-detention/7867718>.
- <sup>474</sup> See the evidence of BR, Dylan Voller, BQ, AY, a female detainee, BN, AX and AV discussed in the section 'Physical contact with the neck and head area'.
- <sup>475</sup> See the evidence of BR, BE, AB, AM, BA, BN, BH and BA discussed in the section 'Ground stabilisation'.
- <sup>476</sup> See the evidence of Dylan Voller, a female detainee, AP, AG, AS, BH, BV and BV discussed in the section 'Application of body weight to vulnerable areas'.
- <sup>477</sup> See the evidence of AX, AY, AN, AQ and Dylan Voller referred to in the section titled 'Inappropriate contact'.
- <sup>478</sup> See the evidence discussed in the section regarding restraints used for internal escort purposes inside the detention centre.
- <sup>479</sup> See the evidence of AY referred to in the section 'Restraints used for extend periods of time'.
- <sup>480</sup> See the evidence of Dylan Voller referred to in the section 'Spit hoods'.
- <sup>481</sup> See the evidence of multiple detainees discussed in the section 'Body searches'.
- <sup>482</sup> Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, Article 37.
- <sup>483</sup> Australian Human Rights Commission, Australia's commitment to children's rights and reporting to the UN, <<https://www.humanrights.gov.au/publications/australias-commitment-childrens-rights-and-reporting-un>> accessed 6 November 2017.
- <sup>484</sup> Exh.825.001, 9 – Part – Predict Assess & Respond To Aggressive Behaviour – Participants Manual 3 Day Course – 2011 Edition, tendered 24 October 2017, p. 112.
- <sup>485</sup> Exh.824.001, 3 – Part 2004 Edition – Predict Assess & Respond To Aggressive Challenging Behaviour – Participant Manual, tendered 24 October 2017, Introduction, p. 0573.



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- <sup>486</sup> Exh.053.027, Annexure 17 to Statement of Dylan Voller, 12 February 2015, tendered 14 December 2016, p. 75.
- <sup>487</sup> Transcript, Benjamin Kelleher, 21 March 2017, p. 1569: lines 17-18.
- <sup>488</sup> Transcript, James Sizeland, 28 March 2017, p. 1962: lines 30-37.
- <sup>489</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 15.
- <sup>490</sup> Exh.053.027, Annexure 17 to Statement of Dylan Voller, 12 February 2015, tendered 14 December 2016, p. 75.
- <sup>491</sup> Youth Justice Act (NT), s. 151AA.
- <sup>492</sup> Youth Justice Act (NT), s. 151AA.
- <sup>493</sup> Youth Justice Act (NT), s. 151AB.
- <sup>494</sup> Exh.033.004, Annexure C – Use of Restraints Determination, 30 November 2016, tendered 6 December 2016.
- <sup>495</sup> UK Joint Committee on Human Rights, Conclusions and Recommendations, Eleventh Report, para 10. accessed online: <https://publications.parliament.uk/pa/jt200708/jtselect/jtrights/65/6508.htm>
- <sup>496</sup> UK Joint Committee on Human Rights, Conclusions and Recommendations, Eleventh Report, para 8, accessed online: <https://publications.parliament.uk/pa/jt200708/jtselect/jtrights/65/6508.htm>, para. 8.
- <sup>497</sup> Youth Justice Regulation 2016 (QLD) s 16, Children and Young People Act 2008 (ACT), ss 223-225.
- <sup>498</sup> Exh.269.002, Annexure VW-1, 12 September 2016, tendered 31 March 2017, ss. 10.4-10.5.

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ISOLATION



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# ISOLATION

## INTRODUCTION

*'I felt like I was going to die in that BMU ... I often wanted to hurt myself, and I would bang my head against the wall of the cell. I tried to tie the sheets around my neck to hang myself. One of the guards saw me on the camera and came in and told me to stop doing it ...*

*Once things got really bad in the BMU and I told the guards that I wanted to kill myself ...'<sup>1</sup>*

Vulnerable witness BE

The *United Nations Convention on the Rights of the Child* reflects the principle that no child or young person, no matter their circumstances, should be subjected to torture or cruel, inhuman or degrading treatment or punishment.<sup>2</sup> This principle, stemming from the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* which is embodied in Australian law by section 274.2 of the *Criminal Code Act 1995* (Cth).

The Commission was confronted with the question whether some children and young people in detention in the Northern Territory had been subjected to this kind of treatment. The question arose during the Commission's tour of the small, concrete isolation cells of the Behaviour Management Unit at the former Don Dale Youth Detention Centre. Children and young people held in the cells experienced squalid conditions for up to 23 hours a day – often for days on end. They were deprived of natural light, and sometimes water, company, schooling, books and other basic stimulation.<sup>3</sup>

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This would likely meet any definition of treatment that is cruel, inhuman or degrading – possibly amounting to torture. It meets the definition of ‘solitary confinement’ – *‘the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day’*<sup>4</sup> – used by the United Nations Special Rapporteur in relation to torture and other cruel, inhuman or degrading treatment or punishment. The Special Rapporteur has concluded that any solitary confinement of a child or young person violates the *International Covenant on Civil and Political Rights and the Convention against Torture (ICCPR)*,<sup>5</sup> and should be abolished.<sup>6</sup> *The Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)* ‘strictly’ prohibit solitary confinement and ‘any other punishment that may compromise the physical or mental health’ of a child or young person.<sup>7</sup>

The *Youth Justice Act (NT)* permits – and during the relevant period, permitted – the ‘isolation’ of children and young people at a detention centre, for up to 72 hours, with the approval of the Commissioner of Correctional Services, to protect another person’s safety or ‘for the good order or security of the detention centre’.<sup>8</sup> It may be argued that isolation for those purposes is not punitive and thus does not fall within the prohibition in the *United Nations Convention on the Rights of the Child*. The Commission examined a number of isolation placements that looked remarkably punitive. In their effect, when used for disciplinary measures, most, if not all, breached the Havana Rules, to which Australia is a signatory.

The Commission’s investigations revealed that many children and young people in detention in the relevant period, including one aged just 10, spent periods of isolation in the cells at Northern Territory detention centres. Most former detainees who gave evidence to the Commission had been put in isolation – a number for lengthy periods, including longer than 72 hours.

Records showed that some estimates of the period of time they spent in isolation by some detainees was incorrect, which is not surprising. Some young people said time seemed to slow down in isolation:

*‘There is no clock ... you can’t see the outside from in there, except for the sky ... there was no time to see how long you was in there for.’*<sup>9</sup>

In other cases, records were unreliable or did not exist, so there was no way of knowing in each case how long a child was kept in isolation, and whether there was compliance with the law.

Records that do exist show a number of detainees spent periods in isolation far longer than 72 hours.<sup>10</sup> These included the six young people held in the Behaviour Management Unit in the former Don Dale Youth Detention Centre on the night of 21 August 2014. After 17 days in the Behaviour Management Unit, one of them, who was aged 14, ‘snapped’ and tear gas was used to quell the destructive behaviour that followed.<sup>11</sup> The Special Rapporteur considers 15 days to be the point at which solitary confinement becomes ‘prolonged solitary confinement’ and ‘of particular concern’, because this is when ‘some of the harmful psychological effects of isolation can become irreversible’.<sup>12</sup> Four of the young people had been confined, two to a cell, for 17 days, and the sixth was alone for six days. All six had been confined throughout those periods for 22 to 23 hours per day. None was told how long their isolation would last.

In the aftermath of the incident, the Children’s Commissioner investigated and found the presence of the young people in the Behaviour Management Unit did not comply with the requirements of section 153(5) of the *Youth Justice Act*.<sup>13</sup>

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The Commission uncovered further instances of inappropriate isolation. While it cannot determine the full extent of the breaches during the relevant period, it is confident that the misuse of isolation was systemic.

The number of children and young people who were isolated indicates it was commonplace, not the emergency measure that the Correctional Services' procedures manual said it should be. One young person spent so much of his time at the former Don Dale Youth Detention Centre in the Behaviour Management Unit that he 'pretty much 'lived' [there]'.<sup>14</sup> The records show this to be the case.<sup>15</sup>

The Department of Correctional Services at the time not only failed to ensure the law was complied with, it introduced a regime of 'behaviour management' that facilitated breaches of the law. Isolation for extended periods became a regular, but flawed and counterproductive, behaviour management technique. It kept young people who were difficult to manage in isolation, with centre management maintaining there were no other options available. But the Commission saw little evidence of any attempts to use therapeutic intervention to manage the behaviours. As a result, difficult behaviour often became entrenched and sometimes new challenging behaviours emerged as a result of confinement.

## THE WELL-KNOWN DANGERS OF ISOLATION

*'Kids should not be isolated when in detention. When it happened to me, it made me think and feel cold and played with my mind. It made me not care, even when I got out of gaol.'*<sup>16</sup>

Vulnerable witness AY

It was not just the duration of the isolation that was alarming. The conditions were disgusting and cruel. The stress and damage inflicted on the children and young people, some of it no doubt lasting, was distressing to hear and it should have been obvious at the time to the staff and managers responsible for their care. Twenty-five years ago, the *Royal Commission into Aboriginal Deaths in Custody: National Report (RCIADC)* noted the 'extreme anxiety suffered by Aboriginal prisoners committed to solitary confinement'.<sup>17</sup> It noted, 'it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention'.<sup>18</sup>

The harmful effects of isolation were well known long before the Royal Commission into Aboriginal Deaths in Custody was held.<sup>19</sup> In submissions to the Commission, the Human Rights Law Centre, North Australian Aboriginal Justice Agency and Central Australian Aboriginal Legal Aid Service all advocated for a complete prohibition on isolation for children and young people in detention, citing variously the fact that isolation constitutes cruel, inhuman or degrading treatment and the evidence of 'severe, long-term and irreversible effects on a child's health and wellbeing'.<sup>20</sup>

The Special Rapporteur has reported:

*'Negative health effects can occur after only a few days in solitary confinement, and the health risks rise with each additional day spent in such conditions ... Research*



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*further shows that solitary confinement appears to cause ‘psychotic disturbances’ a syndrome that has been described as ‘prison psychoses’. Symptoms can include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia and self-harm ...*

*Some individuals experience discrete symptoms while others experience a ‘severe exacerbation of a previously existing mental condition or the appearance of a mental illness where none had been observed before’. Still, a significant number of individuals will experience serious health problems regardless of the specific conditions, regardless of time and place and regardless of pre-existing personal factors.’<sup>21</sup>*

The Commission heard from experts about the harm caused by isolation. One spoke of the ‘endless’ harms. It is ‘counterproductive’, ‘psychologically damaging’ and ‘a very dangerous practice ... both for behaviour management ... and as a suicide prevention tool’, said one expert:

*‘It causes long-term psychological issues that prisoners and other people who are held in isolation may not recover from. There is a wealth of literature, which goes back to the 1950s, which says in one word: do not do this under any circumstance.’<sup>22</sup>*

The harms can be ‘more pronounced’ in children and young people.<sup>23</sup>

*‘While there are no studies that ‘look specifically at the effects of prolonged solitary confinement on adolescents, many experts on child and adolescent psychology [contend that solitary confinement] can cause or exacerbate mental disabilities or other serious mental health problems.’<sup>24</sup>*

The Commission heard that isolation is inappropriate for children and young people due to the risk of psychological harm to their brains when they are still developing.<sup>25</sup> The part of the brain that controls impulses, the prefrontal cortex, can be impaired permanently, limiting a child’s or young person’s impulse control.<sup>26</sup> The Commission heard that isolation situations involving ‘complete sensory deprivation’ are:

*going to exacerbate the likelihood of post-traumatic stress disorder ... Hallucination is possible. Complete stunting of normal development. And suicide ideation to the extent of self-harm will be a likelihood.’<sup>27</sup>*

The psychological effects can be amplified for Aboriginal children and young people, particularly those from remote communities, due to specific cultural needs.<sup>28</sup>

The Northern Territory’s Chief Psychiatrist told the Commission:

*‘Restrictive practices, such as seclusion and restraint, are highly traumatising to any young person subjected to them and especially to this population. Placing children and young people in seclusion leaves them with distressing thoughts and feelings, and with very few ways in which they can manage these. This practice is therefore significantly more likely to increase stress, distress and vulnerability. A culture of care, compassion and rehabilitation, in which young people are treated humanely, and where there are activities and supports in place for children, young people and staff, will reduce the*

need for these practices.

*Unless there is significant change to the system [including the use of isolation] it [is] likely that detention will continue to contribute to adverse mental health and social outcomes for young people.<sup>29</sup>*

At the very least, it is likely that extended periods locked down in isolation will result in harm and trigger troubling behaviours.<sup>30</sup> Dr Kelly Dedel, a US clinical psychologist specialising in juvenile detention, told the Commission of the experience in Ohio, where isolation was a ‘key response’ to violence in youth detention, with some young people spending 70% of their time in detention in isolation. This ‘deprived them of all the programs and services which were designed to help them deal with what was underlying the violence and only resulted in more violence,’ she said. ‘The kids emerged from isolation more angry, more frustrated, more hopeless.’<sup>31</sup>

It was a ‘cyclical problem’ – the response to the violence ‘added to the problem’.<sup>32</sup> Dr Dedel could have been describing the experience in the Northern Territory in the relevant period.

The evidence of young people echoed the feelings of anger and hopelessness, and revealed the harms isolation causes:

- *A lot of the kids at BMU were stressing out. They would get angry. I think that was because they were scared like me, and also hungry and thirsty.<sup>33</sup>*
- *When I was put in isolation ... it was really difficult for me. When you were in isolation, you were by yourself and I felt really alone. A lot of the time, the guards would not even be around to check up on me. They would just look and come back to check and leave again. There was no one I could talk to. Time seemed to go a lot slower in isolation. It would also be really frustrating, and all I could do to pass the time would be to walk around the edges of the cell over and over. Sometimes I would feel angry having to be in isolation, but mostly I just felt sad.<sup>34</sup>*
- *Being in isolation never made me want to act better. It made me angrier, and it felt like it was making me more mad inside my head. It ended up making it harder for me to be outside of detention. Almost all the times I hurt myself in detention was when I was in isolation – not long after I had got out or when they were threatening to put me in. I hurt myself because I was either so angry at being put in isolation or I would get so upset that [I] felt dying was better than staying in isolation.<sup>35</sup>*
- *All that time in isolation made it harder for me to be around people ... I still have nightmares about being in those rooms.<sup>36</sup> ... The whole time I was in detention I just felt that no one cared about me and that most of the people there hated me. I also had these crazy feelings of sadness and anger that I did not know how to deal with. I almost always felt either sad or angry, and also tired. Being in isolation just made everything worse. I look back now and I see the [former Don Dale Youth Detention Centre] and the [current Don Dale Youth Detention Centre] as evil places ... I want to give evidence about what happened to me because I don't want anyone else to go through what I went through during my time in detention.<sup>37</sup>*

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- *In 2014, I was only on remand but they still kept me in the BMU. I did not know why I was there ... I really wanted to get out of there. I was so sick of looking at the walls and cage. I felt I wanted to kill myself but I couldn't. I just hated the whole Don Dale...<sup>38</sup> When I was in the BMU, I tried to tell them 'we are only little kids'. In the cell, I would try to talk to them. I would cry but they didn't worry. They wouldn't care.<sup>39</sup>*

One young person said that at first, he tried to act tough to show that isolation did not affect him, but eventually on later placements he just stopped caring.<sup>40</sup>

The Australian Children's Commissioners and Guardians recently wrote:

*'Any use of seclusion on a child to the extent that it equates to solitary confinement is a matter of serious concern. Seclusion necessarily involves a very serious interference with the physical and psychological wellbeing of the child. It is almost impossible to reconcile seclusion with the 'best interests' of the child as it serves no integrative or rehabilitative objective. Children in detention are particularly susceptible to medical, social and psychological problems which can be seriously exacerbated by the use of seclusion cells or being left alone in their own cells for extended periods of time.'*<sup>41</sup>

The Commission heard that isolation can be used appropriately for 'de-escalation' and 'in response to an immediate threat to somebody's safety', 'not when a kid is just mouthing off at staff, but when the kid is agitated, when they're escalated, when they're threatening violence or just after a violent incident had occurred'.<sup>42</sup> Dr Dedel told the Commission the appropriate duration of the isolation varies for individuals and should be based on the child or young person's 'behaviour ... and readiness to return' to the group. Staff must assess this by interacting with the child or young person, and asking questions such as 'what happened, what triggered you, what skills could you have used, what got in the way of using those skills ... and how are you going to respond the next time you see that kid or staff or whatever it was that upset you?'<sup>43</sup> Dr Dedel explained that 'through that kind of assessment':

*'the staff get a sense of whether the kid can be returned safely. And that could be within 20 minutes or, for some kids who calm down more slowly, it could be a couple of hours. But seeing a kid in isolation for more than, say, four hours, raises some flags for me, that a kid can't get de-escalated in that period of time, and I would hope that mental health folks have been called to assist in those situations.'*<sup>44</sup>

While isolation is a 'very important security and safety tool for staff to have in the immediate aftermath of violence', it is 'absolutely' not appropriate to 'use it as a consequence' or sanction 'way after the fact'.<sup>45</sup>

The Australasian Juvenile Justice Administrators' Juvenile Justice Standards state that separation or isolation of a child or young person is to be used 'for the minimum amount of time necessary' and 'only in response to an unacceptable risk of imminent harm, escape and or in accordance with legislation'.<sup>46</sup>

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## THE LEGAL RESTRICTIONS

Section 153(5) *Youth Justice Act* and regulation 72 of the *Youth Justice Regulations (NT)* regulated the circumstances in which detainees could be isolated throughout the relevant period.<sup>47</sup>

Section 153, under the heading 'Discipline', provides:

1. *The superintendent of a detention centre must maintain discipline at the detention centre.*  
...
2. *If the superintendent is of the opinion that a detainee should be isolated from other detainees:*
  - a. *to protect the safety of another person; or*
  - b. *for the good order or security of the detention centre,*

*the superintendent may isolate the detainee for a period not exceeding 24 hours or, with the approval of the Commissioner, not exceeding 72 hours.*

The *Youth Justice Act* does not define the term 'isolate'.<sup>48</sup> The ordinary meaning applies: to 'place apart or alone; cut off'.<sup>49</sup> Section 153(5) therefore refers to the superintendent separating a child or young person from the rest of the detention population.<sup>50</sup>

Nor does the *Youth Justice Act* specify where or how a child or young person may be isolated or the conditions of the isolation. Regulation 72 provides that a detainee '*must not be isolated in a cell (emphasis added) except under section 153(5) of the Act*'.<sup>51</sup> Section 153(5) is not so limited. It concerns any form of isolation, without describing where it might occur.<sup>52</sup> Regulation 72 requires that a staff member monitor an isolated detainee continuously, either by physical observation or on closed-circuit television, and at least every 15 minutes, record observations in a journal.

The journal must contain a record of each period of isolation, including:

- the date and time the detainee was isolated
- the detainee's name
- the reason the detainee was isolated
- the time the on-call person in charge was notified and that person's name
- the name of the staff member recording the observations
- the date and time of exercise periods and 'ablutions'
- details of any approval by the Commissioner of Correctional Services for isolation exceeding 24 hours, and
- the date and time the detainee was released from the isolation cell.

The fact that exercise periods and ablutions must be recorded in the journal implies that a period of 'isolation in a cell' includes time out of the cell to exercise and wash. In other words, 24 hours of isolation does not necessarily mean being confined in the cell constantly for 24 hours.

The Commission was told there was no 'set process for review and some detainees would be on a

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placement for the full 24 hours. That would depend on their behaviour'.<sup>53</sup> A 24 hour placement in the Behaviour Management Unit generally involved confinement to a cell for 23 hours a day.<sup>54</sup>

## Procedures and Instructions Manual

The *Procedures and Instructions Manual* directed that detainees should only be placed in an isolation cell 'as a last resort' and where:

- their behaviour put the 'safety of staff, other detainees or another person in the detention centre at significant risk of harm', and
- 'persistent poor behaviour' had 'not been corrected through other behaviour management strategies' and was 'detrimental to the good order or security of the detention centre'.<sup>55</sup>

The terms of the manual were essentially consistent throughout the relevant period.<sup>56</sup> It stated that isolation placements were 'regarded as an emergency response', 'should not continue beyond the period necessary to address the emergency' and when a detainee was placed in a cell, 'the focus must turn to overcoming the emergency and working towards the detainee's release from the cell'. The manual advised staff that 'negotiation' was a 'key strategy' for achieving this and 'establishing positive communications' and:

*'As early as possible benefits such as bedding or reading materials should be used to negotiate positive communication and empower the [child or young person] to improve his or her predicament.'*<sup>57</sup>

The instructions given about time out of isolation cells changed between the 2007 and 2011 versions of the manual. The 2007 version suggested four 30-minute periods of exercise, preferably outside, each day, subject to the detainee's behaviour.<sup>58</sup> The 2011 version stated that staff 'should endeavour to provide a minimum of one hour out of the cell on each shift', depending on the detainee's behaviour and their 'individual management plans', but it noted that 'times of ½ hour out of the unit per shift' may be appropriate.<sup>59</sup>

## Places of isolation

The location for isolating children and young people was not specified. In practice, at the former Don Dale Youth Detention Centre, security cells, colloquially known as 'the back cells' – which were distant from the individual cells or dormitories – were used. In 2012, those cells were renamed the 'Behaviour Management Unit' and detainees were sent there, as the name suggests, to have their unwanted behaviours managed under an Intensive Management Plan.

After relocation to the current Don Dale Youth Detention Centre in December 2014, detainees continued to experience isolation in C Block and, from mid-2015, in the High Security Unit.

The Alice Springs Youth Detention Centre has isolation cells, which were previously described as the Behaviour Management Unit but are now designated as de-escalation rooms.<sup>60</sup> Young people were also isolated at the former detention centre, Aranda House, after the move to the new facility in 2011. These places are discussed in detail below.

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## The power to isolate

The power to isolate a child or young person in a youth detention centre is limited. It must be exercised by the superintendent or a staff member to whom the superintendent has delegated the power in writing.<sup>61</sup> It is the Commission's view that section 153(5) of the *Youth Justice Act* is the only lawful mechanism by which a child or young person may be isolated in the Northern Territory.<sup>62</sup>

The superintendent can only exercise the power to isolate for one of two specific purposes:

- to protect the safety of another person, or
- to ensure the good order or security of the detention centre.

In either of these cases, the period of isolation must not exceed 24 hours.

The words '*good order or security of the detention centre*' are potentially broad but, like all legislatively granted power, must be exercised reasonably and for the purpose for which it was granted.<sup>63</sup>

Using isolation as a penalty or punishment is not specifically authorised by the *Youth Justice Act*.<sup>64</sup> To that extent, the *Youth Justice Act* embodies the prohibition in Article 37(a) of the *United Nations Convention on the Rights of the Child*, which requires that no child or young person, no matter their circumstances, should be subject to cruel, inhuman or degrading punishment. This is different to the adult system, where separation 'from other prisoners for up to 7 days' can be imposed as a penalty for misconduct.<sup>65</sup> The General Manager of an adult custodial correctional facility also has a broader power to '*separate a prisoner from other prisoners as the General Manager considers appropriate*'.<sup>66</sup>

Thus, for isolation of detainees to be lawful under the *Youth Justice Act*, certain conditions must be met:

- the superintendent, or their delegate, must form the opinion that isolating a child or young person '*from other detainees*' is necessary to protect another person's safety or to maintain the good order or security of the detention centre
- a reasonable basis for forming this opinion must exist. The superintendent must exercise the power reasonably and in good faith – not capriciously or for some other purposes
- the superintendent must not isolate a detainee for more than 24 hours
- beyond 24 hours, the approval of the Commissioner of Correctional Services is required. That approval is only valid for a further 48 hours of isolation
- due to the above, a detainee must not be isolated for more than 72 hours in one period of isolation. A continuous period of isolation that exceeds 72 hours is unlawful, and
- if a detainee is isolated for further periods, each of the above conditions must be satisfied on each occasion. In particular, the superintendent must consider afresh whether the specified circumstances exist. The detainee can be returned to isolation lawfully only if the superintendent

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forms a reasonable belief that one or both of those circumstances exist.

## The state of the records

The requirement under regulation 72 of the Youth Justice Regulations to keep records in an isolation journal means that it should have been possible to ascertain whether a period of isolation complied with these obligations. That was not always the case. In March 2014, the Professional Standards Unit found a lack of compliance with the requirements of regulation 72, including not recording the reason why the detainee was isolated by reference to the incident report number and one Behaviour Management Unit placement not recorded in the journal.

It is likely there was a consistent lack of compliance with regulation 72(g) during the relevant period, as there was no formal system for recording the Commissioner's approvals for 72-hour placements – and there was no place in the Behaviour Management Unit journal to record them.<sup>67</sup> The Commissioner's approval was generally sought and given orally or by email.<sup>68</sup> The General Manager of the detention centre told the Children's Commissioner 'he was not required to provide evidence for the Commissioner to consider'.<sup>69</sup>

The Commission's review of various isolation placement journals revealed that those journals were not commonly completed when a detainee was housed in the Behaviour Management Unit under an Intensive Management Plan, a separate regime that was seen as different from isolation under section 153 of the *Youth Justice Act* (discussed in greater detail below).<sup>70</sup> In such instances, the daily journal would record the detainee's accommodation in the Behaviour Management Unit, however details such as when and if recreation time was taken and why the detainee was housed in the Behaviour Management Unit were typically not recorded.<sup>71</sup>

Accordingly, the records often did not provide an accurate and complete picture of what was occurring in the Behaviour Management Unit.

## Email approvals for 72-hour placements

The Commission reviewed a sample of 11 emails relating to approvals for 72-hour placements from 2013 to 2015.<sup>72</sup>

In an email sent at about 8am on 4 July 2015, the superintendent of the current Don Dale Youth Detention Centre asked then Northern Territory Correctional Services Commissioner Ken Middlebrook to approve the isolation of two young people for 72 hours 'for the good order and security of the centre'. The Superintendent had put them on 24 hour placements at about 8pm the previous evening. The only information given in the email was that the young people had 'become non-compliant' and assaulted staff by spitting on them. Without diminishing the seriousness of assault by spitting, this information does not make it clear that the good order and security of the centre was at risk at the time of the request 12 hours after the incident, or if it was indeed at risk immediately after the incident occurred. The email said:

*'considering the circumstances and what we are trying to achieve here I recommend that the youths require a 72 hr placement.'*

This is not to suggest that the placement did not fall within section 153(5) of the *Youth Justice Act* but



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that the record does not obviously explain that purpose given the time lapse.

Mr Middlebrook's response, like each of the emails the Commission saw in which he approved a request to isolate a child or young person for 72 hours, was brief: 'Placement approved'.<sup>73</sup>

A request from the former General Manager, Russell Caldwell, to Mr Middlebrook on Christmas Day 2014 specifically said he wanted to isolate a young man at the current Don Dale Youth Detention Centre for 72 hours to 'set an example',<sup>74</sup> presumably to other young people Mr Caldwell suspected were 'plotting' an escape attempt.<sup>75</sup> The request was made and approved after a 'shank' was found in the detainee's room. Other emails on the same day indicate that Mr Caldwell and Mr Middlebrook were concerned that an escape attempt involving the use of weapons was 'potentially' being 'planned'.<sup>76</sup> In addition, a few days earlier, four young people had 'attacked' a staff member with a plastic chair and two got onto the roof of the Holtze Youth Detention Centre.

An email Mr Caldwell sent to former Executive Director of Northern Territory Youth Justice, Salli Cohen, on a Tuesday said he had sought Mr Middlebrook's approval to isolate a young person for 72 hours, partly because Mr Caldwell was going to be 'out of town until Friday'.<sup>77</sup> It is not clear from the description of events that isolating the young person for 24 hours was necessary to protect another person's safety, or for the good order and security of the detention centre. The email is reproduced in full for context and fairness:

*'When in his room [on the 24 hour placement the young person] smashed the in-room keyboard device ... It turns out the device has a very large piece of aluminium inside. [The young person] fashioned the metal into a shiv and was threatening staff if they came in.*

*The shift supervisor and senior [Youth Justice Officer] attempted negotiation. As a precaution I requested prison back up ... but at that time the prison was on lock down with their own incident.*

*Regular observations were instigated. I spoke/negotiated with [the young person] who asked me to come into the cell with him. I said I would be accompanied by two officers if he relinquished the weapon, leaving it at the door and return to the back of the room and lay face down on his stomach. He complied we entered the room cleared it of the weapon and debris.*

*I had a conversation with [the young person] who claims to be feeling anger due to his girlfriend also in detention and not having contact, I also suspect he is having withdrawal issues. [The young person] describes having significant feelings of anger coming on and unable to shake it.*

*Given the weapon and threatening staff etc. I sought the Commissioners [sic] agreement for a 72 hour placement as I am out of town until Friday. [The young person] will complete this in his current room and I will reassess on Friday.*

*I have informed [the young person] of the decision and informed him that I will escalate requests for a medical consult and for counselling. I informed [the young person] that he will not be permitted a TV but that books etc. will be made available. I will send a*

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message ... about getting someone to talk to him in the interim.

*[The young person] has become agitated again and has just now attempted to break his toilet seat to make a weapon. I have instructed that he be moved to a padded cell. Staff will need to take him to the toilet but at least he will have less chance to break things and make weapons.'*

This violent reaction could hardly have been a surprise to Mr Caldwell.

A similar approach to isolation was seen in most of the other sample emails. In most cases, approval to isolate a child or young person for the full 72 hours was requested and given immediately or shortly after an incident. No records seen by the Commission reveal that consideration was given to separating the young person for a short time, helping them to calm down, monitoring their behaviour and keeping them in isolation for no longer than was necessary to protect another person's safety, or to maintain order and security at the detention centre. Nothing in section 153(5) of the *Youth Justice Act* expressly mandates this approach or prohibits the approach that was taken, but the approach appeared to be well removed from what Dr Dedel considered appropriate in such situations, and was also inconsistent with the department's *Procedures and Instructions Manual*. The manual stated that isolation placements 'are regarded as an emergency response and should not continue beyond the period necessary to address the emergency' and when a child or young person is put on placement, 'the focus must turn to overcoming the emergency and working towards the detainee's release' from isolation.

In two series of emails in particular, it seems clear that approvals were given without any consideration of the circumstances at the time of the request.

On 22 December 2014, Mr Middlebrook approved a request from Mr Caldwell to isolate two young people for 72 hours after they were involved the day before in an 'attack on [a] staff member' using plastic chairs. They also attempted to get onto the roof of the Holtze Youth Detention Centre. The email said the staff member 'received minor injuries to his hands' and charges 'would be progressed'. However, Mr Caldwell's request to isolate the young people for 72 hours did not give any information about the circumstances that then existed or the young people's behaviour at the time of the request. It also did not suggest why further isolation was necessary to protect another person's safety, or for the good order and security of the detention centre. The information related only to the events of the day before which were very serious and were well known to the Commissioner.<sup>78</sup> The Commission cites this to draw attention to the apparent failure to reflect upon and record the reasons afresh for this second placement request. It is the failure to record the reconsideration of the need to further isolate which can lead and in some cases did lead to 'rolling' 72 hour placements.

As an example, twenty minutes after Mr Middlebrook gave approval, Mr Caldwell asked for approval to isolate a third young person who was also involved in the incident and had just been returned to the detention centre after a period at the adult prison. Mr Caldwell's email said only:

*'Thank you.*

*This morning [AS] has been returned from the prison to the centre also seeking approval to put him on a 72 hour placement.*

Russ<sup>79</sup>

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This email gives the impression that isolation was an automatic measure, without any assessment of the present circumstances or young person's state after being in the adult prison. Mr Middlebrook's response, about two hours later, was: 'Approved'.<sup>80</sup>

On another occasion, in January 2015, then Assistant General Manager of the current Don Dale Youth Detention Centre, Barrie Clee asked Mr Caldwell to seek approval to isolate a young person for 72 hours soon after a 'serious assault' in which the young person punched a staff member in the eye. The email stated that Mr Clee had put the young person in isolation for 24 hours. As the end of the 24-hour period approached, Mr Clee had still not received a response from Mr Caldwell. Mr Clee repeated the request to Mr Caldwell, giving the same information as 24 hours earlier. Mr Caldwell then sought Mr Middlebrook's approval, simply reproducing Mr Clee's description of the incident from the previous day. No information was given, and there is no evidence that Mr Middlebrook asked any questions about the circumstances that existed at that time. Mr Middlebrook simply responded: 'Placement approved'.<sup>81</sup>

These emails, and the sample as a whole, while limited, suggest an approach to the use of isolation and to the interpretation of the legislation that was not consistent with the department's own procedures manual described above which existed to protect children and young people.

There was no proper procedure in place for documenting the authorisation of 'cell placements'.<sup>82</sup> Mr Caldwell told the Commission that when he was superintendent of the former Don Dale Youth Detention Centre, he generally approved 24 hour placements verbally, usually by phone, at the request of a shift supervisor or the most senior person at the detention centre.<sup>83</sup> The decision was not necessarily recorded in writing.<sup>84</sup>

In 2015, the Children's Commissioner reported that youth justice officers 'consistently stated in their interviews [in late 2014] that they were unaware of the procedure for obtaining approval to isolate young persons in the BMU and relied upon instructions from shift supervisors'.<sup>85</sup> Not all shift supervisors were 'aware of who could authorise this type of placement'.<sup>86</sup>

## THE BEHAVIOUR MANAGEMENT UNIT

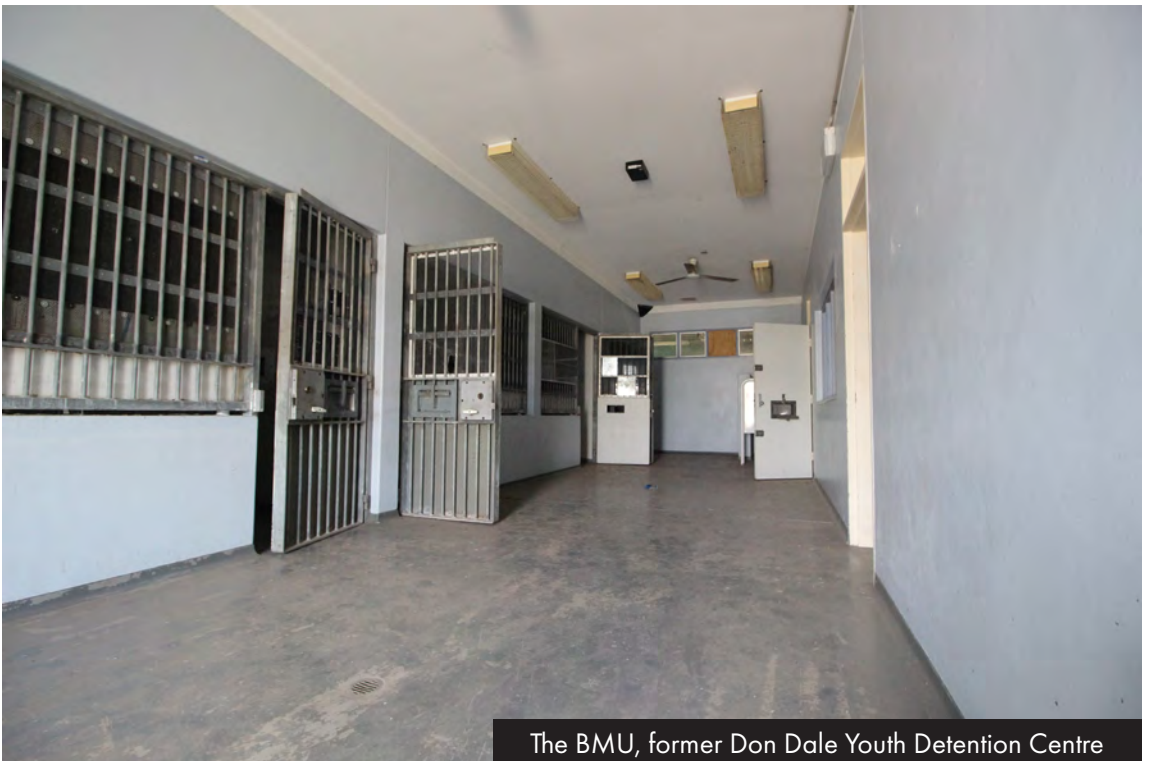
The Behaviour Management Unit was a collection of isolation cells separate from the mainstream cells of the former Don Dale Youth Detention Centre. Before 2012, the isolation area was called 'the security cells' and was widely known as the 'back cells'. In this chapter, it will be identified as the 'back cells' for the period until 2012. At this time, the name changed to the Behavioural Management Unit, and that change is important in understanding management's approach to its legal obligations under the *Youth Justice Act*.

It was a horrible place,<sup>87</sup> 'totally inappropriate' for any youth detention situation.<sup>88</sup> Witnesses who were former detainees, staff members and visitors, including Ministers, struggled to find words graphic enough to describe the ghastliness of the block.

It contained five concrete cells, about two and a half metres by three metres in size, which adjoined an internal 'exercise yard' that was more like a wired corridor, with an open shower at one end. A



The BMU, former Don Dale Youth Detention Centre



The BMU, former Don Dale Youth Detention Centre

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detainee showering in the exercise yard, could be seen from the cells:

*'The other kids could see us. It made me feel shame.'*<sup>89</sup>

Heavy doors with metal bars, screen mesh and a hatch opened from the cells onto the 'exercise yard'. These doors could only be opened from the outside with a key. There was no handle on the inside of the doors. Occupants could see the exercise yard through the metal mesh screen that covered the front of the cells, which were windowless and had no natural light. The only natural light came through a bank of high, narrow windows at one end of the 'exercise yard'. The cells were lit by harsh fluorescent lights.

The cells were very hot and had neither air conditioners nor fans, although there were two ceiling fans in the 'exercise yard'. There was no fresh water in the cells, so detainees could not wash their hands after using the toilet in their cell, which had no seat or lid.

There was nothing in the cells except the toilet and a mattress on a 'concrete slab' that constituted the bed. At times, the mattress would be taken away:<sup>90</sup>

*'The guards would take everything from the back cell before you came in, mattresses, sheets, pillows and you would be left in there with nothing. There was nothing to do in the cells. You would go mad. Because you were so bored, you would just sleep all of the time. When I was in the back cells I felt that this was not fair. We shouldn't be in the back cells like this. We were only kids.'*<sup>91</sup>

Behaviour Management Unit journals repeatedly record detainees just lying on their beds or on the bare concrete slab. Usually, detainees had nothing to do in the cells. Occasionally, they would be given playing cards or something to read. Otherwise, apart from a radio playing into the cell at the discretion of staff, there was nothing to occupy the detainee or to engage their mind:

*'They locked us in those cells all day ... so we had no basketball, and no school and no time to talk to anyone.'*<sup>92</sup>

The Commission heard that before 2011, the back cells were used rarely and only for 'de-escalation' 'in extreme cases of violence'.<sup>93</sup> This is consistent with the *Procedures and Instructions Manual*, which said 'cell placements' were an 'emergency response and should not continue beyond the period necessary to address the emergency'.<sup>94</sup>

The detainees involved in the incident labelled a 'riot' on Boxing Day 2011 were placed in the back cells. Thereafter, they appeared to be used more frequently to control behaviour.

The Commission heard that the cells were also used for purposes other than isolation, including:

- for 'short-term accommodation', when the detention centre was overcrowded<sup>95</sup>
- to 'house a female detainee away from male detainees',<sup>96</sup> and
- as alternative 'at risk' accommodation when the regular at risk accommodation was full.<sup>97</sup>

While these uses of the Behaviour Management Unit may not have been covered in section 153(5) of the *Youth Justice Act*,<sup>98</sup> it is concerning that any detainee, especially one at risk of self-harm, could

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be accommodated in such appalling conditions. These unacceptable situations arose because, as discussed in Chapter 10 (Detention facilities), the infrastructure at the former Don Dale Youth Detention Centre was not adequate for the number of detainees housed there, both male and female, and for the rehabilitative purposes of the *Youth Justice Act*.

## Conditions in the Behaviour Management Unit

Ten days before the tear-gassing incident in the Behaviour Management Unit on 21 August 2014, lawyers from the North Australian Aboriginal Justice Agency (NAAJA) were shown around the former Don Dale Youth Detention Centre. The Department of Correctional Services organised the tour to demonstrate why it was necessary to move detention centre operations to the old adult prison at Berrimah see (Chapter 10 (Detention facilities)). The tour was also designed *'to demonstrate that the BMU was highly unsuitable'*.<sup>99</sup> This was the first time the visiting lawyers had seen the Behaviour Management Unit. One lawyer described the experience to the Commission:

*'My memory is being led through the BMU, almost on the way to somewhere else and we came into the area. I can remember it was dark and dank. It smelt bad ... foul smelling ... I was with [colleagues] and I can't remember which of the Corrections Officers were with us, but they were leading us through and I remember us sort of pausing and looking at each, and saying 'Hang on sec, are there kids in there?' Because it was, it was dark, but we could just make out some movement or see something. So, we asked the guards and they confirmed that this, that's where kids were being held, and we were – we were frankly shocked. I was frankly shocked that there were – that there were kids in there ... it felt like a dungeon. It felt draconian.'*<sup>100</sup>

The lawyer wrote to Mr Middlebrook the next day expressing his concern. The North Australian Aboriginal Justice Agency complained to the Children's Commissioner, who later investigated the events of August 2014.<sup>101</sup> During the investigation, detention centre staff told the Children's Commissioner what they thought of the Behaviour Management Unit:

*'dark, dingy, repressive ... in-humane ...'*<sup>102</sup>

*'The BMU stinks. It is revolting. I would not like to be in there for 72 hours.'*<sup>103</sup>

One youth justice officer called it a *'shithole'*.<sup>104</sup> Another said he would have gone *'insane'* if he had been isolated in the Behaviour Management Unit.<sup>105</sup>

The Commission heard similar evidence of the dreadful conditions from former staff and managers, who used terms such as *'horrible'*,<sup>106</sup> *'horrid and oppressive'*,<sup>107</sup> *'totally unacceptable'*,<sup>108</sup> *'disgusting'*,<sup>109</sup> and *'a disgrace'*.<sup>110</sup> Ms Cohen said:

*'The whole of the BMU gave me great concern and any period of time of a young person being held in it was inappropriate. I don't believe you can say otherwise ... the BMU is totally unsuitable ... it's not an environment that you want a young person in.'*<sup>111</sup>

It was widely accepted that the Behaviour Management Unit was unfit for occupation by any person, whether an adult or a child.<sup>112</sup>



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The smell and filth were gone when the Commission inspected the Behaviour Management Unit in December 2016 to get some sense of what it must have been like for the young people kept in those conditions, but the names children and young people had carved into the concrete walls were still there. Some of them gave evidence of what it was like:

*'The cells were dirty and disgusting. There were spit balls in the cell that I was in and I felt unclean. I felt so unhealthy.'*<sup>113</sup>

*The back cells were the worst places ... They were so hot ... they stunk ... When I was in the back cells, I felt like I was going mad. I would bang on the bars of the cell, like I was a caged animal, a monkey.'*<sup>114</sup>

*It was not good in there. There wasn't any fresh air and the shower was right outside the cells so you could see a person showering from them ... There was no air conditioning ... only one big fan for four cells ... There was only one window to the outside from the BMU, but you couldn't see people through the window because it was high up. You're only looking up at the sky, as it was quite a little window close to the ceiling.'*<sup>115</sup>

*The cells look like pet cells ... It wasn't a place for a kid to be for a day or two or three.'*<sup>116</sup>

*The back cells ... were awful. They were tiny and narrow ... The whole cell stank. The cells were really hot. There were no windows, you couldn't see the sun or sky.'*<sup>117</sup>

It is unlikely that anyone could think spending time confined in those conditions would improve a detainee's behaviour, let alone a superintendent charged with the 'physical, psychological and emotional welfare of the detainees.'<sup>118</sup>

## Isolation to manage behaviour – the Intensive Management Plan Directive

In August 2011, the Commissioner of Correctional Services issued the 'Intensive Management Plan Directive', which applied to adult and juvenile custodial operations.<sup>119</sup> The language throughout the directive was aimed at adult correctional facilities, with the only acknowledgement that it was also intended for children and young people being in the definition of 'prisoner' – 'prisoner', 'for the purposes of this Directive includes juvenile detainees.'<sup>120</sup> The purpose of the directive was to provide 'a framework to support the assessed risks and needs of a prisoner who [was] not at risk but cannot be managed within the mainstream prison population'.<sup>121</sup>

The legislative authority for managing juveniles pursuant to the directive was described as sections 151 and 152 of the *Youth Justice Act*. These provisions contain a superintendent's general obligations and powers to maintain order and ensure the safety of all within a detention centre.

Where a prisoner's 'attitude, conduct and behaviour continually jeopardise[d] the good order and security of a prison [or] threaten[ed] the health and safety of staff, other prisoners or themselves', the directive authorised imposing particular regimes 'for management purposes'. These might include housing the prisoner in an area away from other prisoners – in isolation – and removing certain privileges as well as limiting time with the general prison population.



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As a result, the back cells at the former Don Dale Youth Detention Centre came to be used to manage behaviour.<sup>122</sup> In 2012, the cells were named the 'Behaviour Management Unit'. Mr Caldwell offered the explanation that one purpose of the name change was to distinguish the cells in the minds of both detainees and staff from the type of cells that someone would be held in at the police station or at court.<sup>123</sup> As was discussed earlier in relation to other changes of nomenclature see Chapter 10 (Detention facilities), the nature and use of the facility remained the same. In the circumstances it is unclear whether the rebadging was for a legitimate purpose or rather intended to disguise reality. By then, isolation was no longer an exceptional practice used in emergency situations and it had started to become a routine part of behaviour management. From 2012, use of the Behaviour Management Unit increased. More children and young people were placed in the Behaviour Management Unit and for longer periods, including for more than 72 hours.<sup>124</sup> This was thought to be legitimate under the terms of the Intensive Management Plan Directive.

## ***Terms of the Intensive Management Plan Directive***

The terms of the Intensive Management Plan Directive were inappropriate in a number of ways. Clearly, it was directed at adult prisoners – juveniles in a youth detention facility were an 'add-on', without any modification. Mr Middlebrook recognised that this use of an adult directive was inappropriate. He explained that it occurred 'because there was a lack of written directions within the youth justice system'.<sup>125</sup> He 'wanted to make sure there [was] at least ... some coverage'<sup>126</sup> and he was 'trying to ... get a number of directives standardised across the Department'.<sup>127</sup> He told the Commission:

*'In hindsight, looking at directives, I know a lot of these are probably not suitable for youth justice environments. Can I tell you that the starting point was a system where there was very few directives and operational procedures to start with. And what I was concerned about was that there wasn't a lot of directives for staff to tell them what they could and couldn't do, and I accept that it probably wasn't the best way to go about modifying those directives because I'm the first to admit that there is a difference between running adults and juveniles but at the time we were a very, very small lean organisation.'*<sup>128</sup>

'Cutting and pasting' directives used in adult corrections for use in youth detention brings the risk that the directives do not sufficiently account for the different focus and purpose of youth detention. That is precisely what happened on this occasion.

Although isolation was one of the 'regimes' that could be applied under the Intensive Management Plan Directive and the directive used similar language to section 153(5) of the *Youth Justice Act*, it did not source its power from that provision, which is the only authorised way to isolate a child or young person.

The directive gave managers wide discretion.<sup>129</sup> On its face, it permitted isolation together with removal of all privileges for two months,<sup>130</sup> though policy allowed for the Intensive Management Plan to be reviewed earlier if there was an improvement in behaviour. It allowed 'flexible out of cell time', but did not refer to any minimum out-of-cell time. Mr Middlebrook told the Commission that, in hindsight, the directive should have referred to the time limits in the *Youth Justice Act*.<sup>131</sup>

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The terms of the directive created a high risk that young people in youth detention would be isolated in breach of the strictures the Act imposed to protect them. That is what occurred.

## *Use of the Intensive Management Plan Directive*

Managers believed the Intensive Management Plan Directive gave them wide discretion. In an email in August 2012, an Assistant General Manager expressed the view that the directive *'allows us to isolate and manage any detainee's behaviour as we see fit'* and that the plans themselves were *'fully flexible management plans'*. He added:

*'We have in the past copped a bit of flak from external agencies, as there have been a few complaints raised by detainees, but the directive fully covers us with these flexible plans.'*<sup>132</sup>

In evidence, Mr Middlebrook suggested to the Commission this was a *'poor interpretation'* of the Intensive Management Plan Directive and inconsistent with how he expected it would be used.<sup>133</sup>

The Assistant General Manager was not asked to respond to Mr Middlebrook's comment, however the email cited does demonstrate the problems that can arise when a youth system is grafted on to a system for adults.

Two former Assistant General Managers at the Don Dale Youth Detention Centre, James Sizeland and Michael Yaxley, explained to the Commission how the Intensive Management Plan Directive was applied. They understood it allowed them to hold detainees in the Behaviour Management Unit beyond the 72-hour time limit set out in the *Youth Justice Act*.<sup>134</sup> These additional periods spent in the unit were seen as different from isolation under the *Youth Justice Act*; therefore, they did not need to seek the Commissioner's approval.

After a 72-hour placement under section 153(5) of the *Youth Justice Act*, some detainees, if not returned to the general population, started an *'IMP placement'* in the Behaviour Management Unit, with the aim of phasing them back into the main detention population, depending on improved behaviour.<sup>135</sup> As one young person explained:

*'Once you were in the BMU, you were meant to go on a 'management plan'. A management plan would be a way for you to get out of the BMU. If you followed the steps on the management plan, you would be allowed out of the BMU.'*<sup>136</sup>

The Children's Commissioner was told *'it was common for young persons to remain in the BMU for periods exceeding 72 hours if their behaviour did not improve'*.<sup>137</sup>

A detainee's behaviour in the Behaviour Management Unit determined how long they would be confined to their cell. This might be for 23 hours each day before they were allowed more and more time out of the unit, in accordance with the Intensive Management Plan.<sup>138</sup> The unit might only be used *'as a place to stay overnight'*, or, as Mr Yaxley described it, *'as a bedroom'*, with the detainee attending school, participating in activities and having recreation time during the day, then returning to the unit to *'reside back in [the] cell for a period of time'*.<sup>139</sup>

Behaviour *'within the BMU and out'* determined whether and when the detainee would be permitted to return to the general detention population.<sup>140</sup> Misbehaviour, such as assault, could result in the

Intensive Management Plan placement ‘reverting’ back to a ‘cell placement’.<sup>141</sup> Therefore, staff distinguished between two kinds of placements: the 24 hour or 72 hour isolation placements under section 153(5) of the *Youth Justice Act*, which were subject to its limitations, and placements under an Intensive Management Plan, which they considered were not covered by the isolation provisions in the *Youth Justice Act*. To the detainee, there was no difference. An email from Mr Caldwell to Mr Middlebrook and Ms Cohen in 2014 said the practice at the former Don Dale Youth Detention Centre of placing a child or young person ‘on an IMP’ and housing them ‘separately in the BMU cells but not actually on [an isolation placement]’ was ‘long standing’.<sup>142</sup> Mr Middlebrook told the Commission that he was unaware of this as a longstanding practice.<sup>143</sup>

Using expressions such as ‘IMP placements’ or ‘overnight accommodation’ did not change the fact that a child or young person was being isolated from the general detainee population. Isolation overnight was still isolation under the *Youth Justice Act*. Calling it something different, with a softer name, did not change what it was – isolation subject to the requirements of the *Youth Justice Act*.

An example of an ‘IMP placement’ in the Behaviour Management Unit in February 2012

While the Commission heard that ‘IMP placements’ in the Behaviour Management Unit happened after children and young people had been isolated for 72 hours under the *Youth Justice Act*, records produced by the Northern Territory Government indicate they also happened in other circumstances.

At approximately 8.30pm on 18 February 2012, AY was involved in a serious incident, threatening staff with a sharp object and injuring two youth justice officers. The police were called.<sup>144</sup>

At 8.45pm, an Intensive Management Plan was issued. It stated that AY was to be housed ‘in a room on his own’. In fact, he was put in a cell in the Behaviour Management Unit and the journal shows that he was placed in the cell for the next 70 hours and 15 minutes. During this period, he was allowed out of his cell on two occasions, each time for approximately 15 minutes, to shower and use the exercise yard.<sup>145</sup>

There is no evidence in the material the Northern Territory Government produced or in the Behaviour Management Unit journal of written approval being given to isolate AY in a cell in the unit for more than 24 hours under section 153(5) of the *Youth Justice Act*.

However, the Intensive Management Plan was set for review 72 hours after it was issued at 8.45 pm on 21 February 2012.<sup>146</sup> This suggests that the plan was used to ‘authorise’ placement and isolation of AY in the unit for a period of 72 hours, contrary to section 153(5).

## ***An ineffective, counterproductive and cruel form of behaviour management***

Not only was the use of the Behaviour Management Unit under an Intensive Management Plan not

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in accordance with the law, it was a seriously misconceived concept for behaviour management. Isolating detainees in the unit was highly unlikely to improve their behaviour. It is inconsistent with the therapeutic care that the research shows children and young people in detention need.<sup>147</sup> If anything, time in the unit was likely to exacerbate poor behaviour.<sup>148</sup> Young people told the Commission how being sent to the unit and being in the unit made them 'upset' and 'act up'.<sup>149</sup> The futility of isolating children and young people when it was unlikely to help them address the underlying causes of their conduct – or even assist in maintaining the good order of the centre when they were returned to the general detention population – should have been obvious to staff and management. This was acknowledged by at least one manager of a detention centre, who said that '*in a number of cases it was actually a waste of time*'.<sup>150</sup>

While not required under the Intensive Management Plan Directive, the pro forma Intensive Management Plan required sign-off from the Senior Case Worker, who typically was qualified and had experience in assessing the behaviours and rehabilitation needs of children and young people.<sup>151</sup> In June 2012, the Senior Case Worker sought to introduce a requirement in the Intensive Management Plans for 'out of cell time' and for 'counselling/mediation/restorative justice' to 'address what therapeutic service is being provided to the detainee'.<sup>152</sup> In practice, however, by 2014, the role of the Case Management Unit in the Intensive Management Plan process had been diminished (as discussed in Chapter 19 (Case management and exit planning)). Responsibility for the plans was entirely in the hands of Mr Sizeland, and the plans did not provide for therapeutic services.

The Children's Commissioner examined the Intensive Management Plans created for the children and young people isolated in the Behaviour Management Unit in August 2014, following an escape attempt. The Children's Commissioner found:

- Mr Sizeland did not keep a record of expired Intensive Management Plans, including copies of the plans before 21 August 2014, as his practice was to type over previous versions and destroy the hard-copy originals to prevent confusion
- the Intensive Management Plans were compiled without input from case workers or other relevant stakeholders
- there were no provisions within the Intensive Management Plans to address individual behavioural standards or behavioural triggers, and
- Mr Sizeland was not aware of the conditions set out in the Intensive Management Plan Directive.<sup>153</sup>

The Commission saw little evidence of thoughtful attempts to address the causes of misbehaviour. Sometimes a detainee was let out after a certain period, whether or not they had any insight into what they had done wrong.<sup>154</sup> Mr Sizeland was asked about the approach to addressing the escalating aggressive behaviour of AJ, who spent many lengthy periods in the Behaviour Management Unit. Mr Sizeland stated that he had previously spent a fair bit of time talking to AJ one on one, but when asked whether any attempt was made to look into the causes of his escalating behaviour and talk to him about it, he said:

*'At that time, no, I couldn't answer, I'm sorry.'*<sup>155</sup>

Even though the Intensive Management Plan was meant to improve behaviour and provide the way out of the Behaviour Management Unit, one young person said that sometimes detainees did not have a plan:

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*'Sometimes I would be in the BMU for weeks without any management plan. I would ask one of the guards when it was happening, but they would just say 'it's coming' and put it off. It would make me really upset because I didn't know how long I was going to be there for or how I could get out. It happened to a lot of us in the BMU. We would talk about it to each other while we were in the BMU. It was like we were on death row. It really blows your brains away.'*<sup>156</sup>

Intensive Management Plans did not include interventions that would help improve a child or young person's behaviour. The thinking appeared to be that behaviour would improve simply as a result of being placed in isolation. In many cases, on analysis of the records, the Commission found that of the plans that did exist, many were little more than pro forma, with no individualised development.

The case of AS was an example of using an Intensive Management Plan well beyond the intention of the directive. AS was very young when he was first detained at the former Don Dale Youth Detention Centre. He was effectively kept in isolation to separate him from older detainees for his safety.

AS spent 56 days at the former Don Dale Youth Detention Centre over different periods of detention. For most of this time, he was confined to his cell in the High Dependency Unit.<sup>157</sup> There was no bed and AS lay on a mattress on the floor.<sup>158</sup> He also spent one period in the Behaviour Management Unit for two days,<sup>159</sup> even though at least one Intensive Management Plan said AS was not to be placed in the unit at any time.<sup>160</sup>

AS had limited time out of his cell or contact with others. The Intensive Management Plans directed that he eat his meals in his room and spend his 'recreation time by himself' under supervision.<sup>161</sup>

Management did not consider this to be isolation under the *Youth Justice Act*. Conditions were put in place under the Intensive Management Plan Directive and Intensive Management Plans that said AS needed 'a management regime that will ensure he is protected from risk of harm by other detainees given his young age and vulnerability'.<sup>162</sup>

The Commission heard what the long periods of isolation, including in the Behaviour Management Unit, were like for AS and the effect they had on him.

*'Being isolated in the cells was boring, but it was also very lonely.*

*When I was in the [HDU] or in my cell all that time by myself, I would get stressed out and go silly in the head.*

*Being in isolation is awful. I would usually stress out a lot being by myself and hours could seem like days. When I got put in places like the BMU if I reacted, I knew things would just get worse. To pass the time, I would sleep as much as I could. There wasn't anything else I could do. My brain went blank being in isolation and I couldn't think about anything to pass [sic] the time. It was sort of like being a zombie. There were no photos, books, no magazines. The BMU was also hot. I was always felt [sic] sweaty and I struggled to sleep in the heat.'*<sup>163</sup>

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## Isolation as punishment

In the young people's eyes, they were put in the Behaviour Management Unit to be punished. One said it was the worst punishment they could get.<sup>164</sup> Others said they were put in the unit as punishment for 'doing the wrong thing', 'not doing what we were told' or 'getting into trouble',<sup>165</sup> even for minor infractions such as being smart, talking back or swearing.<sup>166</sup> Their evidence was supported by one youth justice officer, who believed the unit was being used for punishment,<sup>167</sup> though other witnesses disagreed.<sup>168</sup>

In 2012, a written direction was issued to staff in response to 'recent incidents of detainees swearing loudly ... and using abusive language'. It directed staff 'who note detainees using foul or abusive language other than in a quiet conversation between their peers' to apply 'sanctions', which included a 30-minute placement in the Behaviour Management Unit for 'a first offence', 60 minutes for a 'second offence' and two hours for a 'third offence'.<sup>169</sup>

Placement in the Behaviour Management Unit amounted to isolation. Using the unit in this way was clearly contrary to the Act. Such a drastic response to swearing – particularly given that a number of youth justice officers conceded that most of them swore<sup>170</sup> – was hardly necessary to protect another person's safety or maintain the good order or security of the detention centre. Staff were directed to use the unit for this purpose.

## Ignoring the law

In March 2014, the Northern Territory Government decided to move youth custody operations from the former Don Dale Youth Detention Centre to the old adult prison at Berrimah, where the current Don Dale Youth Detention Centre is located. For more information, see Chapter 10 (Detention facilities).

The inappropriateness of the Behaviour Management Unit was a large factor in the decision to move.<sup>171</sup> Yet, in the months leading to the relocation – which took place earlier than planned because of the teargassing incident on 21 August 2014 – the unit was used as secure accommodation and detainees who behaved abusively and/or violently were held there for extended periods because there was no other secure place to put them.<sup>172</sup> In the face of these difficulties, compliance with the law was given a low priority.

In an email to detention centre management in February 2014, a case worker raised serious concerns about 'the BMU being used as [an] accommodation unit' for a young person who had told her:

*'If I have to stay another night at the BMU I will go mad ... go mad and smash someone in here. It is too hot and there is no breeze in here.'*

The email said:

*'I have told you about this information yesterday. Tonight, I have again been told he is to remain in there again tonight. I would like to remind you all that I am concerned about the BMU being used as [an] accommodation unit ... which it was never designed to be used for ... I was told he was going there for one night in the BMU this has turned*

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*into two nights ... I was told that it was too late to move him last night. Again, tonight, I have been told he cannot be moved tonight as there is no beds in H Block and he is to remain there in the BMU. I also am aware there is legislation to protect detainees and inmates from being in segregation situations and considering [the young person] is under a lot of stress at the moment I do implore for better decisions to be made around this issue.<sup>173</sup>*

The following month, three young people were held in the Behaviour Management Unit after they were overheard discussing plans to escape. Two were released after 72 hours. The department sought urgent legal advice from the Solicitor for the Northern Territory about keeping the third young person, a 16-year-old, in the unit and asked whether the *Youth Justice Act* allowed 'recurrent periods' of 72 hours of isolation. The department proposed continuing to isolate the young person overnight 'as an accommodation placement', using an Intensive Management Plan, but allowing him to re-enter the general population during the day, and participate in school and recreation.<sup>174</sup> The department was concerned that the risk of escape would increase if the young person returned to an ordinary accommodation room at night.

The Solicitor for the Northern Territory advised that overnight accommodation in the Behaviour Management Unit constituted isolation, and raised concerns that the justification for the initial isolation and proposed continuation was not within the *Youth Justice Act*. The advice confirmed that 'no one period of isolation can extend beyond 72 hours' and, after each period of isolation, the 'Superintendent must assess the situation afresh'. The advice also stated that 'overnight isolation ... cannot be imposed as a blanket management strategy' or used to 'overcome a resource problem'. The Department would not be able to argue legitimately that isolation was necessary 'because of an insufficiency of resources to deal with the issue under an alternative management approach'.<sup>175</sup>

The advice put the department squarely on notice that the way it had been using the Behaviour Management Unit under Intensive Management Plans and as 'secure accommodation' was potentially unlawful. No further advice was sought and actions the detention centre management took in April 2014 to deal with two young people, and again in August 2014, to secure five young men who were returned to the detention centre after escaping, were contrary to the advice and to the *Youth Justice Act*. The Northern Territory Government now contends that the advice from the Solicitor for the Northern Territory was wrong.<sup>176</sup>

AJ was in the Behaviour Management Unit from 8–28 April 2014. On 9 April, Mr Middlebrook approved a 72-hour placement by email and said, 'if he is still a problem' after that 'take him out for a period, say 6 to 8 hours and put him back for a further 72 hours'.<sup>177</sup> Mr Caldwell could not recall whether AJ was taken out for such a period.<sup>178</sup>

Mr Middlebrook told the Commission that the email was not intended to be read as a blanket approval, and had followed a discussion with Mr Caldwell, which would have made the situation clear:

*'[T]he discussion went around that if in fact at the end of that first 72 hours there was still a problem, then get him out for a few hours, get him outside, get someone to talk to him and if it was still a problem, then put him back in.'*<sup>179</sup>

He said 'the way [he] expressed it' on the telephone would have made it clear that he was not



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accepting a 'rolling situation' of '72 hours, 72 hours, 72 hours', and emphasised that he had also suggested to Mr Caldwell that he should seek the court's approval to transfer the young man to the adult prison.<sup>180</sup>

Mr Caldwell was under a different impression. On 11 August, two days after Mr Middlebrook's email, Mr Caldwell referred in an email to discussions he had had with Mr Middlebrook. He said, 'In recent days' Mr Middlebrook had 'verbally indicated a willingness to agree to rotating 72 hour BMU placements for both detainees'.<sup>181</sup> Mr Caldwell was referring to AJ and Dylan Voller. Mr Caldwell's evidence to the Commission was that he 'welcomed' this offer of 'rotating 72 hour placements' as a way of managing the situation, including the risks to the young people and others.<sup>182</sup> This was despite the advice suggesting that this approach may be unlawful if the Commissioner had not considered the status afresh for each period. While obviously mindful of the terms of the *Youth Justice Act*, Mr Caldwell's main concern was managing the serious practical problems he faced, rather than complying with the *Youth Justice Act*.

*'What I also had to balance is the welfare of those people, the welfare of the other detainees and young people in a multiple ... scenario, so just letting people out into that mix where the escalating behaviour, the risk of violence, assault, confrontation is still there, I suggest, would be irresponsible. So I could say, 'Damn the consequences', and just let them out ...'*<sup>183</sup>

Mr Caldwell laid out his thinking in an email on 13 April 2014 to Mr Middlebrook and Ms Cohen, which foreshadowed needing 'permission every 72 hours' to keep managing AJ and Dylan Voller, whose behaviour presented a risk to the 'safety of staff and detainees' in the Behaviour Management Unit.<sup>184</sup> He referred to the 'long standing practice' of placing children and young people in the Behaviour Management Unit on Intensive Management Plans and the legal advice received in March 2014, and indicated a desire to use 'revolving periods of isolation'. Although lengthy, the email is worth setting out in full as it conveys, fairly, Mr Caldwell's concerns and acknowledges past practices:

*'I am keeping both in the BMU until a plan can be agreed and put in place. Questions may be asked about this but the safety of staff and detainees is at risk – and staff are looking to me for surety and leadership as many feel unsafe and intimidated.*

*There may be questions raised and there may be limits to the capacity of the [youth justice] system and legislation to deal with this situation but we cannot in good conscience simply return these two to the general population and dormitory accommodation.*

*In the past these offenders would have been placed on an IMP and house[d] separately in the BMU cells but not actually on a placement. This is a long standing practice at Don Dale. SFNT [the Solicitor for the Northern Territory] though have recently provided advice indicating this is may [sic] not be appropriate and that potentially it constitutes isolation which is limited by the [Youth Justice] Act. This would leave youth detention virtually powerless to manage such offenders. We simply do not have individual cells in which to keep these offenders separate. Again this is only advice and I am sure if it were tested against real time risk to detainees and staff alike. Ultimately the advice does conclude that revolving periods of isolation of 24 and*

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72 hours are permitted provided the Superintendent (in the case of 24hr) and the Commissioner (72) have considered the status afresh for each period.

Apart from the special needs HDU cells, [t]he BMU cells are simply the only proper cells we currently have where detainees can be kept separately, securely and where they do not need to be let out for the toilet. Moving these detainees anywhere at the moment presents significant risks to staff.

...

Jimmy [Sizeland] has suggested an alternative to moving these detainees, this would be to manage them out of the individual BMU cells at Don Dale, establish a regime and assign staff with the necessary skills to both manage security and to positively engage the behaviour issues ... As above I may need permission every 72 hours to keep the regime in place until we are satisfied the risk has been addressed.<sup>185</sup>

AJ and Dylan Voller were in the Behaviour Management Unit for a further 15 days after this email was written.<sup>186</sup> In total, Dylan Voller was in the unit from 9–28 April 2014.<sup>187</sup> No evidence of any approvals being granted after 9 April 2014 was produced to the Commission.

Mr Caldwell was cross-examined on the plan to manage AJ and Dylan Voller in the Behaviour Management Unit on rolling 72-hour placements. Again, his answers indicated that he was not focused on ensuring compliance with the *Youth Justice Act* but rather on managing the difficult ‘real time situation’ he faced:

*‘What I was coming at it from was the angle that there wasn’t any suitable safe or secure accommodation to meet the needs. So I wasn’t looking at it from the angle of isolation or punishment. I’m looking at it at the angle of where do you house young people with problems in a context where there is between three and six others in a room?... So I was trying to solve an accommodation problem. There wasn’t any suitable rooms to deal with people like this.’<sup>188</sup>*

He said the circumstances he was dealing with made it impossible to comply with the *Youth Justice Act*.<sup>189</sup>

Mr Caldwell used the same explanation for placing young people in the Behaviour Management Unit for periods of 15 and 17 days in August 2014, which led to the tear gassing incident on 21 August 2014.<sup>190</sup> The Commission accepts that the Department was not comfortable with holding the young people in the Behaviour Management Unit and tried to find alternatives.<sup>191</sup> However, as the advice to the Executive Director in March 2014 stated, these circumstances did not justify breaching the law.

Mr Middlebrook told the Commission he did not conduct 72-hourly reviews of the placement of the detainees in the Behaviour Management Unit in August 2014. He relied on advice from Ms Cohen that there was nowhere else to put them. He did not give any further approvals and was aware they were being held contrary to section 153(5) of the *Youth Justice Act*:

*‘Look, yes, I was aware, and also I was very much aware of the difficulty that we had*

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*in trying to place them elsewhere, and I was also mindful that during the time that those young people were in the community they ... had quite a criminal spree ... their behaviour in the community ... was fairly poor.*<sup>192</sup>

On 15 August 2014, Mr Middlebrook approved placement of Dylan Voller in the Behaviour Management Unit for a 72-hour period via email.<sup>193</sup> He was then held in the Behaviour Management Unit for six days, until the teargassing incident on 21 August 2014. No further approval was given. Instead, as the Children's Commissioner reported, after the 72-hour period ended, Mr Voller continued to be held in the Behaviour Management Unit under a 'management plan'.<sup>194</sup> The Children's Commissioner was also told that the five other young men held in the Behaviour Management Unit between 5 and 21 August 2014 were 'being housed in the BMU as part of a 'management regime', and not pursuant to s 153 of the Youth Justice Act'.<sup>195</sup>

Mr Caldwell confirmed in his evidence to the Commission that there was no 'cycle of approvals going on' and emphasised his view that these were not 'orthodox BMU placement[s]'. Rather, from his point of view, the issue was 'the lack of any alternatives to safely or securely accommodate' the young people anywhere in the Northern Territory.<sup>196</sup> He was asked if he had made an 'order' for a 24 hour placement for one of the detainees, AD, during this time. He answered:

*'No, but as I said ... the situation was a little bit different then. What anyone had ever envisaged in relation to emergency that we were at – finding ourselves confronted with. Our primary focus was on, every waiting [waking] minute, including in the weekends, was around getting the paperwork and the legal requirements up to the Minister and up so that we could get – get them out of there. We were all pulling in the same direction around it was undesirable for them to be there and that we needed them out of there.*<sup>197</sup>

The Northern Territory Government argued that the law was not breached because the detainees had not been 'isolated' within the meaning of section 153(5) of the Youth Justice Act, due to the following circumstances:

- a. *in a cell with another detainee, or in a cell on their own when another detainee or other detainees are placed in other cells in the BMU;*
- b. *taken out of the cell for only a limited, including a short, period each day;*
- c. *with the placement duration either defined at the outset, or undefined but not intended to be indefinite (eg contingent upon making works to render other accommodation secure and/or suitable, or upon securing an alternative detention location), and*
- d. *because the detainee has demonstrated, by their behaviour, that they cannot be securely or safely held in any other part of the centre (eg by escaping from the centre or by breaking into the roof cavity and thereby accessing other parts of the centre, including the rooms of other detainees).*<sup>198</sup>

In the Commission's view, segregation from the main detention population and confinement in isolation cells for 23 hours a day, sometimes for periods of some weeks even with another detainee in the same cell or other detainees confined in neighbouring cells, is isolation under the Youth Justice Act.

Whatever the legitimacy or otherwise of the use of the Behaviour Management Unit for behaviour management, its use was detrimental and did not improve the behaviour of those detainees. It was the view of Ms Cohen that the placement in the Behavioural Management Unit created the conditions that set off the serious incident on 21 August 2014.<sup>199</sup> No one could tell the detainees how long they would be kept there.<sup>200</sup> Very little, if anything, was done to reduce their stress or ameliorate the dreadful conditions.<sup>201</sup> It was no surprise to anyone that one of the young men ‘snapped’ on 21 August 2014 and a serious incident ensued.<sup>202</sup> A youth justice officer told the Children’s Commissioner:

*‘The kids kept asking if they could get out and management never had any answers for them and the detainees went off and I don’t blame them, I would have too. It wouldn’t have happened if they didn’t keep them in there for so long. It is horrible, it stinks ... you’ve got so many kids in there and they are all going to the toilet and they were sharing cells, it is not nice living arrangements or accommodation. I am surprised it didn’t happen sooner.’<sup>203</sup>*

The Commission acknowledges that the aggressive and destructive behaviour of some detainees was very difficult to bring under control and presented risks to the safety of staff, other detainees and, quite possibly, if they escaped, the community.<sup>204</sup> But extended isolation was not the way to address this behaviour and no doubt made it worse. The use of the Behaviour Management Unit in the months, weeks and days leading up to 21 August 2014 was an ‘absolute disaster’<sup>205</sup>

## **AJ in Isolation**

AJ, who is now deceased, was a young person with a family history that involved extreme domestic violence. AJ may have suffered the most isolation of any young person about whom the Commission has information. His friend AG said he ‘pretty much ‘lived’’ in the Behaviour Management Unit.<sup>206</sup> The records show this to be the case.<sup>207</sup> He was held in the Behaviour Management Unit often and for long periods. AJ’s mother, BZ, said:

*‘He got treated like a dog, left in the back cells all the time, never got let out.’<sup>208</sup>*

In one long period, he spent more than 30 days in the Behaviour Management Unit after an incident in September 2013 in which a group of young people broke into a roof cavity and caused extensive damage. AG was also involved in the incident and held in isolation during this time.

*‘When we were both out in the back cells we used to talk through the door that separated the boys and the girls. In 2013 he had a particularly bad time ... we spent a lot of time in cell placements ... Our cells were next to each other and we could speak to each other by calling out through the window.’<sup>209</sup>*

AG told the Commission about the changes they saw in AJ during his time in detention:

*‘Being in isolation for so long though sent AJ mad. He got worse and worse and then he just stopped caring at all.’<sup>210</sup>*

AM told a similar story:

*'Over time I saw AJ go from being an outgoing and friendly person to a reclusive person who was often in his room ... [W]hen I first knew him, he was friendly and we would go down to the oval to kick the footy around. After he had been in isolation a number of times, he seemed sadder. He told me that he was over being in Don Dale and [that] he was sick of the way that the guards would mistreat him, the way they would make him feel bad about himself and because of all the time he spent in isolation. I know from [my] own experience in isolation ... you feel more emotional when you go into isolation for a long time, your mood goes up and down, you feel angry, sad and then frustrated and you start talking to yourself after a while.'*<sup>211</sup>

AJ's mother watched him get sadder and sadder.<sup>212</sup>

In June 2014 AJ applied to be transferred to the adult prison because he could not bear to stay at the former Don Dale Youth Detention Centre any longer. AG was in court for AJ's matter:

*'He started crying and told the court that he refused to go to Don Dale. He kept asking the judge not to send him to Don Dale and to send him to the big house instead. Eventually the judge agreed to send AJ to the adults' prison. AJ was 17 years old at the time.'*

*... He told me that [he] liked the big house much more than in Don Dale.'*<sup>213</sup>

The submissions made to the Commission on behalf of AJ's mother made the point that those managing AJ should have foreseen that:

*'... leaving AJ in a cell alone, with little to nothing to do for hours, days and weeks on end, without any physical release, and with a great sense of injustice growing into despair, [he] would start to protest, and if there was no response to that protest, start to act out and to disrespect the entire system.'*<sup>214</sup>

The Commission does not seek to conclude that AJ's many placements in the Behavioural Management Unit were the sole cause of psychological distress. He was removed from the care of his family for his own safety. Such a background required skilled therapeutic intervention, not isolation.

## ISOLATION AT THE CURRENT DON DALE YOUTH DETENTION CENTRE

Following the relocation to the current Don Dale Youth Detention Centre in late December 2014, practices involving long periods of time under lockdown and isolation continued for detainees

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housed in the high security accommodation areas, C Block and the High Security Unit. Unlike the Behaviour Management Unit, which was a separate part of the former Don Dale Youth Detention Centre, the isolation cells at the current Don Dale Youth Detention Centre, now known as 'de-escalation rooms', were contained within these accommodation blocks. Isolation placements are now called 'de-escalation room placements'.

The Commission received evidence that young people who were designated with a high security risk classification and housed in C Block or the High Security Unit were subjected to extended and frequent lockdown periods. Those given de-escalation room placements were frequently locked in with minimal out-of-room time each day. These experiences were exacerbated by the poor physical conditions at the current Don Dale Youth Detention Centre.

## C Block

G Block was initially used as the high security accommodation area at the current Don Dale Youth Detention Centre. However, only a few weeks after the move to the new site in early January 2015, a serious incident in G Block resulted in significant damage to the area, which rendered it uninhabitable. The incident started when around five detainees barricaded themselves in the main wing area of G Block. The prison response team were then called in by staff. During the incident the detainees started a fire using a toaster causing some mattresses to catch fire and emit black smoke. The prison response team went in and removed all the detainees, and the fire was extinguished.<sup>215</sup> The young people involved in the G Block incident were then rehoused in C Block as it was deemed the only area capable of accommodating detainees with a high security risk classification.<sup>216</sup> The detainees involved in the incident were put on 72-hour placements in the C Block 'de-escalation rooms'.

C Block had not been used for some time before the relocation, when the facility was still an adult prison and in a state of disrepair. At the time of the decision to use C Block as alternative accommodation, Mr Caldwell was not aware that there was no running water in the cells because the pipes had been removed. As a result, while repairs were underway, staff had to continually take water to the cells for drinking, washing and flushing.<sup>217</sup>

AM spent a considerable period in an isolation cell between April and June 2015.<sup>218</sup> He described the C Block isolation cells as 'disgusting':

*'The cells did not have air conditioning and it was extremely hot. The cell and mattress was dirty, the buzzer did not work and the sheets I received smelt like piss. The only time I remember when those isolation cells were cleaned was when the guards would get us to clean rooms in exchange for going to the tuckshop. There was a bubbler in the cell but it was right next to the toilet and tasted really bad, like metal. In this way, there was no clean water provided within the cell so I had to ask the guards to bring me some water every time I was thirsty ... I often had a headache from the heat while I was in the cell.'*<sup>219</sup>

A Professional Standards Unit review found that the young people put on 'de-escalation placement' received very little out-of-cell time each day. It found that on the first day, 'none of the detainees ... appear[ed] to have received any significant out of cell time'. This included one detainee receiving only five minutes out of his cell. On the second day, one detainee received eight minutes and another

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received 30 minutes out of their cells. The remaining detainees, excluding those who went to court that day, received up to 1 hour and 45 minutes on the morning shift and 30 to 50 minutes during the afternoon shift out of their cells. The review found that this fell short of the standard set by the procedures at the time, which provided that *'staff should endeavour to provide a minimum one hour out of the de-escalation room per each [sic] shift'* excluding the night shift.<sup>220</sup>

Mr Caldwell conceded in evidence that the minimal out-of-cell time amounted to a breach of policy. However, in response to the Professional Standards Unit's findings, he sought to explain that this breach was a result of staff working under difficult circumstances. As staff were occupied with readying the cells for use and taking water to the cells, it was not possible to get the young people out of their cells for the required amount of time.<sup>221</sup>

The Commission acknowledges the significant difficulties posed by the C Block infrastructure; however, it was unacceptable that detainees were locked in their cells for up to 23 hours and 55 minutes a day. It is clear that the young people should never have been accommodated in C Block, which had no running water and was not fit for use. For more information see Chapter 10 (Detention facilities).

## Use of C Block in mid-2015

Following the incident in G Block in January 2015, C Block was used to house high security young people until an incident in early April 2015, when a number of them smashed the asbestos in the building. They were then moved to the High Security Unit, also known as B Block.<sup>222</sup> However, they did not stay in B Block for long.

From June to July 2015, C Block was again temporarily used as high security accommodation while the High Security Unit was being repaired after it was damaged during an incident on 31 May 2015, when two young people escaped.<sup>223</sup>

AM was housed in C Block during this time. He described cells that were 'falling apart' and had many hanging points. He was not allowed to go to school or participate in activities.<sup>224</sup> When he was not locked down, the main yard was the only area available to him. AM said he would:

*'... spend hours walking around in circles or else we would sleep all day. It was horrible. We should have been able to be active and healthy and try to work on making ourselves better instead of being left to rot in jail.'*<sup>225</sup>

AM described the despair and loneliness of living in those conditions for an extended period:

*'It was really hard being in C Block all of that time. You can't get out from the walls. You end up sitting in your cell and the only thing to wait for is to be taken to some other area of Don Dale. I felt depressed when I was in there. I thought about self-harm, even though I tried to get out of my mind. I was feeling really angry towards the guards and the bosses who had keep me in this area. There was no school, and I would just have just have to sit in my cell with nothing going through my mind. I felt blank. At night, I would be awake and I use the buzzer to talk to the guards. I would tell them that I was going to hurt myself. They would come after a half hour or an hour. I just wanted to talk to someone for couple of minutes. This is how it was for those months in C Block.'*<sup>226</sup>



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The experience of a young person in C Block while 'at risk' is discussed in Chapter 15 (Health, mental health and children at-risk).

## THE HIGH SECURITY UNIT

Since it was reopened in late July 2015, the High Security Unit has been used as the accommodation block for detainees assessed as being a high security risk and, remarkably, new detainees awaiting classification. It also houses detainees with a medium security classification who require intensive supervision. The High Security Unit was formerly maximum security housing for adult prisoners. It now consists of high security rooms, a secure common area, secure internal exercise yards, an admissions wing, a classroom and two de-escalation rooms.<sup>227</sup> The de-escalation rooms are used for at-risk placements as well as isolation placements under the *Youth Justice Act*.<sup>228</sup>

Detainees who are housed in the High Security Unit are confined within the block, which is surrounded in sections by either barbed or razor wire. Daily activities and school are conducted inside the block.

When Commission staff visited the current Don Dale Youth Detention Centre in June 2017, all the rooms, apart from the de-escalation rooms, were filled.

### Conditions in the High Security Unit

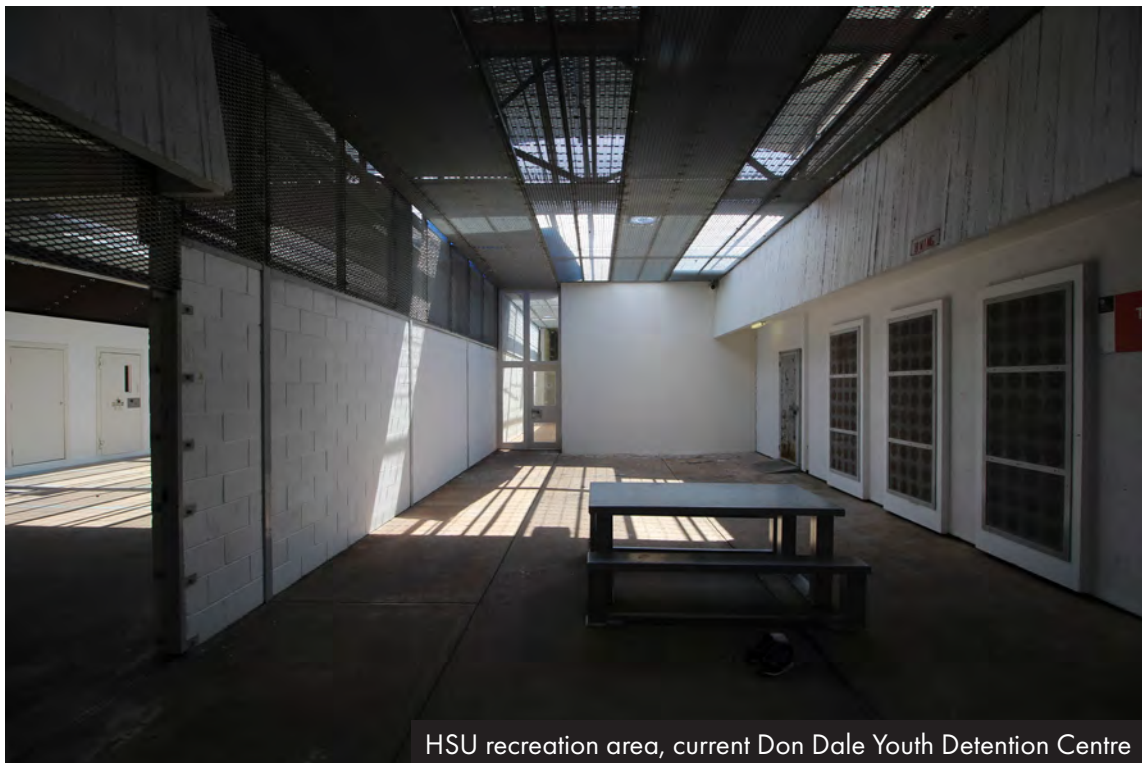
As stated in Chapter 10 (Detention facilities), the High Security Unit is an enclosed concrete block with heavy doors, metal bars and little natural light. It is an oppressive environment that is completely unsuitable for accommodating children and young people.



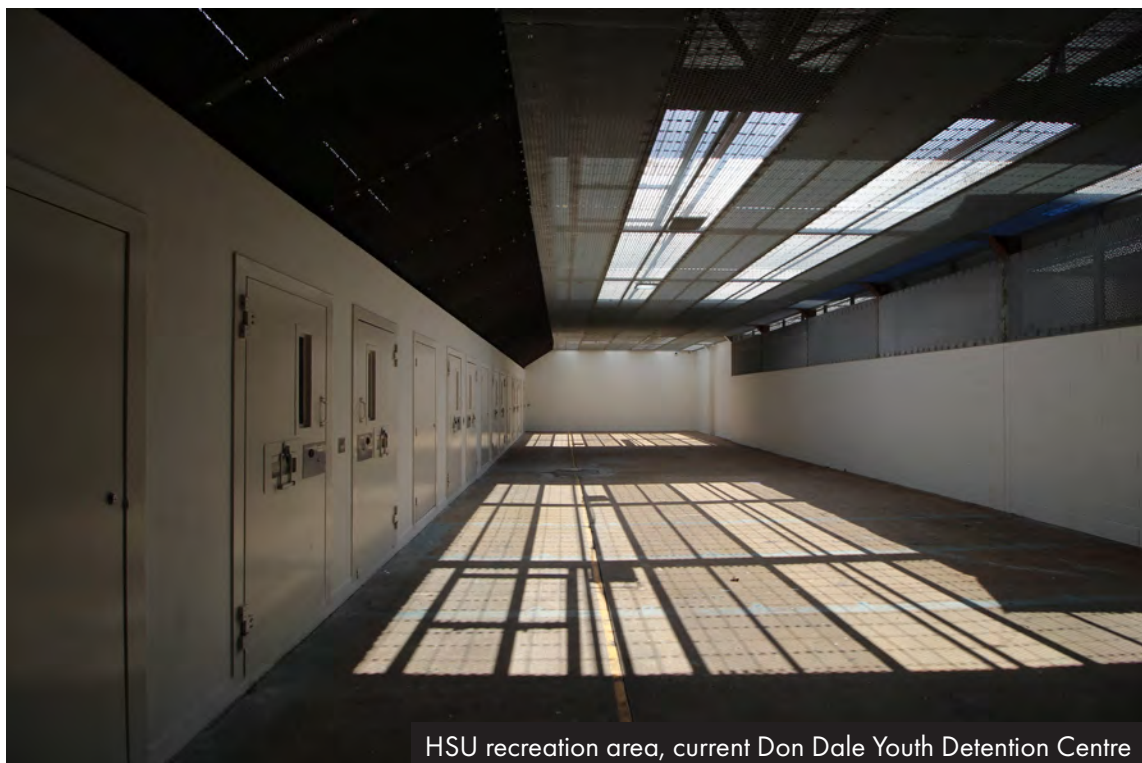
The HSU, current Don Dale Youth Detention Centre



Walkway to HSU, current Don Dale Youth Detention Centre



HSU recreation area, current Don Dale Youth Detention Centre



HSU recreation area, current Don Dale Youth Detention Centre

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Young people spoke of the harsh conditions. BH described being housed in the High Security Unit as 'like being in a big birdcage':

*'You can hardly see the sky in there. The windows in HSU cells are covered in a metal plate with holes, then a crimsafe screen, then bars, then another layer of concrete blocks with holes. You can hardly see out and there is no fresh air.'*<sup>229</sup>

Many of the young people said the water in the cells was warm and tasted 'disgusting' like metal, so they would have to ask the youth justice officers for cold water.<sup>230</sup> The reduced access to palatable drinking water left BV frequently dehydrated:

*'I remember getting a lot of really bad headaches and feeling dizzy and stressed during that period [in the HSU]. I think part of this was because I did not drink enough water. In HSU, the water in the cell tastes bad and the guards do not give you enough cold water. When I was in HSU for that period, I let myself get dehydrated as it was better than drinking the water in the cells.'*<sup>231</sup>

Until recently, there was no air conditioning in the High Security Unit.<sup>232</sup> Extreme heat was a problem for a number of young people.<sup>233</sup> BA said he would sleep on the concrete floor of his cell to be near the air vent, where it was slightly cooler.<sup>234</sup>

The young people housed in the High Security Unit were not only subjected to oppressive physical conditions, they were – and still are – placed on a behaviour management regime that imposed long periods of time locked down in their rooms.

## Intensive Individual Managements Plans

In accordance with the High Security Unit procedure, detainees housed in the High Security Unit are placed on 'Intensive Individual Management Plans'. These plans are meant 'to address their specific problem behaviours and provide staff with guidance and strategies to manage time.'<sup>235</sup>

The Intensive Individual Management Plan is a staged behaviour management regime, whereby a detainee progresses through four stages, gaining privileges, including recreation time, with each upward stage. Privileges assigned to each stage include being allowed personal visits, and watching television and visiting the tuck shop.

Advancement is dependent on behaviour – if a young person completes the stages they leave the High Security Unit.



The following table shows how much time was allocated in the High Security Unit for recreation and for lockdown at each stage, as at July 2015.<sup>236</sup>

Stage	Recreation and lock down time	Period required at each stage
Stage 0 – Assessment	<ul style="list-style-type: none"> <li>1 hour for recreation</li> <li>Lockdown before 3pm</li> </ul>	Maximum 3 weeks
Stage 1 – Basic privileges	<ul style="list-style-type: none"> <li>1 hour for recreation</li> <li>Lockdown before 3pm</li> </ul>	Minimum 3 weeks
Stage 2 – Restricted privileges	<ul style="list-style-type: none"> <li>Normal out-of-cell hours, with an early lockdown</li> <li>Lockdown before 3pm</li> </ul>	Minimum 4 weeks
Stage 3 – Full privileges	<ul style="list-style-type: none"> <li>Normal out-of-cell hours</li> <li>Lockdown before 5pm</li> </ul>	Minimum 6 weeks
		<b>Total: 13–16 weeks</b>

According to the above schedule, without a classification review, it would take 13 to 16 weeks to complete the Intensive Individual Management Plan and move out of the High Security Unit. This allocation of time, whether or not it was adhered to, is astonishing given that the average time spent in detention for the vast majority of remandees (70–80%) is around 17.5 days,<sup>237</sup> and a young person would likely be released from detention before completing the Intensive Individual Management Plan. In January 2016, the minimum length of time for each stage was reduced and is shown in the following table.<sup>238</sup>

Stage	Period required at each stage
Stage 0 – Assessment	Minimum 24 hours, maximum 72 hours
Stage 1 – Basic privileges	Minimum 7 days
Stage 2 – Restricted privileges	Minimum 7 days, maximum 4 weeks
Stage 3 – Full privileges	Until rehoused
<b>Total: 3 weeks</b>	

The Commission notes the parallels between this Intensive Individual Management Plan regime and the Intensive Management Plan procedures that became entrenched at the former Don Dale Youth Detention Centre by early 2014. This updated regime, like its predecessor, allowed for lengthy periods of room confinement over an extended period. For stages 0–2, a young person could be locked down by 3pm, spending around 16 hours a day locked in their rooms for a number of weeks. Even when a child reaches stage 3, the period of lockdown could still be around 14 hours.

Evidence from young people who spent time in the High Security Unit confirms that these extended

lockdown periods occurred.<sup>239</sup> Other than attending school and having limited recreation time, young people were locked in their rooms. BV spent three months in the High Security Unit, from December 2015 to March 2016. He described his experience as follows:

*'One of the worst things about being in HSU is being in lockdown all the time. It feels like you are locked down more than you are unlocked. You are locked down until school starts and you are locked down again when school finishes ...*

*One of the reasons you are locked down all the time is that there are not many programs available when you are in HSU. During that period, the main program we were doing was school. I cannot really remember doing other programs other than watching movies sometimes.*<sup>240</sup>

BV further stated:

*'I cannot really remember, but during that period in HSU it felt like there were days where we were locked down all day. I think this is because there was not enough staff to let us out for recreation time. I remember guards saying things like 'We can't let you out as someone hasn't come to work'. Those days were the worst.'*<sup>241</sup>

### **BN locked down for 23 hours a day**

The Commission received evidence of BN being locked down in his room for 23 hours a day after he was expelled from school.<sup>242</sup> BN said he was kept in the 'back cells' of the High Security Unit for six weeks from May to June 2016 and that during this period he was locked down for 23 hours a day.<sup>243</sup>

A complaint was made to the Children's Commissioner about BN being held in the 'back cells' in isolation for 44 days from 3 May 2016 to 16 June 2016. Bed records verify that BN was housed in the designated 'de-escalation rooms' in the High Security Unit during this period.<sup>244</sup>

In response to the complaint, Correctional Services Commissioner Mark Payne confirmed that during this period, BN was placed on three separate 24 hour de-escalation placements – on 4 May, 6 May and 7 July. He also had an at-risk placement from 13–17 May 2016.<sup>245</sup>

Commissioner Payne's response stated that when BN was not on a de-escalation or an at-risk placement between 3 May and 16 June 2016, he was:

*'... secured singularly in a cell; however, he was not placed in isolation... [BN] had access to two one hour visits and five professional visits. The HSU journal identifies that the detainee had access to recreation time, hygiene opportunities and access to education (when he wished to participate) in line with stage 1 and 2 of his IIMP and his entitlements to as [sic] high security detainee. There are instances in the HSU journal that does [sic] not specify which individual detainees were participating in certain activities and on these occasions there is no evidence if [BN] had out of cell time.'*<sup>246</sup>

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The Commissioner's response did not specify the length of time BN had out of his room for recreation or participation in activities during this period. Crucially, it acknowledged that, in certain instances, the High Security Unit journal could not verify whether BN had any out-of-room time.

Records indicate that BN told staff in early June that he was only allowed out during breakfast, lunch and weekends. The remainder of the time he was locked down in his room.<sup>247</sup> BN was not allowed items in his room, including reading and schoolwork materials, due to the self-harm incident and a number of occasions in May when he damaged his room.<sup>248</sup>

BN's Behaviour Management Plan dated 14 June 2016 detailed his progress through the stages of the Intensive Individual Management Plan during May and early June:

- on stage one from 3–24 May
- started stage two on 25 May
- started stage three on 1 June, and
- regressed back to stage one on 8 June.<sup>249</sup>

The plan noted that BN's lack of progression was a result of a number of serious incidents in May and early June. It is apparent that BN was on stage one of the plan for 30 of the 44 days he was housed in a de-escalation room. Stage one allows only one hour of recreation time.

The result was that BN was locked in his room for extensive periods of time – up to 23 hours a day – for the majority of the six-week period from 3 May to 16 June 2016.

## Recreation time

Young people in the High Security Unit are not allowed to leave the block during recreation time and are confined to the concrete 'exercise yard', which is fully enclosed between cells, roofed and does not have access to sunlight. It is a particularly grim environment and a very small space for up to 17 detainees to be placed, particularly when many have complex needs.<sup>250</sup> A number of young people spoke of having nothing to do in the courtyard. AM said he and the other young people '*would just sit in the courtyard and do nothing*'.<sup>251</sup> BH said sometimes they were given balls to play with in the yard.<sup>252</sup> AS said at one stage there was no basketball hoop in the exercise yard, '*so we ended up getting some soap and drawing a ring on the wall to act like a hoop*'.<sup>253</sup>

In addition, children and young people in the High Security Unit are precluded from attending most activities, which are normally conducted outside the block.<sup>254</sup> They are denied access to the recently renovated recreation facility, which has a pool table, table tennis, computer and music rooms, a movie theatre and library.





HSU recreation area, current Don Dale Youth Detention Centre



HSU recreation area, current Don Dale Youth Detention Centre

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## De-escalation placements

Isolation placement procedures were updated after the move to the current Don Dale Youth Detention Centre. Security cells and isolation placements were renamed 'de-escalation rooms' and 'de-escalation room placements' respectively.

The current de-escalation room placement procedure, dated January 2016, states that placements are an 'emergency response' and should only be used 'as a last resort for detainees posing a risk to others'. It says:

*'Placements in a de-escalation room should not continue beyond the period necessary to address the emergency or threat to the detainee or others. As soon as a detainee is placed in a de-escalation room, the focus must turn to overcoming the emergency and working towards the detainee's release from the de-escalation room.'*<sup>255</sup>

Detainees are to be given a minimum of one hour out of the de-escalation room on each day and evening shift. However, this is 'dependent on ... behaviour and safety and security concerns'. Despite the requirement that de-escalation placements be used only as a measure of last resort, a Youth Justice Court judgment handed down in early 2016 found there was 'clear evidence that isolation, at least 15 minutes of isolation, is regularly used as a disciplinary sanction for minor incidents'. The judgment concerned charges of assault against AS arising out of an incident in the High Security Unit in November 2015.<sup>256</sup>

AS gave evidence that during that incident he pushed an officer in frustration after the officer threatened to take AS to the de-escalation rooms if he did not return to his room.<sup>257</sup> AS objected to the direction to go to his room because he denied doing anything to warrant it. Five other guards then assisted the officer to restrain AS to place him in a de-escalation room for 24 hours.<sup>258</sup>

The Magistrate found there was no evidence that the superintendent had delegated his power to isolate a detainee for up to 24 hours to any of the officers involved in the incident.<sup>259</sup> Despite this, the evidence of the youth justice officers revealed that they believed they had the power to use isolation as a sanction.<sup>260</sup> The Magistrate stated:

*'It is clear isolation was used regularly and with the knowledge of [the youth justice officers'] supervisors. They clearly have not been properly informed as to their powers in the limited training they received in their induction to the service.'*<sup>261</sup>

The Magistrate considered that the use of isolation as a sanction at the current Don Dale Youth Detention Centre was a 'clear contravention of section 153 of the Youth Justice Act'.<sup>262</sup>

The evidence given at AS's trial and the Magistrate's findings suggest that youth justice officers regularly used isolation unlawfully at the current Don Dale Youth Detention Centre. Given the youth justice officers' lack of training and understanding, and the fact that the superintendent did not appear to have delegated them power to isolate,<sup>263</sup> it is likely that breaches occurred on a wider scale.

Professional Standards Unit audits of de-escalation room journals, conducted in May and October 2016, found instances of non-compliance with de-escalation placement procedures. Both audits found:

- that de-escalation room placements appeared to continue beyond the point necessary to address the emergency or threat to the young person or others. Most young people were kept on the placement for the full 24 hours and there was no recorded evidence of staff interactions and decisions relating to the management of those detainees, which enhanced the appearance that such placements were punitive rather than as a means of emergency management.
- there was no recorded evidence that the young people were given their minimum one-hour recreation time. In the May audit, of the eight placements reviewed, six were detained for a 24 hour period. Five of the six that were detained for this period only received a single period of two to three minutes of out-of-cell time which was to be used to clean their room. In the October audit, of the eight placements reviewed, seven were placed in de-escalation rooms for a 24 hour period with the eighth placement exceeding the 24 hour placement by 9 minutes. Six of these placements had no recorded evidence of out-of-cell time.<sup>264</sup>

The reviewer considered that the use of de-escalation room placement beyond the time necessary to address the emergency or threat to the young person or others could be viewed '*as a punitive measure rather than a tool for emergency management*'.<sup>265</sup>

Mr Keith Hamburger's 2016 review of the Department of Correctional Services echoed these concerns about the punitive nature of de-escalation practices at the current Don Dale Youth Detention Centre, which his team observed in May 2016:

*'... it appeared that the 'de-escalation' and observation cells are the only recourses of staff, and there is little or, no attempt to talk down or de-escalate youth who are involved in incidents or act out. At Don Dale, placement in a 'de-escalation' cell is in effect separate confinement, with youth spending the maximum 24 hours in a 'de-escalation' cell, once placed in one.*

*Members of the Review Team have considerable experience in corrections, and it is our understanding that separate confinement (or administrative segregation) is a procedure for isolating adult prisoners who are considered to threaten the safety of any person, and/or good order and discipline. It is not intended to be punishment for unacceptable behaviour or of proven breaches of prison conduct rules. Except for the provision of 'hardened' cell fittings, prisoners under administrative segregation should not be deprived of normal prisoner entitlements, except insofar as they present a risk to safety and security, have been withdrawn as a punishment administered for a proven prison discipline offence, or as part of a behavioural management plan.*

*However, while the 'de-escalation' cells in youth detention are not intended for either separate confinement or as punishment cells, they are certainly designed as such. Youth confined in these cells are deprived of normal entitlements such as access to a television, although radio is provided through the cell call system. With minimal interaction or engagement with staff or their peers, and very little to occupy their time, it is not hard to understand why youth would attempt to damage the cell and its fittings.<sup>266</sup>*

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## Current practice

Mr Victor Williams, former superintendent of the current Don Dale Youth Detention Centre, told the Commission that since around June 2016 the superintendent or deputy superintendent must grant approval for isolation placements at both the current Don Dale Youth Detention Centre and the Alice Springs Youth Detention Centre.<sup>267</sup>

Since around late 2016, the following changes have been made to isolation practice:

- de-escalation placements are to be reviewed after two hours and end if the young person has calmed down, and
- if, on review, the young person is still non-compliant, a request for an extension must be made to the superintendent or the deputy superintendent.<sup>268</sup>

The Deputy Chief Executive Officer of Territory Families confirmed that isolation for more than 24 hours has ceased in practice because as the delegate of the Commissioner she will not authorise it.<sup>269</sup>

These changes are commendable and are significant departures from previous practices. However, while isolation placements have been shortened, and requirements for staff to implement de-escalation practices are in place, it is unclear whether these practices are being implemented in order to ensure that a young person calms down and spends the shortest amount of time possible on a placement.<sup>270</sup>

Changes in around mid-2016 saw all detainees housed in the High Security Unit put on an Intensive Individual Management Plan in conjunction with a Behaviour Management Plan prepared by case management in collaboration with management.<sup>271</sup> The Behaviour Management Plan includes information about a young person and why they may be presenting with challenging behaviour. It also identifies ways in which staff and the detainee could manage the behaviour.<sup>272</sup>

The Commission has reviewed a number of Behaviour Management Plans issued from early 2017 for young people in the High Security Unit. They represent a marked improvement on the Intensive Management Plans used at the former Don Dale Youth Detention Centre. In contrast, the new plans are individualised and represent a genuine attempt to adopt a therapeutic approach to managing complex behaviours.

However, children and young people who are subject to such plans continue to be confined in a wholly inappropriate prison-like compound, spending long periods of time in small cells under the Intensive Individual Management Plan regime. Such a regime is unlikely to improve behaviour. Rather, the prolonged confinement and isolated conditions of the High Security Unit are likely to increase the risk of psychological harm and have a detrimental effect on their behaviour, as explained above in 'The well-known dangers of isolation'.

The Northern Territory Government indicated that it is refining policies and directives relating to the concepts of isolation and separation.<sup>273</sup> It had planned to complete the review by 30 June 2017, but has not yet achieved this.

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## ISOLATION AT ALICE SPRINGS

### Alice Springs Youth Detention Centre

The Commission received evidence about concerns raised in relation to isolation practices in the early years after the Alice Springs Youth Detention Centre was opened in March 2011. Like the former Don Dale Youth Detention Centre, the centre in Alice Springs contained a Behaviour Management Unit used for isolation placements. Each cell had a bed, television and window, but no toilet or bubbler.<sup>274</sup>

In August 2011, CAALAS raised concerns with the then Minister for Correctional Services about the frequent and lengthy use of isolation at the newly opened Alice Springs Youth Detention Centre. Legal aid service clients said they were regularly placed in isolation for eight hours or more for minor infringements, such as playing with a light switch in the common room and calling out to a family member at the adult prison next door.<sup>275</sup> The Minister responded:

*'Isolation is not used as a punishment but rather as a protective measure when high risk behaviours are displayed, and detainees are returned to mainstream when the exhibited behaviours subside and staff assess it is safe to do so.*

*Behaviour management at the ASJDC is closely aligned with that of the Don Dale Youth Detention Centre. The perception by some detainees of arbitrary application of isolation is understandable, given the complex and wide ranging spectrum of challenging behaviours displayed by detainees, and the need for a case by case tailored response to the management of these behaviours.'*<sup>276</sup>

In a letter to Mr Middlebrook in June 2012, the Central Australian Aboriginal Legal Aid Service highlighted its concern about the use of individual Behaviour Management Plans at the Alice Springs Youth Detention Centre. It was particularly concerned that young people did not understand the reasons for the plans, and that some plans imposed extensive lockdown or isolation periods.<sup>277</sup>

Christopher Castle, a case worker at the Alice Springs Youth Detention Centre from November 2012 to April 2013, told the Commission the physical environment of the Behaviour Management Unit was 'dungeon-like'.<sup>278</sup> Mr Castle said that while he was sometimes permitted access to detainees in the Behaviour Management Unit, he was not encouraged to speak to young people as senior youth justice officers thought 'a BMU placement was not the time for detainees to be offered counselling'.<sup>279</sup>

The Officer in Charge at the Alice Springs Youth Detention Centre from 2013 to 2015 confirmed that on at least one occasion a child on a Behaviour Management Unit placement was denied counselling<sup>280</sup> (for further detail, see Chapter 19 (Case management and exit planning)). Mr Castle said such practices contributed to a culture at the centre where 'primacy [was] given to security imperatives, to the detriment of rehabilitative and humanitarian processes'.<sup>281</sup> But Mr Castle did acknowledge that there were many people working at the Alice Springs Youth Detention Centre who were doing their best to give effect to rehabilitative and humanitarian processes and displayed many kindnesses to young people.

Evidence suggests that isolation practices have improved since Mr Castle's time at the centre.



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Antoinette Carroll, Youth Justice Advocacy Project Co-ordinator at the Central Australian Aboriginal Legal Aid Service, said she understood that the Behaviour Management Unit placement practice had changed since 2012, and now it was only used as a last resort.<sup>282</sup>

## Aranda House

The Commission heard evidence of young people being isolated at Aranda House in the aftermath of an escape from the Alice Springs Youth Detention Centre in May 2012. By this time, the centre had been operating for more than a year and Aranda House was, from time to time, re-opened to accommodate overflow and high security risk young people for more information, see (Chapter 10 (Detention facilities)).<sup>283</sup> On 25 May 2012, eight young people were housed at Aranda House, including five of the recent escapees.<sup>284</sup>

Three young people, AY, BX and AX, told the Commission of their experiences at Aranda House during this period. They unanimously spoke of being kept in their cells for at least 23 hours a day. BX said he was allowed half an hour out of his cell:

*'... I spent my time either in the shower, on the phone to my family, walking around what I call the exercise yard or watching TV. I had to plan what I would do in that time, because I knew that as soon as 30 minutes were up, I would have to go back into my cell so I tried to make the most of it.'*<sup>285</sup>

AY said that after he was transferred to Aranda House, he was in his cell for 23 hours on most days, but when there were fewer staff he had only 30 minutes outside his cell. He recalled that after a time, they were able to go to school for half the day.<sup>286</sup> AX said that during the period when there was no school, he was only allowed out of his room for around 15 minutes a day.<sup>287</sup>

Young people were not allowed out together and took their recreation time separately.<sup>288</sup>

The accounts of excessive lockdown times are supported by a letter dated 5 July 2012 from Max Yffer, then senior psychologist at the Central Australian Aboriginal Congress, to the senior caseworker for youth detention. Mr Yffer conducted a group counselling session with the young people at Aranda House on 26 June 2012. In his letter, he said the young people were locked in their individual cells for 23 hours a day, with half an hour allowed for school and another half an hour for recreation.<sup>289</sup>

The Commission reviewed the Aranda House daily journal for the period 24 May to 29 August 2012.<sup>290</sup> Out-of-room times were not routinely recorded in the journal. There were only 10 entries of out-of-room time recorded for the above detainees across the entire period, starting from early June. Those entries indicated that, up until late June, AY, BX and AX were variously permitted out of their rooms for 30 minutes, 50 minutes and an hour. The four entries from late June until August showed that AX received two hours to two hours and 10 minutes of out-of-room time.<sup>291</sup> These records are generally consistent with the detainees' accounts above. The journal also suggested that education was provided from about 29 May 2012.<sup>292</sup> In addition, another record from early July indicated that the detainees consumed lunch in the courtyard.<sup>293</sup>

Records indicate that AX, BX and AY were held at Aranda House for the following periods outlined in

the table below.<sup>294</sup>

Young person	Period	Duration
AX	24 May – 29 August 2012	97 days
BX	24 May – 7 August 2012	75 days
AY	25 May – 21 June 2012	27 days

The records suggest that these young people were managed at Aranda House in accordance with their Intensive Management Plans.<sup>295</sup> The Commission has seen two Intensive Management Plans for AX, covering the period from 9 June to 9 July 2012. The plans confirm that during that period, AX was prescribed two hours of school and 30 minutes of recreation time on weekdays. At weekends, he was to be given 30 minutes outside his room per shift per day. He was not to take his recreation time in company with any other young person.<sup>296</sup>

Based on this evidence, when there was no schooling at Aranda House, the above young people were locked down in their rooms for up to 23 hours and 30 minutes a day. Even when they had schooling (from about 29 May 2012), they were still locked down for up to 21 hours and 50 minutes a day.

Such long periods in lockdown are manifestly unacceptable. Given that the young people were placed on Intensive Management Plans, it is unlikely that approvals for 72-hour placements were sought under section 153(5) of the *Youth Justice Act*, as the Intensive Management Plan regime was considered to be distinct from isolation placements under the Act.

The excessive time in which the young people were locked down in Aranda House constituted isolation and was a gross breach of section 153(5) of the *Youth Justice Act*.

This was further exacerbated by the extremely harsh conditions at Aranda House, such as:

- no access to natural light
- water from the bubblers tasted ‘really bad like metal’
- not being given soap in their cells to wash their hands
- not being given shampoo when they showered
- no heating or air conditioning in the cells
- no reading material allowed in the cells, and
- no talking allowed between the detainees.<sup>297</sup>

AY described Aranda House as follows:

*‘When I was in Aranda House, it looked to me like the reason why they shut it down before we got there was because it was falling apart. It looked like it hadn’t been used for a long time ... Parts of the cells were broken. There were a lot of places where you could hang yourself from on the corners of the cells. Looking back now, I think it was a perfect example of how you could easily do that to yourself.’<sup>298</sup>*



The oppressive physical conditions at Aranda House are further detailed in Chapter 10 (Detention facilities).



Mr Yaxley, the General Manager at the time, accepted that holding children in those conditions for such long periods was unsuitable.<sup>299</sup> Records indicate that some of the conditions, such as the lack of access to materials and natural light, may have been ameliorated to some extent after a forum was held between detainees and staff at Aranda House on 10 July 2012.<sup>300</sup>

Mr Yffer, a senior psychologist from Central Australian Aboriginal Congress, in a letter to a senior caseworker noted his concerns relating to prolonged isolation and identified the following priority areas of concern as critical to the mental health of young people in Aranda House: lack of contact with others, lack of sunlight and lack of reading material.<sup>301</sup> He stated that '*[i]f the present conditions continue, I would expect the poor behaviour to also continue but more importantly, I would have grave fears for the immediate and long-term mental health of these young men.*'<sup>302</sup>

Mr Yffer stated:

*'Human beings are social creatures, we generally like and need contact with other people ... Younger people in particular enjoy the company of others, and Indigenous male youth I have observed to especially like physical contact. To prevent these youths from any form of connection with their peers is greatly risking their mental health. Even in mainstream prisons, inmates are normally housed with others and only those at risk of harming themselves are generally placed in isolation – and then only for the duration of concern after which they are returned. I would urge every effort be made to increase the amount of time detainees are permitted out of their individual cells and that this*

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*time be with at least one other youth; 23 hours locked in a cell alone is going to have an inevitable detrimental impact on a person's immediate behaviour and short to long term mental health.*<sup>303</sup>

He said that being deprived of sunlight for extended periods could lead to a depressive condition known as Seasonal Affective Disorder, which can increase the risk of vitamin D deficiency affecting a person's physical health.

Mr Yffer considered it hardly surprising that children were exhibiting poor behaviour in circumstances where they were locked down for extended periods and deprived of mental stimulation in their cells:

*'With nothing but a mattress and toilet in each cell, it is not surprising that they are bored, have nothing else to do but sleep, and are restless. With no activity, and deprived of contact with their peers, it is little wonder that they will react to staff and exhibit poor behaviour ... I believe that reading material should be considered a right, not a privilege. This is particularly the case where these youths have virtually no access to any other form of activity or stimulation. This lack of reading material, particularly at an important stage of adolescence, could contribute to a significant detrimental impact on neurological development if allowed to continue. I am confident that if reading material was provided, and they had some input into what it was, these youths would have a far greater chance of being content and less disruptive.'*<sup>304</sup>

In his submission to the Commission, Mr Yffer recalled that staff at the time did not 'seem able to comprehend' why the young people exhibited poor behaviour, such as 'yelling out from their cells to each other and refus[ing] to stop', 'as though they 'were going crazy.' One staff member:

*'... could not understand it, and it seemed that the more they took away from the youths, and the more the youths did not change their behaviour, the more frustrated the staff got.'*<sup>305</sup>

The staff members' lack of understanding of the connection between isolation and behaviour was a manifestation of the lack of training and the failure of management to ensure staff were equipped to respond (for more information see Chapter 20 (Detention centre staff) and Chapter 23 (Leadership and management)).

## Findings

- 1. Isolation of children and young people was used on some detainees excessively, punitively and in breach of section 153(5) of the Youth Justice Act (NT) during the latter part of the relevant period, in particular at Aranda House in mid-2012 and at the former Don Dale Youth Detention Centre from 2012 to August 2014 where detainees were placed in physically and mentally unhealthy conditions.**
- 2. The full extent to which isolation was used in the 'back cells' and the Behaviour Management Unit at the former Don Dale Detention Centre in breach of the Youth Justice Act (NT) can never be known because isolation**

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of children and young people was often not documented properly and the basic record keeping requirements in regulation 72 of the Youth Justice Regulations (NT) were not complied with. It may be concluded, nonetheless, that breaches occurred on a systemic scale.

3. Senior executives and senior management responsible for youth detention during the latter part of the relevant period showed a disregard for compliance with the legislation in placing children and young people in isolation for extended periods, including beyond the statutory limits in section 153(5) of *Youth Justice Act* (NT).
4. As should have been obvious to all involved in carrying out and overseeing the use of isolation of the kind described above in the youth detention centres, it contributed to poor behaviour and the occurrence of serious incidents.
5. The approach to the isolation of children and young people in Northern Territory detention centres was indicative of a system in crisis where the leadership at all levels seemed incapable of rising above the day to day cycle of misbehaviour, isolation and punishment. A system was put in place that was built around a culture where little focus was placed on the duty of care, respect and protection to the children and young people to whom it was owed.
6. Senior executives and senior management subordinated strict obligations imposed by the legislation, particularly sections 151 and 153(5) of the *Youth Justice Act* (NT), to operational convenience.
7. Senior executives and the management and staff at the detention centres implemented and/or maintained and/or tolerated a detention system seemingly intent on 'breaking' rather than 'rehabilitating' the children and young people in their care, particularly those with difficult and complex behaviours, contrary general principles contained in sections 4(b) and 4(n) of the *Youth Justice Act* (NT), and the obligations imposed on management by sections 151(2) and 151(3)(a) and (b) of the *Youth Justice Act* (NT)
8. In doing so they caused suffering to many children and young people, and very likely, in some cases, lasting psychological damage to those who not only needed their help but whom the state had committed to help by enacting rehabilitative provisions in the *Youth Justice Act* (NT).
9. Isolation has continued to be used inappropriately, punitively and inconsistently with section 153 (5) of the *Youth Justice Act* (NT) at the current Don Dale Youth Detention Centre.
10. The use of 'de-escalation' cells has breached written de-escalation placement procedures.

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11. Children and young people held in the High Security Unit continue to be:

- confined in a wholly inappropriate, oppressive, prison-like environment that is detrimental to their health, wellbeing and prospects of rehabilitation, and
- subject to a behaviour management regime that involves being locked down in confined spaces with minimal out of cell time and little to do for long periods of time.

12. Even if not isolation at law, the confinement described above it is little different in practice. Its effects on children and young people are similar, and the approach is unlikely to be any more effective in improving behaviours than the punitive approach followed at the former Don Dale Youth Detention Centre.

13. The use of isolation on detainees in the circumstances identified above was potentially inconsistent with the following human rights standards:

- *Article 37(a) of the United Nations Convention on the Rights of the Child*, which requires that no child or young person, no matter their circumstances, should be subject to cruel, inhuman or degrading punishment (such standards are also contained in *Rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners* and *Article 7 of the International Covenant on Civil and Political Rights*)
- *Article 10 of the International Covenant on Civil and Political Rights*, which provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person
- *Rule 43 of the United Nations Standard Minimum Rules for the Treatment of Prisoners* which prohibits prolonged solitary confinement
- *Article 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, which provide that all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned, and
- which was embodied in section 153 of the *Youth Justice Act (NT)*, and in the superintendent's responsibility under section 151 (2) of the *Youth Justice Act* for the physical, psychological and emotional welfare of detainees.

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## REFORM

A number of young people who experienced isolation during the relevant period asked the Commission to recommend abolishing it.<sup>306</sup> Their submissions carried strong weight. Similarly, a number of organisations in their submissions have urged for reform in this area.<sup>307</sup>

The Human Rights Law Centre, which called for an absolute prohibition on solitary confinement, submitted, that:

*'[p]rohibiting the use of solitary confinement does not undermine the safe operation of youth detention facilities, as it does not preclude appropriately separating children in limited circumstances to protect that child or another child. Indeed the safety and security of a facility are strengthened when a therapeutic rather than punitive approach to young people is embedded in the operation, culture, training and systems of the facility.'*<sup>308</sup>

There is no question that the law should not permit the kind of isolation suffered by children and young people held in the Behaviour Management Unit and in isolation at the other detention centres. This isolation occurred due to careless management, poorly drafted directives that were not at all appropriate for youth detention, badly trained and inexperienced staff, inadequate facilities and a punitive approach to managing children and young people. These factors are discussed in other chapters, which include recommendations for reform. As discussed in Chapter 10 (Detention facilities), children and young people in detention should not be exposed to physical environments and conditions that could harm them. Chapter 10 recommends that steps are taken to ensure this does not occur again.

Broadly worded legislation also enabled unjustified isolation to occur. The *Youth Justice Act* should expressly prohibit the use of isolation as punishment for misbehaviour – following legislation in other states and the Australian Capital Territory – or as a general behaviour management strategy.

There will be situations in detention when it is necessary to separate children and young people in daily life. The *Youth Justice Act* should specify when, and the extent possible, to define clearly all forms of legitimate separation, as distinct from isolation, including where:

- a child or young person is ill
- a child or young person asks to be separated from the group
- separation is necessary for the child or young person's protection, and
- it is necessary to protect the safety of another person or property or to restore order at the detention facility.

Stronger legal protections are also needed. The *Youth Justice Act* should require that separation may only continue for as long as it is necessary. This should be reviewed regularly. Separation for the protection of another person or property, or to restore order, should be:

- allowed only as a last resort after all therapeutic alternatives have been attempted or when no other course is reasonably available or practical
- reported to caseworkers, the Chief Executive Officer of Territory Families and the Children's

Commissioner as soon as it is practical, and

- closely monitored and reviewed by the manager of the detention facility, as well as staff on duty.

Access to case workers and medical professionals, including psychologists, should be also guaranteed by legislation.

Legislative changes must be supported by policy and staff training. The Northern Territory Government must ensure that all policies, directives and written instructions to staff accord with the legislation and that staff are trained adequately in the legal and policy requirements. It should also introduce strong systems to ensure compliance with those requirements.

### **Recommendations 14.1**

**Section 153(5) of the *Youth Justice Act (NT)* be repealed and in its place a new provision be inserted to have the following effect:**

- 1. The superintendent may separate a detainee from other detainees where:**
  - a. a detainee for good reason requests to be separated from other detainees**
  - b. a detainee is ill and may be infectious**
  - c. separation is reasonably necessary for the detainee’s protection**
  - d. separation is reasonably necessary either:**
    - i. to protect the safety of another person or property but only after all reasonable behavioural or therapeutic options have been attempted and have not alleviated any threat to safety, or**
    - ii. to restore order at the detention facility but only after all reasonable behavioural or therapeutic options have been attempted and order has not been restored, and**
    - iii. no other course is reasonably available or practical.**
- 2. If the superintendent separates a detainee from other detainees under sub-paragraph (1)(d) above, it must be reported to the Chief Executive Officer of Territory Families and to the Children’s Commissioner as soon as reasonably practical.**
- 3. If the superintendent separates a detainee from other detainees under sub-paragraphs (1)(c) or (d) above, that separation must not continue for more than 24 hours without the approval of the Chief Executive Officer of Territory Families.**
- 4. The superintendent must regularly and at least every two hours review the decision to separate to ensure that the period of separation does not extend longer than is required.**

5. The Superintendent must regularly and at least every two hours review the decision to separate to ensure that the period of separation does not extend longer than is required.
6. The superintendent must record or cause to be recorded a decision to separate a detainee under subsection 1 in a register and include in that register information such as the date on which the period of separation commenced, the duration of the period of separation and the reasons for the decision.
7. Prior to separation, or within a reasonable period after separation, a detainees must be seen by a health professional.
8. During the period in which the detainee is separated, the detainee:
  - a. must have access to a case worker, counsellor or psychologist within a reasonable time, or when a staff member forms the view that they should be consulted
  - b. must not be denied access to education including education material to enable private study
  - c. must not be denied access to lawyers, family members and appropriate peers
  - d. must be given access to outdoor exercise or recreation at least every three hours if the separation lasts for three hours or longer between 8am and 6pm for at least 15 minutes, and
  - e. must have access to appropriate recreation material such as reading material.
9. Isolation for the purposes of behaviour management or punishment is prohibited.
10. Extendable periods in isolation beyond 24 hours are prohibited.





## ENDNOTES

- <sup>1</sup> Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, paras 43-44.
- <sup>2</sup> Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, Article 37(a). See also Criminal Code Act 1995 (Cth) section 274.2. There is very limited case law on the meaning of torture under section 274.2 The Federal Court in *Forster v Repatriation Commission* [2015] FCA 198 held that the ordinary usage or definition of torture (or its consequences) includes physical or mental pain or anguish (at [55]). In *de Bruyn v Ellison* [2004] FCA 880, the Federal Court considered torture in the context of deciding an extradition application. The Court considered the definition of torture under section 6 of the Crimes (Torture) Act 1988 (Cth), which included relevantly similar terminology as the current provision, for the purpose of determining an extradition order. The Court concluded that the possibility of violence in a South African prison with the connivance of corrupt prison officers, after extradition, was not in itself sufficient to constitute a risk of torture. The court stated that whilst such conduct could have fallen within the ordinary meaning of torture, section 22(3)(b) of the Extradition Act 1988 (Cth) (which stated that a person is only to be surrendered in relation to a qualifying extradition if 'the Attorney-General does not have substantial grounds for believing that, if the person were surrendered to the extradition country, the person would be in danger of being subjected to torture') is directed at institutionalised torture by government authorities, and not at occasional and unpredictable violence occurring in prisons, even with the connivance of corrupt prison officers. There have been no cases under either the Crimes (Torture) Act 1988 or the Code which deal with children in isolation.
- <sup>3</sup> Transcript, Michael Yaxley, 29 March 2017, p. 2208: lines 20-26; Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 38.
- <sup>4</sup> Juan E. Mendez, *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 5 August 2011, p. 9. and United Nations Standard Minimum Rules for the Treatment of Prisoners ('Mandela Rules') UN Doc E/CN.15/2015/L.6/Rev, Rule 44
- <sup>5</sup> Article 7 of the International Covenant on Civil and Political Rights and Article 16 of the Convention against Torture. For more information about these instruments, see Chapter 5 (Human rights framework).
- <sup>6</sup> Juan E. Mendez, *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 5 August 2011, pp. 21, 23.
- <sup>7</sup> Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, rule 67; International Psychological Trauma Symposium, 'The Istanbul Statement on the use and effects of solitary confinement', 9 December 2007.
- <sup>8</sup> Youth Justice Act s 153(5).
- <sup>9</sup> Closed court transcript, BF, 13 March 2017, p. 5: lines 8-13.
- <sup>10</sup> See, example, sections in this chapter relating to the following young people's experience of isolation: AS, AJ, AX, BX, AY and BN. See also, AG's experience of isolation in the Behaviour Management Unit following a major incident in Chapter 8 (Detention experiences).
- <sup>11</sup> Exh.043.001, Statement of AD [redacted], 22 November 2016, tendered 9 December 2016, paras 23, 26.
- <sup>12</sup> Juan E. Mendez, *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 5 August 2011, p. 9.
- <sup>13</sup> Exh.053.028, Annexure 18 to Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre, 20 August 2015, tendered 14 December 2016, p. 38.
- <sup>14</sup> Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 76.
- <sup>15</sup> Exh.195.001, Offender History of Beds – part 1, tendered 29 March 2017; Exh.283.231, Offender History of Beds – part 2, tendered 31 March 2017.
- <sup>16</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 100.
- <sup>17</sup> Exh.024.003, National Report – Royal Commission into Aboriginal Deaths in Custody – Volume 3, 15 April 1991, tendered 13 October 2016, para. 25.7.12.
- <sup>18</sup> Exh.024.003, National Report – Royall Commission into Aboriginal Deaths in Custody – Volume 3, 15 April 1991, tendered 13 October 2016, recommendation 181.
- <sup>19</sup> See Exh.634.000, Precise of evidence of Elizabeth Grant, 26 May 2017, tendered 29 June 2017, para. 30; Transcript, Elizabeth Grant, 29 June 2017, p. 5301: lines 23-43.
- <sup>20</sup> Submission, Human Rights Law Centre, 4 October 2017 citing the United Nations Standard Minimum Rules for the Treatment of Prisoners ('Mandela Rules') UN Doc E/CN.15/2015/L.6/Rev, Rule 45(2) and Havana Rules, para. 67. See also Committee on the Rights of the Child, General comment no. 10, UN Doc CRC/C/GC/10 (25 April 2007); Juan E. Mendez, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment', UN Doc A/HRC/28/68 (5 March 2015), para. 86(f); Australian Children's Commissioners and Guardians, 'Human rights standards in youth detention facilities in Australia: the use of restraints, disciplinary regimes and other specified practices', April 2016, pp 63; Submission, the North Australian Aboriginal Justice Agency, p.43-44 citing Havana Rules art 67
- <sup>21</sup> Juan E. Mendez, *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 5 August 2011, pp. 17-18 (references omitted).
- <sup>22</sup> Transcript, Elizabeth Grant, 29 June 2017, p. 5301: lines 25-43.
- <sup>23</sup> Exh.634.000, Precise of evidence of Elizabeth Grant, 26 May 2017, tendered 29 June 2017, para. 33; Exh.636.005, Precise of evidence of Elizabeth Grant – Appendix 5, 2017, tendered 29 June 2017, p. 125.
- <sup>24</sup> Exh.634.000, Precise of evidence of Elizabeth Grant, 26 May 2017, tendered 29 June 2017, para. 33; Exh.636.005, Precise of evidence of Elizabeth Grant – Appendix 5, 2017, tendered 29 June 2017, p. 125.

25 Transcript, John Rynne, 17 March 2017, p. 1314: lines 32-43.

26 Transcript, John Rynne, 17 March 2017, p. 1320: lines 31-42.

27 Transcript, John Rynne, 17 March 2017, p. 1314: lines 39-42.

28 Transcript, John Rynne, 17 March 2017, p. 1316: lines 8-23; E Grant, L Lulham and B Naylor, 'The use of segregation for children in Australian youth detention systems: An argument for prohibition', *Advancing Corrections*, 2017, pp 117-136. Available at: <[https://digital.library.adelaide.edu.au/dspace/bitstream/2440/105842/3/hdl\\_105842.pdf](https://digital.library.adelaide.edu.au/dspace/bitstream/2440/105842/3/hdl_105842.pdf)>.

29 Exh.642.000, Statement of Denise Riordan, 21 June 2017, tendered 29 June 2017, paras 75-76; see also Transcript, Denise Riordan, 29 June 2017, p. 5348: line 30 - p. 5349: line 21.

30 Transcript, Keith Hamburger, 6 December 2016, p. 409: lines 1-3; Exh.031.002, Annexure 1 to Statement of Keith Hamburger's report *A Safer Northern Territory Through Correctional Interventions* [redacted], 31 July 2016, tendered 5 December 2016, pp. 144-145; Transcript, Keith Hamburger, 5 December 2016, p. 323: lines 6-7; Transcript, Mick Creati, 23 March 2017, p. 1740: lines 37-44.

31 Transcript, Kelly Dedel, 29 June 2017, p. 5284: line 44; p. 5285: line 11.

32 Transcript, Kelly Dedel, 29 June 2017, p. 5285: lines 14-15.

33 Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 42.

34 Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para. 40.

35 Exh.159.001, Statement of AN, 17 February 2017, tendered 23 March 2017, para. 51.

36 Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, para. 115.

37 Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, paras 133-134.

38 Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 25.

39 Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 46; Closed court transcript, BE, 27 March 2017, p. 6: lines 14-26; p. 7: lines 8-19.

40 Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para. 55.

41 Exh.024.025, Australian Children's Commissioners and Guardian, *Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specific practices*, April 2016, tendered 13 October 2016, p. 61.

42 Transcript, Kelly Dedel, 29 June 2017, p. 5288: lines 27-34.

43 Transcript, Kelly Dedel, 29 June 2017, p. 5288: lines 34-41.

44 Transcript, Kelly Dedel, 29 June 2017, p. 5288: lines 41-46.

45 Transcript, Kelly Dedel, 29 June 2017, p. 5289: lines 1-4.

46 Exh.221.001, Australasian Juvenile Justice Administrators Juvenile Justice Standards, 2009, tendered 30 March 2017, para. 9.5.

47 The terms of s 153(5) and r 72 did not vary in any substantive way during the relevant period.

48 The question has not come before the Northern Territory courts. This leaves room for argument about what amounts to isolation under the Act. See, for example, Submissions, Northern Territory Government, 23 May 2017, paras 88-93; Exhibit 313.001, SFNT Advice, 18 March 2014, tendered 24 April 2017.

49 This is the definition in the Concise Oxford English Dictionary. 'Isolation' means 'the process or fact of isolating or being isolated'.

50 This much is clear from the words of section 153(5). The provision is directed to a decision to isolate one detainee from the rest as demonstrated by the words: 'a detainee from the other detainees'. Section 24 of the *Interpretation Act* (NT) provides that in an Act words in the singular include the plural and words in the plural include the singular. However, this is subject to any contrary intention indicated by the particular provision. In the Commission's view, section 153(5) expresses a contrary intention as it is about the concept of 'isolating' a child or young person from the general detention population. The use of the singular 'detainee' and plural 'detainees' is likely to be deliberate drafting to convey this concept: *Commissioner of State Revenue v The Muir Electrical Co and Others* (2003) 8 VR 200 at 207.

Not every act of separating detainees would amount to isolation under the *Youth Justice Act*. As the Northern Territory Government pointed out in its submissions to the Commission, children or young people may need to be separated for different reasons in the ordinary course of daily life in a detention centre: Submissions, Northern Territory Government, 23 May 2017, paras 90-91. For example, males may need to be separated from females and young people with a high security classification may need to be separated from those with a low security classification. Separating groups of people based on certain criteria is not isolation under section 153(5). As discussed above, the provision is directed to isolation of one child or young person from the rest of the detention population. The Northern Territory Government argued in submissions that the Commission's approach to the definition of isolation would lead to consequences that certain types of segregation of children would be covered by section 153(5) and that would not have been contemplated by the legislature. The Commission does not accept the Northern Territory Government's arguments in this regard. The examples provided are either types of conduct which could be covered by section 153(5) and there is no reason to argue that this was not contemplated, or are matters which would not in any event be covered by the Commission's preferred interpretation. In respect of the former there is no reason why children identified as 'at risk' or requiring special protections or are ill could not be covered by section 153(5) and subject to the protections therein. This is particularly so for children who may cause harm to other detainees, which is clearly covered by section 153(5)(a): 'to protect the safety of another person'. In respect of the latter, the Commission does not accept that detainees being housed in separate rooms overnight and sole female detainees being separated from males are not caught by the Commission's approach to 'isolation'. In respect of the latter it would be undesirable that a female detainee would be isolated for periods of time as a result of her gender and instead reasonable accommodation would need to be made to ensure that she was not left without the benefit of company from other detainees.

51 Youth Justice Regulations (NT) reg 72(1).

52 Further, contrary to the submissions by the Northern Territory Government (see Submission, Northern Territory Government, 23 May

2016, para. 93), the form of isolation does not limit the application of the provision. For example, if the cell has a window to the outside or bars to the next cell, allowing for communication, does not determine whether it is isolation.

<sup>53</sup> Exh.172.001, Statement of James Sizeland, 17 February 2017, tendered 27 March 2017, para. 95.

<sup>54</sup> Transcript, Michael Yaxley, 29 March 2017, p. 2208: line 25.

<sup>55</sup> Exh.741.029, Annexure MP-29 to Statement of Mark Payne, Youth Detention Procedures and Instructions Manual, 2007, tendered 25 July 2017, s 10.3.

<sup>56</sup> Exh.741.032, Annexure MP-29 to Statement of Mark Payne, Draft Operations Manual – Section 10 – Security, Safety and Procedures, tendered 25 July 2017, pp. 8-9.

<sup>57</sup> Exh.741.029, Annexure MP-20 to Statement of Mark Payne, Youth Detention Procedures and Instructions Manual, 2007, tendered 25 July 2017, s 10.3; Exh.741.032, Annexure MP-32 to Statement of Mark Payne, Draft Operations Manual – Section 10 – Security, Safety and Procedures, tendered 25 July 2017, p. 8.

<sup>58</sup> Exh.741.029, Annexure MP-29 to Statement of Mark Payne, Youth Detention Procedures and Instructions Manual, 2007, 23 February 2017, tendered 25 July 2017, s 10.3.

<sup>59</sup> Exh.741.032, Annexure MP-32 to Statement of Mark Payne, Draft Operations Manual – Section 10 – Security, Safety and Procedures, 2011, tendered 25 July 2017, p. 9.

<sup>60</sup> Exh.093.001, Statement of Christopher Castle, 7 February 2017, tendered 16 March 2017, paras 28-37; Exh.075.001, Statement of Derek Tasker, 16 February 2017, tendered 14 March 2017, para. 90; Exh.738.034, Annexure 34 to Statement of Jeanette Kerr, ASP SSP 4.3: De-escalation rooms, January 2016, tendered 25 July 2017.

<sup>61</sup> *Youth Justice Act (NT)* s 157.

<sup>62</sup> Sections 151 and 152 of the *Youth Justice Act (NT)* provide that a superintendent has powers that are necessary or convenient for the performance of his or her functions, which include to maintain order and ensure the safe custody of all persons, the maintenance and efficient conduct of the detention centre and supervise the health of detainees. Section 153(5) provides that the Superintendent may isolate a detainee to protect the safety of another person or to ensure the good order or security of the detention centre, but then only for a period of 24 hours (and the Commissioner has the power to extend that period for up to 72 hours). The Northern Territory Government submitted that the power to isolate a detainee was under both section 152 (a general power) and section 153(5) (a power to isolate for disciplinary purposes, limited as to its terms): See Submissions in response to Notice of Adverse Material 18/17, Northern Territory Government, 15 September 2017, paras 19-26. While there is potential overlap between the powers in section 152 and section 153(5), as section 153(5) expressly deals with isolation and provides limitations and controls over the exercise of that power, the Commission is of the view that s 152 does not confer a power to isolate. General principles of statutory construction dictate this interpretation. Where a statute confers both a general power, not subject to limitations and qualifications, and a specific power, subject to limitations and qualifications, the general power cannot be exercised to do that which is the subject of the special power: *Fink v Australian Film Commission (1979)* 24 ALR 513 at 518; *Grofam Pty Ltd v ANZ Banking Group Ltd (1993)* 117 ALR 669 at 674-675; *Anthony Horden and Sons Ltd v The Amalgamated Clothing and Allied Trades Union of Australia (1932)* 47 CLR 1 at 7. Further, isolation directly impacts on the common law right of personal liberty and there is a presumption that the legislature will not abrogate that right without clear and unambiguous language. Such clear language can be seen in section 153(5). The Northern Territory Government made a number of submissions directed to why there were two powers under the Youth Justice Act authorising the isolation of a detainee: See Submissions in response to Notice of Adverse Material 18/17, Northern Territory Government, 15 September 2017, paras 13-26. Those submissions included that the power under section 153(5) was directed to discipline and that there are circumstances where isolation is necessary but was not for a disciplinary purpose and relied on a narrow interpretation of the concepts of ‘discipline’, ‘protection of another person’ and ‘good order or security’. However those submissions do not persuade the Commission that the legislature conferred a separate power to isolate under section 152. The construction preferred by the Commission would not frustrate the operation of the Youth Justice Act and is reasonably open.

<sup>63</sup> *Youth Justice Act (NT)* section 153(1).

<sup>64</sup> A separate regulation, reg 70, deals with ‘management of misbehaviour’. This regulation does not authorise the use of isolation.

<sup>65</sup> *Correctional Services Act (NT)* s 78(2)(b).

<sup>66</sup> *Correctional Services Act (NT)* section 41. The section gives examples of grounds on which it may be appropriate to separate a prisoner including: the prisoner poses a threat to the safety of another person; the prisoner poses a threat to himself or herself; the prisoner’s safety is under threat from another prisoner; and to maintain the security and good order of the facility.

<sup>67</sup> Exh.053.028, Annexure 18 to *Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre*, 20 August 2015, tendered 14 December 2016, p. 32.

<sup>68</sup> Exh.053.028, Annexure 18 to *Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre*, 20 August 2015, tendered 14 December 2016, pp. 32. ‘The GM said he usually [sought approval for a 72-hour placement] by telephone or e-mail’ and ‘he was not required to provide evidence for the Commissioner to consider’.

<sup>69</sup> Exh.053.028, Annexure 18 to *Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre*, 20 August 2015, tendered 14 December 2016, p. 32.

<sup>70</sup> See also, Professional Standards Unit’s audits of Behaviour Management Unit journals did not extend to instances where isolation cells were used as a management tool for prolonged periods of time: Transcript, David Ferguson, 23 March 2017, p. 1725: lines 25-32.

<sup>71</sup> See example, discussion of isolation at Aranda House in 2012 below.

<sup>72</sup> Exh.800.001, Email from Salli Cohen to Peter Rainbird, 9 September 2013, tendered 23 October 2017; Exh.794.001, Email from Ken Middlebrook to Russell Caldwell, 15 August 2014, tendered 23 October 2017; Exh.801.001, Email from Ken Middlebrook to Russell Caldwell, 22 December 2014, tendered 23 October 2017; Exh.802.001, Email from Ken Middlebrook to Russell Caldwell, 22 December 2014, tendered 23 October 2017; Exh.803.001, Email from Ken Middlebrook to Russell Caldwell, 25 December 2014, tendered 23 October 2017; Exh.804.001, Email from Ken Middlebrook to Russell Caldwell, 14 January 2015, tendered 23

- October 2017; Exh.805.001, Email from Ken Middlebrook to Russell Caldwell, 25 February 2015, tendered 23 October 2017; Exh.806.001, Email from Ken Middlebrook to Russell Caldwell, 25 February 2015, tendered 23 October 2017; Exh.807.001, Email from Ken Middlebrook to Russell Caldwell, 5 April 2015, tendered 23 October 2017; Exh.808.001, Email from Salli Cohen to Randall Edwards, 1 June 2015, tendered 23 October 2017; Exh.809.001, Email from Ken Middlebrook to Victor Williams, 4 July 2015, tendered 23 October 2017.
- <sup>73</sup> Exh.809.001, Email from Ken Middlebrook to Victor Williams, 4 July 2015, tendered 23 October 2017.
- <sup>74</sup> Exh.810.001, Email from Russell Caldwell to Ken Middlebrook, 25 December 2014, tendered 23 October 2017.
- <sup>75</sup> Exh.811.001, Email from Russell Caldwell to Ken Middlebrook, 25 December 2014, tendered 23 October 2017.
- <sup>76</sup> Exh.803.001, Email from Ken Middlebrook to Russell Caldwell, 25 December 2014, tendered 23 October 2017; Exh.811.001, Email from Russell Caldwell to Ken Middlebrook, 25 December 2014, tendered 23 October 2017; Exh.812.001, Email from Russell Caldwell to Ken Middlebrook, 25 December 2014, tendered 23 October 2017; Exh.811.001, Email from Ken Middlebrook, 25 December 2014, tendered 23 October 2017.
- <sup>77</sup> Exh.813.001, Email from Russell Caldwell to Salli Cohen, 2 December 2014, tendered 23 October 2017.
- <sup>78</sup> Exh.802.001, Email from Ken Middlebrook to Russell Caldwell, 22 December 2014, tendered 23 October 2017.
- <sup>79</sup> Exh.802.001, Email from Ken Middlebrook to Russell Caldwell, 22 December 2014, tendered 23 October 2017.
- <sup>80</sup> Exh.802.001, Email from Russell Caldwell to Ken Middlebrook, 22 December 2014, 23 October 2017.
- <sup>81</sup> Exh.804.001, Email from Ken Middlebrook to Russell Caldwell, 14 January 2015, tendered 23 October 2017.
- <sup>82</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 3000: line 38; Transcript, Russell Caldwell, 29 March 2017, p. 2110: line 5 - p. 2111: line 45; p. 2113: line 26 - p. 2114: line 45.
- <sup>83</sup> Transcript, Russell Caldwell, 29 March 2017, p. 2113: lines 26-43.
- <sup>84</sup> Transcript, Russell Caldwell, 29 March 2017, p. 2113: lines 26-43. Regulation 72 does not require these decisions to be recorded in writing.
- <sup>85</sup> Exh.053.028, Annexure 18 to *Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre*, 20 August 2015, tendered 14 December 2016, p. 31.
- <sup>86</sup> Exh.053.028, Annexure 18 to *Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre*, 20 August 2015, tendered 14 December 2016, p. 32.
- <sup>87</sup> Exh.053.028, Annexure 18 to *Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre*, 20 August 2015, tendered 14 December 2016, p. 37.
- <sup>88</sup> Transcript, Salli Cohen, 24 April 2017, p. 2840: lines 42-43; p. 2827: lines 14-15.
- <sup>89</sup> Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para. 30.
- <sup>90</sup> Transcript, Conan Zamolo, 20 March 2017, p. 1401: lines 1-23.
- <sup>91</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 38.
- <sup>92</sup> Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 41.
- <sup>93</sup> Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para. 116; Transcript, Leonard de Souza, 22 March 2017, p. 1621: lines 10-22; Transcript, Michael Yaxley, 29 March 2017, p. 2191: lines 25-36; Transcript, Ken Middlebrook, 26 April 2017, p. 2986: lines 11-15; Exh.153.001, Statement of Louise Inglis, 15 February 2017, tendered 24 March 2017, para. 68.
- <sup>94</sup> Exh.741.029, Statement of Mark Payne, Annexure 029 (Confidential Exhibit), 23 February 2017, tendered 25 July 2017, section 10.3; Exh.741.032, Statement of Mark Payne, Annexure 032, 23 February 2017, tendered 25 July 2017, p. 8.
- <sup>95</sup> Exh.444.000, Statement of Peter Rainbird, 3 May 2017, tendered 12 May 2017, para. 36; Transcript, Michael Yaxley, 29 March 2017, p. 2203: lines 15-18.
- <sup>96</sup> Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para. 97.5.3.
- <sup>97</sup> Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para. 97.5.3; Transcript, Michael Yaxley, 29 March 2017, p. 2203: line 10. For information about treatment of children and young people at risk of self-harm, see the 'At-risk' section of Chapter 16 – Health.
- <sup>98</sup> Presumably the separation in these situations was the usual separation that happens day to day in detention centres; for example, lockdown at night or separation of males and females, or as a result of the special at risk procedures under rr 41 and 42 of the Youth Justice Regulations (NT). On the Commission's analysis, if the Behaviour Management Unit cells were being used in the same way as any other accommodation room – with children and young people free to move around like other detainees, visiting other parts of the centre for meals, recreation or sport during the day and staying in their cell overnight – then the restrictions of s 153(5) would not arise.
- <sup>99</sup> Transcript, Salli Cohen, 24 April 2017, p. 2825: lines 6-39.
- <sup>100</sup> Transcript, Jonathon Hunyor, 20 March 2017, p. 1487: line 35; p. 1488: line 21.
- <sup>101</sup> Exh.103.001, Statement of Jonathon Hunyor, 16 February 2017, tendered 20 March 2017, paras 28-31; Exh.103.003, Annexure B to Statement of Jonathon Hunyor, 12 August 2014, tendered 20 March 2017; Exh.103.005, Annexure D to Statement of Jonathon Hunyor, 14 August 2014, tendered 20 March 2017.
- <sup>102</sup> Exh.053.028, Annexure 18 to *Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre*, 20 August 2015, tendered 14 December 2016, p. 32.
- <sup>103</sup> Exh.053.028, Annexure 18 to *Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre*, 20 August 2015, tendered 14 December 2016, p. 32.
- <sup>104</sup> Exh.053.028, Annexure 18 to *Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre*, 20 August 2015, tendered 14 December 2016, p. 37.
- <sup>105</sup> Transcript, Ben Kelleher, 21 March 2017, p. 1544: lines 5-8.
- <sup>106</sup> Transcript, James Sizeland, 29 March 2017, p. 1887: lines 5-10; Transcript, Russell Caldwell, 29 March 2017, p. 2166: line 2; Transcript, Conan Zamolo, 20 March 2017, p. 1400: line 40.

- <sup>107</sup> Transcript, Salli Cohen, 24 April 2017, p. 2807: lines 43-47.
- <sup>108</sup> Transcript, Salli Cohen, 24 April 2017, p. 2835: line 31.
- <sup>109</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 3007: line 39.
- <sup>110</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 3051: lines 45-47.
- <sup>111</sup> Transcript, Salli Cohen, 24 April 2017, p. 2843: lines 1-13.
- <sup>112</sup> Transcript, James Sizeland, 29 March 2017, p. 1887: lines 5-10; Exh.748.0001, Statement of Margaret Anderson, 22 March 2017, tendered 25 July 2017, para. 91; Transcript, Conan Zamolo, 20 March 2017, p. 1400: lines 40-45; Transcript, Benjamin Kelleher, 21 March 2017, p. 1543: lines 40-45; Transcript, Russell Caldwell, 29 March 2017, p. 2126: lines 15-20; Transcript, Salli Cohen, 30 March 2017, p. 2239: lines 40-47; Transcript, Kenneth Middlebrook, 26 April 2017, p. 3052: lines 45-57; Exh.321.001, Statement of John Elferink, 31 March 2017, tendered 27 April 2017, para. 45.
- <sup>113</sup> Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 40.
- <sup>114</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, paras 34-35.
- <sup>115</sup> Exh.068.001, Statement of BF, 20 February 2017, tendered 13 March 2017, para. 36.
- <sup>116</sup> Closed court transcript, BF, 13 March 2017, p. 4: line 26.
- <sup>117</sup> Exh.084.001, Statement of BY, 21 February 2017, tendered 16 March 2017, paras 52-54.
- <sup>118</sup> *Youth Justice Act (NT) s 152(2)*.
- <sup>119</sup> Exh.204.001, Northern Territory Correctional Services Directive, 31 August 2011, tendered 29 March 2011.
- <sup>120</sup> Exh.204.001, Northern Territory Correctional Services Directive, 31 August 2011, tendered 29 March 2011, para. 3.
- <sup>121</sup> Exh.204.001, Northern Territory Correctional Services Directive, 31 August 2011, tendered 29 March 2011, para. 2.
- <sup>122</sup> Transcript, James Sizeland, 29 March 2017, p. 1887: line 15; p. 1935: lines 8-10.
- <sup>123</sup> Transcript, Michael Yaxley, 29 March 2017, p. 2196: lines 23-33; p. 2197: lines 14-40.
- <sup>124</sup> Transcript, Michael Yaxley, 29 March 2017, p. 2200: lines 1-13; p. 2204: lines 6-10; Transcript, David Ferguson, 23 March 2017, p. 1725: lines 15-20.
- <sup>125</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2989: lines 33-36.
- <sup>126</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2990: lines 8-10.
- <sup>127</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2989: lines 33-36.
- <sup>128</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2989: lines 19-27.
- <sup>129</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2988: line 22.
- <sup>130</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2988: lines 24-27.
- <sup>131</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2987: line 45; p. 2988: line 2.
- <sup>132</sup> Exh.311.008, Document [Email] written by Barrie Clee, 24 August 2012, tendered 26 April 2017.
- <sup>133</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2990: line 34.
- <sup>134</sup> Transcript, Michael Yaxley, 29 March 2017, p. 2204: lines 26-37; Exh.053.028, Annexure 18 to *Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre*, 20 August 2015, tendered 14 December 2016, p. 31.
- <sup>135</sup> Transcript, Michael Yaxley, 29 March 2017, p. 2206: lines 2-9; Transcript, James Sizeland, 27 March 2017, p. 1935: line 33; p. 1936: lines 12-18.
- <sup>136</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 25.
- <sup>137</sup> Exh.053.028, Annexure 18 to *Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre*, 20 August 2015, tendered 14 December 2016, p. 31.
- <sup>138</sup> Transcript, Michael Yaxley, 29 March 2017, p. 2206: lines 39-47.
- <sup>139</sup> Transcript, Michael Yaxley, 29 March 2017, p. 2205: lines 34-39; p. 2206: lines 28-33.
- <sup>140</sup> Transcript, Michael Yaxley, 29 March 2017, p. 2207: line 46 - p. 2208: line 2.
- <sup>141</sup> Transcript, Michael Yaxley, 29 March 2017, p. 2207: lines 23-28.
- <sup>142</sup> Exh.198.001, Emails 'Re: Incident reports for [redacted]', 13 April 2014, tendered 29 March 2017. Mr Middlebrook said he was not aware that it was a longstanding practice: Transcript, Ken Middlebrook, 26 April 2017, p. 2998: lines 9-12.
- <sup>143</sup> Transcript, Ken Middlebrook, 26 April 2017, p. 2991: lines 4-11.
- <sup>144</sup> Exh.342.005, Integrated Offender Management System report 9880 Bundle (G Donald (2), J Clee), February 2012, tendered 9 May 2017, pp. 1025-1027.
- <sup>145</sup> Exh.342.003, Confidential tab (Behaviour Management Unit placement journal), February 2012, tendered 9 May 2017, pp. 1010, 1013, 1015.
- <sup>146</sup> Exh.342.008, Intensive Management Plan, 18 February 2012, tendered 9 May 2017, p. 1036.
- <sup>147</sup> Transcript, Keith Hamburger, 5 December 2016, p. 340: lines 35-37; Exh.634.000, Precis of evidence of Elizabeth Grant, 26 May 2017, tendered 29 June 2017, para. 34.
- <sup>148</sup> Transcript, Keith Hamburger, 6 December 2016, p. 409: lines 1-3; Exh.031.002, Annexure 1 to Statement of Keith Hamburger, A *Safer Northern Territory through Correctional Interventions*, 31 July 2016, tendered 5 December 2016, pp. 144-145; Transcript, Keith Hamburger, 5 December 2016, p. 323: lines 4-29.
- <sup>149</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 27; Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 42; Exh.159.001, Statement of AN, 17 February 2017, tendered 23 March 2017, paras 51, 133; Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para. 40.
- <sup>150</sup> Transcript, James Sizeland, 27 March 2017, p. 1888: lines 18-19.
- <sup>151</sup> Exh.311.007, Intensive Management Plan generic draft, 24 August 2012, tendered 28 April 2017, p. 2.
- <sup>152</sup> Exh.064.096, Email Intensive Management Plans, 12 June 2012, tendered 31 March 2017, p. 1.
- <sup>153</sup> Exh.053.028, Annexure 18 to Statement of Dylan Voller, *Own Initiative Investigation Report – Services Provided by the Department*



- of Correctional Services at the Don Dale Youth Detention Centre, August 2015, tendered 14 December 2016, pp. 12, 33.
- 154 Transcript, James Sizeland, 27 March 2017, p. 1888: lines 10-14.
- 155 Transcript, James Sizeland, 27 March 2017, p. 1939: lines 25-47; p. 1940: lines 28-31.
- 156 Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 26.
- 157 Exh.140.009, Bed history for AS, tendered 23 March 2017.
- 158 Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 21.
- 159 Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 22; Exh.140.009, Bed history for AS, tendered 23 March 2017, p. 0120.
- 160 Exh.064.013, Intensive Management Plan, 25 November 2012, tendered 31 March 2017, pp. 2888, 2893, 2898, 2903.
- 161 Exh.064.013, Intensive Management Plan, 25 November 2012, tendered 31 March 2017, pp. 2888, 2894, 2899, 2903.
- 162 Exh.064.013, Intensive Management Plan, 25 November 2012, tendered 31 March 2017, p. 2886.
- 163 Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, paras 20, 24, 26.
- 164 Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 25.
- 165 Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 35; Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 21; Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para. 56.
- 166 Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 36; Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, paras 43, 56.
- 167 Transcript, Benjamin Kelleher, 21 March 2017, p. 1544: line 3.
- 168 Transcript, James Sizeland, 28 March 2017, p. 1987: lines 25-27.
- 169 Exh.064.074, Swearing charts and placements, 19 March 2012, tendered 30 March 2017, p. 1.
- 170 Transcript, Trevor Hansen, 14 March 2017, p. 990: lines 26-27; Transcript, Derek Tasker, 15 March 2017, p. 1113: lines 16-20; Transcript, Conan Zamolo, 20 March 2017, p. 1448: line 26; Transcript, Leonard de Souza, 22 March 2017, p. 1654: lines 26-37.
- 171 Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, paras 149-155; Transcript, Salli Cohen, 30 March 2017, p. 2377: line 36; p. 2378: line 2; Transcript, Salli Cohen, 24 April 2017, p. 2808: lines 1-29; p. 2809: lines 5-11.
- 172 Transcript, Salli Cohen, 30 March 2017, p. 2361: lines 25-32; Transcript, Russell Caldwell, 29 March 2017, p. 2110: lines 33-35; See also, sections in this chapter regarding the extended periods of time spent in the Behavioural Management Unit by the detainees involved in the tear-gassing incident on 21 August 2014, and by AJ in April 2014.
- 173 Exh.283.009, Email from Susan Watts to Greg Donald, 12 February 2014, tendered 31 March 2017.
- 174 Exh.383.001, Annexure ANC-1 to Statement of Amanda Nobbs-Carcuro, Email chain, March 2014, tendered 12 May 2017, pp. 0003-0004, 0009.
- 175 Exh.313.001, SFNT Advice, 18 March 2014, tendered 24 April 2014, pp. 1-3.
- 176 Submission, Northern Territory Government Response to Notice of Adverse Material 18/17, para. 96.
- 177 Exh.196.001, Emails 'Re: [redacted]', 9 April 2014, tendered 29 March 2017, p. 0099.
- 178 Transcript, Russell Caldwell, 29 March 2017, p. 2114: lines 34-39; p. 2115: line 8.
- 179 Transcript, Ken Middlebrook, 26 April 2017, p. 2999: lines 31-33.
- 180 Transcript, Ken Middlebrook, 26 April 2017, p. 3000: lines 19-23.
- 181 Exh.200.001, Emails 'Re: Possible transfer of [redacted] to Don Dale', April 2014, tendered 29 March 2017, p. 2238.
- 182 Transcript, Russell Caldwell, 29 March 2017, p. 2141: lines 14-17.
- 183 Transcript, Russell Caldwell, 29 March 2017, p. 2141: lines 26-30.
- 184 Exh.198.001, Emails 'Re: Incident reports for [redacted]', 13 April 2014, tendered 29 March 2017, p. 2250.
- 185 Exh.312.001, Emails 'Re: Incident reports for [redacted]', 13 April 2014, tendered 24 April 2017, p. 2250-2251.
- 186 Exh.195.001, Offender History of Beds – part 1, tendered 29 March 2017, p. 1572.
- 187 Exh.793.001, Dylan Voller – Offender History of Beds Part 2, 23 October 2017, p. 0616.
- 188 Transcript, Russell Caldwell, 29 March 2017, p. 2123: line 40 – p. 2124: line 12; p. 2125: lines 14-44.
- 189 Transcript, Russell Caldwell, 29 March 2017, p. 2124: lines 10-17; p. 2125: lines 40-44.
- 190 Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 150-153, 176; Transcript, Russell Caldwell, 29 March 2017, p. 2115: lines 22-29; Transcript, Salli Cohen, 24 April 2017, p. 2834: lines 32-38; p. 2835: lines 41-46.
- 191 Transcript, James Sizeland, 27 March 2017, p. 1889: line 31 – p. 1890: line 10; Transcript, Salli Cohen, 30 March 2017, p. 2374: line 43 – p. 2375: line 17; Transcript, Salli Cohen, 24 April 2017, p. 2809: lines 5-11; p. 2835: lines 20-33; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, paras 175-184; Transcript, Russell Caldwell, 29 March 2017, p. 2115: lines 22-29; p. 2126: lines 5-10.
- 192 Transcript, Ken Middlebrook, 26 April 2017, p. 3002: line 21-39.
- 193 Exh.794.001, Re: Dylan Voller, 15 August 2014, tendered 23 October 2017, p. 2175.
- 194 Exh.053.028, Annexure 18 to *Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre*, 20 August 2015, tendered 14 December 2016, p. 10. Mr Caldwell's request on 15 August 2014 said, 'a management plan will be set in place as [Mr Voller] will likely need to remain accommodated in the Behaviour Management Unit [after the 72-hour period] for his own safety and that of other detainees and staff': Exh.794.0001, Re: Dylan Voller, 15 August 2014, tendered 23 October 2017, p. 2175.
- 195 Exh.053.028, Annexure 18 to *Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre*, 20 August 2015, tendered 14 December 2016, p. 11.
- 196 Transcript, Russell Caldwell, 29 March 2017, p. 2115: lines 22-26.
- 197 Transcript, Russell Caldwell, 29 March 2017, p. 2166: lines 23-29.
- 198 Submissions, Northern Territory Government, 23 May 2017, para. 93.
- 199 Transcript, Salli Cohen, 30 March 2017, p. 2375: lines 10-39.



- 200 Transcript, Russell Caldwell, 29 March 2017, p. 2165: lines 37-40.
- 201 Transcript, James Sizeland, 27 March 2017, p. 1891: line 44 – p. 1892: line 2; Transcript, Salli Cohen, p. 2809: line 41 – p. 2811: line 17.
- 202 Transcript, Russell Caldwell, 29 March 2017, p. 2169: lines 16-17.
- 203 Exh.053.028, Annexure 18 to *Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre*, 20 August 2015, tendered 14 December 2016, p. 14.
- 204 Transcript, Russell Caldwell, 29 March 2017, p. 2172: line 14 – p. 2174: line 4.
- 205 Transcript, Salli Cohen, 24 April 2017, p. 2906: lines 27-28.
- 206 Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 76.
- 207 Exh.195.001, Offender History of Beds – part 1, tendered 29 March 2017; Exh.283.231, Offender History of Beds – part 2, tendered 31 March 2017.
- 208 Closed court transcript, BZ, 23 March 2017, p. 43: lines 43-45.
- 209 Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 81.
- 210 Exh.145.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 80.
- 211 Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 18.
- 212 Exh.136.001, Statement of BZ, 20 February 2017, tendered 23 March 2017, para. 29.
- 213 Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, paras 82-83.
- 214 Submissions, BZ, 26 May 2017, p. 9, para. 42.
- 215 Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 334-346; Exh.194.015, Annexure 16 to Statement of Russell Caldwell, Incident reports, January 2015, tendered 29 March 2017.
- 216 Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 346-347.
- 217 Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 349-352.
- 218 Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 24.
- 219 Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 30.
- 220 Exh.064.223, Review of post-incident cell placements at Don Dale Youth Detention Centre, 8 January 2017, tendered 29 March 2017, pp. 2-3.
- 221 Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 349-355; Exh.194.018, Annexure RSC-17 to Statement of Russell Caldwell, Response to review of post-incident cell placements, 2 February 2015, tendered 29 March 2017.
- 222 Exh.174.001, Transcript of Children Commissioner’s interview with James Sizeland, 9 December 2016, tendered 27 March 2017, p. 12.
- 223 Exh.135.008, Statement of Victor Williams, 22 March 2017, tendered 23 March 2017, para. 5.
- 224 Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, paras 40, 45.
- 225 Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 39.
- 226 Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 46.
- 227 Exh.737.026, Annexure JK-26 to Statement of Jeanette Kerr, Site-specific procedure DWN 4.1.4: High Security Unit, January 2016, tendered 25 July 2017, p. 2; Exh.738.044, Annexure JK-44 to Statement of Jeanette Kerr, Site-specific procedure DWN 4.3: De-escalation rooms, January 2016, tendered 25 July 2017, p. 2. Previously, there were eight cells in the High Security Unit designated as de-escalation rooms, however, this was reduced to two in late 2016: Exh.124.008, Annexure DF-7 to Statement of David Ferguson, Audit of de-escalation room procedures at Don Dale Youth Detention Centre, 6 October 2016, tendered 23 March 2017, p. 1.
- 228 Exh.738.044, Annexure JK-44 to Statement of Jeanette Kerr, Site-specific procedure DWN 4.3: De-escalation rooms, January 2016, tendered 25 July 2017, p. 2.
- 229 Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, para. 37.
- 230 Exh.365.000, Statement of CE, 21 February 2017, tendered 10 May 2017, para. 24; Exh.241.001, Statement of BV, 19 February 2017, tendered 31 March 2017, para. 29; Exh.251.001, Statement of BA, 17 February 2017, tendered 31 March 2017, paras 41-42; Exh.102.001, Statement of BN, 14 February 2017, tendered 20 March 2017, para. 81; Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, paras 53-54.
- 231 Exh.241.001, Statement of BV, 19 February 2017, tendered 31 March 2017, para. 29.
- 232 Transcript, Ken Davies, 30 June 2017, p. 5439: lines 5-6.
- 233 Exh.251.001, Statement of BA, 17 February 2017, tendered 31 March 2017, para. 39; Exh.365.000, Statement of CE, 21 February 2017, tendered 10 May 2017, para. 24; Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, para. 29; Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 33.
- 234 Exh.251.001, Statement of BA, 17 February 2017, tendered 31 March 2017, para. 39.
- 235 Exh.737.026, Annexure JK-26 to Statement of Jeanette Kerr, Site-specific procedure DWN 4.1.4: High Security Unit, January 2016, tendered 25 July 2017, p. 2.
- 236 Exh.741.014, Annexure MP-41 to Statement of Mark Payne, Site-specific procedure at Don Dale Youth Detention Centre: High Security Unit, July 2015, pp. 10-11.
- 237 In 2015–16, 82 % of all admissions to detention were for remand only. The average length of time on remand was 17.5 days: Exh.696.001, Statement of Carolyn Whyte, 9 June 2016, tendered 10 July 2017, paras 71-72.
- 238 Exh.737.026, Annexure JK-26 to Statement of Jeanette Kerr, Site-specific procedure DWN 4.1.4: High Security Unit, January 2016, tendered 25 July 2017, p. 4.
- 239 Exh.241.001, Statement of BV, 19 February 2017, tendered 31 March 2017, paras 26-27; Exh.050.001, Statement of Dylan Voller, 25 November 2016, tendered 12 December 2016, paras 162-163; Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, paras 40-41; Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 34; Exh.102.001, Statement of BN, 14 February 2017, tendered 20 March 2017, paras 71-72, 76; Exh.123.001, Statement of AS, 22 February 2017,

tendered 22 March 2017, para. 52; Exh.365.000, Statement of CE, 21 February 2017, tendered 10 May 2017, para. 25.

240 Exh.241.001, Statement of BV, 19 February 2017, tendered 31 March 2017, paras 26-27.

241 Exh.241.001, Statement of BV, 19 February 2017, tendered 31 March 2017, para. 28.

242 See Exh.245.016, Email correspondence between staff, 27 June 2016, tendered 31 March 2017; Exh.245.017, Email correspondence between staff, 24 August 2016, tendered 31 March 2017; Exh.245.018, Offender Behaviour Programs Assessment, 22 September 2016, pp. 5-6.

243 Exh.102.001, Statement of BN, 14 February 2017, tendered 20 March 2017, paras 71-72.

244 Exh.245.001, Bed history for BN, 13 March 2017, tendered 31 March 2017, pp. 3-4.

245 Exh.064.316, Complaint response Don Dale Youth Detention Centre, 12 September 2016, tendered 31 March 2017, pp. 2-3.

246 Exh.064.316, Complaint response Don Dale Youth Detention Centre, 12 September 2016, tendered 31 March 2017, p. 3.

247 Exh.795.001, Email to Victor Williams, 7 June 2016, 23 October 2017.

248 Exh.796.001, Extract of case notes for BN, 24 May 2016, 23 October 2017.

249 Exh.797.001, Intensive Behavioural Management Plan, 14 June 2016, tendered 23 October 2017, pp. 4911, 4913.

250 Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 51; Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, para. 40; Exh.251.001, Statement of BA, 17 February 2017, tendered 31 March 2017, para. 43.

251 Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 34.

252 Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, para. 40.

253 Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 51.

254 Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, para. 42; Exh.251.001, Statement of BA, 17 February 2017, tendered 31 March 2017, para. 43; Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 51.

255 Exh.738.044, Annexure JK-44 to Statement of Jeanette Kerr, Site-specific procedure DWN 4.3: De-escalation rooms, January 2016, tendered 25 July 2017, p. 3.

256 Exh.798.001, [Redacted] v DR, Youth Justice Court, 22 March 2016, tendered 23 October 2017, para. 22.

257 It is noted that the finding of the court was that AS had pushed one officer in the back and head and had punched another in the face. The court did not accept the evidence of one officer that AS 'rained punches about his head'. Exh.798.001, [Redacted] v DR, Youth Justice Court, 22 March 2016, tendered 23 October 2017, paras 28-29.

258 Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 42; See also Officer's reports of the incident: Exh.140.012, Integrated Offender Management System reports, 4 November 2015, tendered 23 March 2017.

259 See *Youth Justice Act* (NT) s 157.

260 The Procedures and Instructions Manual at the current Don Dale Youth Detention Centre allowed youth justice officers to use bedroom placements of up to three hours 'for the management of minor non-compliance or breaches of the detention centre rules'. Bedroom placements was stated not to invoke the operation of s 153 of the *Youth Justice Act 2005* (NT) because it 'does not involve the degree of isolation of a security isolation unit placement': See Exh.741.032, Annexure MP-32 to Statement of Mark Payne, *Draft Operations Manual – Security, Safety and Procedure*, 2011, tendered 25 July 2017, section 10.5.

261 Exh.798.001, [Redacted] v DR, Youth Justice Court, 22 March 2016, tendered 23 October 2017, para. 22.

262 Exh.798.001, [Redacted] v DR, Youth Justice Court, 22 March 2016, tendered 23 October 2017, para. 22.

263 The superintendent's power under section 153(5) to approve isolation placements for up to 24 hours was delegated only to the deputy general manager and shift supervisors: See Exh.741.366, Annexure MP-366 to Statement of Mark Payne, Instrument of Delegation, 19 September 2014, tendered 25 July 2017; Exh.741.367, Annexure MP-367 to Mark Payne, Instrument of Delegation, 6 October 2015, tendered 25 July 2017; Exh.741.368, Annexure MP-368 to Statement of Mark Payne, Instrument of Delegation, 18 January 2016, tendered 25 July 2017.

264 Exh.124.007, Annexure DF-6 to Statement of David Ferguson, Audit of de-escalation rooms at Don Dale Youth Detention Centre, 3 May 2016, tendered 23 March 2017; Exh.124.008, Annexure DF-7 to Statement of David Ferguson, Audit of de-escalation room procedures at Don Dale Youth Detention Centre, 6 October 2016, tendered 23 March 2017.

265 Exh.124.007, Annexure DF-6 to Statement of David Ferguson, Audit of de-escalation rooms at Don Dale Youth Detention Centre, 3 May 2016, tendered 23 March 2017, p. 1; Exh.124.008, Annexure DF-7 to Statement of David Ferguson, Audit of de-escalation room procedures at Don Dale Youth Detention Centre, 6 October 2016, tendered 23 March 2017, p. 3.

266 Exh.031.002, Annexure 1 to Statement of Keith Hamburger, *A Safer Northern Territory through Correctional Interventions: Report on the Review of the Northern Territory Department of Correctional Services*, 31 July 2016, tendered 5 December 2016, p. 148.

267 Exh.269.001, Statement of Victor Williams, 28 February 2017, tendered 31 March 2017, paras 42-44.

268 Exh.269.001, Statement of Victor Williams, 28 February 2017, tendered 31 March 2017, paras 45-47.

269 Transcript, Jeanette Kerr, 8 May 2017, p. 3543: paras 15-25.

270 See Exh.124.007, Annexure DF-6 to Statement of David Ferguson, Audit of de-escalation rooms at Don Dale Youth Detention Centre, 3 May 2016, tendered 23 March 2017, p. 3.

271 Exh.311.131, Response to the Vita Report Recommendations, 25 August 2016, tendered 28 April 2017, p. 4899.

272 Exh.375.000, Statement of CB, 10 May 2017, tendered 11 May 2017, paras 58-59.

273 Exh.799.001, Annexure B - Current Status to Letter from Solicitor for the Northern Territory to the Solicitor Assisting the Commission, 7 July 2017, tendered 23 October 2017, p. 7.

274 Exh.050.001, Statement of Dylan Voller, 25 November 2016, tendered 12 December 2016, para.151.

275 Exh.096.015, Letter from the Central Australian Aboriginal Legal Aid Service to Minister for Correctional Services, 15 August 2011, tendered 17 March 2017, pp. 1-2.

276 Exh.096.018, Letter from Minister McCarthy to the Central Australian Aboriginal Legal Aid Service in response to correspondence dated 15 August 2011, 12 October 2011, tendered 17 March 2017, p. 1.

277 Exh.080.013, Annexure AC-48 to Statement of Antoinette Carroll, Letter from the Central Australian Aboriginal Legal Aid Service to

- Ken Middlebrook, 13 June 2012, tendered 15 March 2017, pp. 1-3. The Commission is not aware if a response was provided.
- 278 Transcript, Christopher Castle, 16 March 2017, p. 1291: lines 4-6.
- 279 Exh.093.001, Statement of Christopher Castle, 9 February 2017, tendered 16 March 2017, para. 35.
- 280 Transcript, Barrie Clee, 20 April 2017, p. 2570: lines 5-35.
- 281 Exh.093.001, Statement of Christopher Castle, 9 February 2017, tendered 16 March 2017, para. 41.
- 282 Transcript, Antoinette Carroll, 15 March 2017, p. 1165: lines 10-15.
- 283 Transcript, Derek Tasker, 15 March 2017, p. 1083: lines 3-5.
- 284 Exh.114.009, Confidential tab (Alice Spring Juvenile Holding Centre daily journal), 24 May 2012 – 29 August 2012), tendered 21 March 2017, p. 0280.
- 285 Exh.243.001, Statement of BX, 14 February 2017, tendered 31 March 2017, para. 17.
- 286 Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, paras 54, 56.
- 287 Exh.111.001, Statement of AX, 17 February 2017, tendered 21 March 2017, paras 51, 57.
- 288 Exh.243.001, Statement of BX, 14 February 2017, tendered 31 March 2017, para. 17.
- 289 Exh.111.003, Annexure B to Statement of AX, Letter from Max Yffer to Tanya Blackmore, Senior Caseworker, 5 July 2012, p. 1.
- 290 Exh.114.009, Confidential tab (Alice Spring Juvenile Holding Centre daily journal), 24 May 2012 – 29 August 2012), tendered 21 March 2017.
- 291 Exh.114.009, Confidential tab (Alice Spring Juvenile Holding Centre daily journal), 24 May 2012 – 29 August 2012), tendered 21 March 2017, entries on 5, 8, 9, 10, 17, 18 and 30 June 2012, and 7, 8 and 19 July 2012.
- 292 Exh.114.009, Confidential tab (Alice Spring Juvenile Holding Centre daily journal), 24 May 2012 – 29 August 2012), tendered 21 March 2017, entry on 29 May 2012.
- 293 Exh.064.100, Aranda Forum Minutes, 10 July 2012, tendered 15 March 2017, p. 0223.
- 294 Exh.114.009, Confidential tab (Alice Spring Juvenile Holding Centre daily journal), 24 May 2012 – 29 August 2012), tendered 21 March 2017.
- 295 Exh.114.009, Confidential tab (Alice Spring Juvenile Holding Centre daily journal), 24 May 2012 – 29 August 2012), tendered 21 March 2017, p. 121.
- 296 Exh.064.099, AX Intensive Management Plan, 22 June 2012, tendered 31 March 2017.
- 297 Exh.243.001, Statement of BX, 14 February 2017, tendered 31 March 2017, paras 20, 22-23; Exh.111.001, Statement of AX, 17 February 2017, tendered 21 March 2017, paras 47, 48; Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 54; Exh.111.003, Annexure B to Statement of AX, Letter from Max Yffer to Tanya Blackmore, Senior Caseworker, 5 July 2012, p. 1.
- 298 Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 55.
- 299 Transcript, Michael Yaxley, 30 March 2017, p. 2293: lines 34-37.
- 300 Exh.064.100, Aranda Forum Minutes, 10 July 2012, tendered 15 March 2017.
- 301 Exh.111.003, Annexure B to Statement of AX, Letter from Max Yffer to Tanya Blackmore, Senior Caseworker, 5 July 2012, pp. 3-4.
- 302 Exh.111.003, Annexure B to Statement of AX, Letter from Max Yffer to Tanya Blackmore, Senior Caseworker, 5 July 2012, p. 4.
- 303 Exh.111.003, Annexure B to Statement of AX, Letter from Max Yffer to Tanya Blackmore, Senior Caseworker, 5 July 2012, p. 3.
- 304 Exh.111.003, Annexure B to Statement of AX, Letter from Max Yffer to Tanya Blackmore, Senior Caseworker, 5 July 2012, p. 4.
- 305 Submission, Max Yffer, 29 May 2017, pp. 1-2.
- 306 Submission, AX, 23 May 2017, p. 2, para. 1(c); Submission, BR, 23 May 2017, p. 8, para. 29; Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 100(a); Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, para. 63(d); Submission, BL, 23 May 2017, p. 17, para. 63; Submission, AN and Jamal Turner, 23 May 2017, p. 0029; Submission, AB, 23 May 2017, p. 4, para. 21; Submission, BZ, 23 May 2017, p. 3, para. 9(a); Submission, AU, 28 May 2017, p. 9, para. 41; Submission, Dylan Voller, 11 June 2017, p. 17, para. 3b.25.1.
- 307 Submission, Central Australian Aboriginal Legal Aid Service, 10 July 2017, p. 4, para. 28; Submission, North Australian Aboriginal Justice Agency, July 2017, p. 49, recommendation 20(l); Annexure B to Submissions, Danila Dilba, 31 May 2017, pp. 16-17; Submission, Aboriginal Peak Organisations Northern Territory, July 2017, p. 187, recommendation 118; Submission, Human Rights Law Centre to Commission, 4 October 2017, p. 1.
- 308 Submission, Human Rights Law Centre, 4 October 2017, p. 1.



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HEALTH, MENTAL HEALTH  
AND CHILDREN AT-RISK



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# HEALTH, MENTAL HEALTH AND CHILDREN AT-RISK

## INTRODUCTION

Children and young people in detention are entitled to medical and health care of the same quality that the general public receives. The right to the same standards of health care as the wider community, without discrimination on the grounds of legal status, is enshrined in international human rights standards.<sup>1</sup>

Incarcerated children and young people are more likely to have experienced poor physical and mental health and disproportionately higher levels of disadvantage than the general population.<sup>2</sup> Accordingly, their health needs may be greater than those of children and young people in non-custodial settings.<sup>3</sup> Many children and young people entering detention arrive with complex physical and mental health care needs, some of which may not have been identified previously. These health care needs, particularly substance addictions, may be an underlying factor of offending behaviour.<sup>4</sup>

*'I have known a lot of people who have gone into youth detention. They usually have ended up in trouble with the law because there has been drug and alcohol misuse in their family, they have been abused, some have been the victims of paedophilia and some have been bullied.'*<sup>5</sup>

Vulnerable witness AG

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Professor Stuart Kinner, a paediatrician with research interests in juvenile detention, noted:

*Remarkably little is known about outcomes for young people released from detention, except that the majority reoffend and a disproportionate number die from preventable causes, including drug overdose, suicide, homicide and accidents and injury.*

Accordingly, apart from giving effect to the Northern Territory Government's duty of care to provide for the health and wellbeing of young detainees, detention provides an opportunity to seek to manage and treat many of the underlying health causes of detainees' dysfunction. It is accepted that the provision of such services to short-term remandees is difficult. However, other jurisdictions, such as NSW, have better achieved continuity of service in the community after release.

This Chapter will consider the quality of health care accorded to children and young people in detention centres in the Northern Territory. The Commission has considered a sample of approaches across the 10-year period and has sought to draw some more general inferences from those examples. The Northern Territory Government has challenged the Commission's entitlement to do so on this body of evidence. The Commission has little evidence of day-to-day practices in Darwin and Alice Springs for the period 2006 to 2011. The Commission considers that where generalisations are made, they are supported by the evidence. However, the Commission acknowledges that there might well be exceptions.

The recollection of former detainees' are not always reliable, in particular when recounting numbers and time when tested against the records. It is not for that kind of exactness that the Commission has referred to and relied on many of them. It is for the overall perceptions of young people's detention experiences. These have been accepted as authentic. Some staff members had a different recollection, particularly for mental health episodes that were experienced by some detainees. As has been mentioned elsewhere, there was a perception among many of the staff members who gave evidence to the Commission that detainees over the relevant period became more difficult to manage and demonstrated increasing rates of mental illness.

The study undertaken by the Children's Commissioner for England and Wales in 2012 about the prevalence of cognitive and mental health deficits in young people in secure detention – *Nobody Made the Connection* - revealed a previously unrecognised high level of prevalence. A similar study has not occurred in Australia but as is discussed in Chapter 3 (Context and challenges), there is sufficient evidence to make a finding that there are likely to be undiagnosed causes of behavioural and mental health manifestations amongst the youth detention population in the Northern Territory.

## THE HEALTH NEEDS OF CHILDREN AND YOUNG PEOPLE

There is no comprehensive data on the health of children and young people in detention in the Northern Territory.<sup>6</sup> However, other sources of evidence suggest that many of these children and young people, like their counterparts in other jurisdictions, have complex physical and mental health, social and emotional wellbeing needs, some of which are unidentified or untreated.<sup>7</sup>

These needs include mental health problems, drug and alcohol abuse, elevated rates of chronic conditions, poor oral health, asthma, learning difficulties and intellectual disabilities.<sup>8</sup> In 2003,

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hearing tests were conducted on 10 detainees at the former Don Dale Youth Detention Centre. This small study found that six detainees had active ear disease.<sup>9</sup> Evidence before the Commission also established that many of the children and young people in detention in the Northern Territory during the relevant period arrived with variously:

- hearing loss
- poor vision
- fetal alcohol spectrum disorder (FASD)/cognitive impairment, and
- mental health disorders, including early life trauma and psychiatric disorders, including depression, substance abuse and behavioural disorders.<sup>10</sup>

These conditions are prevalent and may impact on the child's experience in the detention system. There is evidence, however, that hearing loss outcomes in 2017 have improved for children and young people in the Northern Territory, including those in detention.<sup>11</sup> Children or young people with undiagnosed hearing loss may come across as difficult to manage. They may appear to be ignoring or not complying with instructions given by staff members, but in fact they cannot hear or understand what is being said.<sup>12</sup>

Some of the control measures employed by youth justice officers during the relevant period, while difficult for children and young people generally, may be even more so for those in detention with these particular conditions. For example, handcuffing or applying a spit hood to a child or young person with a hearing impairment limits their ability to anticipate danger or to communicate.<sup>13</sup>

Vulnerable witnesses BY and AN gave evidence that poor eyesight hampered their ability to read, write and learn in school. In relation to BY, this deficit was not identified or addressed during his time in detention. While AN was provided with large-font material to read, she was not provided with glasses to address adequately her vision deficits.

Children and young people with FASD have trouble understanding and following instructions, but to the untrained eye may appear oppositional and wilful and merely reacting badly to being disciplined and given time out.<sup>14</sup> The environment of youth detention in the Northern Territory on the whole did not provide the structured, regular, predictable and therapeutic environment required for children and young people with FASD.<sup>15</sup> The Royal Australian and New Zealand College of Psychiatrists submitted that youth detention '*has been found to be associated with increased risks of suicidality and psychiatric disorders, depression, substance use and behavioural disorders.*'<sup>16</sup> Many children and young people enter youth detention suffering the effects of withdrawing from alcohol and drugs, including tobacco use. Without appropriate treatment and support, withdrawal can have severe effects on behaviour including a propensity to be violent and disruptive.<sup>17</sup>

## ASSESSMENT AND TREATMENT OF NEEDS

A comprehensive health assessment on admission to a detention centre is not only critical to ensuring that the institution is upholding the state's duty of care to every child and young person who is detained on remand or sentence<sup>18</sup> and giving effect to the obligations in the *Youth Justice Act* (NT) and the *Youth Justice Regulations* (NT), but is a right enshrined in both international and Australian standards. The *Youth Justice Regulations* require the superintendent '*to ensure*' a comprehensive

medical and health assessment be carried out by a medical practitioner on each detainee within 24 hours of admission, or if a medical practitioner is not available, as soon as possible following an interim assessment by a registered nurse.<sup>19</sup>

While improvements have been made to the admissions health assessment process since late 2016, for much of the relevant period the admissions assessment conducted upon entry to a youth detention centre in the Northern Territory was not comprehensive, nor did it regularly occur within 24 hours of admission as required by the legislation.

## Admission assessment

*'When I got to Don Dale I was asked about my health. I remember a nurse took some blood for a test ... no one checked my eyesight or hearing. I think I needed glasses because I couldn't see very far. This problem has continued for me.'*<sup>20</sup>

Vulnerable witness BY

The Commission heard that the admission assessment was a 'cursory sort of health screening'.<sup>21</sup> The assessment was undertaken with the aim of identifying acute illnesses, mental health problems, potential pregnancy and substance withdrawal, rather than being a comprehensive medical and health assessment.<sup>22</sup> A subsequent assessment was undertaken within five days, including basic pathology testing for communicable diseases, chronic disease, and pregnancy for females.<sup>23</sup>

During the relevant period, comprehensive testing sufficient to identify the requirements of a group known to have complex health needs was not conducted in the initial admission assessments. The assessment process relied on children and young people identifying their own hearing problems when asked by medical staff.<sup>24</sup> Children and young people were asked if they had ear discharge or pain, or thought they had hearing problems.<sup>25</sup> This approach is problematic when children either may not know that they have hearing issues,<sup>26</sup> or do not want other people to know that they cannot hear.<sup>27</sup>

The failure to conduct routine hearing screening is not consistent with health checks undertaken for children in remote communities, some of whom have similar hearing issues to those experienced by children and young people in detention.<sup>28</sup> Until 2017, hearing tests were not routinely conducted as part of a health screening in youth detention centres.<sup>29</sup> There is evidence that hearing screening occurred in youth detention in 2006. However hearing screening was not included in the reception screening in 2011. It is unclear why it was ceased.<sup>30</sup> The Commission heard that since 2017 the Department of Health commenced a basic hearing test conducted by a nurse at the current Don Dale Youth Detention Centre and the Alice Springs Youth Detention Centre.<sup>31</sup> If a child or young person fails, they are referred to an audiologist for a full assessment.<sup>32</sup>

*'I went through a medical check-up every time I was remanded or sentenced to Don Dale. The check-up seemed to be about whether I was 'at-risk' or suicidal. I don't remember ever being checked for my physical health.'*

*I was also required to provide a piss test and a blood test. I can't remember being informed of the results.*<sup>33</sup>

Vulnerable witness AQ

Vision tests were also not routinely undertaken.<sup>34</sup> For a child or young person to receive a basic vision test in the health centre, they must ask for one and complete a medical request form.<sup>35</sup> Nor is FASD screening routinely carried out in youth detention in the Northern Territory.<sup>36</sup> As discussed in the box below it is likely that FASD is prevalent in youth detention in the Northern Territory.<sup>37</sup> It is accepted that FASD diagnosis can be intensive and expensive, however, the effective use of a screening tool is achievable and essential to assist in appropriate referral for formal diagnosis.<sup>38</sup>

### **Fetal Alcohol Spectrum Disorder**

The Commission was told that there are no plans to screen routinely for FASD.<sup>39</sup> The Department of Health has indicated that it did not believe FASD was particularly prevalent in the Northern Territory:

*'In terms of what proportion of children within the youth detention centre may have FASD, obviously we don't know because we have not been routinely screening. But what I can say is 75 per cent of the Aboriginal people in the NT live in remote communities, the vast majority of remote communities are alcohol free, have deliberately had alcohol restrictions put in place by Aboriginal owners for many years. There's a small amount of communities that have licensed clubs and the common behaviour within most of those communities, I can't speak to every one of those communities, but most of the communities that I'm familiar with is that ... people disapprove of pregnant women drinking, and it is not a common thing for pregnant women to be drinking in those communities. In the regional centres, so Alice Springs, Darwin, Katherine, Tennant Creek, unfortunately, women will be drinking when they are pregnant ... We would suspect some of these children would have FASD, but it may be less than what we might find in other jurisdictions where there is a greater proportion of Aboriginal people living in a metropolitan area, for example.'*<sup>40</sup>

This is not consistent with the expert evidence given to the Commission that the prevalence of FASD is likely to reflect that seen in international jurisdictions.<sup>41</sup> There is currently no reported data on the prevalence of FASD among children and young people in detention. However, preliminary findings from a study of children and young people at Banksia Hill Detention Centre in Western Australia found that about a third of the detainees aged 10–17 assessed for the study were identified as having FASD.<sup>42</sup> Dr James Fitzpatrick told the Commission that studies in North America have found that '10 to 23 per cent of the people in correction and forensic settings have FASD'.<sup>43</sup> He said that this was likely to be the case in the youth detention system in Australia and 'in detention systems where there is a very high proportion of Aboriginal residents, the

rates are likely to be higher'.<sup>44</sup> A study of Aboriginal children and young people in detention in Canada found that 27% of its cohort were diagnosed with FASD.<sup>45</sup>

The Commission collected data on the prevalence of a range of conditions in youth detention. It commissioned multidisciplinary assessments of 16 of the children and young people who gave evidence on their experiences in youth detention. The assessments found that:

- 56% of those children and young people had FASD
- 56% had a history of self-harm/suicidal ideation, and
- 31% had had some form of brain injury.<sup>46</sup>

The failure to undertake a comprehensive medical and health assessment on admission or shortly thereafter was partly due to a lack of medical staff. For most of the relevant period, medical staff members were not permanently based at the former or current Don Dale Youth Detention Centres, the Alice Springs Youth Detention Centre or Aranda House.<sup>47</sup> A former Assistant General Manager at the former Don Dale Youth Detention Centre from 2009 to 2012, told the Commission that during this period nurses would attend from Darwin Correctional Precinct for an admission assessment within 24 hours.<sup>48</sup> However, medical staff could not always attend youth detention centres in a timely manner,<sup>49</sup> and the health and wellbeing needs of children and young people became a secondary priority for staff members based at adult correctional facilities. This was reported by staff to be a persistent failing that was documented in a number of reviews. 'A Safer Northern Territory through Correctional Interventions' - Report of the Review of the Northern Territory Department of Correctional Services (Hamburger Report) noted that staff members had reported that admission assessments 'may not occur for up to 24 hours or more, depending on the availability of nursing staff (who attend Don Dale from the DCP [Darwin Correctional Presinct]) and court appearances of youth'.<sup>50</sup> In 2013, it was reported by a member of staff, as part of the Dolphin Report, which was an internal report to the Department of Correctional Services, that because nursing staff were based at adult correctional facilities there were often delays in attending youth detention when there was crowding and a lack of staff at adult facilities.<sup>51</sup>

*'Most of the times when I have been readmitted to Don Dale I did not receive a mental or physical examination of my health when I first got there. Usually this might happen about four days later and a nurse would carry it out.'*<sup>52</sup>

Vulnerable witness AM

The Northern Territory Government referred to evidence that children and young people upon entry into detention had already been 'seen' or 'assessed' by a watch house nurse during a period of police custody immediately prior, in explaining lack of timely medical examination.<sup>53</sup> This response does not address the legislative requirement that a detainee be given 'a comprehensive medical and health assessment ... within 24 hours after ... admission to the detention centre'. In any event, watch house nurses do not perform comprehensive, or even basic, assessments of health needs.<sup>54</sup> They

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monitor the immediate welfare of people in temporary police custody in the watch house. Evidence before the Commission confirmed children and young people's accounts that they had not been assessed within 24 hours of admission, though this omission was generally rectified within a few days.<sup>55</sup> It also demonstrated that the health screening provided was sometimes completed in less than 10 minutes.<sup>56</sup> The nature of that assessment conducted in that timeframe is unlikely to have been comprehensive nor to have complied with legislative requirements.

The evidence of Dr Mick Creati, the former Head of Medical Services at Parkville Youth Justice Precinct in Victoria, was that a comprehensive health assessment within 24 hours of admission to youth detention was not ideal for a number of reasons, including the possibility that the child or young person could be in a heightened state and in the process of adjusting to custody, withdrawing from drugs or drug affected and the need to prioritise court appearances such as bail applications.<sup>57</sup> He recommended a two stage process of an initial risk assessment within 24 hours, followed by a comprehensive assessment within three days.<sup>58</sup>

There is further support for the provision of health care in a youth detention environment in two phases. An initial screening to identify acute health care needs should be followed by a more comprehensive assessment conducted within a specified timeframe early in a child or young person's period of detention. Health care staff should continue to monitor the health needs of children and young people on an ongoing basis.<sup>59</sup>

The admission health screening should be comprehensive, multi-faceted and conducted by staff trained in the specific health needs of children and young people. The health assessment undertaken at Melbourne Youth Justice Centre, in Parkville, Victoria, is a useful model to consider. Under that model, within 24 hours of coming into custody, or 12 hours for an Aboriginal child or young person, a nurse conducts an acute risk assessment to identify risk or medical needs that require immediate attention. These risks or needs include current acute medical illnesses requiring treatment, existing medical conditions requiring medication, trauma or injuries requiring prompt forensic consultation, acute dental conditions requiring immediate care, drug or alcohol intoxication, significant drug and alcohol use with risk of withdrawal, infectious conditions, history of mental illness and any allergy risks.<sup>60</sup> On the third day a more comprehensive health check is undertaken to assess general health including hearing, vision, musculoskeletal development, teeth, nutrition, skin problems, learning difficulties, intellectual disabilities, drug and alcohol use, sexual reproductive health and mental health, as well as documenting past medical history.<sup>61</sup>

The Chief Executive Officer of Danila Dilba Health Service, Olga Havnen, told the Commission:

*'I've known a number of young people that I would describe as having fairly vulnerable health situations for various reasons, either particular conditions that they've had or that they've been in need of particular kind of specialist care and treatment and that those services haven't readily been provided. Quite often because, you know, staff have [ ... ] been unaware of those needs.'*<sup>62</sup>

This suggests that at least on occasion the admission health checks have not been adequate.



The Commission heard from the principal of Tivendale School that education staff were unable to properly assess the health and behavioural factors that may affect a child or young person's ability to learn, due to the inadequacy of health checks undertaken. Regular vision, hearing and mental health checks were not conducted.<sup>63</sup> This failure 'disadvantages everybody if you don't have a full understanding of some of the issues that the young people are facing'.<sup>64</sup> The former Assistant Manager at Alice Springs Youth Detention Centre from time to time between 2011 and 2015, told the Commission:

*'... we didn't know what we were doing with some of these children that came in because ... we just had no idea that they had anything. We weren't informed ... of the behaviours that they could display, we weren't informed of any – if they had any disabilities in any way.'*<sup>65</sup>

The Hamburger Report found that collaboration between Department of Health and Department of Corrections case management staff members was so limited that the nursing staff members who attended the current Don Dale Youth Detention Centre were not aware that a psychologist was employed at the centre.<sup>66</sup>

The staffing model has recently changed, with medical staff members from the adult correctional facilities now rostered to attend youth detention centres. The Commission heard that a nurse is on site at the current Don Dale Youth Detention Centre between 7am and 3.30pm during the week and on weekends between 9am and 5.30pm.<sup>67</sup> There is no permanent general practitioner on site at either detention facility. A general practitioner based at the Darwin Correctional Precinct is scheduled to attend the current Don Dale Youth Detention Centre on Wednesdays and Fridays, attending as required on other weekdays. At the Alice Springs Youth Detention Centre, a general practitioner attends from the adult prison Monday to Friday 1–3pm.<sup>68</sup>

## Finding

**Children and young people entering detention did not have an adequate health assessment upon admission to youth detention, whether at initial or subsequent assessments, as required by regulation 57 of the Youth Justice Regulations.**

**FASD screening of detainees is not undertaken despite the likelihood that a significant number of detainees are affected.**

### Recommendation 15.1

1. Amend regulation 57 of the Youth Justice Regulations (NT) so that comprehensive medical assessments can be delayed or postponed for a further 72 hours post admission but that an initial risk assessment occur within 24 hours of admission.
2. On the admission of a child or young person to a detention centre:
  - a. ensure sufficient medical staff are made available at youth detention centres to:

- i. undertake a comprehensive medical and health assessment in accordance with regulation 57, and
    - ii. provide the medical attention, treatment and medicine that, in the opinion of a medical practitioner is necessary for the preservation of the health of the detainee in accordance with regulation 58.
  - b. mental health screening be adopted, and if mental health issues are identified in that process or in the pre-sentence report or medical and health assessment, a mental health plan be developed and ongoing counselling for each detainee including continuing treatment after release be made available.
3. The comprehensive medical and health assessment required to be carried out, should include:
- a. an assessment of both physical and mental health, and
  - b. a behavioural questionnaire to determine whether a formal assessment for Fetal Alcohol Spectrum Disorder should be conducted, and if so determined and if the detainee has not previously been the subject of a formal assessment, that assessment to be conducted.
4. The Northern Territory Government:
- a. ensure that culturally competent and age-appropriate health professionals deliver services to children and young people in detention, and
  - b. in consultation with Aboriginal Community Controlled Organisations, revise health manuals and tools to ensure they are culturally appropriate.

## Ongoing assessment and access to treatment

During the relevant period, a reactive system of health care was in place in the Northern Territory youth detention centres, offering only minimal ongoing medical assessments and treatment. The system relied on detainees themselves actively seeking medical attention by asking and relying on youth justice officers for assistance to access health services.<sup>69</sup>

The Commission heard of the risks and issues associated with a system where youth justice officers were the gatekeepers of medical attention. Youth justice officers were not trained to identify medical issues. At times they did not take some requests from detainees for medical assistance seriously unless, or until, the need was visibly obvious.

*'I got medical treatment if I had an injury I could show. If I said my chest was hurting, nothing would happen.'*<sup>70</sup>

Vulnerable witness BF

*'In 2014, I got an [infection] and I struggled to eat. I told the guards but they did not believe me and they told me that I was not allowed to see the nurse. I had this [infection] for about three weeks. When I was finally provided with medical attention, I was taken to the Darwin Royal Hospital where I needed to undergo surgery ... when I went back to Don Dale, I was still very sick. I threw up my painkillers but the guards did not believe me and they did not let me have any more. I was in a lot of pain because of this.'*<sup>71</sup>

Vulnerable witness AG

*'... while I was in isolation I asked on a number of times for things like water and Panadol but the guards would not give me anything. I became so desperate that I thought I had no other choice but to self-harm. I grabbed a pillow case and a shirt and tied it up, I then attempted to hurt myself with these. Only after I had attempted to hurt myself did the guards pay attention to my requests.'*<sup>72</sup>

Vulnerable witness AM

The Commission also heard evidence from former Youth Justice Officer Greg Harmer, who recalled times during his employment from 2011 to 2013 when other youth justice officers did not deal with the medical requests of children and young people. The requests were not met because officers *'used to think that some of these medical complaints were just stories to try and get out of an activity that they didn't want to do'*.<sup>73</sup>

For much of the relevant period, the provision of ongoing treatment and medical assessments relied heavily on the availability of medical staff members from the adult prison. In 2016, the Hamburger report noted that medical staff members at the Darwin Correctional Precinct were unable to keep up with the demand for medical services from adult prisoners.<sup>74</sup> This severely affected the quality of medical care that children and young people were given, with treatment delayed sometimes resulting in conditions worsening. The Commission heard evidence from one young person who had asked for treatment for infected insect bites but was unable to be seen by a nurse that day as Corrections were understaffed.<sup>75</sup> When seen the following day, she was treated with antibiotics and daily review was recommended.<sup>76</sup>

*'I do remember a couple of times where I didn't receive medical treatment until I complained a lot. I got a sty or boil on my face when I was in Holtze in August 2014. It took a couple of days for me to see a doctor for this. In the end I was taken to hospital.'*<sup>77</sup>

Vulnerable witness AB

The Commission heard that in an environment where medical staff could not attend promptly to assess and treat children and young people, some youth justice officers attended to the medical needs of detainees as best they could:

*'I often remember dressing kids' boils and attending to their medical problems myself as best I could with the first aid kit we had there inhouse, rather than having to wait a day, or two, or three, whatever it might be to get seen by a professional.'*<sup>78</sup>

The job description for youth justice officers during the relevant period set out the following as essential qualifications: First Aid, Professional Assault and Response Training (PART) and suicide prevention.<sup>79</sup> In March 2014, the Professional Standards Unit (PSU) conducted an audit of staff training qualifications to determine compliance with Departmental responsibilities for providing, recording and maintaining essential qualifications for all youth justice officers.<sup>80</sup> However, the overall accuracy for staff training qualifications could not be confirmed, as the information contained in the human resources reports and the databases maintained by the Training Centre and the training officers were inconsistent.<sup>81</sup> The audit found that of 71 officers, 21 were not qualified in PART, only 27 held a current senior first aid certificate and only 33 were recorded as having participated in suicide prevention training.<sup>82</sup> Evidence in relation to the years that were not the subject of the audit, indicated that sometimes the only medical training youth justice officers had was a senior first aid certificate.<sup>83</sup> This lack of adequate training and qualifications is especially concerning in an environment where children and young people had high-risk needs and medical staff were not readily available.

The Commission heard that youth justice officers at the former and current Don Dale Youth Detention Centres routinely dispensed some medications to children and young people.<sup>84</sup> The result was that medication was *'often forgotten, lost or dispensed without recording'*<sup>85</sup> by those officers to the observation of one youth justice officer. The Commission heard that the system for the dispensing of medication by a youth justice officer only changed in September 2016 when additional resources allowed for extended hours for nursing staff.<sup>86</sup>

## Finding

**Ongoing health assessments and treatment were not always available for children and young people in detention in a timely or comprehensive manner. Youth justice officers, who did not have medical training, made judgments about whether children or young people required medical treatment.**

## Recommendation 15.2

### While in detention:

1. regular, at least monthly, medical checks including dental checks are implemented for detainees
2. regular drug and alcohol education programs are provided to promote harm minimisation, and
3. after release, specialised drug and alcohol treatment services if required continue to be made available.

## ALCOHOL AND OTHER DRUGS

*'I was not offered any treatment to deal with my drug dependence in Don Dale and I went through cold turkey every time I got remanded without medical advice or supervision.'*<sup>87</sup>

Vulnerable witness AQ

For many children and young people who enter detention, *'alcohol, tobacco and other drug use are key drivers of offending and of poor health outcomes'*.<sup>88</sup> There is no data on the prevalence of this due to the absence of drug testing.<sup>89</sup> Left untreated, addiction can result in violent and disruptive behaviour, particularly during withdrawal.<sup>90</sup> Despite this, no adequate or regularly offered treatment or rehabilitation programs were provided to detainees to address their behavioural issues or to stop the cycle of drug related offending.<sup>91</sup> Antoinette Carroll, a youth justice advocacy co-ordinator for the Central Australian Aboriginal Legal Aid Service (CAALAS), described to the Commission the case of a young person whose offending was linked to his drug addiction:<sup>92</sup>

*'In [name] specific case he did have frequent contact with the juvenile justice system ... His overarching substance misuse issues, which started at marijuana misuse and then to heightened, more illicit, drug use. So you can envisage a young person doing that level of crime to feed that habit. He would have big binges, enter into the detention centre and concerns were around that detoxification, his coming down period, and treatment programs ... there were none – there were no actual programs per se to address his overarching drug misuse ... he escalated very quickly ... entered in at 13 and we could see a rapid escalation through the system ... he might have had some contact with the Daisy program in Don Dale, but again if you look at his misuse, it would require a really intensive alcohol and other drug therapeutic support model, which I'm of the view he didn't have.'*

A lack of drug treatment programs was clearly the norm in youth detention in the Northern Territory during the relevant period other than the DAISY drug treatment program which commenced in

2015. Children and young people often entered detention after alcohol and other drug binges, but therapeutic support was inadequate. It is unclear if any ongoing medical treatment was given to assist with the detoxification and withdrawal period.<sup>93</sup> Vulnerable witness AG described to the Commission the inconsistent fashion in which drug rehabilitation programs were run at the former Don Dale Youth Detention Centre:<sup>94</sup>

*'Sometimes early in my time at Don Dale there would be the DAISY rehab program that came in and would speak to us. The program was ok but I thought that it was a bit shit how they could never really come back often enough for it to work. When they did come back, there would be different counsellors which made it hard for the program to work well.'*

At the Youth Detention Centre Staff Forum in Darwin in February 2017, (not during any commission hearing), the Commission was told that there was a lack of drug and alcohol treatment in youth detention and that detainees told staff members they were 'excited' to go to the adult prison because they knew they would have access to treatment there.<sup>95</sup> The Commission accepts that these comments were from a small group of young people and that from time to time drug and alcohol abuse programs were offered to detainees over the relevant period.

Aside from the issue of re-offending, continuity of care for children and young people with alcohol and other drug addiction is critical, as a disproportionate number of children and young people released from detention die from preventable causes such as drug overdose and suicide.<sup>96</sup>

## MENTAL HEALTH

The Commission heard expert evidence that mental health is 'the biggest health issue for young people in custody'.<sup>97</sup> Research undertaken in Australia into the prevalence of mental health disorders in youth detention centres demonstrated that more than 75% of children and young people in detention had one or more diagnosable psychiatric disorders.<sup>98</sup> This is consistent with international evidence that indicates rates of mental illness are much higher in detention centres than among the general population.<sup>99</sup> The most commonly diagnosed conditions among children and young people in detention in Australia are 'attention-deficit/hyperactivity disorder, autism, mood and anxiety disorders and post-traumatic stress disorder'.<sup>100</sup> Suicide risk factors are more prevalent among children and young people who are detained than in the general population.<sup>101</sup> Youth detention has been found to be associated with 'increased risks of suicidality and psychiatric disorders including depression, substance use, and behavioural disorders'.<sup>102</sup>

Vulnerable witness BQ told the Commission that he started to suffer from panic attacks and anxiety after he entered the former Don Dale Youth Detention Centre when he was 15:<sup>103</sup>

*'You just feel like you're going – about to drop down and die. Sometimes when my heart beat really fast and my legs start shaking and just feel like two hammers banging into my head, and sometimes I can't even sleep at night. I just – just very terrible experience. And I've never had it in my whole time as well, until I went into Don Dale. That's the first time I experienced it.'*

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Many of the children and young people entering detention have also experienced trauma, which contributes to their susceptibility to mental health and behavioural issues. A representative from Danila Dilba told the Commission:<sup>104</sup>

*'Many Aboriginal families will have experienced varying degrees of trauma from things like suicide, premature and early death, members of the Stolen Generation. Many of these very vulnerable families will have also had family members, siblings, parents or whatever who have themselves been incarcerated or been removed from their own families. What we're seeing is perhaps second and third generation children now coming into contact with the justice system who have come from those families that have had very difficult life experience.'*

Children and young people who enter youth detention are being removed from their home. This is a highly stressful experience involving 'a loss of liberty, personal identity and familiar landscape, accompanied by a loss of social supports and familiar coping mechanisms'.<sup>105</sup> Children and young people may also enter youth detention with fears for their own safety, adding further to their stress.<sup>106</sup>

Vulnerable witness AU, who first went to the former Don Dale Youth Detention Centre at age 16, told the Commission:

*'I feel like it's been a nightmare being locked up as a kid. Most of the time I feared for my life at Don Dale. Every night, since I've been locked up as a kid, I have nightmares. I feel like everything that I did, and being in Don Dale meant that I haven't been able to reach my goals in life.'*<sup>107</sup>

Despite there being a high prevalence of poor mental health in youth detention, for most children and young people, mental health services were almost entirely absent.

For most of the relevant period, there was no on-site psychologist at the former or current Don Dale Youth Detention Centres or at the Alice Springs Youth Detention Centre.<sup>108</sup> Forensic Mental Health services were provided to youth detention centres by the Department of Health,<sup>109</sup> but the mental health team attended only when a young person was identified as being at-risk of self-harm or suicide.<sup>110</sup> This arrangement relied on nursing staff identifying mental health issues during the initial admission assessment.<sup>111</sup> The Commission also heard from detention staff members (not during any Commission hearing), that while the Forensic Mental Health team responded to critical incidents, they were not prepared to respond to behavioural issues as they did not fall in the scope of their professional work.<sup>112</sup>

In Alice Springs for most of the relevant period there were no systems in place to assess and diagnose children and young people with mental health problems.<sup>113</sup> A former Deputy General Manager of the Alice Springs Youth Detention Centre told the Commission, 'later in my tenure in Alice Springs we were ... bringing the detainees into town for assessments'.<sup>114</sup> Children and young people in detention in Alice Springs were, and still are, referred to the Child and Youth Mental Health Service, which does not have the capacity to provide consultation and an effective



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service to the detention centre.<sup>115</sup> When a child or young person in detention is referred, they must be transported to the Child and Youth Mental Health Service clinic, which is dependent upon operational and staffing matters at the detention centre.<sup>116</sup> Over the last few years, the Child and Youth Mental Health Service, which is a part of the Northern Territory Department of Health, requested further resourcing to employ more people to provide a more effective service, but this was declined.<sup>117</sup>

The lack of access to a psychologist meant that there was no regular provision of counselling to children and young people in need of therapeutic support.<sup>118</sup> In 2014, the Department of Correctional Services began the process of recruiting a full-time psychologist. In early 2015, a youth forensic psychologist, responsible for the wellbeing of children and young people in both youth detention centres,<sup>119</sup> commenced work at the current Don Dale Youth Detention Centre. However, one psychologist did not have the capacity to manage the needs of all the children and young people in detention in the Northern Territory, let alone manage children and young people on community corrections orders as the Department was seeking.<sup>120</sup>

Salli Cohen, former Executive Director of Youth Justice, told the Commission, it *'was really a drop in the ocean in terms of [the psychologist's] ability to take on a caseload where she would be able to generate outcomes'*.<sup>121</sup> As a result, the caseload was restructured so the psychologist would work only with the detainees deemed to be most at risk. At one point the work was entirely focused on sentenced detainees<sup>122</sup> and was primarily concerned with groups of young people and their offending behaviour, rather than individual counselling.<sup>123</sup> Further, the role of the psychologist from the Department of Corrections was to work with groups of young people rather than providing individual counselling.<sup>124</sup> The Commission was informed that the Department of Health has recently retained a psychologist at the current Don Dale Youth Detention Centre to provide some individual counselling.<sup>125</sup>

The Alice Springs Youth Detention Centre has never had an on-site mental health staff member.<sup>126</sup> A position is currently available for a part-time psychologist, but attempts at recruitment have thus far been unsuccessful.<sup>127</sup>

One-on-one mental health services were sometimes available to children and young people from external providers. However, referrals for those services often relied on the Case Management Unit, which at times during the relevant period was chronically understaffed.<sup>128</sup> The Case Management Unit is discussed in further detail at Chapter 19 (Case management and exit planning).

## Finding

**The healthcare needs of children and young people in youth detention with alcohol and drug addiction or experiencing mental health issues were not adequately met.**

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## How mental health and wellbeing needs were managed by youth justice officers

In addition to a lack of mental health services, for most of the relevant period, youth justice officers worked with children and young people with complex mental health needs with no on-site expert support and little or no mental health training.

Some staff were trained in Applied Suicide Intervention Skills Training (ASSIST) and mental health first aid training was offered, however training was not offered consistently.<sup>129</sup> When questioned, the former Assistant General Manager for Youth Detention told the Commission that while some staff training programs were provided during this period, *'there wasn't a formalised continuous growing program for that ... as an ongoing program'*.<sup>130</sup>

Both the Royal Commission into Aboriginal Deaths in Custody and the recommendations of the coronial inquest into the death of a detainee in Don Dale in 2000 emphasised that staff members should receive ongoing training in recognising the signs of mental illness and distress that may lead to self-harm or attempted suicide.<sup>131</sup>

The Commission heard evidence from Senior Youth Justice Officer Ian Johns, who described the anxiety he felt knowing that staff members were ill-equipped to deal with a mentally distressed child or young person:

*'I was worried about a death in custody, I was worried about the hourly checks and this sort of stuff ... that we didn't have the skills ... we kept saying why aren't they going through the hospital system and to be mentally assessed, because some of these kids, like, I've had kids tell me they're seeing things at night, "Somebody's standing at the end of the bed". This is an Aboriginal boy who was on some medication and it freaks me out as well as it freaks the kid out. So you try to calm him as best you can, but they need help. We haven't got the skills, or some of us might have the skills to talk to them, and make them feel more comfortable but you send them to hospital and they come back. It's a behaviour problem and it's not a behaviour problem ... it's a mental health problem.'*<sup>132</sup>

The lack of training of youth justice officers in how to recognise and manage mental health issues is reflected in the way they dealt with vulnerable children and young people. The Commission acknowledges that there were youth justice officers who interacted appropriately with detainees.<sup>133</sup> However, it is clear that throughout the relevant period, many youth justice officers failed to engage with children and young people in a way that catered to their mental health and wellbeing needs.

Children and young people in detention need support from properly trained staff members, who can recognise that some children and young people may act out their distress and who: *'don't immediately respond to angry behaviour by becoming angry back, or placing firm, harsh limits on the child, but rather recognise that anger might be their way of expressing their fear and sadness'*.<sup>134</sup> Youth justice staff members cannot be expected to be mental health experts, but it is essential that they are *'trained in the basics of trauma-informed care with a clear recognition that punitive responses will be likely to compound previous damage done to these children'*.<sup>135</sup> Delivering an

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effective trauma-informed service to children and young people requires *'adequate training and ongoing support of staff, and a whole system of understanding'*.<sup>136</sup>

Staffing models in other jurisdictions include personnel with specific expertise in the health of children and young people. For example, in Victoria, health services are led by general practitioners with expertise in adolescent, mental health and substance use. In New South Wales, health services are jointly led by a child and adolescent psychiatrist and an adolescent physician, and clinical assessments are made by experienced adolescent-trained nursing staff.<sup>137</sup> The Royal Australasian College of Physicians acknowledges that there is a lack of specialist expertise in the Northern Territory.<sup>138</sup> However, to ensure proper care is provided to children and young people, all staff members must have appropriate training.

The Commission heard that trauma informed care is now being delivered as part of the Certificate IV in Youth Justice, which occurs in the first week of new induction training. As at April 2017, this training was to be rolled out to existing staff within 12 months.<sup>139</sup> The Commission understands that the new recruitment training course, which is delivered over five weeks, also includes training components in drug and alcohol awareness, suicide awareness and *'safe talk'*, management, behaviour plans and positive behaviour support planning for detainees with FASD.<sup>140</sup>

A trauma-informed approach to health care requires close collaboration between mental health staff and youth justice staff.<sup>141</sup> Detention and mental health services should support youth justice officers to develop a better *'understanding of children in their care, and to develop a way of thinking, reflecting and behaving that enables them to retain a therapeutic stance in the face of difficult behaviour'*.<sup>142</sup>

## At-risk procedures

*'During the 2013–14 period, the Northern Territory recorded the highest rate [in Australia] of children self-harming or attempting suicide in custody (not requiring hospitalisation).'*<sup>143</sup>

Dr Elizabeth Grant

The term *'at-risk'* is used to describe children and young people in youth detention who are at-risk of suicide or self-harm.

The *Youth Justice Act* and Youth Justice Regulations detail the legislative requirements for a child or young person who is considered to be at-risk.<sup>144</sup> Under the legislation, if a staff member considers a child or young person to be at-risk, they must ensure that the detainee remains in constant view of a member of staff until an Emergency Management Protocol is prepared, or an Individual Management Plan is implemented. The superintendent must be notified, who must immediately refer the child or young person to a medical practitioner.<sup>145</sup> Only a medical practitioner can cancel an *'at-risk'* status.<sup>146</sup>

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During the relevant period, at-risk procedures at the detention centres primarily relied on youth justice officers identifying at-risk behaviour or a detainee stating they were distressed or considering self-harm.<sup>147</sup>

In practice, when a youth justice officer observed a detainee believed to be at-risk, they were required to notify the shift supervisor or a senior youth worker, who would arrange for that detainee to be under observation at all times until an Emergency Management Protocol or Individual Management Plan was implemented.<sup>148</sup> The nurse would then determine whether the child or young person was officially at-risk and sign an at-risk notification, which would be forwarded to medical staff members based at the adult correctional facility.<sup>149</sup> The nurse would also notify Forensic Mental Health.<sup>150</sup> A primary health care medical practitioner and a Forensic Mental Health clinician were required to attend within 24 hours to assess the child or young person.<sup>151</sup> The primary health care medical practitioner was required to develop an Individual Management Plan for the detainee classified at-risk. The primary health care medical practitioner decided if a detainee could be taken off the at-risk placement.<sup>152</sup>

In 2012, the 'after hours' practice at the Alice Springs Youth Detention Centre was for youth justice officers to monitor a child or young person overnight, and Forensic Mental Health staff members to attend the following morning.<sup>153</sup> From 2016, the policy has been to escort a detainee or young person to Alice Springs Hospital for assessment.<sup>154</sup>

The Commission heard from the General Manager of the former and current Don Dale Youth Detention Centres that between February 2014 and May 2015, despite the requirements for Forensic Mental Health to attend within 24 hours, 'they were frequently slow in attending. They would typically attend the following day, but sometimes not until the day after'.<sup>155</sup> In one instance in 2015, a young person was classified at risk for four days, 16 hours and 33 minutes without being seen by a Forensic Mental Health staff member because of a lack of communication between the staff of the current Don Dale Youth Detention Centre, the Department of Health, Correctional Services and Forensic Mental Health.<sup>156</sup> The at-risk procedures were updated in 2016 to address the timeliness of at-risk assessments and communication between health and youth justice staff.<sup>157</sup>

In compliance with the Youth Justice Regulations, children and young people at both centres would be put in an at-risk cell in isolation.<sup>158</sup> The Children's Commissioner described the at-risk cell as a room that contained 'a concrete platform ... used for sleeping, a toilet and hand basin, a CCTV camera and an intercom'.<sup>159</sup> Dylan Voller gave evidence that when classified as at-risk, 'they take everything off you'.<sup>160</sup> A child or young person considered as being at risk would be 'isolated from the rest of the centre, and given limited opportunity to exercise or interact with others'.<sup>161</sup> Vulnerable witness AB told the Commission, 'it's exactly like being in the BMU [Behaviour Management Unit], there's ... no help for you at all in there'.<sup>162</sup> Another former detainee said:

*'If I was at-risk, then I couldn't go to school. I also couldn't have pens, pencils or paper. They didn't have TVs in at-risk cells either. When I was at risk I had nothing to do.'*<sup>163</sup>

## CCTV footage of an at-risk incident

The Commission requested the expertise of a child psychiatrist, Dr Jon Jureidini, to examine the CCTV footage of a young person held at-risk on his first time in detention at the Alice Springs Youth Detention Centre.<sup>164</sup> The young person was classified as at-risk for attempting to asphyxiate himself with his t-shirt and stating he was going to kill himself.<sup>165</sup> With the exception of one toilet break, this young person was held for three hours in a de-escalation cell with no natural light or access to water and which contained only a steel bed base and a thin mattress.<sup>166</sup> After being placed in this room, the young person displayed behaviour such as headbutting a wall, lying in bed wrapped in a sheet, attempting to choke himself and poking himself in the eye.<sup>167</sup> This behaviour occurred repeatedly and persistently over almost the entire period. According to Dr Jureidini, an environment of such starkness and deprivation is likely to cause a child or young person to 'protest' and 'some will give way to despair'.<sup>168</sup> This young person did attempt to manage his behaviour by wrapping himself in his sheet and lying on the bed, but the youth justice officers thought he was unsafe. They entered the room to remove the sheet and check on him, after which he returned to more destructive behaviours.<sup>169</sup>

These behaviours can be viewed as '*a clumsy attempt to inform his adult carers that his circumstances are dangerous and unacceptable to him emotionally*'.<sup>170</sup> Dr Jureidini noted that even more concerning behaviour occurred when the detainee appeared to have '*entered into a state of despair ... when he settled into a sustained slumped posture*'.<sup>171</sup> At one point the young person verbalised that nobody was helping him, to which the youth justice officer responded, '*We did not put you in here – nobody put you in detention*'.<sup>172</sup> This is one example of staff interaction with the young person during this period. Three hours of isolation may not negatively impact a child or young person if isolation is comforting and staff interaction is supportive.<sup>173</sup> Dr Jureidini concluded that '*Neither of these criteria was met in this case. This period of three hours in an isolation cell is likely to have been a highly distressing and disturbing experience*'.<sup>174</sup>

As Dr Jureidini stated, de-escalation of this young person's behaviour could only be achieved using the at-risk procedures employed in youth detention in the Northern Territory:

*'... by the subject losing hope and therefore 'giving in' and becoming compliant. While the system may regard hostility as the more troubling outcome (creating, as it does, extra pressure on staff), it is despair, hopelessness and loss of agency that is more dangerous for the individual.'*<sup>175</sup>

The Commission heard evidence from a range of witnesses about the process where a child in acute mental distress is placed in total isolation:

*'Isolation seems antithetical to ameliorating the suffering of a distressed child.<sup>176</sup> The continuance of punitive cold conditions, coupled with isolation, obviously could never effectively reduce distress in young people.'<sup>177</sup>*

Christopher Castle, case worker

*'The approach to managing children who are identified as being at risk of self-harm needs to be comprehensively reviewed and changed, particularly the so-called 'at-risk' procedure. On the video footage that I reviewed I saw vulnerable children who threatened self-harm subject to brutalising and humiliating assaults, ostensibly in order to ensure their safety. Apart from the palpable risks to physical safety, the traumatising effects of such assaults poses a serious risk to the psychological health of vulnerable young people.'<sup>178</sup>*

Dr Howard Bath

*'That sort of situation is just going to exacerbate the likelihood of post-traumatic stress disorder ... hallucination is possible. Complete stunting of normal development. And suicide ideation to the extent of self-harm will be a likelihood.'<sup>179</sup>*

Professor John Rynne

*'If there was an act designed to clearly humiliate a child, to forcibly remove their clothing on the pretext that this was, you know, preventing them from self-harming is just obscene. It's completely barbaric, it's outdated, and it has to cause ... a trauma to that child. If you seriously believe a child is at risk of self-harm, for goodness sake, go and find the appropriate medical care and treatment for that child. The fact that some of these practices continue to happen, or that they're still prescribed under law, so it might make them legal, but I don't think it makes them right.'<sup>180</sup>*

Olga Havnen, Chief Executive Officer Danila Dilba Health Services

In the opinion of Stuart Kinner, Professor of Adolescent and Young Adult Health, a response where a child or young person is put in 'at-risk' isolation is not 'in and of itself a sufficient response'.<sup>181</sup> The consequences arising, albeit unintended, from the at-risk procedures can constitute a cruel response

to a child or young person in a state of distress.<sup>182</sup> The Children’s Commissioner Own Initiative Investigation Report noted that ‘the general theme of the Regulations and the Manual is the YJOs priority to isolate a young person to prevent the imminent threat of self-harm and to alleviate that threat’.<sup>183</sup> Placing a child or young person in isolation can have a number of negative consequences, including extreme anxiety, hallucinations, panic attacks, cognitive deficits, obsessive thinking, paranoia, anger, migraine headaches, insomnia, fatigue, aggravation of pre-existing medical conditions and gastrointestinal and cardiovascular problems.<sup>184</sup> The Children’s Commissioner found in 2015 that as a result of ‘prolonged and often repeated episodes of isolation for extended periods of time’ some children and young people were becoming more agitated and attempting self-harm.<sup>185</sup>

The Commission is unaware of any attempt by the Department to obtain up-to-date advice from a youth mental health expert to review the detention centre at-risk procedures. However, the Commission notes that the Northern Territory’s Chief Psychiatrist has consulted with Territory Families regarding the establishment of a clinical governance committee which will include independent experts and will ensure that aspects of child and adolescent mental health are at the forefront of the development of youth detention centre policies.<sup>186</sup> The Department of Health has begun implementation of this committee, named the Northern Territory Clinical Senate, with the first meeting scheduled for early December 2017.

*‘Whenever I was in isolation in ODD and NDD [Old Don Dale and New Don Dale] I would only be allowed out for 20–30 minutes a day at most. Sometimes not at all. Because I was at risk I wasn’t allowed anything. I didn’t get any school work, magazines or puzzles. I got no eating utensils and my food was often cold. I always felt tired and all I ever did was just lay around and think and think. Sometimes at the HDU [High Dependency Unit] some of the guards would have conversation with me at the door. But mostly I didn’t talk to anyone. Sometimes in the NDD I would talk to spirits.*

*I hated being in isolation. All my life I had been around my siblings, cousins and other family. I grew up spending a lot of time outdoors. Detention was the first time I had ever felt alone like that.*

*Being in isolation never made me want to act better. It made me angrier and felt like it was making me more mad inside my head. It ended up making it harder for me to be outside of isolation. Almost all of the times I hurt myself in detention was when I was in isolation, not long after I had got out or when they were threatening to put me in. I hurt myself because I was either so angry at being put in isolation or I would get so upset that I felt dying was better than staying in isolation.’<sup>187</sup>*

*I had been in ODD for two weeks before I tried to hurt myself the first time. In the few months after that I tried to hang myself with a sheet. I’m pretty sure I was in isolation all these times. I just hated being alone at that time and I was feeling angry and hopeless. I wanted to die but not really. Like in the moment I did feel like dying but I think I really wanted to live, just not in isolation.’<sup>188</sup>*

Vulnerable witness AN



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Dr Jureidini gave evidence that the following principles should be adopted in attempting to de-escalate an at risk situation:<sup>189</sup>

- not rushing into action as most distressing behaviour will cease before any action is done and rushing in can exacerbate behaviour
- taking steps to pre-empt at-risk behaviour by training staff members to recognise that children and young people may respond aggressively to certain events, such as a court outcome, in an attempt to express fear and sadness, and that an empathetic response is more appropriate than a punitive one, and
- avoiding a focus on behaviour management as many children and young people in youth detention centres have been subjected to abuse and neglect and behaviour management strategies that focus on rewards and punishments will exacerbate their sense of failure and powerlessness.

Dr Jureidini recommended that if isolation is necessary in an at-risk situation, an adult who is known and trusted by the child or young person should be sitting quietly and consistently outside the room, partially engaged in some other activity, but always available for the child or young person to deal with any questions or requests.<sup>190</sup> A senior youth justice officer told the Commission that there was a period of time when the staff did attempt to deal with at-risk children and young people in a more humane and individualised way. A youth worker would stay with an at-risk detainee one-on-one, or if a child or young person had a rapport with a particular youth justice officer, that staff member would be asked to come and talk to them.<sup>191</sup> Vulnerable witness AN, who spent a great deal of time in detention with an at-risk classification, identified a female youth justice officer as a good staff member who was always very kind and spoke nicely.<sup>192</sup> A senior youth justice officer confirmed that calling this youth justice officer to speak to AN when she was at-risk would have been a useful thing to do.<sup>193</sup> The Commission was told that these types of practices seemed to become less utilised, or indeed stopped altogether, and while there is a female youth justice officer at the current Don Dale Youth Detention Centre who has a great rapport with most of the children, 'some youth workers think it's demeaning to get someone else to handle a situation'.<sup>194</sup> This suggests a culture where the ability to de-escalate a child or young person is not a skill that is respected. Dr Jureidini noted:

*'if people are really supportive ... and proud about being able to do de-escalation and there's a strong sanction against putting kids into a lock up, then ... they will exhaust the option of de-escalation before they lock the kid up.'*<sup>195</sup>

The at-risk procedures were primarily concerned with protecting the physical wellbeing of a child or young person, with less concern for mental wellbeing.<sup>196</sup> Practices aimed at reducing the risk of self-harm, such as the use of at-risk clothing, were unsatisfactory because self-harm can still occur when a child or young person is wearing at-risk clothing.<sup>197</sup> The focus of interventions should be upon building a child or young person's sense of well-being, rather than focusing on restrictive practices aimed at the prevention of dangerous behaviours.<sup>198</sup> AN described what it felt like after an incident at the current Don Dale Detention Centre in which she was classified as at-risk and a group of mostly male guards used a Hoffman knife to cut off all her clothes including her bra and underwear:

*'I was fully naked and I felt real shame with all those men in the room. After a while of pinning me down they let me go and left the room. A short time later a guard opened the door and threw in an at-risk gown. That was one of my worst experiences in*

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*detention. I still think about this and it upsets me.*<sup>199</sup>

Attempting to remove the means to self-harm can actually increase the risk of self-harm.<sup>200</sup> The Chief Psychiatrist of the Northern Territory, told the Commission that putting a child or young person in isolation as part of at-risk practice is:

*'... not only depriving them from any kind of source of support, we are leaving them with all of those negative thoughts and distressing images that they will be carrying with them. And we're also absolutely taking away from them a lot of the sort of mechanisms and coping strategies that might help them to be able to self-soothe and to be able to accept the support and the soothing of other people.'*<sup>201</sup>

The Commission heard evidence that the at-risk management protocols were of little value and that there is no way of predicting and preventing self-harm or suicide.<sup>202</sup> The Chief Psychiatrist stated:

*'Self-harm is frequently described by those who engage in it as a way of coping with distress and as a way of containing and controlling overwhelming feelings that are distressing and difficult to manage in any other way. It can also be used to express anger and to communicate a need for help that cannot be expressed by them in any other way.'*<sup>203</sup>

To reduce the chances of a child or young person becoming at risk of self-harm or suicide the focus should be on enhancing their wellbeing.<sup>204</sup> This is reflected by AN, who when discussing her self-harming stated:

*'When I was in detention I just remember people always saying to me 'why did you do that for?' I thought they were playing dumb. It seemed obvious to me that I was doing it because I hated being in isolation. All I knew at the time was that I hated being in isolation so much that I would rather have killed myself.'*<sup>205</sup>

## Engagement of staff members with at-risk children and young people

Problems with the at-risk procedures were compounded by the lack of mental health services available for detainees. The Commission heard that as a result of a lack of staff, Forensic Mental Health were often slow to attend, sometimes arriving the following day, or two days later.<sup>206</sup> If the issue arose on weekends or public holidays the delay was exacerbated.<sup>207</sup> A former caseworker employed at the Alice Springs Youth Detention Centre from 2012 to 2013 told the Commission that a detainee deemed at-risk in Alice Springs '*only received a brief interview by mental health visiting staff through the bars of the BMU cell*'.<sup>208</sup> The same case worker noted that while a brief interview in certain circumstances could be appropriate, '*the continuance of punitive, cold, conditions, coupled with isolation, obviously could never effectively reduce distress in young people.*'<sup>209</sup>

Vulnerable witness BA told the Commission of his sense of needing to engage in extreme behaviour to get attention:

*'When you are 'at-risk', they are supposed to put you in a room with a camera or the*

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*guards are meant to watch you 24/7. This doesn't happen and there is no way for them to always watch you ... Every time you call up on the intercom they ignore you. If you press the button too much, the whole thing cancels. But if you block the camera, they come straight away.'*<sup>210</sup>

Another detainee told the Commission, 'I would be left alone for long periods and it felt like they had forgotten about me'.<sup>211</sup> Vulnerable witness AB told the Commission, 'being put "at-risk" made me feel worse not better. They do nothing for you; they just leave you in the cell all day'.<sup>212</sup>

During 2010 and 2011, there was no preventative counselling or ongoing treatment provided to children or young people who had been classified at-risk.<sup>213</sup> This situation continued, and in 2015, the Children's Commissioner found that the timeliness of a child or young person being seen by a medical practitioner 'is inadequate and therapeutic intervention provided by the Department of Health is limited to a risk assessment rather than an ongoing management plan to address and limit the need for an ongoing "risk" classification'.<sup>214</sup> This finding was supported by the evidence of Dr Jureidini, who noted in the incidents he reviewed that '[i]oo often the involvement of mental health services are restricted to a glib risk assessment'.<sup>215</sup> Vulnerable witness AG told the Commission:<sup>216</sup>

*'when we went at-risk the guards would just leave non-rip clothes for us and then no one would come and check on us at all other than to give us our meals ... I don't remember having any access to a counsellor or a doctor. The only time that someone would come and see us was when they decided to take us off at-risk status. The doctor from the big house would come and ask us why we had gone at-risk. We would say we do not know and that we were not going to hurt ourself and then that would be it, there would be no further follow ups.'*

Youth justice officers were left to manage detainees exhibiting at-risk behaviours with very little support from medical and Forensic Mental Health staff members. Their lack of training meant that the at-risk procedures with a 'one-dimensional focus on behaviour management strategies at the expense of more trauma-informed approaches' were often the only recourse.<sup>217</sup> For children and young people who have spent a lot of time in detention it is critical that all staff members responsible for them, including youth justice officers, have a thorough knowledge of their background, personality, vulnerability and needs, including a formulation from mental health experts on why that child or young person may behave in a particular way in certain circumstances. Working with children and young people who may engage in self-harm, attempt suicide or have unpredictable and aggressive outbursts will inevitably have a psychological impact on staff members, which is greater when they do not have strategies and training to cope with such actions.<sup>218</sup> When staff members begin to feel traumatised, the Chief Psychiatrist of the Northern Territory told the Commission, 'the risk of punitive responses to situations increases',<sup>219</sup> and that strategies including training in trauma informed practices are necessary to counter this risk.<sup>220</sup>

Improvements to the at-risk procedures were introduced from September 2016. The current practice is for the primary health care doctor to attend youth detention centres during business hours to assess the child or young person after they have been classified as being at-risk, and subsequently every 24 hours to reassess their at-risk status. The youth justice psychologist is included in the assessment process undertaken by the nurse.<sup>221</sup> The Department of Health has also undertaken the development

of a care plan, which includes contacting relevant family members as required.<sup>222</sup> However, outside business hours there is still no primary health care doctor rostered on to visit youth detention centres, which means that a child or young person must be transported to hospital emergency departments in Darwin or Alice Springs to see the psychiatric registrar.<sup>223</sup> This practice may heighten a child's or young person's behaviour and they may have difficulty engaging with a person they have not seen before.<sup>224</sup>

Despite the improvements, the at-risk procedures and practices adopted in youth detention in the Northern Territory continue to be reactive and punitive and do not address the underlying causes of at-risk behaviour. At-risk procedures and practices must be informed by the recognition that:<sup>225</sup>

*'... victims of childhood trauma may have marked difficulties with the management of emotions and impulses such that when they are under stress, they may readily resort to verbal and sometimes physical aggression believing that they are under threat. They may also self-harm as a way of managing intense emotional stress.'*

The Commission heard that Danila Dilba Health Service has recently been asked by Territory Families to provide 'specialist support to de-escalate at risk situations ... in a culturally appropriate and health-specific manner to ensure the safety and well-being of the youth at-risk'.<sup>226</sup>

## Findings

**At-risk procedures adopted in youth detention centres in the Northern Territory in some instances were likely to exacerbate the distress of a child or young person rather than prevent serious harm.**

**The identification of at-risk behaviours was carried out by youth justice officers who had minimal or no mental health training.**

### Recommendation 15.3

- 1. Best practice in youth suicide prevention be part of induction training for youth justice officers.**
- 2. If isolation is required a trained staff member sit in proximity to the detainee and engage appropriately as required**

## CULTURALLY AND AGE-APPROPRIATE SERVICES

The fact that many of the children and young people in youth detention are Aboriginal makes it critical that treatment and services for health and wellbeing are culturally appropriate and take into account the particular needs of the individual. Dr Mick Creati, a paediatrician with experience working in youth justice and Aboriginal health care, told the Commission that children and young people will give more information to a medical professional closer to their age and that an Aboriginal medical professional is able to obtain more information from an Aboriginal young person than a non-Aboriginal medical professional.<sup>227</sup>

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To provide appropriate care once a child leaves detention it is critical to 'know context and where that kid lives and where he's going home to'.<sup>228</sup> Health care staff members who are not culturally competent are likely to behave in a way that does not gain the trust they need to provide adequate care and treatment to Aboriginal children and young people in detention. The Department of Health advised that there is one Aboriginal health practitioner providing services to the current Don Dale Youth Detention Centre and none at the Alice Springs Youth Detention Centre.<sup>229</sup> There are well-established Aboriginal health service organisations in the Darwin and Alice Springs regions who would very likely assist.

The services provided must be age appropriate. It appears that policies for the health assessment of adults upon entry into custody were applied, with minor adjustments, to children and young people entering detention.<sup>230</sup> Policies should be adjusted to ensure they are directed to the needs of children and young people.

## FAMILY INVOLVEMENT

It was not routine to notify a detainee's family if the child or young person had been transferred to hospital, injured or classified at risk. The Commission heard that when AG was taken to hospital for treatment for an injury in 2012 her mother was contacted,<sup>231</sup> but on another occasion in 2014 when she required surgery her family were only informed when AG was given permission to call them.<sup>232</sup>

Despite records indicating that the Acting General Manager of the former Don Dale Youth Detention Centre attempted to contact a detainee's mother by leaving a message, AN also told the Commission:

*'One time I was in hospital and I really wanted to call Mum. The guards wouldn't let me. The doctor said, 'she's not in Don Dale now, she can ring who she likes'. But the guards said I was at-risk and I couldn't call anyone. When Mum saw me a few days later she didn't even know I'd been in hospital. Mum told me that she was never told any of the times I was taken to hospital and she made complaints about this.'*<sup>233</sup>

The Commission heard that on occasion in complex at-risk incidents 'case workers would sometimes advise various stakeholders that a detainee had been placed at-risk'.<sup>234</sup> The Director of Youth Justice from 2012 to 2015, recalled that in such situations he 'personally telephoned or met with the detainee's parents and other family members'.<sup>235</sup> However, this was not done routinely. The Deputy General Manager of the former and current Don Dale Youth Detention Centre from February 2014 to May 2015, said that as he became more experienced in the role he recognised it was beneficial to engage supportive family members outside youth detention to attempt to help children and young people displaying difficult behaviours.<sup>236</sup> The mother of a vulnerable witness spoke to her son on the phone almost every day when he was in youth detention and tried to visit him once or twice a week, yet she was not asked 'by staff at Don Dale about the best way to deal with him when the guards were having trouble with him, or when they didn't know what to do with him'.<sup>237</sup>

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The Commission notes that since April 2015, the Department of Correctional Services policy has been that in all cases where a detainee is treated for a medical emergency or a serious medical condition, case management must attempt to contact or inform the parent or guardian and should such contact fail, contact and inform the detainee’s legal representative.<sup>238</sup>

## Findings

**The Northern Territory Government did not adequately provide for culturally competent or age appropriate provision of health services to children and young people in detention.**

**The Northern Territory Government did not adequately notify or involve family in relation to the provision of health services.**

## DATA SHARING

Appropriate and effective health care requires the consideration of existing information and, where possible, collecting and sharing information in a way that provides continuity of care. The Commission understands that while the Northern Territory has had a shared record system for some time,<sup>239</sup> the Department of Health has recently developed a single health record system. This allows health care staff members in youth detention centres to access a child’s or young person’s health records that are held by other health services, including Aboriginal Community Controlled Health Organisations, mental health teams and hospitals.<sup>240</sup> Child protection information cannot be accessed.<sup>241</sup> Information is also not shared between the staff working for different departments within youth detention. Due to the high number of children in detention who are also in out-of-home care, accessing child protection information would ensure health staff are given a complete history when forming a health picture of a child or young person.<sup>242</sup> It is not appropriate for all staff to have access to the health records of children and young people, but information that allows staff to perform their role and provide detainees with appropriate and quality care should be shared. Information sharing systems are discussed in more detail at Chapter 41 (Data, and information-sharing).

## CONTINUITY OF CARE

The Commission heard from Professor Stuart Kinner that:

*‘The evidence strongly suggests that we achieve the best results in terms of engagement with care, retention in care and better health outcomes when that care is provided to the extent possible through an in-reach model instead of having a separate unique health service for young people in detention.’<sup>243</sup>*

Engaging external and independent health care services to provide an in-reach service would facilitate organisation and maintenance of medical throughcare and continuity of service when a child or young person is released from detention.<sup>244</sup> However, an effective in-reach model is currently hindered by the exclusion of detainees from access to Medicare<sup>245</sup> and the Pharmaceutical Benefits Scheme under section 19(2) of the *Health Insurance Act 1973* (Cth).<sup>246</sup> This provision presumes that the states and territories will provide an equivalent standard of healthcare for children

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and young people in detention.<sup>247</sup> The result is that community health services, including Aboriginal Community Controlled Health Services, cannot easily serve children and young people in youth detention.<sup>248</sup> If an exemption were granted to this exclusion, children and young people would be able to receive comprehensive health check-ups from their provider of choice, particularly providers with whom they are already engaged within the community, to promote continuity of care.<sup>249</sup> The whole community would benefit socially and economically if children and young people in detention were given unhindered access to medical and pharmaceutical benefits.

## **Recommendations 15.4**

### **The Commonwealth Minister for Health:**

- a. make the necessary directions under section 19(2) of the *Health Insurance Act 1973 (Cth)* to enable the payment of Medicare benefits for medical services provided to children and young people in detention in the Northern Territory**
- b. take all necessary steps to ensure that supply of pharmaceuticals to children and young people in detention in the Northern Territory is provided under the Pharmaceutical Benefits Scheme, and**
- c. direct that if an initial questionnaire for Fetal Alcohol Spectrum Disorder indicates that a full assessment is required, that assessment be funded through Medicare or the NDIS as appropriate.**





## ENDNOTES

- <sup>1</sup> Exh.006.005, *Standard Minimum Rules for the Treatment of Prisoners* ('Standard Minimum Rules'), 31 July 1957, tendered 11 October 2016.
- <sup>2</sup> Submission, Royal Australasian College of Physicians, 16 December 2016, pp. 3-4.
- <sup>3</sup> Submission, Royal Australasian College of Physicians, October 2016, p. 2.
- <sup>4</sup> Submission, Danila Dilba, 31 May 2017, p. 6; Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 51.
- <sup>5</sup> Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 97.
- <sup>6</sup> Submission, Royal Australasian College of Physicians, 16 December 2016, p. 3.
- <sup>7</sup> Submission, Royal Australasian College of Physicians, 28 October 2016, p. 4.
- <sup>8</sup> Transcript, Stuart Kinner, 23 March 2017, p. 1738: lines 44-46; Submission, Royal Australasian College of Physicians, 28 October 2016, p. 4.
- <sup>9</sup> Exh.025.001, Statement of Dr Damien Howard, 5 October 2016, tendered 13 October 2016, para. 28.
- <sup>10</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 52; Transcript, James Fitzpatrick, 8 December 2016, p. 541: lines 36-44; Exh.025.001, Statement of Dr Damien Howard, 5 October 2016, tendered 13 October 2016, paras 25-27.
- <sup>11</sup> Transcript, Christine Connors, 16 March 2017, p.1272: lines 14-44.
- <sup>12</sup> Exh.025.001, Statement of Dr Damien Howard, 5 October 2016, tendered 13 October 2016, para. 31.
- <sup>13</sup> Transcript, Jody Barney, 13 October 2016, p. 249: lines 25-47; Transcript, Dr Damien Howard, 13 October 2016, p.249: lines 11-19.
- <sup>14</sup> Transcript, James Fitzpatrick, 8 December 2016, p. 531: lines 5-6; p. 536: lines 3-16.
- <sup>15</sup> Transcript, James Fitzpatrick, 8 December 2016, p. 539: lines 35 -39; Exh.026.001, Statement of Jody Barney, 9 October 2016, tendered 13 October 2016, para. 18; Exh.125.001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017.
- <sup>16</sup> Submission, Royal Australian and New Zealand College of Psychiatrists, 28 October 2016, p. 8-9.
- <sup>17</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 51; Transcript, Ken Middlebrook, 26 April 2017, p. 2938: lines 5-9; Transcript, Dr Mick Creati, 23 March 2017, p. 1744: lines 37-41.
- <sup>18</sup> Transcript, Keith Hamburger, 5 December 2016, p. 318: lines 40-42.
- <sup>19</sup> Youth Justice Regulations 2006 (NT), r 57.
- <sup>20</sup> Exh.084.001, Statement of BY, 21 February 2017, tendered 16 March 2017, para. 19.
- <sup>21</sup> Although not a medical practitioner, this comment was made by a very experienced Chief Executive Officer of a health services organisation: Transcript, Olga Havnen, 21 March 2017, p. 1597: lines 40-42.
- <sup>22</sup> Exh.092.001, Statement of Christine Connors, 20 February 2017, tendered 16 March 2017, paras 13 and 17; Transcript Professor Kinner and Dr Creati, 23 March 2017, p.1731: lines 16 and p. 1732: lines 1 - 36.
- <sup>23</sup> Exh.092.001, Statement of Christine Connors, 20 February 2017, tendered 16 March 2017, paras 15-17. Diseases tested for include hepatitis A, B and C, HIV, syphilis, tuberculosis, diabetes and kidney disease. Female detainees are given a urine pregnancy test on the initial screening, and a further blood pregnancy test on day five. Exh.092.005, Annexure CC1.1 to Statement of Christine Connors, 20 February 2017, tendered 16 March 2017.
- <sup>24</sup> Exh.092.001, Statement of Christine Connors, 20 February 2017, tendered 16 March 2017, para. 27.
- <sup>25</sup> Transcript, Christine Connors, 16 March 2017, p. 1271: lines 45 - p. 1272: line 9.
- <sup>26</sup> Transcript, Dr Damien Howard, 13 October 2016, p. 241: line 45 - p.421: line 2.
- <sup>27</sup> Exh.026.001, Statement of Jody Barney, 9 October 2016, tendered 13 October 2016, para. 19.
- <sup>28</sup> Exh.092.001, Statement of Christine Connors, 20 February 2017, tendered 16 March 2017, paras 25-27.
- <sup>29</sup> Exh.092.001, Statement of Christine Connors, 20 February 2017, tendered 16 March 2017, paras 26-27. Transcript, Christine Connors, 16 March 2017, p.1272: lines 10-22.
- <sup>30</sup> Exh.092.001, Statement of Christine Connors, 20 February 2017, tendered 16 March 2017, paras 26-27.
- <sup>31</sup> Transcript, Christine Connors, 16 March 2017, p. 1272 lines 3-9.
- <sup>32</sup> Transcript, Christine Connors, 16 March 2017, p. 1272 lines 8-9.
- <sup>33</sup> Exh.180.001, Statement of AQ, 14 February 2017, tendered 28 March 2017, paras 67-68.
- <sup>34</sup> Transcript, Christine Connors, 16 March 2017, p. 1281: lines 20-22.
- <sup>35</sup> Transcript, Christine Connors, 16 March 2017, p. 1281: lines 23-24.
- <sup>36</sup> Transcript, Christine Connors, 16 March 2017, p. 1273: lines 9-10.
- <sup>37</sup> Transcript, James Fitzpatrick, 8 December 2016, p. 535: lines 29-45.
- <sup>38</sup> Transcript, James Fitzpatrick, 8 December 2016, p. 541: lines 41-44 and p. 544: lines 9-12.
- <sup>39</sup> Transcript, Christine Connors, 16 March 2017, p. 1273: lines 38-40.
- <sup>40</sup> Transcript, Christine Connors, 16 March 2017, p. 1273: lines 19-34.
- <sup>41</sup> Transcript, James Fitzpatrick, 8 December 2016, p. 535: lines 24-35.
- <sup>42</sup> Submission, Banksia Hill Study team, Telethon Kids Institute, 30 May 2017, p. 3.
- <sup>43</sup> Exh.038.003, Annexure 2 to the Statement of James Fitzpatrick, Joint Report of Dr James Fitzpatrick and Associate Professor Carmela Pestell: prepared for the Royal Commission into the Protection and Detention of Children in the Northern Territory, 7 December 2016, tendered 8 December 2016, para. 4; Transcript, James Fitzpatrick, 8 December 2016, p. 535: lines 24-27.
- <sup>44</sup> Transcript, James Fitzpatrick, 8 December 2016, p. 535: lines 33-35.

- 45 Transcript, James Fitzpatrick, 8 December 2016, p. 535: lines 29-33.
- 46 Exh.1105.001, Telethon Kids Institute Report, 9 August 2017 p. 10.
- 47 Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 72; Exh.031.002, Annexure 1 to Statement of Keith Hamburger, *A Safer Northern Territory through Correctional Interventions*, 31 July 2016, tendered 5 December 2016, p. 143.
- 48 Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March, para. 72.1.
- 49 Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para. 58; Transcript, Russell Caldwell, 29 March 2017, p. 2158, lines 15-22; Transcript, Derek Tasker, 15 March 2017, p. 1095, lines 17-25.
- 50 Exh.031.002, Annexure 1 – Report “A Safer Northern Territory Through Correctional Interventions” [REDACTED], 31 July 2016, tendered 5 December 2016, p.143
- 51 Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 19 December 2013, tendered 31 March 2017, p. 14.
- 52 Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 9; Exh.727.004, Health Assessments, tendered 25 July 2017; Exh.727.005, Medical Request Form, 11 April 2014, tendered 25 July 2017; Exh.727.011, Health Assessments, tendered 25 July 2017; Exh.727.016, Health Assessments, 14-21 October 2015, tendered 25 July 2017; Exh.727.018, Health Assessments, 29-30 January 2016, tendered 25 July 2017; Explanatory Notes for AM, 27 March 2017.
- 53 Exh.727.006, Health Assessments, 11 May 2014, tendered 25 July 2017; Exh.727.010, Health Assessments, 1 September 2014, tendered 25 July 2017; Exh.727.013, Health Assessments, 17-26 June 2015, tendered 25 July 2017; Explanatory Notes for AM, 27 March 2017; Exh.727.008, Health Assessments, 4-5 June 2014, tendered 25 July 2017; Exh.727.015, Health Assessments, 8-10 September 2015, tendered 25 July 2017; Explanatory Notes for AS, 26 July 2017.
- 54 Transcript, Christine Connors, 16 March 2016, p. 1270: lines 14-22.
- 55 Exh.727.006, Health Assessments, 11 May 2014, tendered 25 July 2017; Exh.727.010, Health Assessments, 1 September 2014, tendered 25 July 2017; Exh.727.013, Health Assessments, 17-26 June 2015, tendered 25 July 2017; Explanatory Notes for AM, 27 March 2017; Exh.727.008, Health Assessments, 4-5 June 2014, tendered 25 July 2017; Exh.727.015, Health Assessments, 8-10 September 2015, tendered 25 July 2017; Explanatory Notes for AS, 26 July 2017.
- 56 Explanatory Notes for AS, 26 July 2017.
- 57 Exh.143.001, Precis of Evidence of Dr Mick Creati, tendered 23 March 2017, para. 1.
- 58 Exh.143.001, Precis of Evidence of Dr Mick Creati, tendered 23 March 2017, paras 2-3.
- 59 Transcript, Stuart Kinner, 23 March 2017, p. 1731, lines 16-29.
- 60 Exh.143.001, Precis of Evidence of Dr Mick Creati, tendered 23 March 2017, para. 2; Submission, Royal Australasian College of Physicians, 16 December 2016, p. 6.
- 61 Exh.143.001, Precis of Evidence of Dr Mick Creati, tendered 23 March 2017, para. 3; Submission, Royal Australasian College of Physicians, December 2016, p. 6.
- 62 Transcript, Olga Havnen, 21 March 2017, p. 1597: lines 30-38.
- 63 Transcript, Lisa Coon, 21 April 2017, p. 2712: line 36 - p. 2713: line 6.
- 64 Transcript, Lisa Coon, 21 April 2017, p. 2713: lines 14-16.
- 65 Transcript, Barrie Clee, 15 March 2017, p. 1138: lines 33-43.
- 66 Exh.031.002, Annexure 1 to Statement of Keith Hamburger, *A Safer Northern Territory through Correctional Interventions*, 31 July 2016, tendered 5 December 2016, p. 158.
- 67 Transcript, Christine Connors, 16 March 2017, p. 1270: lines 33-37.
- 68 Transcript, Christine Connors, 16 March 2017, p. 1271: lines 29-37.
- 69 Exh.092.001, Statement of Christine Connors, 20 February 2017, tendered 16 March 2017, para. 30.
- 70 Exh.102.001, Statement of BN, 14 February 2017, tendered 20 March 2017, para. 107.
- 71 Exh.145.001, Statement of AG, 25 November 2017, tendered 24 March 2017, paras 69 – 70.
- 72 Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para. 27.
- 73 Transcript, Greg Harmer, 24 March 2017, p. 1776: lines 23-25.
- 74 Exh.031.002, Annexure 1 to Statement of Keith Hamburger, *A Safer Northern Territory through Correctional Interventions*, 31 July 2016, tendered 5 December 2016, p. 89.
- 75 Exh.899.001, Corrections Chronology of AF prepared by Solicitor for the Northern Territory, tendered 24 October 2017, p. 12; Exh.064.248, [Redacted] 3 May 2015, tendered 23 March 2017; Exh.064.249, [Redacted] 4 May 2017, tendered 23 March 2017; Exh.064.260, [Redacted] 11052015, 11 May 2015, tendered 23 March 2017.
- 76 Exh.1082.001, AF Health Record, 4 May 2015, tendered 28 October 2017.
- 77 Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, para. 85.
- 78 Transcript, Eliza Tobin, 24 March 2017, p. 1776: lines 43-46.
- 79 Exh 126.001, Signed Audit Memo – Currency of Essential Staff Qualification DDYDC, 15 April 2014, tendered 23 March 2017.
- 80 Exh 126.001, Signed Audit Memo – Currency of Essential Staff Qualification DDYDC, 15 April 2014, tendered 23 March 2017.
- 81 Exh 126.001, Signed Audit Memo – Currency of Essential Staff Qualification DDYDC, 15 April 2014, tendered 23 March 2017.
- 82 Transcript, David Ferguson, 23 March 2017, p. 1716: lines 36-37.
- 83 Transcript, Trevor Hansen, 13 March 2017, p. 950: lines 40-42; Transcript Derek Tasker, 14 March 2017, p. 1047: lines 20-21; Transcript, Barrie Clee, 15 March 2017, p. 1123: lines 20-21; Transcript, Conan Zamolo, 20 March 2017, p. 1395: lines 25-26.
- 84 Exh.172.001, Statement of James Sizeland, 17 February 2017, tendered 27 March 2017, para. 44; Exh.092.001, Statement of Christine Connors, 20 February 2017, 16 March 2017, para. 50; Exh.053.029, Annexure 19 to Statement of Dylan Voller, Own

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- 85 Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 63.
- 86 Transcript, Christine Connors, 16 March 2017, p. 1283: lines 1 – 47.
- 87 Exh.180.001, Statement of AQ, 14 February 2017, tendered 28 March 2017, para. 70.
- 88 Exh.142.022, *Precis of Evidence of Stuart Kinner*, tendered 23 March 2017, para. 17.
- 89 Transcript, Salli Cohen, 24 April 2017, p. 2795: lines 44-45.
- 90 Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 51; Transcript, Ken Middlebrook, 26 April 2017, p. 2938: lines 5-9.
- 91 Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 59.
- 92 Transcript, Antoinette Carroll, 15 March 2017, p. 1175: line 29 – p. 1176: line 2.
- 93 Transcript, Antoinette Carroll, 15 March 2017, p. 1176: lines 1-11.
- 94 Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 12.
- 95 Community Meeting, Darwin (Youth Detention Staff Forum), 22 February 2017.
- 96 Transcript, Stuart Kinner, 23 March 2017, p. 1744: lines 8-23.
- 97 Transcript, Dr Mick Creati, 23 March 2017, p. 1736: lines 3-8.
- 98 Transcript, Stuart Kinner, 23 March 2017, p. 1736: lines 3-8.
- 99 Transcript, Stuart Kinner, 23 March 2017, p. 1735: lines 30-38.
- 100 Royal Australasian College of Physicians, *The RACP Policy on Health and Well-being of Incarcerated Adolescents*, 2011, viewed on 27 July 2017, <https://www.racp.edu.au/docs/default-source/advocacy-library/the-health-and-wellbeing-on-incarcerated-adolescents.pdf>, p. 17.
- 101 Submission, Royal Australian and New Zealand College of Psychiatrists, 28 October 2016, p. 8.
- 102 Submission, Royal Australian and New Zealand College of Psychiatrists, 28 October 2016, pp. 8-9.
- 103 Closed court transcript, BQ, 27 March 2017, p. 8: lines 14-19.
- 104 Transcript, Olga Havnen, 21 March 2017, p. 1582: line 44 – p. 1583: line 4.
- 105 Exh.642.000, Statement of Denise Riordan, 21 June 2017, tendered 29 June 2017, para. 69.
- 106 Exh.642.000, Statement of Denise Riordan, 21 June 2017, tendered 29 June 2017, para. 70.
- 107 Exh.128.001, Statement of AU, 16 February 2017, tendered 23 March 2017, para. 68.
- 108 Transcript, Derek Tasker, 15 March 2017, p. 1095: lines 17-19; Transcript, Salli Cohen, 24 April 2017, p. 2798: lines 1-8.
- 109 Exh.031.002, Annexure 1 to Statement of Keith Hamburger, *A Safer Northern Territory through Correctional Interventions*, 31 July 2016, tendered 5 December 2016, p. 157.
- 110 Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 74.
- 111 Exh.031.002, Annexure 1 to Statement of Keith Hamburger, *A Safer Northern Territory through Correctional Interventions*, 31 July 2016, tendered 5 December 2016, p. 157.
- 112 Community Meeting, Darwin (Youth Detention Staff Forum), 22 February 2017.
- 113 Transcript, Barrie Clee, 15 March 2017, p. 1138: lines 4-10.
- 114 Transcript, Barrie Clee, 15 March 2017, p. 1138: lines 15-17.
- 115 Submission, Central Australia Mental Health Service, 28 October 2016, p. 2.
- 116 Exh.642.000, Statement of Denise Riordan, 21 June 2017, tendered 29 June 2017, para. 57.
- 117 Submission, Central Australia Mental Health Service, 28 October 2016, pp. 2, 14.
- 118 Transcript, Christine Connors, 16 March 2017, p. 1288: lines 22-23.
- 119 Transcript, Salli Cohen, 24 April 2017, p. 2798: lines 1-10.
- 120 Transcript, Salli Cohen, 24 April 2017, p. 2798: lines 24-44.
- 121 Transcript, Salli Cohen, 24 April 2017, p. 2798: lines 43-44.
- 122 Transcript, Salli Cohen, 24 April 2017, p. 2799: lines 5-10.
- 123 Transcript, Christine Connors, 16 March 2017, p. 1288: lines 14-20.
- 124 Transcript, Christine Connors, 16 March 2017, p. 1279: lines 10-13.
- 125 Transcript, Christine Connors, 16 March 2017, p. 1279: lines 4-12.
- 126 Transcript, Derek Tasker, 15 March 2017, p. 1095: lines 17-19.
- 127 Transcript, Christine Connors, 16 March 2017, p. 1279: lines 13-14.
- 128 Transcript, Michael Yaxley, 30 March 2017, p. 2262: line 46.
- 129 It was found in 2012 that only 37 staff members had completed either ASSIST or mental health first aid, while 70 had completed neither; Exh.064.080, Response to Children's Commissioner request for information on training including PART for juvenile detention staff, 2 May 2012, tendered 22 March 2017, p. 2.
- 130 Transcript, Michael Yaxley, 30 March 2017, p. 2260: lines 33-42.
- 131 *Findings in the death of Johnno Johnson Wurramarba* [2001] NTMC 84 p. 92. The coroner recommended that staff members receive formal and regular training so they are able to recognise the signs of mental illness in young people; Exh.024.004, National Report – Final Report of the Royal Commission into Aboriginal Deaths in Custody – Volume 3 (reformatted), 15 April 1991, tendered 13 October 2016, Recommendation 155. That recruit and in-service training of prison officers should include information as to the general health status of Aboriginal people and be designed to alert such officers to the foreseeable risk of Aboriginal people in their care suffering from those illnesses and conditions endemic to the Aboriginal population. Officers should also be trained to better enable them to identify persons in distress or at-risk of death or harm through illness, injury or self-harm.
- 132 Transcript, Ian Johns, 28 March 2017, p. 2043: lines 13-25.

- <sup>133</sup> Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, para. 35; Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, paras 43-45; Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, paras 40-42; Exh.151.001, Statement of Greg Harmer, 3 February, tendered 24 March 2017, paras 7, 61-64, 74; Exh.153.001, Statement of Louise Inglis, 15 February 2017, tendered 24 March 2017, para. 34.
- <sup>134</sup> Transcript, Jon Jureidini, 29 June 2017, p. 5338: lines 5-12.
- <sup>135</sup> Exh.641.000, Statement of Jon Jureidini, 28 May 2017, tendered 29 June 2017, p. 6.
- <sup>136</sup> Exh.642.000, Statement of Denise Riordan, 21 June 2017, tendered 29 June 2017, para. 36.
- <sup>137</sup> Submission, Royal Australasian College of Physicians, 16 December 2016, p. 6.
- <sup>138</sup> Submission, Royal Australasian College of Physicians, 16 December 2016, p. 7.
- <sup>139</sup> Exh.746.000, Statement of Jenni Gannon, 5 April 2017, tendered 25 July 2017, para. 29(b).
- <sup>140</sup> Exh.746.000, Statement of Jenni Gannon, 5 April 2017, tendered 25 July 2017, para. 30.
- <sup>141</sup> Exh.641.000, Statement of Jon Jureidini, 28 May 2017, tendered 29 June 2017, p. 13.
- <sup>142</sup> Exh.641.000, Statement of Jon Jureidini, 28 May 2017, tendered 29 June 2017, p. 13.
- <sup>143</sup> Exh.636.004, Appendix 4 to Precip of Evidence of Elizabeth Grant, 12 June 2017, tendered 29 June 2017, p. 6.
- <sup>144</sup> *Youth Justice Act (NT)*, s 162. The superintendent of a detention centre must ensure that a detainee who is considered to be at-risk of self-harm is dealt with in the manner prescribed in the Regulations; *Youth Justice Regulations (NT)*, rr 41, 42, 43, 44.
- <sup>145</sup> *Youth Justice Regulations (NT)*, r 41.
- <sup>146</sup> *Youth Justice Regulations (NT)*, r 44.
- <sup>147</sup> Transcript, Christine Connors, 16 March 2017, p. 1276: lines 1-10.
- <sup>148</sup> *Youth Justice Regulations (NT)*, r. 42; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, paras 178-180; Exh.092.105, Annexure CC5.1 to Statement of Christine Connors, 20 February 2017, tendered 16 March 2017; Exh.053.029, Annexure 19 to Statement of Dylan Voller, *Own Initiative Investigation Report: Services Provided by the Northern Territory Department of Correctional Services to Don Dale Youth Detention Centre, Alice Springs Youth Detention Centre, Final Investigation Report*, 15 August 2016, tendered 14 December 2016, p. 10.
- <sup>149</sup> Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, paras 181, 184.
- <sup>150</sup> Exh.092.108, Annexure CC5.2 to Statement of Christine Connors, 20 February 2017, tendered 16 March 2017, pp. 3-4.
- <sup>151</sup> Exh.092.108, Annexure CC5.2 to Statement of Christine Connors, 20 February 2017, tendered 16 March 2017, pp. 3-4.
- <sup>152</sup> Exh.092.108, Annexure CC5.2 to Statement of Christine Connors, 20 February 2017, tendered 16 March 2017, pp. 3-4.
- <sup>153</sup> Exh.075.001, Statement of Derek Tasker, 16 February 2017, tendered 14 March 2017, para. 42.
- <sup>154</sup> Exh.075.001, Statement of Derek Taster, 16 February 2017, tendered 14 March 2017, para. 42.
- <sup>155</sup> Exh.172.001, Statement of James Sizeland, 17 February 2017, tendered 27 March 2017, para. 100.
- <sup>156</sup> Exh.053.029, Annexure 19 to Statement of Dylan Voller, *Own Initiative Investigation Report: Services Provided by the Northern Territory Department of Correctional Services to Don Dale Youth Detention Centre, Alice Springs Youth Detention Centre, Final Investigation Report*, 15 August 2016, tendered 14 December 2016, p. 13.
- <sup>157</sup> Exh.092.001, Statement of Christine Connors, 20 February 2017, tendered 16 March 2017, para. 43; Exh.092.108, Annexure CC 5.2 to Statement of Christine Connors, 20 February 2017, tendered 16 March 2017 p.; Exh.053.029, Annexure 19 to Statement of Dylan Voller, *Own Initiative Investigation Report: Services Provided by the Northern Territory Department of Correctional Services to Don Dale Youth Detention Centre, Alice Springs Youth Detention Centre, Final Investigation Report*, 15 August 2016, tendered 14 December 2016; Exh.737.011, Annexure 11 to Statement of Jeanette Kerr, 20 February 2017, tendered 25 July 2017.
- <sup>158</sup> Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 182.
- <sup>159</sup> Exh.053.029, Annexure 19 to Statement of Dylan Voller, *Own Initiative Investigation Report: Services Provided by the Northern Territory Department of Correctional Services to Don Dale Youth Detention Centre, Alice Springs Youth Detention Centre, Final Investigation Report*, 15 August 2016, tendered 14 December 2016, p. 9.
- <sup>160</sup> Transcript, Dylan Voller, 12 December 2016, p. 697: lines 43-46.
- <sup>161</sup> Exh.053.029, Annexure 19 to Statement of Dylan Voller, *Own Initiative Investigation Report: Services Provided by the Northern Territory Department of Correctional Services to Don Dale Youth Detention Centre, Alice Springs Youth Detention Centre, Final Investigation Report*, 15 August 2016, tendered 14 December 2016, p. 9.
- <sup>162</sup> Closed court transcript, AB, 23 March 2017, p. 51: lines 38-39. The conditions in the Behaviour Management Unit are discussed in detail at Chapter 14 (Isolation).
- <sup>163</sup> Exh.051.001, Statement of Dylan Voller [redacted], 25 November 2016, tendered 13 December 2016, para 50.
- <sup>164</sup> Exh.641.000, Statement of Jon Jureidini, 28 May 2017, tendered 29 June 2017, p. 1; Exh.641.002, Appendix 2 to Statement of Jon Jureidini, 28 May 2017, tendered 29 June 2017.
- <sup>165</sup> Exh.641.000, Statement of Jon Jureidini, 28 May 2017, tendered 29 June 2017, p. 2.
- <sup>166</sup> Exh.641.000, Statement of Jon Jureidini, 28 May 2017, tendered 29 June 2017, p. 2.
- <sup>167</sup> Exh.641.000, Statement of Jon Jureidini, 28 May 2017, tendered 29 June 2017, p. 2-3.
- <sup>168</sup> Exh.641.000, Statement of Jon Jureidini, 28 May 2017, tendered 29 June 2017, p. 3.
- <sup>169</sup> Exh.641.000, Statement of Jon Jureidini, 28 May 2017, tendered 29 June 2017, p. 3.
- <sup>170</sup> Exh.641.000, Statement of Jon Jureidini, 28 May 2016, tendered 29 June 2017, p. 3-4.
- <sup>171</sup> Exh.641.000, Statement of Jon Jureidini, 28 May 2017, tendered 29 June 2017, p. 4.
- <sup>172</sup> Exh.641.000, Statement of Jon Jureidini, 28 May 2017, tendered 29 June 2017, p. 3.
- <sup>173</sup> Exh.641.000, Statement of Jon Jureidini, 28 May 2017, tendered 29 June 2017, p. 4.
- <sup>174</sup> Exh.641.000, Statement of Jon Jureidini, 28 May 2017, tendered 29 June 2017, p. 4.
- <sup>175</sup> Exh.641.000, Statement of Jon Jureidini, 28 May 2017, tendered 29 June 2017, p. 4.

176 Transcript, Christopher Castle, 16 March 2017, p. 1296: lines 27-29.

177 Exh.093.001, Statement of Christopher Castle, 7 February 2017, tendered 16 March 2017, para. 49.

178 Exh.011.001, Statement of Dr Howard Bath, 5 October 2016, tendered 12 October 2016, para. 99(f).

179 Transcript, John Rynne, 17 March 2017, p. 1314: lines 39-42.

180 Transcript, Olga Havnen, 21 March 2017, p. 1595: lines 30-41.

181 Transcript, Stuart Kinner, 23 March 2017, p. 1753: lines 40-43.

182 Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 192. This is despite the fact the procedures were originally developed following the death in custody at the former Don Dale Youth Detention Centre in 2001.

183 Exh.053.029, Annexure 19 to Statement of Dylan Voller, *Own Initiative Investigation Report: Services Provided by the Northern Territory Department of Correctional Services to Don Dale Youth Detention Centre, Alice Springs Youth Detention Centre, Final Investigation Report*, 15 August 2016, tendered 14 December 2016, p. 11.

184 Exh.634.000, Precis of Evidence of Elizabeth Grant, 12 June 2017, tendered 29 June 2017, para. 30; Exh.053.029, Annexure 19 to Statement of Dylan Voller, *Own Initiative Investigation Report: Services Provided by the Northern Territory Department of Correctional Services to Don Dale Youth Detention Centre, Alice Springs Youth Detention Centre, Final Investigation Report*, 15 August 2016, tendered 14 December 2016, p. 14.

185 Exh.053.029, Annexure 19 to Statement of Dylan Voller, *Own Initiative Investigation Report: Services Provided by the Northern Territory Department of Correctional Services to Don Dale Youth Detention Centre, Alice Springs Youth Detention Centre, Final Investigation Report*, 15 August 2016, tendered 14 December 2016, p. 11.

186 Exh.642.000, Statement of Denise Riordan, 21 June 2017, tendered 29 June 2017, para. 13.

187 Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, paras 47-48, 51.

188 Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, para. 88.

189 Exh.641.000, Statement of Jon Jureidini (Confidential Exhibit), 28 May 2017, tendered 29 June 2017, p. 5

190 Exh.641.000, Statement of Jon Jureidini (Confidential Exhibit), 28 May 2017, tendered 29 June 2017, p. 6.

191 Transcript, Ian Johns, 28 March 2017, p. 2061: line 32 – p. 2062: line 10.

192 Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, para. 86.

193 Transcript, Ian Johns, 28 March 2017, p. 2062: lines 30-38.

194 Transcript, Ian Johns, 28 March 2017, p.2061: line 32 – p. 2062: line 19.

195 Transcript, Jon Jureidini, 29 June 2017, p. 5341: lines 35-39.

196 Closed court transcript, Jon Jureidini, 29 June 2017, p. 3: lines 25-43 and p. 6: lines 4-10.

197 Closed court transcript, Jon Jureidini, 29 June 2017, p. 3: lines 12-16.

198 Closed court transcript, Jon Jureidini, 29 June 2017, p. 3: lines 25-43.

199 Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, para. 59.

200 Exh.642.000, Statement of Denise Riordan, 21 June 2017, tendered 29 June 2017, para. 80.

201 Transcript, Denise Riordan, 29 June 2017, p. 5348: lines 45 – p. 5349: lines 6.

202 Closed court transcript, Jon Jureidini, 29 June 2017, p. 3: lines 19-28.

203 Exh.642.000, Statement of Denise Riordan, 21 June 2017, tendered 29 June 2017, para. 78.

204 Closed court transcript, Jon Jureidini, 29 June 2017, p. 3: lines 28-29.

205 Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, para. 113.

206 Exh.172.001, Statement of James Sizeland, 17 February 2017, tendered 27 March 2017, para. 100; Exh.075.001, Statement of Derek Tasker, 16 February 2017, tendered 14 March 2017, para. 42.

207 Exh.053.029, Annexure 19 to Statement of Dylan Voller, *Own Initiative Investigation Report: Services Provided by the Northern Territory Department of Correctional Services to Don Dale Youth Detention Centre, Alice Springs Youth Detention Centre, Final Investigation Report*, 15 August 2016, tendered 14 December 2016, p. 16; Exh.051.001, Statement of Dylan Voller [redacted], 25 November 2016, tendered 13 December 2016, para. 144.

208 Exh.093.001, Statement of Christopher Castle, 7 February 2017, tendered 16 March 2017, para. 48.

209 Exh.093.001, Statement of Christopher Castle, 7 February 2017, tendered 16 March 2017, para. 49.

210 Exh.251.001, Statement of BA, 17 February 2017, tendered 31 March 2017, para. 50 and 53; Closed court transcript, AN, 24 March 2017, p. 10: lines 5-20. AN also told the Commission that youth justice officers would reject calls on the intercom, and to get their attention you would have to cover up the camera with toilet paper. Transcript, Louise Inglis, 24 March 2017, p. 1784, lines 29-31. Ms Inglis told the Commission that some staff members turned off the intercom buttons.

211 Exh.051.001, Statement of Dylan Voller [redacted], 25 November 2016, tendered 13 December 2016, para 144.

212 Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, para. 98.

213 Transcript, Louise Inglis, 24 March 2017, p. 1778: lines 10-16.

214 Exh.053.029, Annexure 19 to Statement of Dylan Voller, *Own Initiative Investigation Report: Services Provided by the Northern Territory Department of Correctional Services to Don Dale Youth Detention Centre, Alice Springs Youth Detention Centre, Final Investigation Report*, 15 August 2016, tendered 14 December 2016, p. 17.

215 Exh.641.000, Statement of Jon Jureidini (Confidential Exhibit), 28 May 2017, tendered 29 June 2017, p. 11.

216 Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 45.

217 Exh.641.000, Statement of Jon Jureidini (Confidential Exhibit), 28 May 2017, tendered 29 June 2017, p. 10.

218 Exh.642.000, Statement of Denise Riordan, 21 June 2017, tendered 29 June 2017, para. 103-108.

219 Exh.642.000, Statement of Denise Riordan, 21 June 2017, tendered 29 June 2017, para. 103.

220 Exh.642.000, Statement of Denise Riordan, 21 June 2017, tendered 29 June 2017, para. 103-108.

221 Exh.092.001, Statement of Christine Connors, 20 February 2017, tendered 16 March 2017, para. 60.

222 Exh.092.001, Statement of Christine Connors, 20 February 2017, tendered 16 March 2017, para. 60.

- <sup>223</sup> Exh.092.001, Statement of Christine Connors, 20 February 2017, tendered 16 March 2017, para. 60.
- <sup>224</sup> Transcript, Dr Mick Creati, 23 March 2017, p. 1742: lines 4-29.
- <sup>225</sup> Exh.011.001, Statement of Dr Howard Bath, 5 October 2016, tendered 12 October 2016, para. 99(h).
- <sup>226</sup> Exh.115.001, Statement of Olga Havnen, 16 February 2017, tendered 21 March 2017, para. 44.
- <sup>227</sup> Transcript, Dr Mick Creati, 23 March 2017, p. 1733: lines 1-14.
- <sup>228</sup> Transcript, Dr Mick Creati, 23 March 2017, p. 1733: lines 6-8.
- <sup>229</sup> Exh.505.000, Statement of Christine Connors, 5 May 2017, tendered 19 May 2017, para. 14.
- <sup>230</sup> Exh.092.005, Annexure CC1.1 to Statement of Christine Connors, 20 February 2017, tendered 16 March 2017.
- <sup>231</sup> Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, paras 72-73.
- <sup>232</sup> Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 70.
- <sup>233</sup> Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, para. 91.
- <sup>234</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 149.
- <sup>235</sup> Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 149.
- <sup>236</sup> Transcript, James Sizeland, 27 March 2017, p. 1940: lines 33-44.
- <sup>237</sup> Exh.136.001, Statement of BZ, 20 February 2017, tendered 23 March 2017, paras 30, 47 and 54.
- <sup>238</sup> Exh.741.012, Annexure MP-12 to the Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, p.11.
- <sup>239</sup> Transcript, Christine Connors, 16 March 2017, p.1267: lines 30-47.
- <sup>240</sup> Exh.092.001, Statement of Christine Connors 20 February 2017, tendered 16 March 2017, para. 18.
- <sup>241</sup> Transcript, Christine Connors, 16 March 2017, p. 1268: lines 11-12.
- <sup>242</sup> Transcript, Christine Connors, 16 March 2017, p. 1268: lines 40-50.
- <sup>243</sup> Transcript, Stuart Kinner, 23 March 2017, p. 1743: lines 32-42.
- <sup>244</sup> Submission, Belinda Greenwood, 19 April 2017, p. 3.
- <sup>245</sup> Transcript, Stuart Kinner, 23 March 2017, p. 1747: lines 29-33.
- <sup>246</sup> *Health Insurance Act 1973* (Cth), s 19(2): Unless the Minister otherwise directs, a Medicare benefit is not payable in respect of a professional service that has been rendered by, or on behalf of, or under an arrangement with: a) the Commonwealth; b) a State; c) a local governing body; or d) an authority established by a law of the Commonwealth, a law of a State or a law of an internal Territory.
- <sup>247</sup> Johnson, C & Tatz, S, 'Prisoners could get Medicare without a heavy taxpayer burden', 17 March 2017, Australian Medical Association website, viewed on 31 July 2017, <https://ama.com.au/ausmed/prisoners-could-get-medicare-without-heavy-taxpayer-burden>.
- <sup>248</sup> Transcript, Stuart Kinner, 23 March 2017, p. 1747: lines 29-33.
- <sup>249</sup> Transcript, Olga Havnen, 21 March 2017, p. 1597: line 40 – p. 1598: line 3.



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EDUCATION IN DETENTION



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# EDUCATION IN DETENTION

## INTRODUCTION

Education is a strong protective factor against reoffending and improves overall life outcomes.<sup>1</sup> Non-attendance at school may indicate that a child or young person needs support or is at risk of engaging in criminal behaviours.<sup>2</sup> The central role of education in children's and young people's lives, including those in detention, is reflected not only in international and domestic human rights standards<sup>3</sup> but also in domestic laws that compel attendance at school.<sup>4</sup> *The Youth Justice Act (NT)* and *Youth Justice Regulations (NT)* echo key principles of the standards.<sup>5</sup>

Children and young people in detention, whether sentenced or on remand, have a right to the same educational opportunities as their peers in the community.<sup>6</sup> This requires that:

- children and young people's access to education not be unnecessarily interrupted when they are detained
- children and young people with cognitive and learning difficulties receive special support<sup>7</sup>
- each child or young person's individual personality, talent, and mental and physical abilities be nurtured and developed to prepare them for life in the community
- children and young people have access to vocational education and general life education
- children and young people be encouraged to continue education beyond compulsory schooling age, and
- disciplinary measures imposed on children and young people in schools be administered with dignity and not unduly impinge on their right to education.<sup>8</sup>

Respecting these principles may require delivery of education, including vocational education, outside the detention facility. It may also involve programs and services that support children and young people's continued education when they return to the community.<sup>9</sup>

The delivery of education in youth detention in the Northern Territory throughout the relevant period has, in many respects, been a missed opportunity to maximise engagement of children and young

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people who are willing to participate in schooling and learning in detention but have had poor engagement in the community. The framework for identification of the need for, and delivery of, special support services to enhance learning ability was inadequate. The importance of Aboriginal language was not recognised appropriately in education delivery to Aboriginal children and young people for whom English was not their first language. In a counter-productive approach, children and young people were excluded from the classroom arbitrarily without assistance to help them to improve their behaviours and stay in the classroom learning. Vocational and life education content was inadequate and delivery was sporadic. Until recently, youth detention services did not include support for continuing engagement with education after detention.

Education was subordinated to security concerns in youth detention services, because management made little effort to find solutions that balanced security with the value of education. Within the classroom, the discretion to exclude or suspend students for disciplinary reasons was overused, and at times staff members did not appreciate the needs of their students. Some steps have been, and continue to be, taken to improve governance in the schools and the continuity of student engagement with education after release from detention. However, education's subordinate role persists as security continues to dominate decision-making.

## THE SPECIAL EDUCATION NEEDS OF STUDENTS IN DETENTION

When viewed as school students, children and young people in detention commonly have traits that amount to special education needs, requiring special education services. A child's willingness and ability to engage effectively in teaching and learning activities is affected by poor past engagement with education, and cognitive and other impairments to learning capacity. In this section, the commission considers children and young people's special needs and whether those needs were adequately identified and addressed in the youth detention centres.

Children and young people in Northern Territory youth detention commonly have very poor levels of English literacy and numeracy.<sup>10</sup> Most have poor to very poor school attendance histories and arrive in detention almost completely disengaged from education. As a former Tivendale School principal explained, children and young people with ability levels well below that of their age level can be deterred from attending mainstream schools, for obvious reasons of embarrassment and discomfort.<sup>11</sup> This is in addition to the many other reasons that may deter, prevent or de-motivate a child or young person from attending school.

At the Tivendale School at the current Don Dale Youth Detention Centre, 94% of students from Darwin, Palmerston and the surrounding rural area have school attendance rates of less than 50%, while 70% of that same group have attendance rates of less than 25%.<sup>12</sup> The position is similar for students at the Owen Springs Education Centre at the Alice Springs Youth Detention Centre.<sup>13</sup> Students in detention also commonly have histories of enrolment at multiple schools, up to 20 in some cases.<sup>14</sup>

While data on the health status of students in the Northern Territory is not aggregated,<sup>15</sup> it is uncontroversial that students in youth detention in the Northern Territory often present with diagnosed or undiagnosed cognitive impairments, as well as complex psychological, health and social issues. These can include Fetal Alcohol Spectrum Disorder (FASD), Attention Deficit (Hyperactivity)

Disorder (ADHD or ADD), Oppositional Defiance Disorder, Autism Spectrum Disorder, neglect, trauma, substance or alcohol misuse or abuse, and speech, vision and/or hearing impairments.<sup>16</sup> In addition, some students in youth detention in the Northern Territory speak a first language or languages other than English.<sup>17</sup>

The presence and indeed prevalence of complex physical and mental health issues is considered further in Chapter 15 (Health, mental health and children at risk), including the prevalence of FASD, history of self harm and other issues.<sup>18</sup>

The presence of such physical and mental health issues among the Northern Territory youth detention population is consistent with extensive research in young offender populations both in Australia and overseas, which has established that the following conditions appear at higher rates in youth offender samples than in the general population:<sup>19</sup>

- executive function deficits
- intellectual impairment
- mental health problems
- substance abuse, and
- traumatic brain injuries.

Physical and mental health conditions and cognitive impairments can impact negatively on children and young people’s ability to get by in a secure detention setting. A hearing or cognitive impairment may appear to result in the child or young person ignoring or not complying with instructions, when in fact they have not heard or understood.

### **A cycle of miscommunication – children and young people with hearing loss in the classroom**

Dr Damien Howard gave evidence about challenges for children and young people with hearing loss in an education system not equipped to deal with them:

*[O]ften the communication problems, as I said earlier, can be minimised in a family context that – where many people have very effective non-communication skills. However, when the child enters the education system, which is very audistic, so it’s very auditory focused ... the teachers from a Western background are not well equipped to be able to communicate with many children who have hearing loss.*

*[U]nfortunately the special ed model that operates in most Australian schools, and in the Northern Territory, assumes that special education support is provided to a few children with severe difficulties.*

*Whereas the reality in many Aboriginal classrooms, or for most Aboriginal children in mixed classrooms, is that the majority of those children may have a current hearing loss and teachers aren’t well equipped in order ... to address that.*<sup>20</sup>

This may lead to the child or young person exhibiting ‘behaviour problems’, with the consequence that children and young people feel unfairly targeted when teachers discipline them due to the teachers’ lack of awareness of hearing issues:

*‘[T]hey might wander around the classroom, because they don’t understand what’s going on, or to try and observe other children’s work to know what to do, but that’s seen as breaking the school rules. They may wait until it’s quiet enough in classrooms to be able to – so that they can hear the other person speak back to them, because when there is a lot of background noise with other children speaking, it’s difficult to do that. But the times that it’s quietest in class is when the teacher is trying to teach, so they are seen to be breaking the classroom rules and talking out of turn, so then they get into trouble.’<sup>21</sup>*

As to education related conditions specifically, there is well-established evidence of a relationship between language impairment and antisocial and delinquent behaviour. Studies have revealed significant incidence of language impairments in youth excluded from school, youth with conduct disorder and institutionalised, antisocial youth.<sup>22</sup> While language skills usually develop on a continuing trajectory, acquisition can be disrupted as a result of biological and environmental factors.<sup>23</sup>

Within the young offender group, research has also considered variables which appear to relate to or impact upon language ability. One study found that 62% of youth offenders who experienced an out of home care placement met criteria for language impairments, compared with 46% of the total youth offender group, suggesting an early experience of maltreatment as a possible influence on the relationship.<sup>24</sup>

In another study, a lower proportion of Aboriginal (16%) compared with non-Aboriginal (30%) youth offenders scored in the average range on the composite structural language score.<sup>25</sup> In another, researchers found that a group of youth classed as ‘high offending’ scored more poorly than a group classed as ‘not high offending’ on all language measures and that 71% of those with extremely high offending scores had language impairments.<sup>26</sup>

Additionally, research suggests that differences are evident among youth offenders without language impairments and youth offenders with such impairments based on years of school completed, experience of early educational intervention of some kind and/or prior attendance at special education programs.<sup>27</sup>

Research also suggests that mental health issues and cognitive impairments are commonly interrelated with educational disabilities, such as ‘receptive’ and ‘expressive’ language difficulties.<sup>28</sup> If unrecognised and untreated, these interrelated characteristics can result in children and young people displaying inappropriate behaviours in the classroom and achieving poor rates of literacy.<sup>29</sup> Students with ‘receptive’ language difficulties have difficulty understanding what is being said to them, despite having normal hearing. Students with ‘expressive’ language difficulties have problems with all aspects of producing spoken and written language. Students with language disorders typically struggle to identify and manipulate the sounds of words, to use language in different social contexts, both written and oral, to understand and exercise semantics, word knowledge



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and vocabulary and even to retain information due to poor working memories.<sup>30</sup> Deficits in both expressive and receptive language skills are common in students with delayed literacy skills.<sup>31</sup>

In order to realise the potential benefits of education in the rehabilitation of children and young people in youth detention, their individual characteristics and how those impact on their learning ability must first be identified. The tailoring of individualised education programs must account not only for a child or young person's assessed ability, but their assessed learning or 'understanding' difficulties.<sup>32</sup> In literacy teaching for example, students with reading difficulties require different levels of intervention depending on their reading ability and reading skills deficits.<sup>33</sup> The *'effectiveness of targeted therapeutic and educational programs is likely to increase when consideration is given to the age, developmental needs and cognitive limitations of the students'*.<sup>34</sup> The varied needs and ability profile of young offenders calls for specialist language assessments and programming to meet individual needs.<sup>35</sup>

Available research suggests a best practice approach to education services in youth detention requires the following elements:

- assessment of students using reliable screening tools as soon as possible after admission
- interventions determined by ongoing formative assessment
- teaching students in a way that is:
  - based on diagnostic assessment and corresponding individual learning plans
  - regular and individualised,
  - delivered by teaching practitioners with specific skills and training that correspond to the educational needs of students, and
- provision of a range of appropriate interventions for the different phases of literacy.<sup>36</sup>

Best practice in teaching students with low or delayed literacy calls for intensive specialist support by practitioners with qualifications in literacy and reading. In the United States, federal funding of youth detention centre schools is subject to the employment of site-based 'reading specialists', who are practitioners with a Master's level degree including courses in psychology, disability, diagnostics, report writing and treatment related to children and reading. These specialists are responsible for remedial or corrective reading instruction in youth detention schools and provide customised support to help teachers meet the diverse needs of students by:

- identifying students needing diagnosis and/or remediation,
- planning programs of remediation from data gathered through diagnosis,
- implementing programs of remediation,
- evaluating student progress in remediation,
- interpreting student needs and progress to the classroom teacher and parents,
- planning and implementing development or advanced programs as necessary, and
- managing the classroom, guiding and supporting teaching staff to maximise time on task and have access to ongoing professional development.<sup>37</sup>

The varied profile of young offenders means more detailed research of the causal relationships between psychosocial factors, language skills and offending behaviours is required if the Northern Territory Government is to achieve long-term reduction in the incidence of language impairments

among children and young people in the Northern Territory.

Further research will inform the assessment of what factors should be targeted as part of early intervention strategies, as well as what models of interventions are most likely to be effective when children and young people have contact with youth justice agencies and youth detention centres.<sup>38</sup> Given the over-representation of Indigenous children in detention in the Northern Territory, research must specifically address the particular psychosocial and language factors of that cohort.<sup>39</sup>

## THE EDUCATION PROVIDED IN YOUTH DETENTION CENTRES

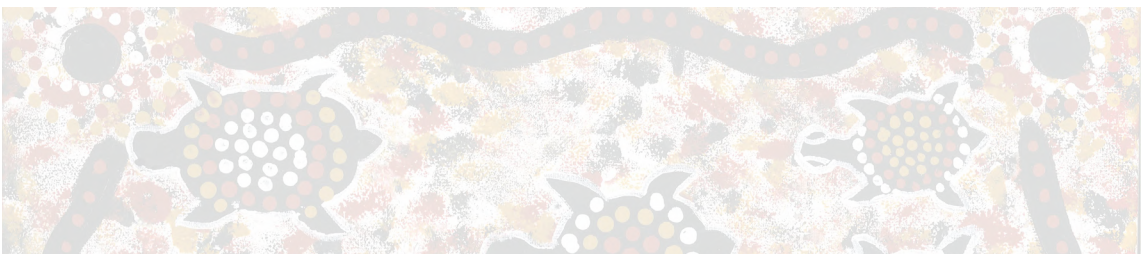
### Schooling in the detention centres

A school operates in each of the two current youth detention centres in the Northern Territory:

1. Tivendale School has operated under different names at the Don Dale Youth Detention Centre and its various locations in Darwin throughout the relevant period,<sup>40</sup> and
2. Owen Springs Education Centre opened at the Alice Springs Youth Detention Centre in 2012.<sup>41</sup>



The Tivendale School, current Don Dale Youth Detention Centre



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Tivendale School caters for children and young people aged 10 to 17 years.<sup>42</sup> In 2016, student numbers fluctuated between 16 and 48.<sup>43</sup> The school employs 12 staff members, including a principal, a senior teacher, five full-time teachers, three classroom support officers, one Aboriginal/Torres Strait Islander education worker and one contracted art teacher.<sup>44</sup> Its 2016/17 budget was \$1.1 million.<sup>45</sup>

The school operates across two sections of the Don Dale Youth Detention Centre. There are four classrooms including two demountables in the 'low-to-medium' security area, although as at August 2017 only two were 'required to be used',<sup>46</sup> and one classroom within the High Security Unit. There are separate administration areas for education staff within the permanent buildings. The school also has access to M Block inside the detention centre, which is a recreation, computers, music and manual arts space completed in August 2016 with funds from both the Department of Education and the Department of Correctional Services.<sup>47</sup>

The Tivendale school operates Monday to Friday for an extended period of 45 weeks a year.<sup>48</sup> The school typically teaches equivalents of between grades 5-12 with capacity to teach below year 5, and the school profile notes that 'all students have extremely low levels of literacy and numeracy'.<sup>49</sup> Literacy, numeracy and physical education are taught each day. For literacy and numeracy, the school uses the Northern Territory Government's Multiple Year Level Curriculum (MYL), which involves five-week unit plans for English and maths and allows the Australian Curriculum to be differentiated for a multiple year and ability classroom.<sup>50</sup> The Commission notes that an individual competency based approach to education in a detention education setting is supported by research, based on the 'high mobility and highly variable skill levels of students' in this setting.<sup>51</sup>

Students may also choose, or be offered, study through the Northern Territory School of Distance Education, which provides senior secondary education to students in years 10, 11 and 12.<sup>52</sup> At October 2016, the school also offered programs including St John Ambulance First Aid Training, Certificate I in Food Processing, Cooking, and Certificate I in Agrifoods Operations, agriculture, working with horses.<sup>53</sup>

The **Owen Springs Education Centre** caters for children and young people aged 10 to 18 years.<sup>54</sup> In 2016, student numbers fluctuated between 9 and 16, with all students being Aboriginal.<sup>55</sup> The school employs six staff members, consisting of three teachers, including a principal, and three assistant teachers.<sup>56</sup> Its 2016/17 budget was \$690,000.<sup>57</sup> Its single classroom fits 12 students.<sup>58</sup> When this number is exceeded, the class is split into two groups, which swap halfway through the day, one supervised by youth justice officers, while the other undertakes a teaching block.<sup>59</sup> Owen Springs runs Monday to Friday, 8.30am to 3pm (2pm on Fridays) for 46 weeks a year.<sup>60</sup> It teaches Year 5 to Year 10 but uses a single-level daily program and the schedule set out below.

As at March 2017, the school also offered weekly music classes delivered by a Red Cross volunteer, fortnightly legal studies classes delivered by Central Australian Aboriginal Legal Aid Service (CAALAS) and Northern Territory Legal Aid Commission, and St John Ambulance First Aid Training each term.<sup>61</sup> The Red Dust Role Models program, which previously delivered weekly music and positive choices group discussion classes ceased in early 2017.<sup>62</sup>

The capacity of both schools to deliver or facilitate programs and activities in addition to academic curriculum is dependent on the availability and funding of external organisations.<sup>63</sup>

## Owen Springs Education Centre – usual daily schedule<sup>64</sup>

- 8.30am: literacy and numeracy
- 10.30am: morning tea
- 11am: lessons in geography, Information Technology or cooking
- 12.30pm: lunch
- 1.10pm: silent reading
- 1.30pm: either art (Mon), music (Tues), sport (Wed) or social studies (Thurs)
- 2.30pm: free iPad time
- 3pm: school ends

The Commission heard about several positive educational experiences of children and young people in detention. Many of the detainees reported that they liked certain teachers and enjoyed attending school and undertaking activities and programs when offered.<sup>65</sup> The Children’s Commissioner found that children and young people ‘crave the education’.<sup>66</sup> Children and young people reported attaining school year completions or other achievements of which they were proud, such as learning to play music or write songs, beating the teachers at chess or being asked to help other children and young people with subjects that they were good at.

Some children and young people also considered their schooling experience to be better in youth detention than in schools in the community. For example, AY gave evidence that ‘at school on the outside I struggled with maths, but in Don Dale I seemed to learn to do maths better and I enjoyed it more’.<sup>67</sup> AG described:

*‘I was learning a lot more at the school in Don Dale than I did at [school name]. This is because the teacher we had there knew how to teach us...She was better than the teachers I had at my regular school because she really knew how to talk to us. I also learnt a lot more in Don Dale because we didn’t have a choice in going...I actually wanted to stay in school and continue my education.’<sup>68</sup>*

That children and young people with poor schooling attendance histories enjoyed their schooling in youth detention demonstrates the opportunity that exists within the detention setting to connect or reconnect children and young people with the education system. Unfortunately, during the relevant period the full scope of that opportunity does not appear to have been achieved. While children and young people attended school, the opportunity to identify and then respond appropriately to individual learning needs was not routinely utilised.

## IDENTIFYING AND MEETING INDIVIDUAL LEARNING NEEDS

When a child or young person entered detention in the Northern Territory, planning for the delivery of education to them was based upon an assessment of their literacy and numeracy ability, their enrolment history and any pre-existing information about their special needs from Student Support Services, a division of the Department of Education which administers and delivers disability and mental health services in education.<sup>69</sup> The Commission considers this was an inadequate base of knowledge from which to plan to deliver education based on individual learning needs and ability.

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## Assessment of need for support services

When a child or young person is taken into detention, staff at the Tivendale School and Owen Springs Education Centre undertake literacy and numeracy assessments using three assessment tools.<sup>70</sup> These tools provided information about an individual's literacy and numeracy ability based on national competency levels. The schools' policy is that children and young people's literacy and numeracy ability is to be assessed promptly after admission,<sup>71</sup> subject to medical clearance to attend school.

Upon re-admission to detention, which was common to many children and young people,<sup>72</sup> students who return within six months are to be given work based on their previous level to continue on with *'until further testing or assessment can be done'*, and students who return outside the six month period are to be tested upon arrival to determine their current levels and then set with work based on the new results.<sup>73</sup>

Some children and young people reported receiving work that was too easy<sup>74</sup> and being given work they had previously completed in detention.<sup>75</sup> This suggests some deficiencies in the correctness of the assessments and record-keeping practices insofar as children re-entering detention are concerned.

While ability in literacy and numeracy was the subject of routine assessment, factors that affect a child or young person's capacity to learn, such as language difficulties, hearing<sup>76</sup> or eyesight issues or other cognitive impairments, were not assessed as a matter of course.

Detention school staff members reported that most students at Tivendale School at least had previously been referred to Student Support Services.<sup>77</sup> In theory the result of referral to Student Support Services is the collection of special needs information, including cognitive, psychological, hearing and vision, and other medical assessments, to which detention school staff members have access.<sup>78</sup>

However, the availability of special needs information to a detention educator assumes the young person's prior engagement in the assessment process. Poor attendance histories, common to young people in detention, meant that comprehensive and up-to-date information about each individual's special education needs was not commonly available.<sup>79</sup>

Upon entry into a detention school, there was no mechanism in place to undertake assessments, or verify the currency of existing information of children and young people who had been previously referred to Student Support Services. Student Support Services staff members did not routinely attend at detention centres, despite a request by a former Tivendale School principal that they do so to conduct even basic sight and hearing tests of children and young people.<sup>80</sup> Student Services Support assessments and services were only available following a referral of an individual child or young person.<sup>81</sup>

The former Tivendale school principal informed the Commission of a slightly different process for the engagement of Student Support Services. He explained that where a student has not had testing in the past by Student Support Services, detention school staff are able to request special needs or special education requirements assessments through the youth detention case management team, subject to first identifying a need for such testing. The results of the case management team assessments would then be passed on to Student Support Services.<sup>82</sup>

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As a result, whether by way of direct referral or via the case management team, only in cases where there was up to date pre-existing information about a student's particular learning difficulties, or where school staff actively identified a need and made a referral, could delivery of education have been tailored not only to the individual's assessed literacy and numeracy ability but also their assessed learning needs.

## Delivery of special education support services

The Tivendale School and the Owen Springs Education Unit are both classified as special schools. This status is intended to provide higher staff-to-student ratios, more resources and individual learning programs based on assessed ability.<sup>83</sup>

The former Tivendale Acting Principal from 2016–17, Brett McNair, explained in a statement to the Commission the process by which special needs may be recognised and responded to at the Tivendale school:

*If anything is recorded on the Dashboard Database, such as information relating to special education, cognitive testing, psychological testing, hearing and vision, FASD and autism spectrum disorder, then that information is received and used by the teaching team...*

*Additional support for a teacher or detainee is available from Student Support Services upon request. When special needs are identified the School will often allocate existing resources to provide extra support to that youth. This will be done by allocating staff to work more intensively with that student and by tailoring the curriculum to provide educational materials appropriate to their level of comprehension...*<sup>84</sup>

Mr McNair clarified in his oral evidence that 'the main thing that Student Support Services assist the school with is training for the teachers because as a special school, we've got ratios, and resources, and we are allowed to set up programs individually based on the student's level.'<sup>85</sup> Any funding for students identified with Student Support Services remains held by the 'home' school in the community which the student may or may not remain enrolled in.<sup>86</sup>

The detention centres' school staff-to-student ratios were higher than mainstream schools<sup>87</sup> and funded for a ratio of one teacher to five or six students.<sup>88</sup> Such a ratio is consistent with the ratio in other youth detention schools in Australia. The Department of Education recorded staff to children ratios of less than 6 throughout the relevant period, however those calculations include not just teachers but also the principal, Aboriginal Education Worker(s), special education support worker(s) and administration support staff.<sup>89</sup> Fluctuation in the detention population of between 10 and 60 children and young people in Darwin alone<sup>90</sup> meant that, at times, teachers at the Tivendale school have sometimes taught classes of many more students, up to 20, of multi-level ability.<sup>91</sup>

During Lisa Coon's time as Principal of Tivendale School, on only one occasion was individual support sought, for an inclusion support assistant to work with a particular detainee (Dylan Voller). Ms Coon only made the request in response to the threat of an anti-discrimination claim and after her misconception of the eligibility requirements had been rectified.<sup>92</sup> The Northern Territory Government in its submissions also emphasised that this step was taken because of Mr Voller's behaviour, not because of his educational needs.<sup>93</sup> Mr McNair told the Commission that in the approximately 18 months to February 2017, staff had not identified any students who required a new referral to Student Support Services.<sup>94</sup>



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Given the evidence about the lack of up to date information available on the Dashboard Database, and the prevalence of extremely low level literacy rates and conditions and impairments which impact upon learning ability, the Commission is concerned that additional assessments and supports for children and young people were not sought from Student Support Services by school staff.

Notwithstanding her own evidence about the complexities of students' disabilities and special education needs,<sup>95</sup> and the absence of any staff with post-graduate qualifications in special education despite the value of specialised training,<sup>96</sup> Ms Coon suggested that Tivendale School had not needed learning assistants in the classroom.<sup>97</sup>

In explaining why she did not make referrals to Student Support Services, Ms Coon also pointed to the issue of remand, which meant children and young people were often not in detention long enough to enable evidence gathering and paperwork for a referral to occur.<sup>98</sup> The issue of remand relates little to the assessment of need for the service but rather to the assessment of utility in pursuing referrals.

As explained above, it was widely recognised that a majority of students in youth detention had low level literacy and numeracy and poor histories of attendance, as well as characteristics which were likely to impact on their learning ability. In these circumstances, the absence of a routine presence of Student Support Services or a routine learning needs, compared with ability assessment upon entry to detention amounted at least to a missed opportunity to identify and respond to those characteristics while children and young people were detained and their attendance at school assured. The requirement to make a preliminary assessment to identify need and then undertake a referral first is a significant and unnecessary obstacle in circumstances where most children and young people exhibit such needs but are only in detention for short periods of time. The Commission acknowledges the Department of Education's recently established position of automatically recognising students in youth detention as trauma victims, which enables access to *'additional departmental resources such as school psychologists'*.<sup>99</sup>

## Ancillary information about children and young people

Detention school staff members recognised the value of information about a child's history beyond literacy and numeracy levels and enrolment history.<sup>100</sup> However, information held by the Department of Correctional Services about students' general background, medical conditions, and plans for release was not *'easily accessible'* to Department of Education staff.<sup>101</sup> Detention school staff members could request background information about children and young people from Correctional Services case managers,<sup>102</sup> but this kind of information gathering was the responsibility and at the discretion of individual teachers rather than school policy and was not done as a matter of course until recently.<sup>103</sup>

The Tivendale School Staff Handbook, which remains in place but was acknowledged to be outdated, makes no reference to the collection and sharing of information about children and young people's special education needs.<sup>104</sup> The Case Management and Throughcare Services (CMATS) Manual identifies *'education/work history'* as *'collateral information'* to be gathered during the intake process,<sup>105</sup> but does not refer to screening for any cognitive or learning impairments. The CMATS Manual permits but does not require involvement of stakeholders from the Department of Education in the development of case management plans.<sup>106</sup> Sharing of information and collaborative case management planning between departments working with children and young people in detention should be mandatory and routine.



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## Finding

**In youth detention centres, delivery of education was not adequately informed by assessment of each student's individual learning needs. Special education support services were under-used.**

## CLASS GROUPINGS

Grouping classes by security classification rather than ability compounded inadequate identification of, and planning for, individual learning needs.<sup>107</sup> The classification grouping made ability targeted education delivery difficult for teachers and made children and young people uncomfortable to engage.<sup>108</sup>

A single class commonly had a mix of 10 to 17 year-olds from different communities around the Northern Territory, with different language backgrounds and abilities. If a detainee's security classification changed between 'high' and 'medium', as could occur every two to four weeks, so too did their classroom placement.

According to Ms Coon, delivering lessons tailored to individual abilities when the classroom was organised by security classification status was 'one of the most difficult aspects' of education in the detention environment.<sup>109</sup> Ms Coon explained the difficulties of delivering targeted curriculum to multi-ability levels in the one classroom, as is the model at the Tivendale and Owen Springs schools:

*'[S]o anyone from 12 years old to someone 17, someone from Gunbalanya, somebody from Palmerston, somebody that can't write their name, somebody we're trying to get through Year 11, all in the one classroom ...*

*For any significant learning to occur, it needs to be targeted at that level. It's very difficult when you have a class of people from 10 to 17, English as a fourth language you know can't write their name, someone doing Year 11 in one classroom. It's impossible to target just for their particular needs. If you had a class of young people that were at the same level, or had the same sort of needs or something like that, then you can target that curriculum directly for ... their individual requirements ... with much greater success, I believe, than multi-ability levels.'*<sup>110</sup>

Grouping children and young people in classrooms according to security classification, which has no relationship to literacy and numeracy ability, must have compounded these difficulties.

## Finding

**The grouping of students into classes based on their security classification instead of age or educational level undermined the delivery of education to children and young people.**

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## LANGUAGE

Precise data is not available identifying the number of Aboriginal children and young people in detention who do not speak English as a first language and the other languages they speak. However, many of the detainees enrolled at the Tivendale School in 2016, of whom 90% were Aboriginal, spoke up to three languages other than English.<sup>111</sup> Some of the Aboriginal children and young people in detention are from remote communities and English is unlikely to be their first language.<sup>112</sup>

Sister Anne Gardiner AM, 2017 Senior Australian of the Year, who has lived most of her life in the Tiwi Islands, recently commented on the impact of discontinuing bilingual education in schools. Her comment resonated with the Commission:<sup>113</sup>

*Our first school was built in 1957 and our first Tiwi ladies to be trained as teachers commenced in the 1970s. The '70s and '80s were years of great change in the education system. Remarkable people like Sr Tess Ward, Fran Murray and others were responsible for the commencement of a bilingual school. It became a Tiwi school, where children were first educated in their own language. Sadly, the bilingual approach faded out and English became the norm for education across the board. Their language and culture exist as one. To me, we have failed the students. In its wisdom, the government saw otherwise and, like it or not, five hours of English teaching became the rule.*

Unsurprisingly, many Aboriginal children and young people with a first language other than English have difficulty understanding rules and complying with directions and instructions in detention.<sup>114</sup> Those children and young people may give a 'yes' or 'no' answer, but do not necessarily understand what is being asked of them.<sup>115</sup> The problem is compounded by the effects of hearing difficulties and cognitive impairments, which are prevalent among Aboriginal children and young people in detention.

The low level of English literacy skills among Aboriginal children and young people in detention has been repeatedly tested and much lamented. However, despite testing showing that some of these children speak up to three languages other than English, the only test of ability and aptitude has been conducted in English. The absence of literacy and comprehension testing in a child or young person's first language or languages must distort any meaningful assessment of their academic capacity.

Rather than using translation and interpretation tools to enhance Aboriginal children and young people's understanding of rules, directions and general matters, or improving their English literacy rates in the classroom, the practice in youth detention throughout the relevant period has been to deny and at times admonish the use of first languages.

*At the Alice Springs Youth Detention Centre some of the teachers went out of their way to stop the Indigenous boys from speaking in another language. I learned a lot about my culture from these same boys and can even speak a little bit of Aranda ... Sometimes these kids spoke in language outside the classroom, which would sometimes get them in trouble with the YJOs [youth justice officers], sometimes not.<sup>116</sup>*

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*When I was in Don Dale, I was not always able to speak my language ... and this made me upset. There were some other boys from [redacted] there and sometimes we would try to sit down and talk stories in our language ... the guards would break up these conversations. They told us to stop speaking in our language and to speak English instead. They said it was 'too risky' and that we could be talking about ways to escape.<sup>117</sup>*

Youth justice officers confirmed that they directed children and young people not to speak in their own language and to speak in English.<sup>118</sup> Teachers at both detention schools confirmed there were occasions when detainees were told to stop speaking in language and speak in English.<sup>119</sup> In sworn evidence before the Commission, the former Executive Director of Youth Justice in the Northern Territory stated:

*'We certainly worked very closely with the Department of Education and another issue that, if you're talking about operational changes on the ground, at one point there was a directive from the Department of Education that young people should not speak in their own language in the class room and I followed that up with the Department of Education specifically for that to be removed, that children or young people were absolutely allowed to talk in language.'<sup>120</sup>*

Notwithstanding this evidence, subsequently the Northern Territory Government has maintained, in correspondence with the Commission, that there was no policy or, indeed any other document or directive endorsed by the Department of Education that children or young people in detention should not speak in their own Aboriginal language.<sup>121</sup>

The Commission was told sometimes children and young people were permitted to discuss school work in language,<sup>122</sup> and those who spoke the same language were seated together so they could speak to each other and discuss the work.<sup>123</sup> However, the more common classroom rule was that everybody speaks English.<sup>124</sup>

The reason teaching staff gave for this rule was suspicion that the children and young people were showing disrespect towards staff members and each other in language.<sup>125</sup> When balanced against the clear benefits of language use, this concern is insufficient to justify an instruction that only English be used in the classroom. There are other means available to deal with disrespectful conduct.

Denying or admonishing the use of language has negative effects beyond the classroom. In an immediate sense, the Aboriginal child or young person will struggle and then withdraw or disengage.<sup>126</sup> As Professor John Rynne, an expert in Aboriginal incarceration, observed:

*'[O]ften what happens is the person just won't talk. They will go along with whatever has happened. They talk to their relatives that are in the institution with them, or they will talk to their friends, but they won't talk to officers and they won't talk to staff. So, if they have a need, because they don't want to be shamed or be embarrassed by not being able to get the words out, they will often not talk ... There are cultural issues as well as – "Why should we learn a language that's not our language? Why should we be forced to enter into using your language as opposed to our language?'*

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In a broader context, denying the use of language deprives children and young people in detention of a means of maintaining their connection to culture and reducing feelings of alienation that accompany being separated from family and country, particularly in the case of children from Central Australia who have been transferred to Darwin.<sup>127</sup> Disallowing a language decreases its use and contributes to its eventual disappearance.<sup>128</sup> When Tiwi Elder Marius Puruntatameri was asked to comment on evidence that children and young people were told not to speak in language in detention he said:

*'Are we going back to the era of assimilation when that policy was put in the '40s and '50s? That's my answer. You can't treat people like that. We have got to allow people to speak their own language. How many other languages are spoken? We are a multicultural society here and we allow people to speak their own language. What's wrong with speaking – letting other Indigenous people? We're the first nation of Australia. We own this country. What's wrong with letting Aboriginal people? That's a disgrace.'*

The failure to harness language as an aspect of culture was a missed opportunity to engage Aboriginal children and young people with education and therefore assist their integration into detention centre operations. The importance of Aboriginal children and young people learning and being proficient in English is not in doubt. Indeed, Aboriginal language should be used as a means of working towards that goal. The difficulty of recruiting teachers and youth justice officers who speak in an Aboriginal language is appreciated. More must be done to respect and utilise the value of languages other than English spoken by Aboriginal children and young people in detention.<sup>129</sup>

## Findings

**During the relevant period, staff members from the Department of Correctional Services and the Department of Education:**

- on occasions directed children and young people not to use Aboriginal language, and
- failed sufficiently to recognise the benefits of using Aboriginal interpreters and interpreting services.

**Education services in youth detention failed to provide Aboriginal children and young people with the opportunity to enhance their English literacy by using Aboriginal language interpreters or teachers skilled in major language groups.**

## BEHAVIOUR MANAGEMENT AND EXCLUSION FROM THE CLASSROOM

At times, students at the Tivendale school were excluded from the classroom by disproportionate responses that prioritised the collective over individual education rights and did not seek to help individual students improve their behaviour so they could remain in the classroom learning. Given the level of 'known dysfunction'<sup>130</sup> within the youth detention population, it is entirely predictable that students in youth detention classrooms will exhibit complex and difficult behaviours.

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Such behaviours should be acknowledged and anticipated so that there are attempts to intervene and change them before they arise. When they do arise, exclusion from the classroom should be a measure of last resort.<sup>131</sup>

Punishment and ‘get tough’ policies have been shown to be ineffective in achieving improvements in behaviour, especially for those students with disability and/or mental health problems.<sup>132</sup> A more active approach to behaviour management in youth detention schools, which anticipates problems and attempts to prevent them by measures at both an institutional and individual level<sup>133</sup> has been demonstrated to be more effective in improving behaviours and therefore minimising interruptions to education.

The Aboriginal Peak Organisations Northern Territory’s submissions cited similar research which demonstrated that *‘disciplinary processes are not effective in modifying challenging behaviour of at-risk students as these measures do little to address the range of social and emotional issues that sit behind such behaviour’*.<sup>134</sup>

At Tivendale School, while Ms Coon was the Principal, some children and young people were excluded from the classroom, including suspensions for lengths of one week and up to the legal maximum of one month, in what appeared to be disproportionate responses to misbehaviour.<sup>135</sup>

On one occasion students who had accessed Facebook on a classroom computer were suspended for one week.<sup>136</sup> On another occasion a young person was suspended for one month for breaking a window outside school hours. Ms Coon maintained the suspension despite the Superintendent and Deputy Superintendent expressing concern at the length of the suspension.<sup>137</sup> Throughout much of the relevant period, the statutory test in the *Education Act* (NT) for suspension from school has been whether the child or young person’s behaviour is such that their continued presence in the classroom is injurious to the health or moral welfare of other persons at the school.<sup>138</sup> Since January 2016 the test is whether the student’s presence is likely to constitute a risk of physical or psychological harm to other persons at the school. The Commission does not consider the examples referred to above could be considered to meet either test.

Ms Coon justified harsher exclusion responses at Tivendale School compared with mainstream schools on the basis that children and young people in detention were *‘some of the worst behaved young people in the Northern Territory’* and that detention was a *‘different context’* to that which the legislative provisions about suspension contemplated.<sup>139</sup>

It was submitted on Ms Coon’s behalf that *‘[m]anaging up to 20 students in one classroom is difficult enough without the added challenge of a misbehaving student. Had [staff to student] ratios been lower, it may have been that discipline and behavioural management could have been dealt with differently’*. It was further submitted that *‘the intention behind utilising [suspension] methods were to maintain an environment for the other young persons in the school that was conducive to learning. Further, the young person would be taught a valuable lesson about meeting expectations around appropriate behaviour’*.

The *‘remind-warn-act’* approach to behaviour management adopted by Ms Coon<sup>140</sup> may have given children and young people an opportunity to correct their behaviour in the moment, before the step of exclusion from the classroom was taken. However without more instruction and support prior to the behaviour arising, and afterwards, it is difficult to comprehend how children and young

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people could have been equipped to avoid the behaviours altogether, or to better self-manage in the moment.

One staff member at the Owen Springs Education Centre observed that the facilities there were lacking a 'cool down' or withdrawal room or area.<sup>141</sup> Provision of such a facility would have offered an intermediate step for teachers to afford students an opportunity to reduce their behaviour and return to the classroom. Ideally, the provision of such physical space should be accompanied by some form of process whereby the child or young person engages with the teacher or other staff member to reflect on and take responsibility for their behaviour and formulate a plan not to repeat the behaviour.

Consideration of some 'education reports' recording decisions to exclude former detainee AG from the Tivendale classroom suggest that the 'remind-warn-act' approach was not applied consistently by school staff, that on these occasions AG was excluded from school for whole days for minor misbehaviour and that little meaningful action was carried out to manage or respond to her misbehaviour before the step of exclusion was taken.

### **2012 - Education Report 1**

*Detainee [AG] was asked several times to come in for class. After a lot of back chatting she slowly walked up to the rec room and then demanded to be taken to the toilet... was asked 10 min prior if she need [sic] to go and stated that she would go later. She was informed that she had an opportunity prior. She then became abusive and demand[ed] after she was also informed by the teacher she was to go to class...then began swearing and became abusive. As a consequence she was not allowed to attend school because of her swearing and negative attitude.<sup>142</sup>*

### **2013 - Education Report 2**

*9.30am: Working with [AG] and she was very hard to settle and wouldn't concentrate on doing her work. She kept saying 'school's for fools' and that she hates school. She also asked to be removed from school for the day. I ignored this and tried to get her engaged in school work. After some success [AG] yelled out something to [staff member] (can't remember exactly what). Although not blatantly rude, it was disrespectful so I told [AG] so. At being told off [AG] began to swear and mumble to herself. At this point I could see that [AG] was not prepared to work in the school and that my time and effort would be better utilised helping the other students so asked that [AG] leave and come back tomorrow.<sup>143</sup>*

### **2013 - Education Report 3 – two days after Education Report 2**

*9.45am: During this morning's session at school I spoke to [AG] more than once about her behaviour and attitude.*

- 1. She requested headphones for her laptop to complete school work. When I informed her she would not be given headphones to listen to music she mumbled under her breathe [sic]. When I asked her to repeat what she has said, she responded with, "nothing".*

2. Detainee [X] went and sat with [AG] and I advised [X] to move back to her desk as she had not requested permission...[AG] mumbled under her breathe [sic]. When I asked her to repeat what she had said, she responded with, "nothing".
3. After [AG] had been working on her maths I noticed her walk past [X's] desk and drop something in to [X's] tray. When I asked [AG] why she dropped detainee [X's] maths work back she denied doing so. I then challenged [AG] and told her that I had witnessed her drop the maths work back in the tray...I then directed [AG] to go back to her desk and sit down. AG then answered something back to me which I could not hear. When I asked her to repeat what she had said, she responded with, "nothing" I then explained to [AG] that if she were to simply copy answers from another detainee's work she was not really participating in school and would not learn anything...[AG] then raised her voice to me and said, "I didn't fucking copy her work bruss". I then told her not to speak to me in that manner, at which point she became louder and more agitated/aggressive in her tone.

*I then directed [AG] to leave school for the day. On leaving school [AG] called out 'get fucked you slut, you dumb cunt.' [AG] can return to school [an additional two school days later].<sup>144</sup>*

These records also suggest an expectation on the part of staff that children and young people would learn the correct behaviour simply as a result of being excluded from the classroom. This is consistent with the approach taken by Correctional Services staff in isolating children and young people in response to misbehaviours, discussed in Chapter 14 (Isolation), but is entirely at odds with the kind of intervention and assistance children require to change their behaviours.

The need for children and young people in detention to receive individualised guidance and help to improve their behaviour is made obvious by BV's account of his own behaviour in school:

*'I get kicked out of school at Don Dale almost every day. I just want to be there to keep myself occupied, but I end up breaking the rules ... For example, I recently got kicked out of school for two days because the teacher asked me to do something and I said something like "Why the fuck are you aiming at me?" I did not mean to swear in a bad way, it just came out by accident.'<sup>145</sup>*

If a student was excluded from school at any point during the day, they were excluded for the whole day.<sup>146</sup> When detainees were excluded from school, they were locked in their room, effectively isolated and let out only at school break times.<sup>147</sup> From October 2016, suspended males were placed in the High Security Unit recreation yard during class time and returned to their room during school breaks. Females were confined to their block but not locked down.<sup>148</sup>

In youth detention centres in Alice Springs and Darwin, if Correctional Services staff members placed a detainee on a room, isolation or 'at risk' placement they were ordinarily confined to a room or cell and as a result automatically excluded from attending school.<sup>149</sup> At times, school attendance was also restricted pursuant to Intensive Management Plans, prepared by Correctional Services staff members when a detainee was accommodated in the Behaviour Management Unit, sometimes for weeks at a time. Intensive Management Plans are discussed in Chapter 14 (Isolation).<sup>150</sup>



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At other times, detainees were excluded or restricted from education for purported security reasons by non-teaching staff. In July 2012, six young people held in Aranda House following an escape attempt at the Alice Springs Youth Detention Centre received only 30 minutes one-on-one teaching per day.<sup>151</sup> Children and young people in detention at the Alice Springs Youth Detention Centre may be 'withheld' from educational activities conducted in certain parts of the centre if Territory Families assess a security risk with a detainee. For example, if an escape risk is assessed, a child or young person may be withheld from sporting activities or cooking classes.<sup>152</sup>

At the current Don Dale Youth Detention Centre, for a period of what appeared to be at least a few weeks during April-May and later in September 2015, some detainees accommodated in maximum/high security accommodation were not permitted to attend school at all and were provided workbooks with no teaching instruction.<sup>153</sup>

Children and young people who were excluded from school by education staff or by Correctional Services staff were not always provided schoolwork to occupy them.<sup>154</sup> If a detainee was excluded, suspended, or otherwise not in the classroom, education staff members seldom engaged with them directly.<sup>155</sup> Given the high incidence of poor literacy and special education needs, the provision of booklets or workbooks to children and young people who were not permitted in the classroom, without teaching or tutoring support or instruction, was unlikely to have provided any meaningful continuity of education.

These approaches were counterproductive not just for engagement with education but also for behaviour management within the detention centre generally. Department of Correctional Services and Department of Education staff members observed that young people were generally better behaved and more engaged while they attended school.<sup>156</sup> They also observed that young people excluded from school exhibited poor behaviour because they wanted to be in school.<sup>157</sup> The failure to provide materials and instruction to occupy young people during their exclusion would have compounded these problems.

## Oversight of suspension decision-making in the detention setting

When exercising her discretion to suspend a child or young person from the classroom, Ms Coon considered there was little a student or anybody else could say to influence her or change her mind about the decision and nothing a student could do to have the decision reviewed or change the length of the suspension.<sup>158</sup>

This approach is inconsistent with the notions of procedural fairness which applied to suspension decision-making throughout the relevant period by virtue of departmental guidelines.<sup>159</sup> Since at least July 2011 those guidelines have specifically encouraged principals to review the length of suspensions where good behaviour is demonstrated,<sup>160</sup> and at least since May 2012, have specifically mandated an opportunity for parents to be heard about a suspension decision before it is made.<sup>161</sup> The Northern Territory Department of Education guidelines and legislation which apply to decision-making about behaviour management of students and the discretion to suspend or expel students from schools apply to all students, regardless of their status as students in detention or in the community.<sup>162</sup> There are however, significant differences between detention and community schools, which impact on how those guidelines can operate effectively in the detention setting.

By virtue of being detained, children and young people in youth detention do not have the same

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ease of access to their parents or guardians. This is particularly the case for children and young people from remote communities. Upon exclusion from the classroom in detention, they are simply transferred to the care of detention centre staff. The absence of strong parental involvement gives rise to the potential for children and young people in detention to be more readily excluded or suspended.

Further, the consequences of suspension for a child in detention are not comparable to those of a child in the community. In youth detention centres, suspension or exclusion from the classroom means confinement to a cell or cell block, with school workbooks, if permitted by detention centre staff and provided by education staff, but no parental or guardian figures present. Children receiving suspensions in the community do not generally experience their time away from school in such harsh conditions.

The combined effect of these features is that children and young people in youth detention are less likely to have access to an effective parental or guardian figure to advocate on their behalf in a suspension or exclusion decision-making process and experience harsher impacts of exclusion or suspension from school.

The Commission considers that the different characteristics of the detention school environment compared with the community school environment call for guidelines, or provision in existing guidelines, which recognise and ensure that children and young people in detention benefit equally from procedural fairness protections and robust oversight of suspension and exclusion decision-making. This may include involvement of the detainee's caseworker and the establishment of regular internal departmental reporting and review of detention school suspension decisions.

## Findings

**At Tivendale School, at times some students were punished disproportionately by imposing a suspension or exclusion from school without adequate regard to alternative means of behaviour management and planning to ensure their continued engagement with education.**

**Children and young people in isolation and 'at risk' placements were arbitrarily excluded from education.**

**At times, children and young people subject to Intensive Management Plans had their access to education limited arbitrarily by Department of Correctional Services' staff.**

### **Boredom: lack of extracurricular programs and activities**

Between 2006 and 2009 at the former Don Dale Youth Detention Centre, a variety of after school and weekend programs and activities was facilitated, predominantly by youth justice officers. Activities included gardening, painting, music, electronics, cooking, carpentry and metal work. Youth justice officers spent a significant amount of their own time organising these activities with the encouragement of management.<sup>163</sup>

From about 2010, management support for the activities and programs regime, and

staff motivation to facilitate the regime, began to wane.<sup>164</sup> The decline of programs and activities had predictable consequences. Former youth justice officer and training officer Leonard de Souza observed that from this time, young people had little to do and were not being positively engaged. He observed they became more agitated and harder to manage.<sup>165</sup>

Saki Muller, a Youth Justice Officer at the former Don Dale Youth Detention Centre in 2014, said a lack of programs left little for staff to do with detainees. She said:

*'Apart from going to school, there were no or very few activities organised for the detainees. The detainees would just sit in the common space, which was an empty room with only a few chairs. There was nothing for them to do and they always seemed bored. The only thing that I could do when I was on duty was to try and chat with the detainees.'*<sup>166</sup>

Senior Youth Justice Officer Ian Johns recalled that young people became stressed and disappointed when, as occurred at times, programs that had been operating for a while were cancelled or discontinued.<sup>167</sup>

The lack of programs was acknowledged in the Professional Standards Unit review conducted after the tear-gassing incident at the former Don Dale Youth Detention Centre in August 2014. It recommended, among other things, that a structured program of activities, such as recreation, exercise, school and work, would provide a good starting point for addressing issues raised in the review.<sup>168</sup>

Programs were even more limited in Alice Springs. Barrie Clee, the Officer in Charge at Aranda House from 2009 and at Alice Springs Youth Detention Centre from 2011, said, *'the ability to deliver programs and services was greatly limited by the infrastructure at either centre. At ASYDC there was not a dedicated programs room.'*<sup>169</sup> Mr Clee tried to introduce programs at the Alice Springs Youth Detention Centre, but said these were never approved.<sup>170</sup>

Throughout the relevant period, external organisations such as Danila Dilba,<sup>171</sup> the Red Cross,<sup>172</sup> the North Australian Aboriginal Justice Agency<sup>173</sup> and Catholic Care NT have delivered services and facilitated group programs for children and young people in detention. These programs have been run successfully, but are subject to funding limitations and are commonly ad hoc or non-ongoing.<sup>174</sup>

Boredom, stress, disappointment and lack of engagement created problems that contributed to an overall deterioration in behaviour. Mr De Souza and Mr Johns, two long term youth justice officers who worked at the former and current Don Dale Youth Detention Centres, experienced more respect and better behaviour from detainees when they were engaged with activities, and observed they became agitated and harder to manage when they had little to do.<sup>175</sup>

Children and young people told the Commission of the effects of hopelessness and boredom on them from a lack of things to do.

- AG spent a significant period in youth detention between 2012 and 2014. Her recollection was that programs were run ‘every now and then, but otherwise there was a lot of time wasted in there’<sup>176</sup>
- AV spent time at Aranda House in 2010 and said, ‘Aranda House was a miserable place, with barely anything in it. It was like being stuck in a box. There was nothing to do except watch TV or do jigsaw puzzles.’<sup>177</sup>
- BR recalled ‘feeling bored, alone and stressed’ when he was in Don Dale.<sup>178</sup>
- One child said he tried to escape because he was bored and ‘it was just something to do.’<sup>179</sup>

Some group programs, such as ‘Balanced Choice’, delivered as a pilot in September 2014, and the Drug and Alcohol Intensive Support Program for Youth (DAISY), incorporated group reflection, which resonated with young people.<sup>180</sup> They also enjoyed programs such as one that involved bringing horses to the former Don Dale Youth Detention Centre.<sup>181</sup>

*‘My favourite program is the one that Adam Drake runs. He gets us to work out but also talks to us about how to change our lives to stop coming back to Don Dale. Adam is a really good bloke who makes you feel good about yourself. I also really liked it when the Aboriginal basketball player came in and talked to us about our goals. These programs are good because they make you feel good and think about what you are going to do with your life.’<sup>182</sup>*

Children and young people giving evidence about what changes they would like to see emphasised the importance of programs. Almost half said they would like more programs and activities in detention.<sup>183</sup> BV told the Commission:

*‘I think there needs to be more programs at Don Dale, whether you are in S Block, K Block or HSU [High Security Unit]. My favourite programs involve exercise. When you do exercise, it helps you take your mind off the stress. If you do not get to do any exercise, it makes you feel really lazy, dopey and miserable.’<sup>184</sup>*

## Finding

**A lack of extra-curricular programs offered in youth detention at Aranda House, Alice Springs Youth Detention Centre and from at least 2010-2015 at the former and current Don Dale Youth Detention Centres left children and young people with little to do and in a state of boredom, and contributed to poor behaviour within youth detention.**

## EDUCATION FACILITIES

The physical facilities at each youth detention centre available for education and vocational

education services throughout the relevant period have been wholly inadequate. At times, overcrowding at the facilities saw children and young people's attendance at school reduced to a staggered timetable.<sup>185</sup> These limitations meant that compulsory attendance legislation was not complied with, depriving young people of rehabilitation opportunities.

Prior to 2011, the Department of Education did not operate a school or base teachers in youth detention in Alice Springs. The department explained that the 'detention facility then operated as a holding centre only, where youths were only held in Alice Springs for short periods of time before they were transferred to Darwin'.<sup>186</sup> In reality, young people were held at Aranda House for weeks at a time without being transferred to Darwin and received little or no education during that time.<sup>187</sup>

### Education at Aranda House

*'At that time, Aranda House had both boys and girls there and they could be either sentenced or on remand in there. There was no school or teachers at Aranda House at that time.'*<sup>188</sup>

Vulnerable witness AX

*'When I was there I complained about the lack of school ... Me and some other boys were in the big house for two weeks then we were sent back to Aranda House. When we got back, there was school that ran for half the day. Half of us got to go to school in the morning (8.30–lunch) and half in the afternoon (lunch–3.30).'*<sup>189</sup>

Vulnerable witness AY

*'For about the first week or two after being locked down we were able to come out and do some schoolwork for about 15 minutes a day. We would be taken to the kitchen and we would work on some exercises. We were taken out two or three at a time. This stopped after about a week or two and I am not sure why.'*<sup>190</sup>

Vulnerable witness BX

The Owen Springs Education Centre facilities consist of one classroom and are 'cramped',<sup>191</sup> 'woefully inadequate'<sup>192</sup> and 'not acceptable' for staff or for students.<sup>193</sup> The centre has no facilities suitable for arts and craft, physical education or science, or storage of material.<sup>194</sup> The classroom has even been used as a bedroom at times of over-capacity.<sup>195</sup> As stated in CAALAS' submissions, '[t]he inadequate facilities [at ASYDC] compromise the ability of teaching staff to provide quality education to the children detained [at the centre]'.<sup>196</sup>

Limitations to education delivery were also imposed by the facilities at Tivendale School at both the former and current Don Dale Youth Detention Centres. The impact of the physical facilities on girls' access to education for a period of time at the former Don Dale Youth Detention Centre is addressed in Chapter 17 (Girls in detention). The Commission was told by one former male detainee that at the former Don Dale Youth Detention Centre, when detainee numbers were high, older boys would

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be sent out of the classroom to do work around the centre, such as mowing the lawns, instead of schooling.<sup>197</sup>

Facilities changes on short notice also appear to have had a significant impact on education services. As a result of the abrupt relocation of Tivendale School with the Don Dale Youth Detention Centre in 2014, no vocational education was offered in 2015, as discussed below, and music and manual arts education programs were unable to recommence until completion of M Block at the current Don Dale Youth Detention Centre in August 2016.<sup>198</sup>

Ms Coon described the impact on education of the relocation of the detention facilities in Darwin:

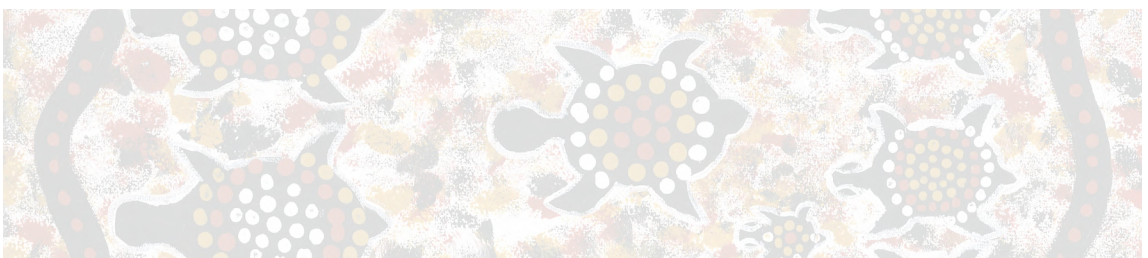
*'My ability to do my role effectively and provide these sorts of [vocational education] opportunities to detainees was significantly limited when Tivendale was moved from Don Dale to Holtze, and then Berrimah.*

*At Holtze it was very difficult to provide schooling services as we did not have simple things like dedicated classroom spaces, staff computers, student laptops or internet access. We were also extremely limited in the resources and materials that we could bring in.*

*At Berrimah it was even more challenging initially as staff spent time doing basic things like cleaning and preparing spaces so that they could be used as classrooms [following destruction of accommodation blocks by detainees]...I recall we just keep doing what needed to be done to keep going and have a school available. I clearly recall scrubbing walls in the old kitchen at Berrimah with assistance from a couple of low security detainees in order to be able to proceed with a VET course that was due to start.'<sup>199</sup>*

The school did not have two 'fully operational' classrooms until April 2015. At that time, male and female classes were staggered so as to allow all male and female detainees to 'have a full day of schooling each', suggesting this had not previously been the case.<sup>200</sup> Despite this apparent improvement, in July 2015 Ms Coon raised with youth detention management that children and young people had not been receiving the 5.5 hours of education required by legislation.<sup>201</sup>

The refurbishment of M Block at the Don Dale Youth Detention in August 2016 has been a significant improvement to the facilities available for education and extra curricular related services at that centre. As a result of the voluntary efforts of a staff member from the Northern Australian Aboriginal Justice Agency, and others with him, detainees also benefit from the creation of a library of sorts within the new M Block.<sup>202</sup> However, when the Commission visited on two occasions, the library did not appear to contain books that were age-appropriate for detainees.



## Findings

**Before 2012, children and young people in youth detention in Alice Springs did not receive adequate access to education.**

**At times, overcrowding at youth detention centres in Darwin and Alice Springs resulted in children and young people having limited and inadequate access to education.**

**The relocation from the former Don Dale Youth Detention Centre in 2014 impacted negatively on the facilities available for delivery of education, vocational education and extra-curricular activities.**

## VOCATIONAL EDUCATION

Children and young people in detention did not consistently receive the protective and rehabilitative benefit of vocational education. The dearth of vocational education programs, or access to such programs, was particularly remarkable given the age and education profile of the cohort. While legitimate barriers to the delivery of vocational education services inside youth detention centres exist, more should have been done to remove those barriers.

The clear focus of day-to-day education services was literacy and numeracy.<sup>203</sup> Music, art and manual work activities were offered at times, but access to those activities was restricted to detainees with medium or lower security classification,<sup>204</sup> the availability of appropriately qualified staff to run them, and facilities in which activities could take place.

The delivery of vocational education was extremely poor. In Alice Springs, the only vocational program offered was a Certificate I in food processing between 2012–2015.<sup>205</sup> In 2016 the course was discontinued. Many children and young people were transferred to the current Don Dale Youth Detention Centre in Darwin during this time making prospective enrolment numbers low,<sup>206</sup> and the Department of Education did not have suitably qualified staff available to deliver the course.<sup>207</sup> While a Certificate I course was offered at the current Don Dale Youth Detention Centre in 2016, as Table 16.1 below demonstrates, only 13 students enrolled and none completed, or partially completed, the program. As at March 2017, due to difficulties in finding a service provider, the course was still not being offered at the Alice Springs Youth Detention Centre.<sup>208</sup>

In Darwin, the vocational programs offered included rural operations, hospitality, agrifood operations, agriculture, sport and recreation, and music and visual arts. The Department of Education provided a vocational education and training (VET) data summary, based on information provided by Charles Darwin University as the VET provider.<sup>209</sup> Since 2012, when completion figures became available, there were 204 course enrolments among children and young people, but only two full completions and 66 partial completions of those courses.<sup>210</sup> The breakdown is set out in Table 16.1.





**Table 16.1: VET courses run at Don Dale Youth Detention Centre, 2012–16**

2012	Certificate I in Agrifood Operations	16 students enrolled 3 students partially completed 0 students completed
	Certificate I in Horticulture	34 students enrolled 0 students partially completed 0 students completed
2013	Certificate II in Rural Operations	2 students enrolled 0 students partially completed 0 students completed
	Certificate I in Hospitality (Kitchen Operations)	15 students enrolled 1 students partially completed 0 students completed
	Certificate I in Agrifood Operations	48 students enrolled 4 students partially completed 2 students completed
	Certificate II in Sport and Recreation	1 students enrolled 1 students partially completed 0 students completed
2014	Certificate II in Rural Operations	3 students enrolled 3 students partially completed 0 students completed
	Certificate I in Hospitality	21 students enrolled 21 students partially completed 0 students completed
	Certificate I in Agrifood Operations	33 students enrolled 31 students partially completed 0 students completed
	Certificate II in Agriculture	1 student enrolled 1 student partially completed 0 students completed
2015	No delivery – closure of Don Dale and relocation to old adult prison – relocation to new adult prison	
2016	Certificate I in Agrifood Operations	13 students enrolled 0 students partially completed 0 students completed
	Certificate I in Food Processing	17 students enrolled 1 student partially completed 0 students completed

The 2014 Cabinet submission prepared by the Department of Correctional Services suggested the move to the Berrimah site would offer more opportunities to deliver vocational education programs.<sup>211</sup> However, this appears to have been nothing more than an idea and it has not eventuated.<sup>212</sup>

During 2015, following the move to the current Don Dale Youth Detention Centre site at Berrimah over the 2014 - 2015 New Year period, no vocational programs whatsoever were delivered to children and young people in detention in Darwin. During 2016, the only vocational studies were a Certificate I in Agrifood Operations or Food Processing. Only one student partially completed any

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aspect of the course and no student completed the certification. While an improvement on the 2015 offerings, such certifications do not appear likely to lead to eligibility for mainstream employment, compared with the past offerings of certifications in hospitality, horticulture, rural operations and sport/recreation. The failure of former Minister Elferink's heralded SEED program is dealt with separately below.

More than three years on from the March 2014 Cabinet decision to relocate the facility to Berrimah, and six months after the Commission commenced inquiries into the status of vocational education in youth detention, the Northern Territory Government submitted that *'arguably, not enough time has passed to determine whether the opportunity to deliver more vocational programs [at the Berrimah site] will be acted on'*.<sup>213</sup>

In evidence before the Commission, the Department of Education identified two challenges to delivery of vocational education services to children and young people in detention. First, the framework for those services relies on the availability of appropriate training staff and facilities that do not exist extensively in youth detention centres.<sup>214</sup> Second, the VET funding allocation model is based on existing completion rates, which are obviously limited with so many children and young people on remand.<sup>215</sup>

Mr McNair's evidence made clear that vocational education is generally not the subject of any planning upon a child or young person's entry into detention:

*'Given the high turnover of students throughout the course, the uncertain amount of time they will be in detention for and the course [the Certificate I in Food Processing] is currently only being funded to run at Tivendale once a year [between 18 April to 19 May 2017], it is generally not feasible to facilitate any VET plan for a student whilst they are in detention'*.<sup>216</sup>

While the Commission accepts that these challenges exist, it nonetheless considers the state of vocational education in youth detention to be wholly unacceptable. It is a failing of the Northern Territory Government during the relevant period that these challenges have not been the subject of attention and reform.

The youth detention and education systems appear ill-equipped to both build and maintain the connection to vocational education throughout the detention and post-release community phases. As a result, a significant opportunity to build life and work-ready skills in children and young people, towards their rehabilitation, has been missed. This is demonstrated in the gap between enrolment and completion numbers for those courses which have been offered in youth detention throughout the relevant period.<sup>217</sup> The lack of continuity, and the barriers to continued delivery of vocational education to children and young people inside youth detention and post-release, must be addressed.

One obvious solution to both access and continuity, is to connect children and young people in detention, with appropriate supervision, with vocational education services in the community. Leave for education, training and work purposes is good for the children and young people who benefit from continuity of those activities inside and outside detention. It is also positive for the community, because a level of community interaction in a productive context assists in breaking down barriers between young offenders and community members.<sup>218</sup>

## Findings

**The vocational education and training services available and delivered to children and young people in youth detention are completely inadequate.**

### The SEED program

The Seek Education or Employment not Detention (SEED) program is an initiative in Northern Territory youth detention centres *'to build the skills of children and young people in detention in education and/or employment to support reintegration back to community and break the cycle of re-offending'*.<sup>219</sup>

The SEED program was intended to be an equivalent initiative to the Sentenced to a Job program delivered in adult prisons. The SEED program was notionally introduced in youth detention in 2014. Commissioner Middlebrook, in the Department of Correctional Services Annual Reports,<sup>220</sup> and Minister Elferink,<sup>221</sup> have made public references suggesting the important role of the program in helping to change the offending behaviour of young people.

However, internal departmental documents cast doubt on the effectiveness of the program and suggested that Michael Vita, who had commented favourably on it in his 2015 report into youth detention services,<sup>222</sup> was not properly informed of the program's limited reach.<sup>223</sup>

The Northern Territory Government was unable to locate records of the total number of children and young people who have participated in the program.<sup>224</sup> However, judging by internal documents produced to the Commission, as at July 2015 only one young person had successfully completed the program, by taking driving lessons and obtaining a provisional driver license which enabled him to maintain employment post-release, despite expenditure of more than \$244,000 and external promotion of the program.<sup>225</sup> 12 months later, after further expenditure of \$242,000, two or three other young people appeared to have been assessed as *'suitable to be considered for the program'*, but only one had engaged in a work readiness program, which occurred after release from detention.<sup>226</sup>

As at March 2017, the Northern Territory Government reported the program had been operating *'well below full capacity during the last 18 months'* due to resource limitations and there appeared to be no additional successful transitions to work from the program, although six young people had reportedly completed a Certificate 1 in Business Administration.<sup>227</sup> This was not recorded as part of the VET programs offered in youth detention, and may have related to children and young people in the community under supervision of Community Corrections.

The Department of Correctional Services identified in its Ministerial briefings a range of barriers to effective delivery of the SEED program, including:

- challenges in establishing a daily routine at the Don Dale Youth Detention Centre in

2015-2016, particularly for high security detainees

- competing priorities for young people during business hours, including schooling, case management and program delivery, and
- a focus on direct engagement in employment being unlikely to have significant uptake or to be effective with young people.<sup>228</sup>

The Department of Correctional Services considered that a range of barriers also made it 'impossible' to engage children and young people in Alice Springs in the program. These barriers included the age and classification of detainees, and short periods of detention before release or transfer to the Don Dale Youth Detention Centre.<sup>229</sup> A significant design barrier to successful delivery of the program was that it was not based on research and evidence concerning the specific needs and abilities of youth but rather based on the Sentenced to a Job program delivered to adult prisoners. Minister Elferink told the Commission that:

*'One of the major policy initiatives which I drove when I became a Minister and the Department implemented during the 2012-13 year was the 'Sentenced to a Job' programme [in the adult prison]...My intent was to deal with the lack of employment as an underlying problem to offending...Following a visit to the Darwin Youth Detention Facility and speaking to one of the detainees, I had the idea that a similar programme for juveniles should be implemented. We found this detainee a job and he thrived. This led to the SEED program for juveniles being implemented in 2014-2015.*

*While unfashionable in approach, I believed then as I do now that criminal activity in the Northern Territory was not related to indigeneity but rather to unemployment and so [sic] I approached recidivism had much more to do with employment and the dignity that flowed from it than anything to do with the race of the offender. After the successes of the Sentenced to a Job program I became ever more convinced of the correctness of that approach.'<sup>230</sup>*

This view, of treating children and young people like adults, was a common feature of Minister Elferink's approach to youth justice policy. Such views and approaches fail to take into account the differences between children and young people, on the one hand, and adults, on the other, which are relevant to the causes of their offending, and consequently the likely success of differing approaches to their rehabilitation.

In the case of children and young people with offending behaviours, employment is only one aspect within a multi-layered approach required to successfully rehabilitate them. A holistic approach is required, through the integration of health, case management and education services in a single plan developed for an individual child.

## LEAVING DETENTION

What little re-engagement with education was achieved in detention was rarely maintained when children and young people were released. Until recently, the Department of Education only provided transition support to assist children and young people to continue to engage with education on

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their return to the community if they had been attending school prior to entering detention and were certain to be able to attend school upon release.<sup>231</sup>

This approach wholly undermined any progress gained in engagement with education and any progress in ability while in detention. Very few children and young people returned to school in the community after exiting detention.<sup>232</sup> Some children and young people reported they were refused admission into mainstream schools when they attempted to do so,<sup>233</sup> and found it difficult to obtain records of their attendance and work completed while at school in detention.<sup>234</sup>

The detention centre schools notify a child or young person's last school of their entrance into the Tivendale School so as to avoid markings of 'absent', however do not record any information in the Department of Education's central Student Administration Management System.<sup>235</sup> The detention centre schools provide assessment and attendance records only on request from children and young people and subsequent schools and other organisations involved in their transition from detention.<sup>236</sup> This lack of automatic information sharing is an unnecessary hurdle in efforts by children and young people and their supporters to achieve continuity of their education upon release.

Recently, the Department of Education has devoted greater attention and more resources to education transition planning.<sup>237</sup> Steps have been taken to establish and formalise relationships between Tivendale School and the Malak Re-engagement Centre in Darwin with plans to expand the centre to Palmerston and between the Owen Springs Education Centre and Alice Springs Outcomes within the Centralian Senior College in Alice Springs.<sup>238</sup> Continuity of education for children and young people from remote communities requires more intensive and creative support efforts, but the difficulties are not insurmountable.<sup>239</sup>

## Finding

**Children and young people in youth detention did not receive transition support to maintain their engagement with education on their return to the community.**

**Information about children's and young people's education in detention was not automatically shared outside the detention centre school, constraining continuity of education and engagement.**

## WHY THE OPPORTUNITIES OF EDUCATION WERE LOST

The Commission's view of the operation of education services in youth detention is that the system as a whole failed to recognise and respond adequately to the complex needs and backgrounds of its students. This lack of insight likely contributed to necessary education support services not being provided and children and young people being excluded arbitrarily from the classroom.<sup>240</sup>

A lack of insight manifested within the youth detention schools by the failure to deliver routine services from the Department of Education's Student Support Services, the failure to use Aboriginal language interpreters, and the view that learning assistants and interpreters were not required in the classroom.<sup>241</sup>

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It also manifested in the approach to behaviour management. In pursuit of consistency, which is a worthy goal in working with children,<sup>242</sup> Ms Coon adopted a uniform, one-size-fits-all approach to behaviour management that failed to engage with children and young people on an individual level, to address their behaviour and enhance their engagement with education. This may have served the 'greater good' of the classroom, but left behind those who needed assistance the most.

That Ms Coon expressly refuted the suggestion of individualised behaviour planning for students in detention<sup>243</sup> demonstrates a lack of insight into the relationship between addressing individual needs, achieving improvements to individual behaviour and consequently engagement with education and rehabilitation. Ms Coon's comments on Facebook below, while Principal of Tivendale School, confirmed that she did not consider rehabilitation to be a reasonable purpose or likely outcome of detention, which is clearly at odds with both the *Youth Justice Act* and the *Education Act*:

*'There seems to be an overriding assumption in these [Facebook] posts that the issue of 'youth offending' is something that can be fixed. In my humble opinion the real problem with this thinking is that you assume that the young offenders see an issue with their behaviour and want to change. For what it's worth – my belief is that the young offenders don't see any issue with their behaviour and have no desire to cease offending. The best that can be done is to keep them off the street to limit their opportunities to offend.'*<sup>244</sup>

## Remand and a transient cohort

The Commission also acknowledges that high rates of children and young people on remand were, and continue to be, a significant barrier to the effective delivery of education in youth detention.<sup>245</sup> Student numbers fluctuate significantly at each school on a daily basis.<sup>246</sup> In 2015–16, the average period of remand was 17 days.<sup>247</sup>

One teacher described the impact of a high remand population:

*'We come in in the morning and we go into the Territory Families or Corrections office and we are given a daily movement sheet. And on that sheet, we are listed the detainees that have – that are present in the facility at that point in time ... So basically, we may have some students come into our class that we have never seen before, that we have never had the opportunity to speak to. So they come in cold. We don't know whether they are fit for school, whether they have had any – there's – they are able to function properly in the classroom. We don't know their literacy or numeracy, academic levels, so we need to assess them as soon as possible. And as you mentioned, we are very uncertain about how long they will be there for. It could be one day, it could be a week, or it could be a few weeks ... it's very hard to program any long-term units of work because of those factors, because the future is very uncertain in terms of what our class will look like the day after – the next day.'*<sup>248</sup>

This difficulty and its impact on the rehabilitative goal of youth detention is further reason to limit detaining young people on remand.

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## Findings

Children and young people did not receive the education that they were entitled to while in detention. This was caused by a number of factors, including:

- the subordination of education goals to security considerations, including organising classes using the discipline classification system
- the over-use of excluding children and young people from the classroom
- the under-utilisation of individualised special education support services and supports, and
- the transient population, partly caused by the high rate of children and young people on remand or sentence for short periods.

## PRIORITISING EDUCATION FOR CHILDREN AND YOUNG PEOPLE IN DETENTION

A significant barrier to education for children and young people in detention has been the dominance of security over educational considerations, with little apparent effort to make decisions that accommodate both. This manifested in the grouping of classes by security classification rather than academic ability, and the exclusion of children and young people from school for reasons other than their behaviour in the classroom, such as those classified as 'at risk', and those placed in isolation or on an Individual Management Plan.

Without consulting Department of Education staff members, Correctional Services staff members made decisions that effectively excluded children or young people from the classroom. Education staff members could not influence these decisions in any way.<sup>249</sup> Removal from school for 'safety reasons' or in accordance with the classification system has been a theme of complaints to the Children's Commissioner. The Children's Commissioner responded that this was actually the time to try to engage children in education and that work should be done to facilitate access.<sup>250</sup>

In March 2016, a memorandum of understanding (MOU) established for the first time a formal, relationship between the Department of Correctional Services and the Department of Education.<sup>251</sup> The MOU renewed in writing the historical position<sup>252</sup> of there being separate and distinct functions to each Department's work in youth detention centres rather than a combined function which balances considerations relating to security and education. The MOU provides that the education function is secondary to the primary function of providing a secure custodial environment and that Correctional Services policies and procedures regarding the management of detainee behaviour take priority over Education policies and procedures:

*The primary function of a youth detention centre is to provide a secure custodial environment ... Education is a secondary function delivered in a youth detention centre ... Corrections legislation, policies and procedures will supersede those of Education at any time the safety and/or security of a youth detention centre and/or the safety or*



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*security of any person within the centre is under threat ... The delivery of educational services to young people in detention will be based on continuous risk assessment. The availability of appropriate supervision and the availability of a suitable physical environment are the prerequisites to the delivery of education services to detainees ... Corrections policies and procedures regarding the management of detainee behaviour will take priority over Education's behaviour management policies and procedures.*<sup>253</sup>

While the MOU may have provided 'clarification' for staff working for different departments within the same detention centre,<sup>254</sup> it did not seek to promote the function of education in youth detention centres or address how access to and delivery of education could still be achieved when security or safety issues arise. The MOU instead cements the functions of the two departments operating on the same sites, with the same clients, as contrasting and competing.

The MOU continues to apply despite the transfer of responsibility for youth detention to Territory Families and the purported change or expansion in primary function of youth detention from security to rehabilitation. Indeed, as at March 2017, the Deputy Chief Executive Officer of the Department of Education considered her department and Territory Families to be operating in detention centres for different purposes.<sup>255</sup>

The Commission accepts that, at times, circumstances may require considerations of safety and security of the centre and individuals to prevail over the delivery of education. It is noted however that the less frequent circumstances of threats to safety or of physical harm should not be conflated with the more common, and indeed expected in youth detention, circumstances of conduct requiring behaviour management interventions. Circumstances of genuine safety concern should still be able to be accommodated within a management framework that does not rank and distinguish between different detention service functions.

Best practice delivery of education in a youth detention setting requires that clear, consistent behavioural expectations be universally embraced and practiced by all staff operating across a detention centre.<sup>256</sup> The Commission considers that support for learning and education must also be practiced by all staff, led in such practice by centre management. The framework established by the MOU is inconsistent with, and a barrier to, the integrated and collaborative approach to decision-making and management of youth detention centres, including behaviour management, which the Commission recommends.<sup>257</sup> In Chapter 28 (A new model for youth detention), international best practice models for secure accommodation which place delivery of high quality education as the central part of operations are discussed in further detail. These include the establishment of 'Secure Schools' to replace detention centres in England and Wales as a result of recommendations of the Review of the Youth Justice System in 2016. Other jurisdictions which have adopted education as a core component of its youth detention reforms include Missouri and Washington DC.

The Commission acknowledges that the Department of Education has improved the governance and oversight of suspension decision-making, approaches to behaviour management,<sup>258</sup> involvement of education staff members in case management and classification meetings,<sup>259</sup> and support for continuity of engagement with education on release from detention. The Commission also acknowledges the positive step taken by the Department of Education in resolving to recognise automatically all children and young people in detention as trauma victims, giving them access to psychological services.<sup>260</sup>

These improvements alone will not be sufficient to ensure children and young people in detention receive equitable access to education and the education support they need. As the Department of Education's Deputy Chief Executive Officer acknowledged, in recognising all children and young people as trauma victims 'there [also] needs to be the additional resources and deepening of the understanding of staff in regard to trauma informed responses', as well as better access to psychological services to promote social and emotional wellbeing.<sup>261</sup> The improvements to governance and oversight of suspension decision-making must be adapted to the detention centre environment.

The Commission's recommendations aim to reduce the rates of children and young people in detention on remand<sup>262</sup> and increase connection with community-based education services and continuity of education support services referrals. When implemented, these recommendations will reduce the impact of the remand phenomenon on effective education delivery in youth detention. Recommendations to improve the position of education for children and young people in detention have been made previously, but not implemented.<sup>263</sup> For those children and young people who will remain or be placed in youth detention centres on sentence, a fundamental shift to put education and training at the centre of detention centre philosophy and decision-making as a core feature of rehabilitation is still required. In addition to the recommendations set out above, and in Chapter 28 (A new model for youth detention), the following changes should occur.

### **Recommendation 16.1**

**The Department of Education, in cooperation with other relevant departments ensure that those involved in the education of young people in detention have access to information about each child and young person, with appropriate safeguards to protect confidentiality, including:**

- **access to the child or young person's medical history**
- **access to information about the child or young person's education level, school attendance and assessment records in and out of the youth detention centres, and**
- **provide information to continue the child or young person's learning program while in detention and to enable the child to move between schools.**

### **Recommendation 16.2**

**Children and young people receive schoolwork appropriate to their ability during any period of suspension, exclusion or other non-attendance at school. The Northern Territory Department of Education ensure its policies and guidelines regulating exclusion and suspension decision-making provide procedural fairness mechanisms appropriate to the position of children and young people in youth detention.**

### **Recommendation 16.3**

The Department of Education's Student Support Services:

- engage regularly with the schools in youth detention centres to ensure the education needs of children and young people in detention are identified and responded to adequately, and
- if a detainee has not been assessed in the previous 12 months, assess a detainee within seven days of entering detention.

### **Recommendation 16.4**

The Department of Education and superintendents of youth detention facilities base school classes within youth detention centres on ability level and age.

### **Recommendation 16.5**

Staff members working in education in youth detention be appropriately qualified to conduct special education.

### **Recommendation 16.6**

Sufficient numbers of permanent and relief teachers be available in youth detention centres to maintain a ratio of one teacher to five students.

### **Recommendation 16.7**

Staff members employed in education in youth detention receive training in:

- the rehabilitation purpose of youth detention
- the function of education in the rehabilitation of children and young people
- the case management principles that govern management of youth detention operations
- the special education needs profile of children and young people in detention
- the special support services available to children and young people in detention and how and when to make referrals to those services, and
- how to deliver education in youth detention by a trauma-informed approach.

### **Recommendation 16.8**

The Department of Education recruit tutors proficient in the major Aboriginal language(s) of the area in which the detention centre is located to deliver, at least weekly, a literacy program in Aboriginal language.

### **Recommendation 16.9**

The Northern Territory Government remove barriers to children and young people in youth detention accessing vocational education services due to their detainee status, including:

- developing programs suitable for delivery inside the detention centres
- developing policies to permit children and young people (with appropriate risk assessments) to leave youth detention facilities temporarily to attend vocational education activities in the community
- increasing the availability of online vocational education activities and access to those activities, and
- ensuring these programs are made available to young persons on remand.

### **Recommendation 16.10**

The Department of Education ensure that there is capacity to adopt an 'English as a second language' teaching model in detention centre schools.



## ENDNOTES

- <sup>1</sup> Exh.031.002, Annexure 1 to Statement of Keith Hamburger, 'A Safer Northern Territory Through Correctional Interventions', July 2016, tendered 6 December 2016, p. 159; Exh.311.050, Australasian Juvenile Justice Administrators Principles, October 2014, tendered 28 April 2017, p. 3; Rae Sinclair, 'To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada', Churchill Fellowship Report, 2011, p. 8; Transcript, Marion Guppy, 16 March 2017, p. 1234: lines 1-5.
- <sup>2</sup> Transcript, Hilary Hannam, 8 May 2017, p. 3423: lines 41-45.
- <sup>3</sup> Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, article 28(1); Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, paras 12, 13 and 18(b).
- <sup>4</sup> *Education Act* (NT) ss 4 (1), 38; note that compulsion is up until the age of 17, with certain exemptions applying for children in full-time employment or training who are 15 years and older and who have completed Year 10; Exh.221.001, Australasian Juvenile Justice Administrators Juvenile Justice Standards, 2009, tendered 30 March 2017, para. 3.6; Exh.311.050, Australasian Juvenile Justice Administrators Principles, October 2014, tendered 28 April 2017, p. 3.
- <sup>5</sup> *Youth Justice Act* (NT) s 4(i); Youth Justice Regulations (NT), reg 69(1).
- <sup>6</sup> Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, article 28(1); Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, paras 12, 13 and 18(b).
- <sup>7</sup> At the Commonwealth level, the *Disability Discrimination Act* 1992 (Cth) s 22(2)(a) makes it unlawful for an educational authority to discriminate against a person on the ground of the person's disability, including by denying or limiting the student's access to any benefit provided by the educational authority.
- <sup>8</sup> Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, articles 28, 29; Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, paras 38, 39 and 42; Australasian Juvenile Justice Administrators Juvenile Justice Standards, 2009, tendered 30 March 2017, para. 3.6.
- <sup>9</sup> Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, paras 38, 59, 79.
- <sup>10</sup> Exh.088.001, Statement of Marion Guppy, 13 March 2017, tendered 16 March 2017, para. 165.; Exh.089.002, Annexure 1 to Statement of Brett McNair, Tivendale School Profile, 6 December 2016, tendered 16 March 2017, p. 2: 'all students [at the Tivendale School] have extremely low levels of literacy and numeracy'.
- <sup>11</sup> Transcript, Brett McNair, 16 March 2017, p. 1226: lines 43-45.
- <sup>12</sup> Exh.089.002, Annexure 1 to Statement of Brett McNair, Tivendale School Profile, 6 December 2016, tendered 16 March 2017, p. 5.
- <sup>13</sup> Exh.262.001, Statement of Anthony Collins, 24 February 2017, tendered 31 March 2017, para. 23.
- <sup>14</sup> Exh.089.001, Statement of Brett McNair, 6 December 2016, tendered 16 March 2017, para. 23.2.
- <sup>15</sup> Exh.088.001, Statement of Marion Guppy, 13 March 2017, tendered 16 March 2017, para. 174.
- <sup>16</sup> Exh.089.002, Annexure 1 to Statement of Brett McNair, Tivendale School Profile, 6 December 2016, tendered 16 March 2017, p. 5; Exh.091.002, Annexure 1 to Statement of David Glyde, Owen Springs Education Profile, February 2017, tendered 16 March 2017, p. 1; Transcript, Lisa Coon, 21 April 2017, p. 2735: lines 45-47 – p. 2736: lines 1-6. See also the discussion of the health characteristics of children and young people in youth detention in Chapter 16 – Health.
- <sup>17</sup> Exh.091.002, Annexure 1 to Statement of David Glyde, Owen Springs Education Profile, February 2017, tendered 16 March 2017, p. 1.
- <sup>18</sup> See also Exh.1105.001, Telethon Kids Institute Report, 9 August 2017 p. 10.
- <sup>19</sup> Anderson, Hawes and Snow, 2016, 'Language impairments among youth offenders: A systematic review', *Children and Youth Services Review*, vol. 65, p. 196 item 1.1 (referring to cited studies).
- <sup>20</sup> Transcript, Damien Howard, 13 October 2016, p. 244: lines 32-44.
- <sup>21</sup> Transcript, Damien Howard, 13 October 2016, p. 245: lines 6-13.
- <sup>22</sup> Anderson, Hawes and Snow, 2016, 'Language impairments among youth offenders: A systematic review', *Children and Youth Services Review*, vol. 65, p. 196 item 1.2 (referring to cited studies).
- <sup>23</sup> Anderson, Hawes and Snow, 2016, 'Language impairments among youth offenders: A systematic review', *Children and Youth Services Review*, vol. 65, p. 196 item 1.1 (referring to Paul & Norbury 2012 and Tomblin 1996 studies).
- <sup>24</sup> Anderson, Hawes and Snow, 2016, 'Language impairments among youth offenders: A systematic review', *Children and Youth Services Review*, vol. 65, p. 199 item 3.1.3 (referring to Snow & Powell 2011 a study).
- <sup>25</sup> Anderson, Hawes and Snow, 2016, 'Language impairments among youth offenders: A systematic review', *Children and Youth Services Review*, vol. 65, p. 199 item 3.1.3 (referring to Snow et al 2016 study).
- <sup>26</sup> Anderson, Hawes and Snow, 2016, 'Language impairments among youth offenders: A systematic review', *Children and Youth Services Review*, vol. 65, p. 199 item 3.1.3 (referring to Snow & Powell 2011 a study).
- <sup>27</sup> Anderson, Hawes and Snow, 2016, 'Language impairments among youth offenders: A systematic review', *Children and Youth Services Review*, vol. 65, p. 199 item 3.1.3 (referring to Snow & Powell 2008 and 2011 a studies, and Games et al 2012 study).
- <sup>28</sup> Rae Sinclair, 'To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada', Churchill Fellowship Report, 2011, pp. 9-10 (referring to Frize, Kenny and Lennings, 2008; Gagnon, Barber, Van Loan and Leone, 2009).
- <sup>29</sup> Rae Sinclair, 'To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention

- centres – USA and Canada’, Churchill Fellowship Report, 2011, pp. 9-10.
- <sup>30</sup> Rae Sinclair, ‘To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada’, Churchill Fellowship Report, 2011, p. 9 (referring to Bloom and Lahey, 1978).
- <sup>31</sup> Rae Sinclair, ‘To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada’, Churchill Fellowship Report, 2011, p. 9 (referring to Wagner, Kutash, Duchnowski, Epstein and Sumi, 2005).
- <sup>32</sup> Anderson, Hawes and Snow, 2016, ‘Language impairments among youth offenders: A systematic review’, *Children and Youth Services Review*, vol. 65, p. 201 item 4.1.
- <sup>33</sup> Rae Sinclair, ‘To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada’, Churchill Fellowship Report, 2011, p. 21 (referring to Applebee, 1996).
- <sup>34</sup> Rae Sinclair, ‘To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada’, Churchill Fellowship Report, 2011, p. 9.
- <sup>35</sup> Anderson, Hawes and Snow, 2016, ‘Language impairments among youth offenders: A systematic review’, *Children and Youth Services Review*, vol. 65, p. 201 item 4.1 referring to Gregory & Bryan 2011 study).
- <sup>36</sup> Rae Sinclair, ‘To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada’, Churchill Fellowship Report, 2011, pp. 26, 37. As to the different phases of literacy, Sinclair describes three groups (pp. 21-23: Group one: severe reading disabilities, Group two: struggling readers, Group three: non-fluent readers. Each requires different styles and lengths of instruction.
- <sup>37</sup> Rae Sinclair, ‘To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada’, Churchill Fellowship Report, 2011, pp. 25, 34.
- <sup>38</sup> Anderson, Hawes and Snow, 2016, ‘Language impairments among youth offenders: A systematic review’, *Children and Youth Services Review*, vol. 65, p. 201 item 4.2.
- <sup>39</sup> Anderson, Hawes and Snow, 2016, ‘Language impairments among youth offenders: A systematic review’, *Children and Youth Services Review*, vol. 65, p. 201 item 4.2.
- <sup>40</sup> The (then named) Don Dale Education Unit operated at the former Don Dale Youth Detention Centre at the commencement of the relevant period. The school was relocated together with the youth detention facility during 2014 to Holtze and then to the current Don Dale at its Berrimah location, and has been renamed Tivendale School.
- <sup>41</sup> Exh.087.001, Statement of Marion Guppy, 22 February 2017, tendered on 16 March 2017, para. 16.
- <sup>42</sup> Exh.089.002, Annexure 1 to Statement of Brett McNair, Tivendale School Profile, 6 December 2016, tendered 16 March 2017, p. 1.
- <sup>43</sup> Exh.088.001, Statement of Marion Guppy, 13 March 2017, tendered 16 March 2017, para. 160.
- <sup>44</sup> Exh.089.001, Statement of Brett McNair, 6 December 2016, tendered 16 March 2017, para. 20.
- <sup>45</sup> Exh.088.001, Statement of Marion Guppy, 13 March 2017, tendered 16 March 2017, para. 161.
- <sup>46</sup> Submissions in response to Notice of Adverse Material 4/17, Northern Territory Government, 15 August 2017, para. 17.
- <sup>47</sup> Exh.089.001, Statement of Brett McNair, 6 December 2016, tendered 16 March 2017, para. 17.
- <sup>48</sup> Exh.089.002, Annexure 1 to Statement of Brett McNair, Tivendale School Profile, 6 December 2016, tendered 16 March 2017, p. 1.
- <sup>49</sup> Exh.089.002, Annexure 1 to Statement of Brett McNair, Tivendale School Profile, 6 December 2016, tendered 16 March 2017, pp. 1, 2.
- <sup>50</sup> Exh.089.002, Annexure 1 to Statement of Brett McNair, Tivendale School Profile, 6 December 2016, tendered 16 March 2017, p. 11
- <sup>51</sup> Davis, Steele, Bozick, Williams, Turner, Miles, Saunders, Steinberg, 2014, ‘How effective is correctional education and where do we go from here’, RAND Corporation report sponsored by the United States Bureau of Justice Program, p. 39, referring to Leone, Meisel and Drakeford 2002.
- <sup>52</sup> Exh.089.002, Annexure 1 to Statement of Brett McNair, Tivendale School Profile, 6 December 2016, tendered 16 March 2017, p. 11
- <sup>53</sup> Exh.089.002, Annexure 1 to Statement of Brett McNair, Tivendale School Profile, 6 December 2016, tendered 16 March 2017, p. 1.
- <sup>54</sup> Exh.091.002, Annexure 1 to Statement of David Glyde, Owen Springs Education Profile, February 2017, tendered 16 March 2017, p. 1.
- <sup>55</sup> Exh.088.001, Statement of Marion Guppy, 13 March 2017, tendered 16 March 2017, para. 168.
- <sup>56</sup> Exh.091.001, Statement of David Glyde, 24 February 2017, tendered on 16 March 17, paras 23-28.
- <sup>57</sup> Exh.088.001, Statement of Marion Guppy, 13 March 2017, tendered 16 March 2017, para. 169.
- <sup>58</sup> Exh.091.001, Statement of David Glyde, 24 February 2017, tendered on 16 March 17, paras 23-28.
- <sup>59</sup> Exh.091.001, Statement of David Glyde, 24 February 2017, tendered 16 March 2017, paras 23-28.
- <sup>60</sup> Exh.091.002, Annexure 1 to Statement of David Glyde, Owen Springs Education Profile, February 2017, tendered 16 March 2017; Exh.091.001, Statement of David Glyde, 24 February 2017, tendered 16 March 2017, para. 8.
- <sup>61</sup> Exh.262.003, Annexure 2 to statement of Anthony Collins, Owen Springs Programs 2015-current, 2017, pp. 1-3.
- <sup>62</sup> Exh.262.003, Annexure 2 to statement of Anthony Collins, Owen Springs Programs 2015-current, 2017, pp. 1-3; Transcript, David Glyde, 16 March 2017, p. 1234: lines 14-15.
- <sup>63</sup> Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, para. 63.
- <sup>64</sup> Exh.091.001, Statement of David Glyde, 24 February 2017, tendered 16 March 2017, para. 8.
- <sup>65</sup> Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para. 85; Exh.067.001, Statement of BC, 23 February 2017, tendered 13 March 2017, para. 25; Exh.478.000, Statement of CK, 29 May 2017, tendered 1 June 2017, para. 25; Exh.180.001, Statement of AQ, 14 February 2017, tendered 28 March 2017, paras 61-63; Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, paras 56-577; Exh.084.001, Statement of BY, 21 February 2017, tendered 16 March



2017, para. 21; Exh.065.001, Statement of Jamal Turner, 21 February 2017, tendered 13 March 2017, paras 32, 76; Exh.123.001, Statement of AS, tendered 22 March 2017, para 60.

<sup>66</sup> Transcript, Colleen Gwynne, 12 October 2016, p. 140: line 4.

<sup>67</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 89.

<sup>68</sup> Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 56-57.

<sup>69</sup> Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, paras 5-10; Transcript, Lisa Coon, 21 April 2017, p. 2711: lines 45-48.

<sup>70</sup> Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, paras 5-10.

<sup>71</sup> Exh.089.002, Annexure 1 to Statement of Brett McNair, Tivendale School Profile, 6 December 2016, tendered 16 March 2017, p. 10.

<sup>72</sup> See Chapter 41 (Data and information-sharing).

<sup>73</sup> Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, para. 22.

<sup>74</sup> Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 49; Exh.102.001, Statement of BN, 14 February 2017, tendered 20 March 2017, para. 86.

<sup>75</sup> Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 57.

<sup>76</sup> The Commission was told that in 2017 hearing tests became a routine part of the admissions process: Exh.092.001, Statement of Christine Connors, 20 February 2017, tendered 16 March 2017, paras 26-27

<sup>77</sup> Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, para. 51.

<sup>78</sup> Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, paras 46-47; Transcript, Brett McNair, 16 March 2017, p. 1228: lines 11-16.

<sup>79</sup> Transcript, Lisa Coon, 21 April 2017, pp. 2711: lines 40-47, 2736: lines 28-36.

<sup>80</sup> Transcript, Lisa Coon, 21 April 2017, p. 2717: lines 37-47.

<sup>81</sup> Transcript, Lisa Coon, 21 April 2017, pp. 2717: lines 44-47, 2738: lines 38-41.

<sup>82</sup> Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, para. 50.

<sup>83</sup> Transcript, Brett McNair, 16 March 2017, p. 1226: lines 23-40.

<sup>84</sup> Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, paras 46-48, 52-53. Mr Collins explained a similar position at the Owen Springs Education Unit: Exh.262.001, Statement of Anthony Collins, 24 February 2017, tendered 31 March 2017, para. 43.

<sup>85</sup> Transcript, Brett McNair, 16 March 2017, p. 1126: lines 38-40.

<sup>86</sup> Exh.262.001, Statement of Anthony Collins, 24 February 2017, tendered 31 March 2017, para. 46.

<sup>87</sup> Exh.087.001, Statement of Marion Guppy, 22 February 2017, tendered 16 March 2017, paras 24-25. The highest average staff–student ratio at Owen Springs between 2013 and 2016 was 3.5 students to one staff member (reached in 2016) and the highest average staff–student ratio at Tivendale between 2006 and 2016 was 5.1 students to one staff member (reached in 2011): Exh.087.005, Annexure MG-4 to Statement of Marion Guppy, staff–student ratio information, 2006–2016, tendered 16 March 2017, pp. 1-2.

<sup>88</sup> Transcript, Lisa Coon, 21 April 2017, p. 2706: lines 29-30.

<sup>89</sup> Compare Exh.087.005, Annexure MG-4 to Statement of Marion Guppy, staff–student ratio information, 2006–2016, tendered 16 March 2017, p 2 (total 11 staff in Semester 2, 2016) with Exh.089.002, Annexure 1 to Statement of Brett McNair, Tivendale School Profile, 6 December 2016, tendered 16 March 2017, p. 2: ‘Key staff as at Semester 2, 2016’ (total 11 staff).

<sup>90</sup> Transcript, Brett McNair, 16 March 2017, p. 1222: line 16.

<sup>91</sup> Transcript, Lisa Coon, 21 April 2017, p. 2706: lines 25-44; Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 49.

<sup>92</sup> Transcript, Lisa Coon, 21 April 2017, p. 2718: lines 21-37, p. 2738: lines 1-20; Exh.716.000, Statement of Brett McNair, 5 April 2017, tendered 25 July 2017, para. 18.

<sup>93</sup> Submissions in response to Notice of Adverse Material 4/17, Northern Territory Government, 15 August 2017, para. 68(c).

<sup>94</sup> Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, para. 51.

<sup>95</sup> Transcript, Lisa Coon, 21 April 2017, pp. 2735: lines 45-47 – 2736: lines 1-6.

<sup>96</sup> Transcript, Lisa Coon, 21 April 2017, p. 2737: lines 1-11.

<sup>97</sup> Transcript, Lisa Coon, 21 April 2017, pp. 2717: lines 44-47, 2738: lines 38-41.

<sup>98</sup> Exh.262.001, Statement of Anthony Collins, 24 February 2017, tendered 31 March 2017, paras 45-46; Transcript, Lisa Coon, 21 April 2017, p. 2717: lines 35-46.

<sup>99</sup> Exh.088.001, Statement of Marion Guppy, 13 March 2017, tendered 16 March 2017, para. 171.

<sup>100</sup> Transcript, Lisa Coon, 21 April 2017, pp. 2711: line 30– 2712: lines 1-5, 2736: lines 8-25.

<sup>101</sup> Exh.089.002, Annexure 1 to Statement of Brett McNair, Tivendale School Profile, 6 December 2016, tendered 16 March 2017, p. 13.

<sup>102</sup> Transcript, Lisa Coon, 21 April 2017, p. 2712: lines 7-26; Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, para. 44.

<sup>103</sup> Transcript, Lisa Coon, 21 April 2017, p. 2712: lines 7-32; Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, para. 47, 54.

<sup>104</sup> Exh.090.011, Annexure BM-10 to Statement of Brett McNair, Tivendale School Staff Handbook, undated, tendered 16 March 2017.

<sup>105</sup> Exh.374.005, Annexure 4 to statement of Amanda Nobbs-Carcuro, Case Management and Throughcare Services Manual, September 2016, tendered 11 May 2017, p. 5.

<sup>106</sup> Exh.374.005, Annexure 4 to statement of Amanda Nobbs-Carcuro, Case Management and Throughcare Services Manual, September 2016, tendered 11 May 2017, p. 11

- <sup>107</sup> Exh.089.002, Annexure 1 to Statement of Brett McNair, Tivendale School Profile, 6 December 2016, tendered 16 March 2017, p. 1.
- <sup>108</sup> Transcript, Lisa Coon, 21 April 2017, pp. 2720: lines 6-35, 2766: lines 28-38; Transcript, Dylan Voller, 12 December 2016, p. 686: lines 35-45; Exh.065.001, Statement of Jamal Turner, 21 February 2017, tendered 13 March 2017, para. 79.F
- <sup>109</sup> Transcript, Lisa Coon, 21 April 2017, p. 2716: lines 7-8.
- <sup>110</sup> Transcript, Lisa Coon, 21 April 2017, pp. 2706: lines 40-42, 2720: lines 12-20.
- <sup>111</sup> Exh.089.002, Annexure 1 to Statement of Brett McNair dated 6 December 2017, undated, tendered 16 March 2017, p. 1.
- <sup>112</sup> Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, paras 44-45.
- <sup>113</sup> Gardiner, A, 2017, 'Listen to their voices, hear their stories and walk together into the future', *Aurora Magazine*, viewed on 19 July 2017. Available at <<https://mnnews.today/aurora-magazine/july-2017/20614-listen-to-their-voices-hear-their-stories-and-walk-together-into-the-future/>>.
- <sup>114</sup> Exh.115.001 Part 1, Statement of Olga Havnen, 16 February 2017, tendered 21 March 2017, para. 17.
- <sup>115</sup> Transcript, Olga Havnen, 21 March 2017, p. 1602: lines 25-35.
- <sup>116</sup> Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, para. 53.
- <sup>117</sup> Exh.260.001, Statement of BW, 22 February 2017, tendered 31 March 2017, para. 21.
- <sup>118</sup> Transcript, Derek Tasker, 15 March 2017, p. 1113: lines 30-35.
- <sup>119</sup> Transcript, David Glyde, 16 March 2017, p. 1253: lines 5-20.
- <sup>120</sup> Transcript, Salli Cohen, 24 April 2017, p.2869 lines 10-17.
- <sup>121</sup> Submissions in response to Notice of Adverse Material 2/17, Northern Territory Government, 17 August 2017, para. 28; Exh.1163.001, Letter from SFNT to Solicitor Assisting the Commission, 4 August 2017, tendered 3 November 2017.
- <sup>122</sup> Transcript, David Glyde, 16 March 2017, p. 1253: lines 45-50.
- <sup>123</sup> Transcript, Lisa Coon, 21 April 2017, p. 2725: lines 40-50.
- <sup>124</sup> Transcript, David Glyde, 16 March 2017, p. 1254: lines 25-30.
- <sup>125</sup> Transcript, David Glyde, 16 March 2017, p. 1253: lines 28-50.
- <sup>126</sup> Transcript, John Rynne, 17 March 2017, p. 1311; lines 5-16.
- <sup>127</sup> Submissions on Youth Detention, Central Australian Aboriginal Legal Aid Service, 10 July 2017, p. 73.
- <sup>128</sup> Transcript, John Rynne, 17 March 2017, p. 1311: lines 34-37.
- <sup>129</sup> Transcript, Marius Puruntatameri, 31 March 2017, p. 2420: lines 4-14.
- <sup>130</sup> Rae Sinclair, 'To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada', Churchill Fellowship Report, 2011, p. 14.
- <sup>131</sup> This measure is supported by the Aboriginal Peak Organisations Northern Territory: Submissions, Aboriginal Peak Organisations Northern Territory, July 2017, p. 93.
- <sup>132</sup> Rae Sinclair, 'To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada', Churchill Fellowship Report, 2011, p. 16 (referring to Nelson, 2005).
- <sup>133</sup> For example, the Positive Behavioural Interventions and Supports Framework uses a three-tiered approach which includes Primary Prevention (in which all students and staff members are explicitly taught the expected behaviour and the positive and/or negative consequences for appropriate or inappropriate behaviours); Secondary Prevention (which provides more intensive instructional strategies and supports for those students who fail to respond to the primary prevention strategy (including for example academic tutoring for struggling students and instruction in matters like social problem solving, anger management and social skills for those with behavioural challenges), and Tertiary Prevention for the small number of students with persistent and serious behavioural and academic challenges (in the form of highly individualised interventions and interagency collaboration): discussed by Sinclair in 'To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada', Churchill Fellowship Report, 2011, pp. 15-16.
- <sup>134</sup> Submissions, Aboriginal Peak Organisations Northern Territory, 31 July 2017, p. 90; Research by Stanley et al states: *The students who act out, or disrupt the social order, are likely those with unmet social, emotional or academic needs, and punitive responses for the sake of achieving order leave these needs unaddressed and these students perpetually underserved. In an institution that prioritises order above all else, an action that jeopardizes order is punished without regard for cause of behaviour. Thus, the most vulnerable students are sanctioned at higher rates and left without supports and services they need:* Stanley, M., Canham, D., & Cureton, V. (2006). 'Assessing prevalence of emotional and behavioural problems in suspended middle school students', *The Journal of School Nursing*, 22(1).
- <sup>135</sup> Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, para. 124; Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 51; Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 54.
- <sup>136</sup> Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, paras 86-87; Exh.135.019, Education Incident Report, 20 May 2015, tendered 23 March 2017, p. 1.
- <sup>137</sup> Exh.171.001, Statement of James Sizeland, 17 March 2017, tendered 27 March 2017, paras 12-13.
- <sup>138</sup> Northern Territory Department of Education suspension guidelines, various dates 1998-2012: Exh.1086.001. School Policy handbook – January 1998 – suspension of students, tendered 28 October 2017; Exh.1087.001, Management of Student Behaviour policy and guidelines v1 – December 2008, tendered 3 November 2017; Exh.1088.001, Student Suspension Guidelines v2 – July 2011, tendered 3 November 2017; Exh.1089.001, Suspension Guidelines v3 – May 2012, tendered 3 November 2017.
- <sup>139</sup> Transcript, Lisa Coon, 21 April 2017, p. 2728: lines 32-36 and p. 2732: lines 14-15.
- <sup>140</sup> Transcript, Lisa Coon, 21 April 2017, p. 2729: lines 6-13.
- <sup>141</sup> Exh.091.001, Statement of David Glyde, 24 February 2017, tendered 16 March 17, para. 26.
- <sup>142</sup> Exh 150.029, IOMS Report, [redacted] 2012, tendered 24 March 2017, p. 1.
- <sup>143</sup> Exh.150.032, Education Incident Report, [redacted] 2013, tendered 24 March 2017, p.1.
- <sup>144</sup> Exh.150.033, Education Incident Report, [redacted] 2013, tendered 24 March 2017, p.1.

- <sup>145</sup> Exh.241.001, Statement of BV, 19 February 2017, tendered 31 March 2017, para. 81.
- <sup>146</sup> Transcript, Brett McNair, 16 March 2017, p. 1249: lines 41-46; Exh.090.011, Annexure BM-10 to Statement of Brett McNair, *Tivendale School Staff Handbook*, undated, tendered 16 March 2017, p. 18; Transcript, Derek Tasker, 15 March 2017, p. 1070: lines 25-27; Exh.150.031, Education Incident Report, [redacted] 2013, tendered 24 March 2017, p. 1; Exh.150.032, Education Incident Report, [redacted] 2013, tendered 24 March 2017, p. 1.
- <sup>147</sup> Exh.258.001, Statement of Victor Williams, 3 February 2017, tendered 31 March 2017, paras 19-21; Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 59.
- <sup>148</sup> Exh.258.001, Statement of Victor Williams, 3 February 2017, tendered 31 March 2017, paras 22-23.
- <sup>149</sup> Exh.307.001, Statement of Lisa Coon, 12 April 2017, tendered 21 April 2017, para. 52.
- <sup>150</sup> Exh.283.172, Intensive Management Plan, 15 October 2013, tendered 31 March 2017, p. 2: '[Redacted] to commence attendance in school but not at the same time as detainee [redacted], there, this is to be alternatively fairly am/pm in agreement with the SS'; Exh.283.169, Intensive Management Plan, 12 September 2013, tendered 31 March 2017, p. 4: '[Redacted] is permitted a book from the Don Dale library ... in conjunction with [redacted] school he will be given the opportunity to deliver a book review within class to promote for his academic progression at the completion of this Intensive Management Plan'; Exh.064.099, [Redacted] – Intensive Management Plan, 22 June 2012, tendered 31 March 2017, p. 3: 'Detainee [redacted] will attend schooling at Aranda House for two hours each day Monday to Friday'; Exh.342.008, Intensive Behaviour Management Plan, 18 February 2012, tendered 9 May 2017, p. 3: 'Detainee [redacted] is not permitted access to school and other recreation and sporting activities whilst this management plan is in place'; Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para.11.
- <sup>151</sup> Exh.111.003, Annexure B to Statement of AX, Letter from Max Yffer to Senior Case Worker, 5 July 2012, tendered 21 March 2017, p. 1. The Northern Territory Government submissions referred to an Individual Management Plan for one detainee which provided for 2 hours education per day, however there was no other evidence to suggest what was told to and recorded by Mr Yffer was incorrect.
- <sup>152</sup> Exh.262.001, Statement of Anthony Collins, 24 February 2017, tendered 31 March 2017, para. 32.
- <sup>153</sup> Exh.760.001, DDYDC Staff meeting minutes, 1 September 2015, tendered 22 August 2017, p. 1; Exh.761.001, Court Report by Indigenous Youth Justice Worker Terry Byrnes, 1 May 2015, tendered 22 August 2017, p. 2; See also records of Complaints by detainees to Children's Commissioner, dated 25 March, 6 April and 1 May 2015: Exh.1083.001, 2015-00086, tendered 28 October 2017; Exh.1084.001, 2015-00101, tendered 28 October 2017; Exh.1085.001, 2016-00139, tendered 28 October 2017.
- <sup>154</sup> Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 59; Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, paras 104-105; Exh.043.001, Statement of AD, 22 November 2016, tendered 9 December 2016, para. 15; Exh.104.001, Statement of Terry Byrnes, 10 December 2016, tendered 20 March 2017, paras 68-71; Transcript, Derek Tasker, 15 March 2017, p. 1071: lines 44-46.
- <sup>155</sup> Transcript, James Sizeland, 27 March 2017, p. 1984: lines 16-19; Transcript, Lisa Coon, 21 April 2017, p. 2729: lines 35-47; Exh.262.001, Statement of Anthony Collins, 24 February 2017, tendered 31 March 2017, para. 33.
- <sup>156</sup> Transcript, David Glyde and Brett McNair, 16 March 2017, p. 1239: lines 20-47 - p. 1241: lines 1-12.
- <sup>157</sup> Transcript, James Sizeland, 27 March 2017, p. 1983: lines 4-12; Transcript, Ben Kelleher, 21 March 2017, p. 1543: lines 27-31.
- <sup>158</sup> Transcript, Lisa Coon, 21 April 2017, p. 2740: lines 4-11, 20-22.
- <sup>159</sup> Exh.1086.001, School Policy handbook – January 1998 – suspension of students, tendered 28 October 2017, pp. 1-2; Exh.1087.001, Management of Student Behaviour Policy and Guidelines v1 – December 2008, tendered 28 October 2017, pp. 7-8; Exh.1088.001, Student Suspension Guidelines v2 – July 2011, tendered 3 November 2017, pp. 3-5.
- <sup>160</sup> Exh.1088.001, Student Suspension Guidelines v2 – July 2011, tendered 3 November 2017, p. 4.
- <sup>161</sup> Exh.1089.001, Suspension Guidelines v3 – May 2012, tendered 3 November 2017, p. 3.
- <sup>162</sup> Exh.1164.001, Letter from Solicitor for the Northern Territory to the Solicitor Assisting the Commission regarding draft Notice to Produce N345/17 to the CEO of the Department of Education, 13 April 2017, tendered 3 November 2017, para. 2. See also Northern Territory Department of Education Suspension Guidelines, June 2016, available at: <[https://education.nt.gov.au/\\_\\_data/assets/pdf\\_file/0005/438962/Managing-Student-Behaviour\\_Suspension-GUIDELINES.pdf](https://education.nt.gov.au/__data/assets/pdf_file/0005/438962/Managing-Student-Behaviour_Suspension-GUIDELINES.pdf)>.
- <sup>163</sup> Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, paras 14-16, 18-20.
- <sup>164</sup> Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, paras 20-21.
- <sup>165</sup> Transcript, Leonard de Souza, 22 March 2017, p. 1623: line 44 to p. 1625. line 13.
- <sup>166</sup> Exh.152.001, Statement of Saki Muller, 10 February 2017, tendered 24 March 2017, para. 25.
- <sup>167</sup> Transcript, Ian Johns, 28 March 2017, p. 2041: line 28 – p. 2042: line 2.
- <sup>168</sup> Exh.125.001, Youth Detention Review September 2014, 19 September 2014, tendered 23 March 2017, p. 6.
- <sup>169</sup> Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para. 75.
- <sup>170</sup> Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para. 76.
- <sup>171</sup> Transcript, Olga Havnen, 21 March 2017, p. 1603: line 46 – p. 1605: lines 1-5.
- <sup>172</sup> Exh.189.001, Statement of Ian Johns, 1 March 2017, tendered 28 March 2017, para. 79.
- <sup>173</sup> Exh.105.001, Statement of Andreea Lachsz, 10 December 2016, tendered 20 March 2017, para. 21; Transcript, Terry Byrnes, 20 March 2017, p. 1483: lines 38-47 – p. 1484: lines 1-6.
- <sup>174</sup> Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, para. 30; Exh.332.001, Statement of Jared Sharp, 24 April 2017, tendered 28 April 2017, para. 246.
- <sup>175</sup> Transcript, Ian Johns, 28 March 2017, p. 2041: lines 20-26; Transcript, Leonard de Souza, 22 March 2017, p. 1623: line 44 to p. 1625. line 13.
- <sup>176</sup> Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 99.
- <sup>177</sup> Exh.065.001, Statement of Jamal Turner, 21 February 2017, tendered 13 March 2017, para. 26.
- <sup>178</sup> Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para. 21.
- <sup>179</sup> Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, para. 133.

- <sup>180</sup> Exh.241.001, Statement of BV, 19 February 2017, tendered 31 March 2017, para. 80; Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para. 104.
- <sup>181</sup> Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, paras 68-69; Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para. 30.
- <sup>182</sup> Exh.241.001, Statement of BV, 19 February 2017, tendered 31 March 2017, paras 79-80.
- <sup>183</sup> Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, para. 110; Exh.067.001, Statement of BC, 23 February 2017, tendered 13 March 2017, para. 41; Transcript, AU, 23 March 2017, p. 12: lines 19-24; Exh.241.001, Statement of BV, 19 February 2017, tendered 31 March 2017, para. 79; Exh.118.001, Statement of BH, 12 February 2017, tendered 22 March 2017, para. 63; Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 99; Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 75; Exh.180.001, Statement of AQ, 14 February 2017, tendered 28 March 2017, paras 65-66.
- <sup>184</sup> Exh.241.001, Statement of BV, 19 February 2017, tendered 31 March 2017, para. 79.
- <sup>185</sup> Exh.072.012, Annexure JF 11 to Statement of John Fattore, email from John Fattore to Ken Middlebrook and others re 'Juvenile numbers at 57', 6 March 2011, tendered 14 March 2017, p. 1; Exh.091.001, Statement of David Glyde, 24 February 2017, tendered 16 March 2017, para. 25.
- <sup>186</sup> Exh.087.001, Statement of Marion Guppy, 22 February 2017, tendered 16 March 2017, para. 18.
- <sup>187</sup> Exh.111.001, Statement of AX, 17 February 2017, tendered 21 March 2017, paras 24-26; Exh.114.013, Bed History for AX (confidential), various dates, tendered 21 March 2017, pp. 3, 6; Exh.343.002, Bed History for AY (confidential), various dates, tendered 9 May 2017, p.7; For more information see Chapter 14 (Isolation).
- <sup>188</sup> Exh.111.001, Statement of AX, 17 February 2017, tendered 21 March 2017, para. 25.
- <sup>189</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 56.
- <sup>190</sup> Exh.243.001, Statement of BX, 14 February 2017, tendered 31 March 2017, para. 19.
- <sup>191</sup> Exh.091.001, Statement of David Glyde, 24 February 2017, tendered 16 March 2017, para. 23.
- <sup>192</sup> Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para. 119.7.
- <sup>193</sup> Exh.091.001, Statement of David Glyde, 24 February 2017, tendered 16 March 2017, para. 26.
- <sup>194</sup> Exh.091.001, Statement of David Glyde, 24 February 2017, tendered 16 March 2017, para. 27.
- <sup>195</sup> Exh.211.001, Statement of Sally Cohen, 21 February 2017, tendered 30 March 2017, para. 80.
- <sup>196</sup> Submissions, Central Australian Aboriginal Legal Aid Service, 10 July 2017, p. 56, para. 4.7.
- <sup>197</sup> Exh.179.001, Statement of BE, 18 February 2017, tendered 27 March 2017, para. 50.
- <sup>198</sup> Exh.089.002, Annexure to Statement of Brett McNair: Tivendale School Profile, 6 December 2016, tendered 16 March 2017, p. 3; Transcript, Lisa Coon, 21 April 2017, p. 2716: lines 22-24.
- <sup>199</sup> Exh.307.001, Statement of Lisa Coon responsive to Dylan Voller, 12 April 2017, tendered 21 April 2017, para. 28.
- <sup>200</sup> Exh.763.001, Minutes of DDYDC staff meeting, 14 April 2015, tendered 22 August 2017, p. 1
- <sup>201</sup> Exh.309.013, Minutes of DDYDC staff meeting, 14 July 2015, tendered 21 April 2017, pp. 1-2.
- <sup>202</sup> Exh.104.001, Statement of Terry Byrnes, 10 December 2016, tendered 20 March 2017, paras 45-46.
- <sup>203</sup> Exh.089.001, Statement of Brett McNair, 6 December 2016, tendered 16 March 2017, para. 36.
- <sup>204</sup> Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 60; Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para. 30.
- <sup>205</sup> Transcript, David Glyde, 16 March 2017, p. 1237: lines 30-35; Exh.087.006, Annexure MG-5 to Statement of Marion Guppy, Don Dale/Tivendale & Owen Springs VET data summary, 22 February 2017, tendered 16 March 2017, pp. 1-3.
- <sup>206</sup> Exh.087.006, Annexure MG-5 to Statement of Marion Guppy, Don Dale/Tivendale & Owen Springs VET data summary, tendered 16 March 2017, pp. 1-3.
- <sup>207</sup> Exh.087.001, Statement of Marion Guppy, 22 February 2017, tendered 16 March 2017, paras 51-52.
- <sup>208</sup> Transcript, David Glyde, 16 March 2017, p. 1237: lines 30-46; Exh.087.001, Statement of Marion Guppy, 22 February 2017, tendered 16 March 2017, para. 51.
- <sup>209</sup> Exh.087.006, Annexure MG-5 to Statement of Marion Guppy, Don Dale/Tivendale & Owen Springs VET data summary, 22 February 2017, tendered 16 March 2017, pp. 1-3.
- <sup>210</sup> Exh.087.006, Annexure MG-5 to Statement of Marion Guppy, Don Dale/Tivendale & Owen Springs VET data summary, 22 February 2017, tendered 16 March 2017, pp. 1-3.
- <sup>211</sup> Exh.311.051, MINC140062 – Signed Budget Cab Sub Youth Justice Framework Phase 1, 10 February 2014, tendered 28 April 2017, p. 28.
- <sup>212</sup> See further, Chapter 23 (Leadership and management). In particular the decision to move to Berrimah site and cabinet funding decision in March 2014.
- <sup>213</sup> Northern Territory Government, Submissions in response to Notice of Adverse Material 4/17, 15 August 2017, para. 83(f).
- <sup>214</sup> Exh.087.001, Statement of Marion Guppy, 22 February 2017, tendered 16 March 2017, para. 48; Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, para. 20.
- <sup>215</sup> Exh.087.001, Statement of Marion Guppy, 22 February 2017, tendered 16 March 2017, paras 38, 50.
- <sup>216</sup> Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, para. 20.
- <sup>217</sup> Mr McNair gave evidence of one instance where a young person's connection with vocational education was maintained, with the assistance of a through-care worker from outside of youth detention, upon their release. This was only able to occur because the young person's release date was known prior to release: Transcript, Brett McNair, 16 March 2017, p. 1235: lines 27-35.
- <sup>218</sup> Transcript, Mike MacFarlane, 27 June 2017, p. 5100: line 35 – p. 5101: line 9.
- <sup>219</sup> Exh.311.138, Incoming Ministerial Brief: Seek Education or Employment not Detention (SEED), 7 September 2016, tendered 28 April 2017, p. 1.

- 220 Exh.321.004, Annexure 3 to Statement of John Elferink, NTDCS Annual Report 2014–2015, 2015, tendered 27 April 2017, p. 65; Exh.321.003, Annexure 2 to Statement of John Elferink, NTDCS Annual Report 2013–2014, 2014, tendered 27 April 2017, p. 46.
- 221 Exh.283.299, Minister Elferink media release, 'Creating a better detention system to rehabilitate offending youths', 18 February 2015, tendered 31 March 2017, p. 1-2.
- 222 Exh.024.024, *Review of the Northern Territory Youth Detention System Report (Vita Report)*, Michael Vita, January 2015, tendered 13 October 2016, pp. 19, 59, 63.
- 223 Exh.311.131, Incoming Ministerial Brief: Vita Report Recommendations – Appendix A, 25 August 2016, tendered 28 April 2017, item 16.
- 224 Exh.374.000, Statement of Amanda Nobbs-Carcuro, 24 March 2017, tendered 11 May 2017, para. 94.
- 225 Exh.311.096C, Legislative Assembly Brief: SEED program, 21 July 2015, tendered 28 April 2017, pp. 1-3; Exh.311.138, Incoming Ministerial Brief: Seek Education or Employment not Detention (SEED), 7 September 2016, tendered 28 April 2017, p. 2.
- 226 Exh.311.138, Incoming Ministerial Brief: Seek Education or Employment not Detention (SEED), 7 September 2016, tendered 28 April 2017, pp. 1-2.
- 227 Exh.374.000, Statement of Amanda Nobbs-Carcuro, 24 March 2017, tendered 11 May 2017, paras 89, 94.
- 228 Exh.311.131, Incoming Ministerial Brief: Vita Report Recommendations – Appendix A, 25 August 2016, tendered 28 April 2017, p. 4; Exh.311.138, Incoming Ministerial Brief: Seek Education or Employment not Detention (SEED), 7 September 2016, tendered 28 April 2017, p. 1.
- 229 Exh.311.138, Incoming Ministerial Brief: Seek Education or Employment not Detention (SEED), 7 September 2016, tendered 28 April 2017, p. 1.
- 230 Exh.321.001, Statement of John Elferink, 30 March 2017, tendered 27 April 2017, paras 15-17.
- 231 Transcript, Lisa Coon, 21 April 2017, p. 2714: line 30 – p. 2715: line 17.
- 232 Transcript, Lisa Coon, 21 April 2017, p. 2714: line 37. Under the Malak Re-engagement Centre's initial approach as a 'through centre', as few as 5–10% of students returned to mainstream schooling, which has led to a change of focus and more flexible options being pursued: Exh.088.001, Statement of Marion Guppy, 13 March 2017, tendered 16 March 2017, paras 112-113.
- 233 Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, para. 13.
- 234 Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 58.
- 235 Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, para. 42.
- 236 Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, paras 24.
- 237 Exh.087.001, Statement of Marion Guppy, 22 February 2017, tendered 16 March 2017, para. 59.
- 238 Exh.266.001, Statement of Michael Jones, 19 December 2016, tendered 31 March 2017, paras 28, 33-34; Exh.267.001, Statement of Malcolm Solomano, 18 January 2017, tendered 31 March 2017, paras 21-22; Exh.087.001, Statement of Marion Guppy, 22 February 2017, tendered 16 March 2017, paras 56-60; Exh.088.001, Statement of Marion Guppy, 13 March 2017, tendered 16 March 2017, paras 220-226; Exh.089.001, Statement of Brett McNair, 6 December 2016, tendered 16 March 2017, paras 45-46.
- 239 Transcript, Marion Guppy, 16 March 2017, p. 1231: lines 20-45.
- 240 See 'Behaviour management and exclusion from classroom' section of this chapter.
- 241 Transcript, Lisa Coon, 21 April 2017, p. 2738: lines 20-41; for discussion of attitudes about use of interpreters.
- 242 See Chapter 11 (Detention centre operations).
- 243 Transcript, Lisa Coon, 24 April 2017, p. 2735: lines 22-43.
- 244 Exh.764.001, Facebook post of Lisa Coon dated 17 May 2016, tendered 22 August 2017, p. 1.
- 245 Transcript, Keith Hamburger, 6 December 2016, p. 434: lines 8-30.
- 246 Exh.088.001, Statement of Marion Guppy, 13 March 2017, tendered 16 March 2017, para. 160 (Tivendale 2016 student numbers) and para. 168 (Owen Springs 2016 student numbers).
- 247 Exh.262.001, Statement of Anthony Collins, 24 February 2017, tendered 31 March 2017, para. 8; Exh.696.001, Statement of Carolyn Whyte, 9 June 2017, tendered 10 July 2017, para. 72.
- 248 Transcript, David Glyde, 16 March 2017, p. 1224: lines 15-31.
- 249 Exh.307.001, Statement of Lisa Coon, 12 April 2017, tendered 21 April 2017, para. 52.
- 250 Transcript, Colleen Gwynne, 12 October 2016, p. 140: lines 5-9.
- 251 The Department of Correctional Services was confirmed as being responsible for children and young people excluded from school, and children and young people were to receive their schoolwork folder if suspended from school for more than two days, although they would not receive individualised teaching instruction. Department of Education staff members were confirmed as having a role in classification meetings leading to classification recommendations made to the Superintendent: Exh.090.006, Annexure BM-5 to Statement of Brett McNair, memorandum of understanding between the Department of Correctional Services and the Department of Education, 14 March 2016, tendered 16 March 2017, p. 5; Transcript, Marion Guppy, 16 March 2017, p. 1241: lines 5-30.
- 252 Ms Guppy confirmed that the memorandum of understanding did not serve to substantially change the way functions between the Department of Education and Department of Correctional Services worked, but rather that 'it was really a process of recording and making sure that we had clarified what was in place previously in any case': Transcript, Marion Guppy, 16 March 2017, p. 1241: lines 25-30.
- 253 Exh.090.006, Annexure BM-5 to Statement of Brett McNair, memorandum of understanding between the Department of Correctional Services and the Department of Education, tendered 16 March 2017, pp. 2, 3, 5.
- 254 Transcript, Marion Guppy, 16 March 2017, p. 1242: lines 15-25.
- 255 Transcript, Marion Guppy, 16 March 2017, p. 1242: lines 15-25.
- 256 Rae Sinclair, 'To evaluate literacy and numeracy programs offered to Indigenous and disadvantaged youth in juvenile detention centres – USA and Canada', Churchill Fellowship Report, 2011, p. 17 (referring to Simonsen, 2010).
- 257 See Chapter 28 (A new model for youth detention).

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- <sup>258</sup> Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, paras 35-39; Exh.090.010, Annexure BM-9 to Statement of Brett McNair, Positive Behaviour Flowchart, undated, tendered 16 March 2017.
- <sup>259</sup> Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, para. 54.
- <sup>260</sup> Exh.088.001, Statement of Marion Guppy, 22 February 2017, tendered 16 March 2017, para. 171.
- <sup>261</sup> Transcript, Marion Guppy, 16 March 2017, p. 1227: lines 32-39.
- <sup>262</sup> See Chapter 25 (The path into detention) and Chapter 27 (Reshaping youth justice).
- <sup>263</sup> Exh.024.024, *Review of the Northern Territory Youth Detention System Report (Vita Report)*, Michael Vita, January 2015, tendered 13 October 2016, p. 61; Exh.031-002, Annexure 1 to Statement of Keith Hamburger, *A Safer Northern Territory through Correctional Interventions*, Northern Territory Department of Correctional Services, 31 July 2016, tendered 6 December 2016, p. 22 (recommendation 85) and p. 42 (recommendation 162).

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GIRLS IN DETENTION





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# GIRLS IN DETENTION

## INTRODUCTION

Female detainees should be treated no less favourably than male detainees and their needs and rights as girls and young women should be met and respected. This is a fundamental value of Australian society and is grounded in international human rights instruments and Australian laws. International conventions require member states to refrain from discriminating against women and to ensure that public authorities and institutions meet this obligation.<sup>1</sup> Further, instruments conferring rights on children do so for all children.

These human rights standards are embodied in the *Sex Discrimination Act 1984* (Cth) and the *Anti-Discrimination Act* (NT), which outlaw all forms of discrimination in the provision of services. This likely includes detention services, and the provision of accommodation, education and access to health and recreation services in detention centres.<sup>2</sup>

Similarly, if followed, the Australasian Juvenile Justice Administrators Principles of Youth Justice in Australia would ensure the needs and rights of girls and young women are met and respected. The principles require that young people receive individualised support and that their developmental, physical and mental health needs are addressed.<sup>3</sup>

The *Youth Justice Act* (NT) and the Northern Territory Government's written policies did not, and do not, contain any express recognition or protection of the particular needs of girls and young women in youth detention.<sup>4</sup> While this recognition and protection may have been thought unnecessary, the Commission's investigations, as outlined in this chapter, reveal that girls in youth detention in the Northern Territory deserve further attention because of their particular needs and vulnerabilities.<sup>5</sup>

The Northern Territory Department of Correctional Services' Code of Conduct prescribed standards of behaviour expected of employees, including in their interactions with young people. The Code of Conduct prohibits discrimination in dealings with detainees on the basis of sex.<sup>6</sup> Additionally the code provides that employees are generally expected to '*perform their duties with professionalism, honesty, integrity and efficiency, respecting the rights of ... detainees*'. This obligation includes the

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*'need to recognise the vulnerability of people under the Department's care and control and show respect for their rights and dignity'.<sup>7</sup>*

At times, girls and young women suffered unequal treatment in detention centres due to a combination of factors including:

- the centres were not built to accommodate them and did not cater for their needs
- they had to share facilities with male detainees, who were greater in number and had better access to the facilities
- there were not enough female staff members to supervise them, and
- their small numbers actually, and relative to boys, affected most aspects of their care.

Small numbers of girls and young women, almost all Aboriginal, were detained, see Chapter 9 (The purpose of youth detention), with males in facilities that were not designed or equipped to accommodate both genders. These girls and young women were small minorities in male-dominated environments. They had less access than male detainees to basic amenities, recreation areas and education. At times, they were isolated while boys and young men used recreation areas. Inadequate separation of the genders, due to the poor-quality facilities, caused incidents. At times, male youth justice officers showed inappropriately sexualised behaviour towards girls and young women and otherwise behaved towards them in a way that did not meet society's expectations.

To ensure their needs are met and that girls and young women are protected, females in detention should be supervised by female staff members as much as possible and always treated fairly and equally.<sup>8</sup> The *'care, protection, assistance, treatment and training'* of girls and young women should be no less than that received by males, regardless of how small their number.<sup>9</sup> Throughout the relevant period, the treatment of girls and young women in the Northern Territory did not meet these standards.

## Space and amenities

J Block, where females were accommodated in the former Don Dale Youth Detention Centre from early 2012, commonly housed between four and seven female detainees, but at times up to 11 were held there.<sup>10</sup> Michael Yaxley, who was General Manager at the former Don Dale Youth Detention Centre, recalled that during the latter part of his tenure, in late 2012, the increase in female detainees was *'unlike [anything] we'd ever seen before'*.<sup>11</sup> A former female detainee recounted that during her time at the centre between 2012 and 2014, J Block housed more than 10 girls. Up to three girls shared a room, sleeping on mattresses on the floor.<sup>12</sup> Another female who was detained at the centre in 2014 recalled an average of about seven girls were accommodated in J Block, but up to 10 at one stage.<sup>13</sup> The daily census records support these recollections of peak numbers although the daily average across the whole 10-year period had close to four females.

During the night, when minimal staff were on shift, this meant male staff members escorted female detainees to the toilet. This practice was contrary to human rights rules that female detainees only be attended and supervised by women staff members in such situations and that male staff members not enter a part of the youth detention centre set aside for females unless accompanied by a female staff member.<sup>14</sup>

Only one toilet and one shower were available within J Block for daily use by girls and young women.<sup>15</sup> Boys and young men had a whole block of showers and toilets within their accommodation area.<sup>16</sup> The admissions area also had a shower, which was used to conduct strip

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searches when children and young people arrived in detention. When female detainee numbers reached eight or nine, the admissions shower and toilet were utilised.<sup>17</sup> This shower was outside J Block, accessed through the boys' accommodation<sup>18</sup> and could be seen from inside the Behavioural Management Unit (BMU) through a glass pane when compactus cabinets in the admissions area were open.<sup>19</sup> One former female detainee described girls being given a bucket of water to shave their legs because they did not have enough time to shave in the single shower.<sup>20</sup> Official Visitor reports to Minister Elferink recorded girls complaining about lack of toilet and shower facilities.<sup>21</sup> Carrying out daily showering and grooming, with up to 11 females sharing one or at best two shower facilities, and minimal available staff, significantly affected the daily routine, including delaying their attendance at school.<sup>22</sup>

At Aranda House in Alice Springs, girls and boys shared a single toilet and shower.<sup>23</sup> The female shower facilities at the current Don Dale Youth Detention Centre at Berrimah are also unacceptable, requiring some girls and young women to shower in a room accessed from an open quadrangle, and screened only by a plastic shower curtain that *'blows open in the wind'*.<sup>24</sup>

Throughout the relevant period, most of the staff members at each detention centre on any given day were male. Most of those with management responsibilities who made operational decisions about the management of female staff and detainees and were required to be in regular attendance were male.<sup>25</sup> At times, the absence of female youth justice officers, particularly at night, resulted in female detainees being supervised by only male youth justice officers.<sup>26</sup> Lack of female staff members meant that girls and young women's daily hygiene needs were not always met, or were only met with inappropriate male supervision. At times, female detainees could not have showers and were escorted by male youth justice officers for intimate activities such as attending the bathroom, particularly on night shifts.<sup>27</sup>

This situation had predictable consequences, including frustration and discomfort for female detainees. For example, one incident report recorded female detainees swearing and being rude to staff members when they were told they would not be permitted to shower that evening because no female staff were rostered for the shift.<sup>28</sup> AN recalled that while she was *'at risk'*, if there was no female staff member available to supervise her while she was showering, a male officer would stand immediately behind the shower door and periodically knock on it, which made her feel *'uncomfortable and weird'*.<sup>29</sup>

## Access to recreation

Girls and young women at the former Don Dale Youth Detention Centre received less frequent and shorter access to recreation facilities compared with the male detainees.<sup>30</sup>

Supervisors for male detainees often allowed the boys and young men to remain in outdoor recreational areas for longer, at the expense of the girls and young women's access to those areas. This was particularly the case if female staff members were supervising female detainees. Unsurprisingly, the girls responded with disappointment and frustration, making their management and supervision more difficult.<sup>31</sup>

Official Visitor reports to Minister Elferink also contained complaints by female detainees about lack of access to the oval and basketball court.<sup>32</sup> Keith Williams, an Official Visitor who gave evidence to the Commission, considered these complaints were justified at the former Don Dale Youth Detention Centre as the recreation area was *'tiny'* and females in general received *'the poor end of the deal on all facilities because there were fewer of them'*.<sup>33</sup>

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The move to the current Don Dale Youth Detention Centre site at Berrimah went some way to ameliorating the problem, but did not completely resolve it.<sup>34</sup> AF and AG who were detained at both the former and current Don Dale Youth Detention Centres recalled having unequal access to the outdoor recreation facilities at both centres.<sup>35</sup>

AF told the Commission of having less access to the outdoor recreation area at the current Don Dale Youth Detention Centre:

*I remember one time when there was no school because it would have been school holidays, the boys were taken out and were able to play football on the grass behind our block. We asked if we were able to have any programs or go out on the grass after the boys, but we were told that we could use the rec room to play Xbox. We weren't allowed to go out to the grass during that holiday time when the boys were able to, which us girls thought was unfair. Even when it was school time, in the afternoon, they went on the grass.<sup>36</sup>*

## Unjustified isolation

At times, the exigencies of the co-location of males and females in the detention centres and shared facilities, resulted in more frequent lockdowns for females, a form of isolation.

At the former Don Dale Youth Detention Centre, at times females were locked in their rooms or confined in their accommodation areas while the males engaged in activities throughout the centre.<sup>37</sup>

While the Commission did not receive direct evidence from any former female detainees about the conditions at the Alice Springs facilities, male detainees who had been at Aranda House painted a picture of prolonged isolation for female detainees there.<sup>38</sup>

Former detainee Dylan Voller recalled that girls at Aranda House would often be left in lockdown so they could not mix with the boys,<sup>39</sup> who enjoyed greater access to the limited recreational areas as a result.<sup>40</sup>

The Commission also heard evidence from a former detainee, AF, who had been effectively accommodated in isolation in Darwin when she was the only female there in 2014. She recalled that she did not have access to the school and was allowed out of her room for only 90 minutes each day. The records available to the Commission did not suggest AF was the subject of any room placement or 'at risk' placement during this time. AF described the recreation space made available to her was limited to a small room with a television and a small area with a basketball court. She had very limited interaction with staff and experienced isolation and boredom.<sup>41</sup> The imperative of separation of male and female detainees makes physical isolation inevitable when there is only one female in detention. Nonetheless, negative feelings associated with such isolation are legitimate and efforts to ameliorate the experience should be made. An example might be by increased interaction with staff and activities, including bringing a female into the centre who might impart some living skills.

It is also likely that girls and young women have experienced feelings of isolation at the current Don Dale Youth Detention Centre. The site of that facility is very large and spread out. The female accommodation block is located at the back of the site, away from the main facilities.<sup>42</sup>

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## Education

Females also remain at a potential disadvantage because they share facilities with males.<sup>43</sup>

For a period at the former Don Dale Youth Detention Centre, females received lower quality education delivered in an inferior classroom compared with male detainees.

At the start of the relevant period, male and female detainees at the former Don Dale Youth Detention Centre were notionally taught together, but female detainees were held in a small back room adjacent to the main classroom. Girls were left with basic worksheets, including colouring-in sheets, while the teacher taught the boys. Youth justice officers, who supervised classrooms, struggled to work in such a confined space and with the lack of resources and educational activities made available to the girls compared with the boys.<sup>44</sup>

The girls were subsequently moved to a separate demountable classroom, which was a small improvement. However a real improvement occurred when the girls' classroom was relocated to a different part of the centre, away from the boys' classroom. The girls were no longer distracted by boys walking past the classroom and their focus improved. A female teacher was also recruited to teach the girls separately.<sup>45</sup>

## Findings

**At times during the relevant period, girls and young women in youth detention:**

- **did not receive the same access as males to personal hygiene facilities at all youth detention centres in the Northern Territory**
- **experienced unjustified effective isolation and segregation due to limited facilities and staff numbers at all youth detention centres in the Northern Territory**
- **experienced particularly harsh conditions of unjustified isolation at Aranda House**
- **received lower priority and unequal treatment in terms of access to recreational facilities and, for a period, delivery of education compared with male detainees at the former Don Dale Youth Detention Centre, and**
- **this conduct was inconsistent with the human right to be free from discrimination on the grounds of sex which is a right that is recognised in Article 2 of the *Convention on the Elimination of All Forms of Discrimination Against Women* and Article 26 of the *International Covenant on Civil and Political Rights*, and which is embodied in section 22 of the *Sex Discrimination Act 1984* (Cth) and sections 19, 28 and 41 of the *Anti-Discrimination Act* (NT).**



### **Recommendation 17.1**

**Sufficient female youth justice officers be rostered on duty to supervise female detainees.**

### **Recommendation 17.2**

**Girls and young women in youth detention have equivalent access to education, training, recreation and personal care facilities as boys and young men.**

### **Recommendation 17.3**

**A female youth justice officer be appointed in each youth detention centre as a 'Girl's Officer' who, in addition to her usual duties, is responsible for monitoring female detainees' access to education, training, recreation, health and facilities.**

## **SEPARATION OF MALES AND FEMALES**

The presence of female detainees was not considered when the youth detention facilities in the Northern Territory were designed. The former Don Dale Youth Detention Centre had no designated accommodation for females, who were housed close to males. In Alice Springs, there were no separate facilities for females. Management intended that females only be detained at Alice Springs Youth Detention Centre if they were on remand for a short period.<sup>46</sup> They were commonly transferred to the former Don Dale Youth Detention Centre.<sup>47</sup>

Before 2008, the lack of suitable separate accommodation for females did not create visible problems. There was on average only one female in detention in the Northern Territory each night. However, by 2009, the number of female detainees had grown<sup>48</sup> and the resulting risk of inappropriate interaction between the sexes affected security and stability at the former Don Dale Youth Detention Centre.

In March 2009, the Department of Correctional Services warned the Northern Territory Government of the growth in female detainees and the corresponding risks. A Cabinet submission sought funding for a separate female facility. The submission identified the government's duty to ensure girls and young women in detention were not '*harassed, assaulted or engaging in inappropriate or risky behaviour*'. The submission assessed the risk of inappropriate conduct between male and female detainees at the time as '*constant, even with direct supervision*' as male and female detainees were in close proximity throughout the day.<sup>49</sup>

The submission also warned against '*potential breaches of national and international standards and obligations*', referring to the specific needs of female detainees, including access to rehabilitation programs, at the former Don Dale Youth Detention Centre.<sup>50</sup> Minister McCarthy was again warned in April 2009. The Department of Correctional Services advised him that the separation arrangements in place had significantly undermined the effectiveness of both the classification and education systems and access to programs and activities for detainees.<sup>51</sup>

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Official Visitors also raised concerns with Minister McCarthy about the adequacy of the former Don Dale Youth Detention Centre for housing both male and female detainees.<sup>52</sup> Official Visitors recorded complaints from female detainees about boys yelling and swearing at them from the male section,<sup>53</sup> and having to make phone calls in the male section.<sup>54</sup>

Between 2009 and 2013, the Department of Justice and the then Department of Corrections routinely investigated possibilities for accommodating females, both at a facility located off-site from the former Don Dale Youth Detention Centre and at a self-contained on-site facility.<sup>55</sup> Former Corrections Minister McCarthy agreed that the rising number of female detainees and their accommodation needs created a *'very challenging issue'*.<sup>56</sup> However, no adequate improvements to separation were made in that time.<sup>57</sup> It should not have been a surprise when the risks were realised in separate incidents.

Before 2012, females were accommodated with low and medium-security males in a building on the former Don Dale Youth Detention Centre site away from the main administration and maximum-security accommodation building. On Boxing Day 2011, an incident, described as a riot, took place. Among other things, the incident involved male and female detainees jumping into a swimming pool together and, without any intervention by staff members present, engaging in suspected sexual activity. The situation was able to occur because standard operating procedures did not require the continued separation of males and females during the fire drill emergency procedure.<sup>58</sup> The *'morning after'* pill was prescribed the following day to three female detainees.<sup>59</sup> A mandatory report was made to the police about the suspected sexual activity, as the females were aged under 16.<sup>60</sup>

Following the Boxing Day incident, females were moved into the main building and a *'wall,'* which was in fact a door, separated the female from the male maximum-security area.<sup>61</sup> In real terms, this did little to improve the situation. Males and females could speak to one another through the door/wall,<sup>62</sup> and it was used as a door at night.<sup>63</sup> The only advantage this arrangement appeared to bring was an improvement in the male detainees' ability to progress through the classification system, because of the increased accommodation capacity in the low-security section.<sup>64</sup>

The problem with co-locating males and females in the main block of the former Don Dale Youth Detention Centre was again demonstrated one evening in September 2013, when four male detainees broke through the ceiling and made their way through the roof cavity to the female section.

The male detainees helped four female detainees join them in the roof cavity. Over a number of hours, and while having unfettered access to the roof cavity, the eight detainees caused significant damage throughout the centre. Two of the eight detainees, one male and one female, remained in the ceiling until the afternoon of the following day.<sup>65</sup> Once again, sexual activity was suspected. The *'morning after'* pill was prescribed and a mandatory report was made to police.<sup>66</sup>

These incidents were the predictable consequence of co-locating male and female adolescents in a confined environment. To have permitted the situation to reach this point amounted to a breach of the obligation to ensure detainees were prevented from being exposed to situations where they might be more readily able to engage in risky or inappropriate behaviour.

The risks posed by co-location remained unaddressed until the move to the former Berrimah prison, more than a year later, in December 2014. The size of that facility at least permitted clearer physical separation of males and females. However, as discussed above, girls and young women likely experienced a sense of isolation as a result of the size and layout of that facility.

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## ACCOMMODATION AND MANAGEMENT OF FEMALE DETAINEES

These incidents highlight the need to manage appropriately male and female detainees. This is a complex task, influenced by a number of countervailing considerations.

In December 2016, Territory Families commissioned a design brief for a new youth detention centre in Darwin, see Chapter 10 (Detention facilities). The brief calls for separate male and female accommodation, but otherwise makes no distinction between the facilities and services needed for male and female detainees or the special needs of females.<sup>67</sup>

The Department of Correctional Services advocated complete separation of the genders during the relevant period in its advices to government. The Hamburger report made the same recommendation in the adult context, because of the inequality of access to services on the current shared prison sites.<sup>68</sup>

While the United Nations human rights rules promote complete separation of the genders, the Commission considers there are good reasons for some mixing. Such interaction reflects the reality of life in families, schools, workplaces and the community. With competent management and supervision, it should be possible to have safe and productive interaction, for example, for limited educational activities.

Providing entirely separate accommodation and facilities for females and males in youth detention is also unlikely to be realistic in a practical or financial sense. The appropriate management of females must recognise that ordinarily they make up a very small portion of the detention population. Before 2008, there was on average one female detainee in the Northern Territory each night. In 2008–09, the average increased to three and, since 2010–11, the average has generally fluctuated between four and five female detainees.<sup>69</sup> However, in real terms, the number of female detainees in detention on any given day can be significantly more than the daily average. In early 2009 at the former Don Dale Youth Detention Centre, there was a new peak of eight female detainees.<sup>70</sup> Between late 2010 and early 2011, numbers remained at five or six, with one additional female at Aranda House.<sup>71</sup> In 2012–2013 the former Don Dale Youth Detention Centre recorded new peak daily numbers of 10–11 females.<sup>72</sup> At the current Don Dale Youth Detention Centre monthly average numbers of females have commonly been between four and eight.<sup>73</sup> Within this group, most of the female detainees were aged between 13 and 17.<sup>74</sup>

If the Commission's recommendations to increase the minimum age at which a child or young person can be sentenced or remanded to detention, and decrease the proportion of children and young people in detention on remand are implemented, the number of girls in detention may be reduced to a very small number, on average.<sup>75</sup>

Given these numbers, it is unrealistic to construct separate sites for females.

Research into the conundrum of small numbers of female detainees and their inequitable access to services in youth detention in Western Australia<sup>76</sup> proposes alternative approaches to better meet the needs of female detainees. This includes co-locating young female adults aged 18–25 with females aged 15–17, at least during some aspects of their routine to minimise the possibility of isolation.

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While there are some attractions in accommodating 15 to 17 year old girls with young female prisoners, for example, aged 18 to 25,<sup>77</sup> both the departure from accepted international standards which mandates against the co-location of children and adults and the significant administrative difficulties in accommodating prisoners with detainees do not command this course. There may also be cultural problems if the numbers are small.<sup>78</sup>

Another alternative that would not offend the youth and adult separation rule is to accommodate female detainees in a different form of secure accommodation, for example, in secure training centres or secure children's homes, as is practised in England and Wales.<sup>79</sup> The Commission encourages the Northern Territory Government to consider alternative options to alleviate the disadvantage and inequality girls and young women presently experience in youth detention in the Northern Territory.

If female detainees are to be accommodated on the same sites as males, perhaps in their own 'cottage', steps must be taken to ensure equal accommodation facilities and access to services, including education and recreation.

## PROTECTION OF GIRLS AND YOUNG WOMEN

The Commission heard that girls and young women were not always protected from inappropriate contact and conduct by male staff members. Evidence before the Commission showed that male youth justice officers did not always supervise girls appropriately and, in some cases, exploited their vulnerability.

### Staff physically handled and restrained girls and young women

Physical handling and restraint of female detainees by male staff members was routine. It occurred even when female staff members were present and in circumstances where female detainees were at risk, isolated or otherwise vulnerable. Physical contact by male staff members in these circumstances understandably made girls and young women feel uncomfortable and shamed.

The following examples demonstrate how physical handling practices across the period, often performed in formulaic application of written procedures, failed to recognise the vulnerability of girls and young women and ignored the reason why they should ideally have been supervised and handled by female staff members.

Some of these examples concern strip searches. Human rights standards relating to the strip searches of female detainees require that they should only be conducted in private and by trained staff of the same sex as the prisoner.<sup>80</sup> These standards are embodied in regulation 73 of the Youth Justice Regulations (NT), which provides that a detainee must not be stripped of clothing and searched in the sight or presence of a person of the opposite gender. During a cell placement in 2009 at the former Don Dale Youth Detention Centre, Trevor Hansen, then a youth justice officer, restrained a 15-year-old female detainee while a female staff member removed her clothes. Mr Hansen held the detainee face down on a cement bed and used his arms to restrain her. First, he used an arm lock while her pants were removed and then a leg lock, in which he put one ankle into her knee cavity and lifted the other leg over to restrict movement, while her shirt was removed.<sup>81</sup>

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PAL IMAGE:T

Restraint of female detainee

2:CAMERA 2

15:16:12



PAL IMAGE:T

Restraint of female detainee

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Mr Hansen said no-one in management ever suggested it was inappropriate for him to hold down a young girl while someone else took off her outer clothing, or that it was inappropriate for him to take any part in the undressing of a young girl at all.<sup>82</sup> It did not occur to Mr Hansen himself that it was inappropriate.

The Professional Standards Unit within the Department of Correctional Services investigated the incident after a complaint was made on behalf of the female detainee, but it found there had been no breach of procedure, which made no distinction between male and female detainees.<sup>83</sup> As to the removal of clothing of female detainees, the unit went no further than to recommend that:

*'it may be beneficial for the procedures relating to the management of female detainees in the security unit to include the offer of removal of all clothing and donning of the "at-risk" gown under the direct supervision of a female staff member only, in the first instance where possible.'*

Even after the unit reviewed the incident and amended the procedure, fulfilment was subject to the availability of sufficient female staff.<sup>84</sup> The absence of a policy dealing with girls in essence absolved those concerned from being the subject of a negative finding.

Given the Professional Standards Unit's attitude in 2009, it was unsurprising that gender-related concerns continued to receive little regard. In 2012, Mr Hansen was present during the strip search of two female detainees at the former Don Dale Youth Detention Centre. Mr Hansen was outside the open door of the room where the strip search was being conducted and briefly stepped into the room before retreating back behind the door.

The unit investigated the matter and found the procedures manual concerning admissions had been breached. It provided that a detainee must not be stripped of his or her clothing in the sight or presence of a person of the opposite gender, or in the presence of another detainee unless it is impracticable to move either detainee, yet recommended no further action be taken.<sup>85</sup> This conduct was also a breach of human rights standards which are embodied in regulation 73 of the Youth Justice Regulations, which similarly provided that a detainee must not be stripped of clothing and searched in the sight or presence of a person of the opposite gender.

The investigation found that Mr Hansen had said to the two female detainees being strip searched that he had previously conducted strip searches on female detainees and was prepared to do it again if the detainees did not comply with instructions. The two female youth justice officers conducting the search both heard Mr Hansen make this statement. In his evidence to the Commission, Mr Hansen suggested he had been misheard and that he had in fact said he had watched female officers perform strip searches before. He explained that due to insufficient female staff numbers, the procedure for strip searching when he began work as a youth justice officer was for a female staff member to conduct a strip search with a male staff member present.<sup>86</sup>

Based on the near contemporaneous accounts recorded in the investigation file of two staff members present, who had no apparent interest in the outcome, the unit's finding is likely to be correct. The significance of the remark is not so much that it amounts to an admission by Mr Hansen, but that such a remark could be made without prompting further investigation and, if necessary, correction of what ought to have been seen as an offensive practice.

Mr Hansen was a shift supervisor and senior youth justice officer at the former Don Dale Youth Detention Centre between 2010–2014.<sup>87</sup> In this context, his conduct also set a poor example for more junior staff.



Other young female detainees felt uneasy about being physically touched, spoken to or watched on camera by male staff members. AF described having shackles for a court escort from the Don Dale Youth Detention Centre put on her ankles by a male officer, which made her very uncomfortable.<sup>88</sup> AF also described being scared when, while at risk in an isolation cell at the Don Dale Youth Detention Centre, a male guard from the adult prison delivered her food by yelling at her to move to the other side of the cell and put her hands at her sides while he put her toast on the ground.<sup>89</sup>

AG told the Commission that usually a male officer would handcuff her on the way to and from court, or restrain her with handcuffs or zip ties when she was in the BMU.<sup>90</sup> She also said it was normally male youth justice officers who restrained girls when they got into a fight with each other, although female officers were present.<sup>91</sup>

But the evidence of, and about, AN best illustrated the disturbing way in which males might physically handle young females.<sup>92</sup> AN was often restrained and handled by multiple male youth justice officers when she was placed at risk and during episodes of self-harm and suicide attempts.<sup>93</sup>

AN described an occasion in 2015 when she was picked up and carried into a room by mostly male youth justice officers and one or two female officers. All her clothes, including her bra and underpants, were then forcibly cut from her with a 'Hoffman Knife'.<sup>94</sup> AN said she '*felt real shame [being naked] with all those men in the room*' while this occurred.<sup>95</sup>

An incident report corroborated AN's account and recorded more detail. The report described how one male officer held her ankles while she faced the door as two female officers cut the clothes from her body, and three other male officers stood on the other side of the open door holding her arms in handcuffs. When AN slipped a hand from the handcuffs, a male officer moved her (presumably naked) from the doorway to the bed, '*stabilising*' her there before he '*successfully extracted*' himself. At-risk clothing was put into the cell and the cell was '*secured*'. A short time later, AN attempted self-harm and was taken to hospital.<sup>96</sup>

Closed-circuit television footage from 2015 showed AN being restrained and surrounded by numerous male officers in two incidents relating to self-harm. On one occasion, she was handcuffed with her hands behind her back while being restrained on the ground by multiple male officers, despite the presence of a female officer and AN showing no signs of aggression towards staff members or ongoing risk to herself. On another occasion, numerous male officers gathered closely around her in a small isolation room while she lay on a bed unmoving and dressed in an at-risk gown following a self-harm attempt.<sup>97</sup>

It was not only female detainees at risk who were handled in such a manner, see Chapter 8 (Detention experiences – Voller). But it is particularly distressing to reflect on how vulnerabilities such as youth, gender and at-risk behaviour, must have been compounded in circumstances such as those AN described. It is fair to ask how such a situation could ever have been viewed as anything but unacceptable and demanding of immediate reform.



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Some incidents involving female detainees may require assistance from a male officer. However, female staff should be properly trained in restraint techniques should they need to use them for physical intervention when trained techniques in non-physical intervention fail. Training would make them competent and confident to restrain or manually handle female detainees in most cases, without needing male colleagues to intervene. Staff should be rostered so that two female officers are available to perform two-person restraints on females and to carry out routine tasks that require physical contact or entry into confined spaces with female detainees. Special considerations, such as whether any physical contact is appropriate in the particular circumstances and if so, what kind should apply when a young female is at risk.

If female detainees were inappropriately handled other than in accordance with the Youth Justice Regulations, that conduct may amount to an assault under section 188 of Schedule 1 of the *Criminal Code Act* (NT).

## Finding

**At times, some female detainees were inappropriately physically handled, restrained and stripped of their clothing by male youth justice officers. Strip searches of females by male youth justice officers was in breach of the human rights standards recognised in rule 52 of *United Nations Standard Minimum Rules for the Treatment of Prisoners*, which require that strip searches should only be conducted in private and by trained staff of the same sex as the prisoner, and which are embodied in regulation 73 of the Youth Justice Regulations (NT).**

### Recommendation 17.4

**The Youth Justice Regulations (NT) be amended to include a regulation requiring physical contact with female detainees only be by female youth justice officers unless there are no female youth justice officers rostered in the youth detention centre or in an emergency.**

## Male staff members behaved inappropriately

At times, some male staff members acted inappropriately, sometimes sexually, towards female detainees both inside and outside detention. One young woman who endured some of the worst examples of this conduct was AG. She spent more than 12 months in detention at the former Don Dale Youth Detention Centre between 2010 and 2012.

While in detention, AG was touched inappropriately by Conan Zamolo, a male youth justice officer, in the following manner. During an incident in which AG was on the floor after falling off a table, Mr Zamolo, who was supervising the girls and young women, stood or sat over her, grabbed her hands and used them to slap her in the face while saying 'stop slapping yourself, stop slapping yourself'.<sup>98</sup>

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Mr Zamolo sought to characterise this incident as 'silly' and 'playful', and emphasised that AG was laughing when it took place. He said it was an instance where he was trying 'not to make too big a deal over her refusal to go to bed', which was apparently 'in keeping with the general lighthearted spirit' he showed when seeking the female detainees' compliance.<sup>99</sup> In his view, his physical engagement with AG did not cross any boundaries.<sup>100</sup>

Mr Zamolo sought to explain further:

*Also, there was not a lot of fun in [the former Don Dale Youth Detention Centre], so I always tried to go along with the fun stuff as much as possible ... I eventually asked to not be assigned duties in J Block anymore. I was known among the detainees as a bit of [a] joker and I felt more vulnerable because I chose to engage with the kids like that ... [I] did not want to risk my employment because I liked to be lighthearted, which the [female] detainees tried to use against me when I was applying the rules more firmly than they liked.<sup>101</sup>*

AG recalled that older staff members would in effect 'pull up' younger staff members for this kind of behaviour, and that the younger staff members would 'get all sooky' when this occurred.<sup>102</sup> AG said that at the time, she and other detainees may also have considered the interactions as 'silly and playful'. However, looking back at age 20, she considered it inappropriate and 'pretty stupid' for a male staff member to be sitting over a 15-year-old female detainee making her slap herself.<sup>103</sup>

AG also told the Commission that another male youth justice officer, using a joking manner, made highly sexualised comments about her to male detainees who were her friends.<sup>104</sup> AG said that he also made similar comments to AG about a very young female relative who visited her.<sup>105</sup> AG described being very upset in both instances. The Commission could not locate the officer in question.

On one occasion after her release from the former Don Dale Youth Detention Centre, and while she was still aged under 18, AG received unsolicited sexualised messages on Facebook from Jon Walton, a male youth justice officer. She later returned to the former Don Dale Youth Detention Centre and Mr Walton was still working there.<sup>106</sup>

Mr Walton believed when he sent the messages that he was 'not allowed' to speak to former detainees.<sup>107</sup> He was aged in his early 20s at the time and described himself as 'immature'. He said in hindsight he was deeply ashamed and embarrassed about his mistake in communicating to AG in the manner he did. He said 'I was a very junior officer and I had very little real understanding of the position of power I held over the detainees'.<sup>108</sup> Mr Walton's employment, without screening or training, was symptomatic of the dire recruitment and selection processes in place, see Chapter 20 (Detention centre staff).<sup>109</sup>

Mr Walton and Mr Zamolo blamed their immaturity for their inappropriate conduct towards AG, which was in breach of the Northern Territory Department of Correctional Services' Code of Conduct. This highlights not only the inappropriate staff selection and training practices that operated at the former and current Don Dale Youth Detention Centres during the relevant period but also the poor oversight by management. The events involving AG are a manifestation of the obvious risks to the protection and wellbeing of detainees in the care of inappropriately selected and trained staff members.

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They were not the only ones. Former training officer Leonard de Souza raised concerns with management about inappropriate contact, such as touching in a sexual manner and cuddling, between male youth justice officers and female detainees.<sup>110</sup>

The Professional Standards Unit recommended taking disciplinary action against a male youth justice officer who worked at Aranda House in Alice Springs in 2009 for conduct including:

- behaving in a flirtatious manner towards a female detainee
- telling a boy in the centre, in front of other young men at the court holding cells, that he would allow him to strip search a girl when she came into the detention centre
- going into girls' cells alone, and
- remarking about the physical attributes of female detainees, including whether they were 'legal' or not.<sup>111</sup>

The Professional Standards Unit only investigated these matters, some of which were historical and the subject of prior complaints, after a female youth justice officer made a complaint that the same male colleague had sexually harassed her.<sup>112</sup>

As the North Australian Aboriginal Justice Agency (NAAJA) and Central Australian Legal Aboriginal Aid Service submitted, such instances of inappropriate conduct involving male staff and female detainees is particularly concerning given the likelihood of girls in detention having experienced trauma and abuse in their lives.<sup>113</sup>

## Finding

**At times, some female detainees and former detainees at the former Don Dale Youth Detention Centre were subject to inappropriate sexualised attention including touching, flirting and sexualised comments by some male youth justice officers.**

## More female staff members are needed

Girls are less likely to have to endure such transgressions by male staff members if there are more female staff members to supervise them. Human rights rules provide that only females should supervise girls and young women in youth detention. However, supervision by both sexes has benefits.

The Commission heard that having a mixture of male and female staff members contributes to normalising the environment for both male and female children and young people, while providing additional support for female detainees.<sup>114</sup>

Importantly, however, properly trained male staff members can similarly build relationships with, and provide mentoring for, young women.<sup>115</sup> There are also important cultural imperatives for employing additional female staff members, having proper regard to the appropriateness of certain communications and interactions between the genders among Aboriginal cultures.<sup>116</sup>

Senior officers Barrie Clee and Derek Tasker told the Commission of the ongoing difficulty in maintaining a suitable male-to-female staff ratio at the Alice Springs Youth Detention Centre. Mr Tasker commented that the lack of female staff had been a persistent issue during his entire time working in youth justice. At the time of giving evidence in March 2017, he said that Alice Springs Youth Detention Centre had only one female youth justice officer.<sup>117</sup>

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The Northern Territory Government accepts the need for more female staff members. It told the Commission in December 2016 that it was taking immediate action in response to the Hamburger report's recommendations.<sup>118</sup> In late April 2017, 25 new youth justice officers began work with Territory Families after completing five weeks of initial training. Thirteen are based at the Alice Springs Youth Detention Centre and the remainder are at the Don Dale Youth Detention Centre. Of the new recruits, 11 were women and 12 were Aboriginal.<sup>119</sup>

The Commission has not seen evidence of female Aboriginal staff members working in the detention centres during the relevant period. However, it is plain, given that the majority of male and female detainees are Aboriginal, that any efforts to increase female staffing levels should include Aboriginal women.<sup>120</sup> Recommendations on recruiting Aboriginal staff members are contained in Chapter 18 (Culture in detention).

## Female hygiene needs

The special needs of females in detention include adequate provision and choice of sanitary products and open access to washing during menstruation. These special needs were not met and female detainees experienced humiliating and degrading treatment as a result.

At least at the former Don Dale Youth Detention Centre, female detainees were not permitted to keep sanitary products in their cells and were often required to ask male officers for them, with no choice of tampons or pads.<sup>121</sup> Some girls were too embarrassed or ashamed to ask male officers for such items.<sup>122</sup> AG said sometimes other girls would ask her to ask the male guards for them.<sup>123</sup> Because the cells at the former Don Dale Youth Detention Centre did not have toilets or showers, females were also unable to go to the toilet or take a shower discreetly, without making a request of staff, if the need arose during menstruation. As recognised in NAAJA's submissions, it is '*completely culturally inappropriate for Aboriginal girls to have to speak about such matter with male staff.*'<sup>124</sup>

## Finding

**Female detainees' needs relating to menstruation were not met at the former Don Dale Youth Detention Centre.**

**This conduct was inconsistent with the human right to be free from discrimination on the grounds of sex which is a right that is recognised in Article 2 of the *Convention on the Elimination of All Forms of Discrimination Against Women* and Article 26 of the *International Covenant on Civil and Political Rights*, and which is embodied in section 22 of the *Sex Discrimination Act 1984* (Cth) and sections 19, 28 and 41 of the *Anti-Discrimination Act* (NT).**

**In relation to this conduct, the superintendent did not comply with section 151(2) of the *Youth Justice Act* (NT) which provided that the superintendent was responsible, as far as practicable, for the physical, psychological and emotional welfare of detainees in the detention centre.**

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## CONCLUSION

Girls and young women in youth detention during the relevant period did not consistently have their needs met and were the subject of inappropriate treatment as outlined in this chapter. The employment of more female staff, the consideration of the particular needs of girls and young women through a dedicated officer and implementing appropriate policies will assist in avoiding these problems of the past being repeated.

## ENDNOTES

- <sup>1</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, 1979, Article 2.
- <sup>2</sup> *Sex Discrimination Act 1984* (Cth) s 22; see also *Anti-Discrimination Act* (NT) ss 19, 28, 41; for an example of an analysis of the definition of ‘services,’ see *Rainsford v The State of Victoria and GSL Custodial Services Pty Ltd* (2008) 167 FCR 26 at 29; *Charles v State of Victoria (Corrections Victoria) (Human Rights)* [2015] VCAT 375 at [47]-[50].
- <sup>3</sup> Exh.311.050, Australasian Juvenile Justice Administrators Principles of Youth Justice in Australia, October 2014, tendered 28 April 2017, p. 3.
- <sup>4</sup> Other than provisions relating to the searching of female detainees. See *Youth Justice Act* (NT) s 20 and *Youth Justice Regulations* (NT) r 73.
- <sup>5</sup> Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice (‘Beijing Rules’), November 1985, tendered 11 October 2016, clause 26.4. Girls have specific health, cultural, social, relationship, recreational and sexual identity needs, which differ from boys. They also have similar needs to boys and relate more to their age and developmental stage than gender; for example, in education, skills development, structured activities, general recreation, health provision and emotional support: Exh.608.002, Annexure 2 to Statement of Neil Morgan, Office of the Inspector of Custodial Services Report *The Management of Young Women and Girls at Banksia Hill Detention Centre*, October 2013, tendered 28 June 2017, p. 7.
- <sup>6</sup> Exh.064.108, Northern Territory Department of Correctional Services’ Code of Conduct, September 2012, tendered 28 March 2017, p. 11.
- <sup>7</sup> Exh.064.108, Northern Territory Department of Correctional Services’ Code of Conduct, September 2012, tendered 28 March 2017, pp. 9, 12.
- <sup>8</sup> Exh.636.002, Appendix 2 to Precip of evidence of Elizabeth Grant, United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), December 2015, 2015, tendered 29 June 2017, rule 81.
- <sup>9</sup> Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice (‘Beijing Rules’), November 1985, tendered 11 October 2016, clause 26.4.
- <sup>10</sup> Exh.146.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 9.
- <sup>11</sup> Transcript, Michael Yaxley, 30 March 2017, p. 2300: lines 18-19.
- <sup>12</sup> Closed court transcript, AG, 24 March 2017, p. 8: lines 34-46 – p. 9: lines 1-15.
- <sup>13</sup> Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para. 23.
- <sup>14</sup> Exh.636.002, Appendix 2 to Precip of evidence of Elizabeth Grant, United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), December 2015, 2015, tendered 29 June 2017, rule 81.
- <sup>15</sup> Transcript, Michael Yaxley, 29 March 2017, p. 2214: line 45.
- <sup>16</sup> Exh.342.017, Floor plan of the former Don Dale Youth Detention Centre, tendered 9 May 2017, p. 2 (see area 34).
- <sup>17</sup> Transcript, Michael Yaxley, 29 March 2017, p. 2214: lines 45-47.
- <sup>18</sup> Exh.342.017, Floor plan of the former Don Dale Youth Detention Centre, tendered 9 May 2017, p. 2 (see area 44).
- <sup>19</sup> Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para 34; Closed court transcript, AY, 9 May 2017, p. 14: lines 10-32; Exh.342.017, Floor plan of the former Don Dale Youth Detention Centre, tendered 9 May 2017, p. 2.
- <sup>20</sup> Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para. 23.
- <sup>21</sup> Exh.321.017, Annexure 16 to Statement of John Elferink, Official Visitor reports, tendered 27 April 2017, pp. 14, 25.
- <sup>22</sup> Exh.190.001, Statement of Michael Yaxley, 2 March 2017, tendered 28 March 2017, para. 124.
- <sup>23</sup> Transcript, Antoinette Carroll, 15 March 2017, p. 1168: lines 20-40.
- <sup>24</sup> Exhibit 031.002, Annexure 1 to Statement of Keith Hamburger, *A Safer Northern Territory through Correctional Interventions*, 31 July 2016, p. 142.
- <sup>25</sup> Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para 97; Exh.153.001, Statement of Louise Inglis, 8 February 2017, tendered 24 March 2017, para 35; Transcript, Eliza Tobin, 24 March 2017, p. 1772: lines 3-10; Transcript, Barrie Clee, 15 March 2017, p. 1127: lines 29-37.
- <sup>26</sup> Exh.765.001, Officer’s report, 4 May 2015, tendered 22 August 2017, p. 1; Exh.146.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 18; Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para. 107. In Alice Springs, maintaining a reasonable number of female staff members on the roster was always difficult, and as at 14 March 2017, the Alice Springs Youth Detention Centre still only employed one female officer: Transcript, Barrie Clee, 15 March 2017, p. 1127: lines 30-36; Transcript, Derek Tasker, 13 March 2017, p. 1051: lines 34-44.
- <sup>27</sup> Exh.765.001, Officer’s report, 4 May 2015, tendered 22 August 2017, p. 1.
- <sup>28</sup> Exh.765.001, Officer’s report, 4 May 2015, tendered 22 August 2017, p. 1.
- <sup>29</sup> Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, para. 77.
- <sup>30</sup> Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 97; Exh.153.001, Statement of Louise Inglis, 8 February 2017, tendered 24 March 2017, para. 43; Transcript, Greg Harmer, 24 March 2017, p. 1775: lines 10-15; Closed court Transcript, AF, 23 March 2017, p. 22: lines 1-5; Closed court transcript, AG, 24 March 2017, p. 11: lines 25-46. Minister Elferink indicated in a response to concerns from the Official Visitor about females’ lack of access to the main sporting field that girls had access to sporting grounds ‘within their section’: Exh.321.017, Annexure 16 to Statement of John Elferink, Letter from Minister for Correctional Services to Ms Hosen, 18 September 2013, tendered 27 April 2017, p. 28. The evidence of other witness describing limited access was not challenged.
- <sup>31</sup> Exh.153.001, Statement of Louise Inglis, 8 February 2017, tendered 24 March 2017, paras 43-45; Transcript, Louise Inglis, 24 March 2017, p. 1772: lines 22-34.
- <sup>32</sup> Exh.321.017, Annexure 16 to Statement of John Elferink, Official Visitor reports, tendered 27 April 2017, p. 24.

- 33 Exh.263.001, Statement of Keith Brent Williams, 13 February 2017, tendered 31 March 2017, para. 40.
- 34 Exh.766.001, Official Visitor report by Keith Williams, 15 July 2015, tendered 22 August 2017, p. 0371.
- 35 Closed court transcript, AF, 23 March 2017, p. 22: lines 1-5; Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para 53; Closed court transcript, AG, 24 March 2017, p. 11: lines 25-46.
- 36 Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para. 53.
- 37 Transcript, Saki Muller, 24 March 2017, p. 1773: lines 1-5; Closed court transcript, AG, 24 March 2017, p. 11: lines 25-34, p. 12: lines 9-11.
- 38 The Commission did not receive evidence from any females about their detention conditions in Alice Springs.
- 39 Exh.050.001, Statement of Dylan Voller, 25 November 2016, tendered 12 December 2016, para. 35.
- 40 At Aranda House there were no dedicated education facilities for any detainees: see Chapter 16 (Education in detention) and Chapter 10 (Detention facilities).
- 41 Closed court transcript, AF, 23 March 2017, p 18-19: lines 30-36.
- 42 Exhibit 031-002, Annexure 1 to Statement of Keith Hamburger, *A Safer Northern Territory through Correctional Interventions*, 31 July 2016, tendered 5 December 2016, p. 142; Transcript, Keith Hamburger, 5 December 2016, p. 317: lines 5-15; Exh.161.001, Map of Don Dale, undated, tendered 24 March 2017, p.1.
- 43 Transcript, Keith Hamburger, 5 December 2016, p. 317: lines 5-15.
- 44 Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 95; Transcript, Louise Inglis, 24 March 2017, p. 1773: lines 34-40.
- 45 Exh.153.001, Statement of Louise Inglis, 8 February 2017, tendered 24 March 2017, paras 39-42.
- 46 Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 120.
- 47 Transcript, Russell Caldwell, 29 March 2017, p. 2138: lines 35-50; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para. 98.
- 48 Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, 'Chart 1: Yearly daily average number of youth in detention by Indigenous status and sex'.
- 49 Exh.318.009, Annexure 5 to Statement of Ken Middlebrook dated 3 March 2017, Budget Cabinet Submission: Construction of a female section at Don Dale Juvenile Detention Centre, 2009, tendered 26 April 2017, pp. 0557-0558.
- 50 Exh.318.009, Annexure 5 to Statement of Ken Middlebrook dated 3 March 2017, Budget Cabinet Submission: Construction of a female section at Don Dale Juvenile Detention Centre, 2009, tendered 26 April 2017, p. 0559.
- 51 Exh.095.012, Annexure GM-11 to Statement of Gerald McCarthy, Flash Brief: Separation of female detainees at Don Dale Centre, 16 April 2009, tendered 17 March 2017, p. 0056.
- 52 Exh.096.002, Brief to Minister from CEO regarding Official Visitor report, April 2009, tendered 17 March 2017, p. 1; Exh.096.008, Official Visitor report, 15 April 2010, tendered 17 March 2017, p. 1; Exh.096.010, Draft brief to Minister from CEO regarding Official Visitor report, August 2010, tendered 17 March 2017, pp. 1-2.
- 53 Exh.321.017, Annexure 16 to Statement of John Elferink, Official Visitor reports, tendered 27 April 2017, p. 90.
- 54 Exh.321.017, Annexure 16 to Statement of John Elferink, Official Visitor reports, tendered 27 April 2017, p. 90.
- 55 Exh.096.002, Brief to Minister from CEO regarding Official Visitor report, 20 April 2009, tendered 17 March 2017, p. 1; Exh.064.137, Juvenile Detention Facilities in Alice Springs, 29 January 2013, tendered 31 March 2017; Exh.206.001, Draft Cab Sub New Female section at the Don Dale Centre 2011, 15 March 2013, tendered 31 March 2017; Exh.212.007, Annexure SC-6 to Statement of Salli Cohen, Documents relating to finding alternative accommodation for females, 2013, tendered 31 March 2017.
- 56 Transcript, Gerald McCarthy, 17 March 2017, p. 1332: lines 25-30, p. 1351: lines 10-15.
- 57 See Chapter 23 (Leadership and management).
- 58 As a result, operating procedures were subsequently amended: Exh.064.070, Email re Detainee Management from Barrie Clee to all staff, 19 January 2012, tendered 31 March 2017, p.1.
- 59 Exh.311.002C, Flash Brief – Incident at Don Dale Juvenile Detention Centre – Fire Alarms Activated, 28 December 2012, tendered 28 April 2017, p. 1.
- 60 Exh.311.002C, Flash Brief – Incident at Don Dale Juvenile Detention Centre – Fire Alarms Activated, 28 December 2012, tendered 28 April 2017, p. 2.
- 61 Exh.064.070, email re 'Detainee Management' from Barrie Clee to all staff, 19 January 2012, tendered 31 March 2017, p.1.
- 62 Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para. 21.
- 63 Closed court transcript, AG, 24 March 2017, p. 8: lines 25-30.
- 64 Transcript, Michael Yaxley, 29 March 2017, p. 2214: lines 30-47 – p. 2215: lines 1-15.
- 65 Exh.211.014, Annexure SC-13 to Statement of Salli Cohen, Documents relating to incident of September 2013, tendered 31 March 2017, pp. 0166-0180.
- 66 Exh.211.001, Statement of Salli Cohen, 21 March 2017, tendered 30 March 2017, paras 164-165; Exh.223.001, Flash brief: Detainee disturbance – Attempted escape – Property damage, 7 September 2013, p. 2.
- 67 Exh.635.000, Outline design brief new Darwin Youth Detention Centre, 22 December 2016, tendered 29 June 2017, pp. 28-29.
- 68 Exh.031.002, Annexure 1 to Statement of Keith Hamburger, *A Safer Northern Territory through Correctional Interventions*, 31 July 2016, tendered 5 December 2016, p. 109.
- 69 Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, 'Chart 1: Yearly daily average number of youth in detention by Indigenous status and sex'.
- 70 Exh.095.014, Annexure GM-13 to Statement of Gerald McCarthy, Issues Paper – Youth Training Centre, May 2009, tendered



- 17 March 2017, p. 0064.
- <sup>71</sup> Exh.095.012, Annexure GM-11 to Statement of Gerald McCarthy, Flash Briefs, December 2010, January 2011 and March 2011, tendered 17 March 2017, pp. 0039-0041.
- <sup>72</sup> Exh.1072.001, Daily census records 0800 hours, 9 February 2012, tendered 28 October 2017; Exh.1073.001, Daily census records 0800 hours, 27 February 2013, tendered 28 October 2017; Exh.1092.001, Daily census records 0800 hours, 28 February 2013, tendered 28 October 2017 [REDACTED].
- <sup>73</sup> See example, Exh.767.001-771.001, Monthly Daily Average Reports August 2014, November 2014, March 2015, May 2015, September 2015, tendered 22 August 2017.
- <sup>74</sup> Australian Institute of Health and Welfare, 2017, *Youth Justice in Australia 2015–16*, AIHW Bulletin No. 139, Australian Institute of Health and Welfare, Canberra, Supplementary table S142b: Young people in detention on an average day by age, sex and Indigenous status, Northern Territory, 2015–16.
- <sup>75</sup> In 2014–15, the average proportion of females in detention who were unsentenced was 67%, in 2015–16 this rose to 90%; Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, 'Chart 6: Yearly daily average percentage of youth detainees who are unsentenced, by sex'.
- <sup>76</sup> Exh.608.002, Annexure 2 to Statement of Neil Morgan, Office of the Inspector of Custodial Services Report *The Management of Young Women and Girls at Banksia Hill Detention Centre*, October 2013, tendered 28 June 2017, p. 13.
- <sup>77</sup> Exh.608.002, Annexure 2 to Statement of Neil Morgan, Office of the Inspector of Custodial Services Report *The Management of Young Women and Girls at Banksia Hill Detention Centre*, October 2013, tendered 28 June 2017, pp. 9-11.
- <sup>78</sup> Exh.608.002, Annexure 2 to Statement of Neil Morgan, Office of the Inspector of Custodial Services Report *The Management of Young Women and Girls at Banksia Hill Detention Centre*, October 2013, tendered 28 June 2017, pp. 9-11.
- <sup>79</sup> Exh.608.002, Annexure 2 to Statement of Neil Morgan, Office of the Inspector of Custodial Services Report *The Management of Young Women and Girls at Banksia Hill Detention Centre*, October 2013, tendered 28 June 2017, pp. 9-11.
- <sup>80</sup> United National Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), rules 50-53.
- <sup>81</sup> Transcript, Trevor Hansen, 13 March 2017, p. 955: lines 15-40.
- <sup>82</sup> Transcript, Trevor Hansen, 13 March 2017, p. 956: lines 30-33, p. 957: lines 30-35.
- <sup>83</sup> See Chapter 22 (Detention system oversight).
- <sup>84</sup> Exh.064.005, Professional Standards Unit internal investigation report, 23 April 2009, tendered 13 March 2017, p. 4; Transcript, Trevor Hansen, 13 March 2017, p 956: lines 15-25. It is noted that subsequent to this investigation the cell placement procedure was also amended at Mr Middlebrook's direction to provide that no clothing was to be removed in the course of a cell placement (only an 'at risk' procedure): Transcript, John Fattore, 14 March 2017, p. 1011: lines 30-45.
- <sup>85</sup> Exh. 064.069, Professional Standards Unit preliminary investigation report, 23 April 2009, tendered 13 March 2017, pp. 2-4.
- <sup>86</sup> Transcript, Trevor Hansen, 13 March 2017, p. 970: lines 40-47 – p. 971: lines 1-35, p. 970: lines 11-18.
- <sup>87</sup> Exh.109.001, Statement of Trevor Hansen, 16 February 2017, tendered 21 March 2017, para. 5.
- <sup>88</sup> Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para. 56.
- <sup>89</sup> Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para. 84.
- <sup>90</sup> Exh.146.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 32.
- <sup>91</sup> Transcript (closed court), AG, 24 March 2017, p. 15: lines 29-35.
- <sup>92</sup> AN also described the 'wedgie' manoeuvre being used on her by Mr Hansen: see Chapter 13 (Use of force).
- <sup>93</sup> Exh.283.032, Officer's report, 22 April 2015, tendered 31 March 2017; Exh.160.017, Officer's report, 24 April 2011, tendered 24 March 2017; Exh.164.001, Use of force entry, 21 April 2015, tendered 24 March 2017; Exh.160.013, Officer's report, 28 January 2015, tendered 24 March 2017.
- <sup>94</sup> The Hoffman Knife is a tool designed to enable quick and effective release in hanging attempts and other trauma situations such as cutting seatbelts. It is generally used by first responders such as paramedics and police and a degree of training is required to use the tool effectively. The Children's Commissioner was appropriately critical of the use of the Hoffman Tool during 'at risk' procedures in youth detention: Exh.053.029, Annexure 19 to statement of Dylan Voller, Northern Territory Children's Commissioner own Initiative investigation report, August 2016, tendered 14 December 2016, pp. 19-22.
- <sup>95</sup> Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, para. 59.
- <sup>96</sup> Exh.160.019, Officer's report, 21 April 2015, tendered 24 March 2017, p. 2.
- <sup>97</sup> Exh.254.001, closed-circuit television footage relevant to AN (confidential exhibit), tendered 31 March 2017; Exh.255.001, closed-circuit television footage relevant to AN (confidential exhibit), 31 March 2017.
- <sup>98</sup> Exh.146.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 28.
- <sup>99</sup> Exh.097.001, Statement of Conan Zamolo, 16 March 2017, tendered 20 March 2017, paras 76-86.
- <sup>100</sup> Transcript, Conan Zamolo, 20 March 2017, p. 1446: lines 35-42.
- <sup>101</sup> Exh.097.001, Statement of Conan Zamolo, 16 March 2017, tendered 20 March 2017, paras 80, 86.
- <sup>102</sup> Closed court transcript, AG, 24 March 2017, p. 14: lines 16-27.
- <sup>103</sup> Closed court transcript, AG, 24 March 2017, p. 14: lines 6-10.
- <sup>104</sup> Exh.146.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 25.
- <sup>105</sup> Exh.146.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 27.
- <sup>106</sup> Exh.146.001, Statement of AG, 26 November 2016, tendered 24 March 2017, para. 26; Closed court transcript, AG, 24 March 2017, p. 14: lines 39-46.
- <sup>107</sup> Exh.147.001, Statement of John Walton (in response to AG), 21 February 2017, tendered 24 March 2017, para. 27.
- <sup>108</sup> Exh.147.001, Statement of John Walton (in response to AG), 21 February 2017, tendered 24 March 2017, paras 12, 26-34.
- <sup>109</sup> Exh.147.001, Statement of John Walton (in response to AG), 21 February 2017, tendered 24 March 2017, paras 17-18.
- <sup>110</sup> Transcript, Leonard de Souza, 22 March 2017, p. 1653: lines 36-37 – p. 1654: lines 1-25.

- <sup>111</sup> Exh.064.010, PSU Internal Investigation Report, October 2009, tendered 14 March 2017; Transcript, John Fattore, tendered 14 March 2017, p. 997: lines 5-45.
- <sup>112</sup> Transcript, John Fattore, 14 March 2017, p.998: lines 5-30. Following a complete investigation, the youth justice officer's employment was terminated for the harassment of the female youth justice officer, and for making comments of a sexual nature about detainees.
- <sup>113</sup> Submission, Central Australian Aboriginal Legal Aid Service, 10 July 2017, p. 62, para. 3.9; Submission, North Australian Aboriginal Justice Agency, 2 August 2017, Topic 3, p. 63.
- <sup>114</sup> Exh.031.002, Annexure 1 to Statement of Keith Hamburger, *A Safer Northern Territory through Correctional Interventions*, 31 July 2016, tendered 5 December 2016, pp. 143-144; Transcript, Harmer, Muller, Inglis and Tobin panel, p. 1771: lines 27-36.
- <sup>115</sup> Exh.189.001, Statement of Ian Johns, 1 March 2017, tendered 28 March 2017, paras 77-78.
- <sup>116</sup> Transcript, Marius Puruntatameri, 31 March 2017, p. 2401: lines 35-47 – p. 2402: lines 1-25.
- <sup>117</sup> Transcript, Derek Tasker, 14 March 2017, p. 1051: lines 35-47; p. 1052: lines 1-7.
- <sup>118</sup> Exh.034.002, Schedule A to Statement of Jeanette Kerr, *A Safer Northern Territory through Correctional Interventions – Response to Recommendations – Youth Only*, 5 December 2016, tendered 6 December 2016, p. 3.
- <sup>119</sup> Georgia Hitch, 'Don Dale: New training for youth justice officers underway in Northern Territory', [media release] 26 March 2017, Australian Broadcasting Corporation, <<http://www.abc.net.au/news/2017-03-26/don-dale-new-training-for-youth-justice-officers-underway-in-nt/8387806>>; Territory Families, 'New youth justice officer recruits complete initial training', [media release] 28 April 2017, Territory Families, <<https://territoryfamilies.nt.gov.au/news/new-youth-justice-officers-complete-initial-training>>.
- <sup>120</sup> North Australian Aboriginal Justice Agency and Central Australian Aboriginal Legal Aid Service called for an increase in Aboriginal women employed at youth justice officers so that they can mentor and support girls in detention: Submissions, North Australian Aboriginal Justice Agency, 2 August 2017, Topic 3, p. 63; Submissions, Central Australian Aboriginal Legal Aid Service, 10 July 2017, p. 53, para. 3.95.
- <sup>121</sup> Transcript, Saki Muller, 24 March 2017, p. 1775: lines 33-37; Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 67; Exh.152.001, Statement of Saki Muller, 10 February 2016, tendered 24 March 2017, para. 29.
- <sup>122</sup> Transcript, Eliza Tobin, 24 March 2017, p. 1775: lines 25-27.
- <sup>123</sup> Closed court transcript, AG, 24 March 2017, p. 11: lines 10-14.
- <sup>124</sup> Submissions, North Australian Aboriginal Justice Agency, 2 August 2017, Topic 3, p. 61.

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CULTURE IN DETENTION



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# CULTURE IN DETENTION

## INTRODUCTION

Among general principles that must be taken into account in the administration of the *Youth Justice Act (NT)* are the following:

- family relationships be preserved and strengthened where appropriate<sup>1</sup>
- a child or young person's sense of ethnic, racial or cultural identity be acknowledged and they have the opportunity to maintain that identity,<sup>2</sup> and
- an Aboriginal child or young person should be dealt with in a way that involves their community, if practicable.<sup>3</sup>

As over 90% of detainees are Aboriginal,<sup>4</sup> this chapter focuses on the importance of ensuring that detention facilities enable Aboriginal children and young people to maintain a connection to culture and family. This proposition is supported in international human rights instruments. The *United Nations Declaration on the Rights of Indigenous Peoples* specifically provides for the rights of Aboriginal people to maintain and develop all aspects of their culture.<sup>5</sup>

Chapter 4 (Challenges for Aboriginal people in the Northern Territory) discusses the protections which ensue from the maintenance and expression of Aboriginal culture.

Throughout the relevant period, youth detention services in the Northern Territory largely failed to support the right of Aboriginal children and young people to build and maintain their connection to culture and family. This was indicated by:

- the inadequately mitigated consequences of isolation and separation from country
- a general institutional failure to recognise and accommodate first languages other than English
- sporadic access to visits by Elders
- unsystematic access to cultural activities, and

- supervision and management by largely culturally unaware and at times culturally inappropriate staff members.<sup>6</sup>

## THE CULTURAL COMPETENCE OF STAFF

The cultural profile of staff employed at youth detention centres to supervise and assist in rehabilitation has never reflected the profile of the children and young people in detention. In addition, the cultural competence of staff members has fallen short of that required to build effective relationships between staff members and Aboriginal children and young people. Chapter 20 (Detention centre staff) covers other aspects of staffing in detention centres.

Cultural competence involves understanding what is important to particular Aboriginal people and how they may react to a situation, depending on their language or skin group and moiety,<sup>7</sup> and understanding how to manage cultural differences, such as avoidance relationships and preventing children and young people from being placed in compromising situations that could cause undue shame or embarrassment.<sup>8</sup>

Aboriginal people with a connection to their culture have a natural advantage over non-Aboriginal people in understanding, relating to and supporting Aboriginal children and young people. They can draw on their own experiences, which are often similar to those of the children and young people in detention. As a result, Aboriginal staff members may more easily form positive relationships with them. They are also more likely to have a better understanding of language, including body language, which is a communication and management advantage.<sup>9</sup>

One young person who was comforted by the presence of two Aboriginal youth justice officers explained:

*'Another reason I liked [the youth justice officers] was that they were Aboriginal. They were the only two Aboriginal guards when I was at Don Dale. [Name redacted] taught me painting. I would sit with him and paint. He was from [redacted] and sometimes we would even talk a bit in [language]. I'm not saying I didn't like the other guards because they were white. The difference was that Aboriginal guards understood your culture and your community. They understood our relationships with our country. I felt like they understood the sadness of being so far away from my community.'*<sup>10</sup>

There were very few Aboriginal staff members in the detention centres.<sup>11</sup> Until the appointment in mid-2015 of Mr Victor Williams as Superintendent of Youth Detention, overseeing both detention centres, there were no Aboriginal senior operational managers. Mr Williams left the position in approximately April 2017. In the detention centre schools, no more than two Aboriginal staff members were employed at any time over the relevant period, but more commonly there was only one.<sup>12</sup> On a visit to Australia in early 2017, the United Nations Special Rapporteur on the Rights of Indigenous People, Ms Victoria Tauli-Corpuz, recommended increasing efforts to recruit Aboriginal staff members and training all staff members in cultural sensitivity. She said this should be a priority given the high number of Aboriginal children and young people in detention.<sup>13</sup>

During the relevant period, the cultural competence training received by detention centre staff members was inadequate. It was only in about 2012 that youth justice officers began receiving any training in cultural awareness. Even then, some did not attend training because of staff shortages.<sup>14</sup>



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Senior Youth Justice Officer Ian Johns expressed the view that lack of cultural awareness was not a large problem.<sup>15</sup> However, he indicated that he did hear racist comments from time to time, which highlights the need for further training.<sup>16</sup> His evidence also suggests a need to provide more than a general education about Aboriginal culture and that staff members need to have an inquiring mind into the role of culture in individual Aboriginal children and young people's lives:

*'You certainly have to understand the cultural background ... I can give you an incident where one of the boy's heads was full of lice, and one of the officers said to me, "Johnsy, we need to cut his hair. It's full of lice but he won't – he said he's not allowed to." I said I will talk to him, and I found out in his, you know, culture, his grandfather said he's not allowed to shave his head. I said, "Alright". I personally talked to the boy. We gave him access to the phone. He talked to his grandfather and we were allowed to cut his hair down to get rid of the lice.'*<sup>17</sup>

*Many kids from communities...are initiated into law and have to be treated like men, even sometimes by kids older than them....If an Indigenous boy has done law and should be treated like an adult, [youth justice officers] should treat [him] appropriate to that law.'*<sup>18</sup>

Some staff members had good cultural awareness because of previous experience working with Aboriginal children and young people in Aboriginal communities, or having relationships with Aboriginal people.<sup>19</sup> These staff members more readily recognised that while some elements of Aboriginal culture are consistent across communities, other cultural elements are specific to different groups.<sup>20</sup> They were also more likely to go out of their way to find out about a child or young person's cultural background. However, staff members without those experiences were more likely to dismiss the relevance and importance of culture in managing children and young people.<sup>21</sup> Particular instances of culturally inappropriate behaviour by youth justice officers are detailed in Chapter 20 (Detention centre staff).

Teachers working in detention education services, which are administered by the Department of Education, can take an online cultural competence training program.<sup>22</sup> While this is an efficient means of rolling out training across a workforce, it is an inadequate substitute for face-to-face interaction with an Aboriginal educator, as noted by Associate Professor John Rynne:

*'Cultural awareness and cultural competency are two different things. A person can sit down for a cultural awareness training and be told this is what – how Aboriginal people live. Cultural competency implies that there is an understand [sic] of how the person will – what is important to that Aboriginal person depending on their language group, or their skin group or moiety, how they should be treated, what's important in their development, how they should be dealt with. So those elements of the culturally competent officer are significantly different to the cultural awareness. Cultural awareness just simply means that – well, it's taking on the notion that Aboriginal people are all the same and therefore if you do a generic program you will learn it.'*<sup>23</sup>

Recently, efforts have been made to improve the cultural profile and competence of the detention centre staff, but ongoing work is required. In 2016, the Department of Education mandated special measures that give Aboriginal applicants first consideration for all positions,<sup>24</sup> but more can be done to attract candidates with a cultural and linguistic background similar to prevalent language groups

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within the detention system and to upskill Aboriginal applicants. A 2014 review of the youth justice and community corrections recruitment processes recommended the Department of Correctional Services increase the recruitment of Aboriginal youth justice officers, including by using a special measures program that places greater emphasis on the Aboriginal relationship criteria for each role. It also supported launching a campaign to increase the pool of Aboriginal applicants for jobs in youth detention. It proposed doing this by using in-language radio advertising and having a greater presence at job expos and university information sessions to increase awareness of career opportunities in youth detention.<sup>25</sup> Other options could include:

- developing traineeship opportunities for young Aboriginal people and promoting those within communities, and
- looking at alternative employment arrangements, such as week on/week off with a rental subsidy, to attract more candidates from communities who have a background in youth work, such as sports and recreation officers and Aboriginal teacher's assistants, but who may not wish to relocate to Alice Springs or Darwin.

Feedback from staff and others about the need for in-depth education about the diverse background among Aboriginal children and young people in detention brings into question the adequacy of recent cultural awareness training delivered to youth justice officers.<sup>26</sup> It was suggested that ongoing training which delivered regular reminders of the importance of culture to the wellbeing of Aboriginal children and young people could address this.<sup>27</sup> The need for Aboriginal rather than non-Aboriginal people to deliver this training, as was recently the case, was also stressed.<sup>28</sup> The Commission notes that North Australian Aboriginal Justice Agency (NAAJA) has submitted that any development of organisational practices or policies or frameworks around developing cultural competence should be undertaken collaboratively with agencies and organisations working with Aboriginal people and culture and with appropriate audit and accountability mechanisms.<sup>29</sup>

Placing Aboriginal children and young people in the care of culturally competent staff members ensures that their connection to, and respect for, culture is maintained while in detention. At a pragmatic level, as past successes have shown, it supports the smooth operation of a detention centre and increases the effectiveness of education programs.

## Findings

**The cultural backgrounds of children and young people in detention were not reflected in the detention centre staff profile.**

**The recruitment and training of detention centre staff members did not adequately equip them to provide culturally appropriate support for detainees.**

## THE ELDERS VISITING PROGRAM AND CULTURAL ACTIVITIES

*'Because they [Aboriginal cultural activities and Elders visits] can show you how to, you know, show you culture and show you that, like there's other things than jail. Like, there's bush camps and that, and you can go out and go through the law and all that, and learn your culture and that, and you can go hunting and shit, instead of stealing and that.'*<sup>30</sup>

Vulnerable witness AQ

The role of Elders in Aboriginal culture is to 'ensure that young people are going through the proper ceremonies when they are young and come out as a mature adult',<sup>31</sup> both in Aboriginal and Western terms.

The benefits of cultural programs such as the Elders Visiting Program were identified by children,<sup>32</sup> youth justice officers,<sup>33</sup> Correctional Services managers,<sup>34</sup> participating Elders<sup>35</sup> and experts in forensic psychology as:<sup>36</sup>

- promoting mental health and wellbeing and reducing anxiety by:
  - providing children and young people with a two-way channel of communicating what is occurring in detention and in the community
  - enabling children and young people to speak in language, and
  - reinforcing the values of Aboriginal culture and spirituality
- inviting children and young people to reflect on, and take responsibility for, their actions before respected cultural figures, who can offer guidance on how to change
- directing children and young people to participate in programs to help with problems including drug and alcohol abuse and family violence
- enabling children and young people to raise issues they are uncomfortable discussing with detention centre staff or close family members due to a sense of shame
- providing Aboriginal children and young people from urban areas with little or no connection to culture an opportunity to learn about culture from Elders
- showing children and young people strong Aboriginal role models and enabling them to engage one on one, and
- generally improving the morale of children and young people.

Mr Puruntatameri, an Elder and Chairman of the Elders Visiting Program, outlined the capacity of Elders to provide a greater contribution to the rehabilitation of Aboriginal children and young people in youth detention:

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*'... In my view, certain improvements could be made to the [Elders] program. For example, we have been told by the Department [of Correctional Services] that there are reintegration and education programs to support the youth detainees. However, we have not seen the content of these programs and do not know how they are delivered. I consider that it would be useful for the Elders to have a look at these programs or curricula and assess whether they are culturally appropriate, and provide input on how they are delivered. As Elders, we cannot just "be used" to talk to these young people about how they can change their lives, we need greater visibility on what they are learning and what they are doing while in detention.'*<sup>37</sup>

Funding and support in the Department of Correctional Services for the Elders Visiting Program and other cultural activities in youth detention was minimal throughout most of the relevant period.<sup>38</sup> As a result, Elders' visits were infrequent and cultural activities were ad hoc.<sup>39</sup> For example, the Department of Correctional Services Annual Report for 2015-2016 outlines that Visiting Elders attended Alice Springs Youth Detention Centre twice in September and November of 2015 and twice in April of 2016, and Don Dale Youth Detention Centre twice in July, August and October 2015 and twice in February 2016.<sup>40</sup> Significant requests were placed on some Elders, many of whom have a range of other commitments in their communities and the program was unable to meet demand.<sup>41</sup> Some detainees had not heard of the program or been involved in any visits, and those who did sought increased access.<sup>42</sup> This meant that the full potential of involving Elders and other respected Aboriginal community members in the management and rehabilitation of Aboriginal children and young people was not realised.

The Commission notes NAAJA's submissions that the Elders Visiting Program should be expanded to serve as an additional oversight mechanism by which the Elders can be involved in dealing with detainees' complaints, participate in case management and provide feedback to staff on the welfare of the young people in detention.<sup>43</sup> Similarly the Commission notes that the Central Australian Aboriginal Legal Aid Service submitted that infrastructure improvements should be made to secure facilities, such as the inclusion of smoking pits, to enable Elders to conduct smoking ceremonies and other practical functions which will positively assist in the health and wellbeing of young people in detention.<sup>44</sup> Mr Puruntatameri proposed having a wider pool of visitors than Elders to include senior members of Aboriginal communities.<sup>45</sup>

As all parties have recognised the value of these visits, the Northern Territory Government should consider enhancing the program. Consultation with Aboriginal organisations about the most effective way to do this should be a preliminary step.

## OTHER CULTURAL PROGRAMS

*'There were no cultural activities available when I was in detention, and this would be good. I saw some kids lost without culture who would have benefitted with more cultural activities.'*<sup>46</sup>

Vulnerable witness BF

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The Elders Visiting Program was not the only cultural activity that received insufficient attention. Other cultural programs and activities suffered from lack of continuity of delivery. Some were delivered most consistently during the annual National Aborigines and Islanders Day Observance Committee (NAIDOC) week, although the Commission was told that it has waned in recent years.<sup>47</sup> For some children and young people in detention, the only cultural activities they experienced were those delivered as part of NAIDOC week.<sup>48</sup> But even this single event gave detention centre staff members an opportunity to show respect for and interest in Aboriginal culture, improving their own cultural awareness and relationships with children and young people.<sup>49</sup>

While providing a positive experience, cultural activities that are restricted to NAIDOC week are not enough:

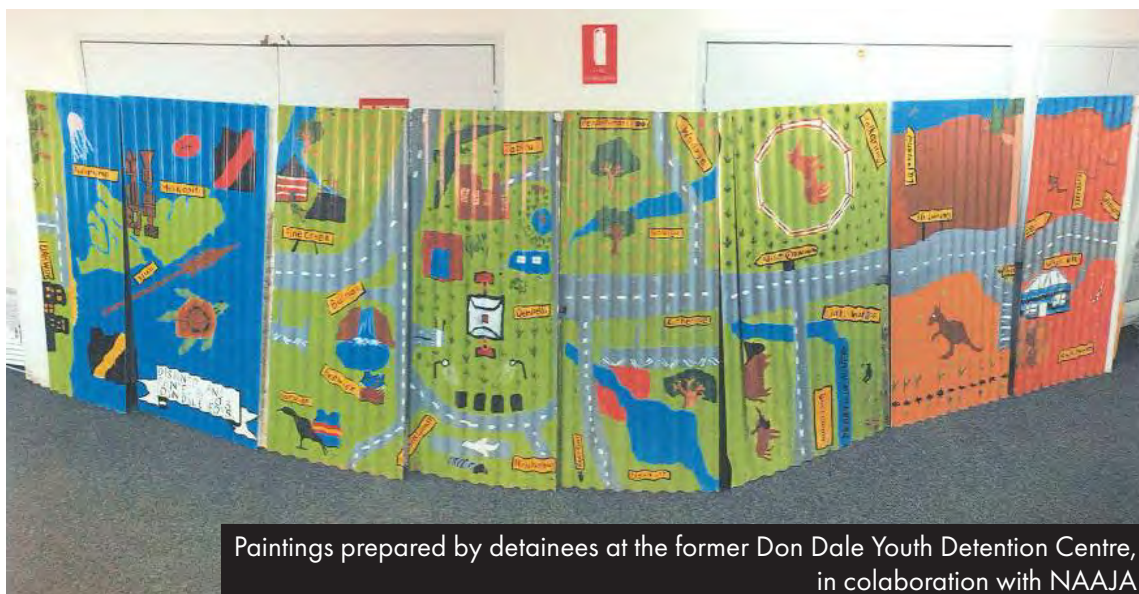
*'[Participating in limited activities does] not assist Aboriginal children to learn about kinship and Aboriginal culture and can result in their alienation. These activities are superficial and only amount to a fun outing rather than engaging children with their community, land and culture.'*<sup>50</sup>

From 2012 to 2016, Red Dust, an Aboriginal organisation focused on engaging children and young people through music and culture, ran a program at the Owen Springs Education Unit in the Alice Springs Youth Detention Centre. The program ended when the facilitator left and could not be replaced.<sup>51</sup> The Tivendale School at the Darwin detention centre has in the past used Aboriginal organisations, such as the Danila Dilba Health Service and the Council for Aboriginal Alcohol Program Services, to run culturally appropriate health education programs.<sup>52</sup> From 2007 to 2014, Danila Dilba delivered education programs on alcohol and other drugs, eventually covering all areas of wellbeing, including building resilience. The Departments of Education and Correctional Services had requested that Danila Dilba fund and run the sessions.<sup>53</sup> In 2015, Danila Dilba had to terminate the programs as it was unable to continue funding them and could not secure funding from the Northern Territory Government.<sup>54</sup> However, in February 2017, it was invited to deliver a 'culturally resonant' program, Deadly Choices, at the Don Dale Youth Detention Centre.<sup>55</sup> This program addresses the physical and mental health and wellbeing of Aboriginal children and young people about issues such as chronic disease, nutrition, smoking, healthy minds and healthy relationships.<sup>56</sup>

When Mr Michael Yaxley was Assistant General Manager at the former Don Dale Youth Detention Centre, external Aboriginal organisations delivered cultural programs which had positive results but were not permanently funded.<sup>57</sup> He described a mural-painting project delivered by NAAJA as an 'amazing experience' for the children and young people in detention.<sup>58</sup>

He said that working with Aboriginal organisations aided communication between staff members and children and young people, improving the overall good governance of the detention centre.<sup>59</sup> When the working relationship between youth detention authorities and organisations like the NAAJA soured,<sup>60</sup> it affected children's access to these important activities.

Since each of these programs assisted to improve detainees' behavior and operation of the centres it is regrettable and disappointing that the responsible departments, Corrections, Health and/or Education, could not find the modest sums to maintain them.



Paintings prepared by detainees at the former Don Dale Youth Detention Centre, in collaboration with NAAJA

Source: Exh.208.001; Nine photographs of paintings, tendered on 30 March 2017, pg. 8.

Recently, efforts have been made to facilitate delivery of cultural activities by:

- employing two Aboriginal staff members in roles dedicated to those activities<sup>61</sup>
- engaging Aboriginal health organisations Danila Dilba and the Central Australian Aboriginal Congress to deliver regular wellbeing services to Aboriginal children and young people in detention<sup>62</sup>, and
- foreshadowing the recruitment of a professional with experience in consulting and collaborating with non-government organisations and Aboriginal communities to 'lead a process whereby such groups will have meaningful input into the design and delivery of programs and initiatives across Territory Families'.<sup>63</sup>

These positive developments should be maintained and expanded. The profile of the overwhelming majority of children and young people in detention in the Northern Territory means that Aboriginal cultural considerations must be at the centre of program activity, service design and delivery. Only then can programs be relevant and effective.<sup>64</sup> There are obvious and tangible benefits flowing from routine access to programs that promote cultural knowledge and participation.<sup>65</sup>

## Findings

**The Elders Visiting Program was delivered too infrequently and the Elders who visited did not come from the range of communities reflected in the population of the centres.**

**Until recently, delivery of cultural and culturally appropriate activities and programs lacked continuity of delivery.**

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## OTHER CULTURAL CONSEQUENCES OF DETENTION

Other examples of the cultural impact of confinement and separation on Aboriginal children and young people in detention include:

- inability to access traditional medicine
- inability to continue or commence initiation
- not recognising status through initiation, which can cause significant shame, and
- inability to attend ceremonies or funerals on country that are part of kinship and community responsibilities, and an aspect of the growth of Aboriginal children and young people.<sup>66</sup>

A long-term senior youth justice officer at both the former and current Don Dale Youth Detention Centres, observed that children and young people in detention experience ‘*real distress*’ because they could not attend a funeral, and understood this could cause ‘*real dislocation*’ with family.<sup>67</sup> He could not recall any occasion when a child or young person in detention had been able to attend ‘*sorry business*’ following a funeral.<sup>68</sup>

Chapter 16 (Education in detention) discusses the importance of ensuring the children and young people in detention maintain their connection to language, and providing appropriate interpreting services for those detainees for whom English is not their first language.

## CULTURAL INITIATIVES IN OTHER JURISDICTIONS

Many jurisdictions incorporate cultural practice in their detention centres through partnerships with local Aboriginal communities. At the Reiby Juvenile Justice Centre (Reiby) in New South Wales Aboriginal partner organisations facilitate Elders from the local council visiting the centre and running activities like ‘*learning circles*’.<sup>69</sup> Learning circles or ‘*yarning circles*’ are a feature in many youth justice centres and provide a forum where children and young people can discuss issues with Elders and learn about their culture.<sup>70</sup> They are often run by community members and have shown success in re-engaging children and young people with culture.<sup>71</sup>

Reiby also has an Aboriginal Community Consultative Committee with membership from government, the community and detention centre staff.<sup>72</sup> The Committee provides and facilitates programs for children and young people in custody, providing Reiby with advice on how to best manage Aboriginal overrepresentation. Reiby relies on the Committee and their networks to refer services that can be made available to children and young people.<sup>73</sup> The Cleveland Youth Detention Centre (Cleveland) in Queensland has a similar advisory group that provides counsel on programs and community issues.<sup>74</sup> Cleveland also has a community partnership arrangement with a non-government organisation from Cairns, the Nintiringanyi Cultural Training Centre, which visits the centre every week to run a youth empowerment program and mentoring.<sup>75</sup>

Recruitment of Aboriginal staff in detention centres is critical in supporting children and young peoples’ cultural needs. At Cleveland one fifth of the staff identify as Aboriginal and Torres Strait Islander.<sup>76</sup> In 2014 Cleveland also established a Cultural Unit that works to engage Aboriginal children and young people with culture and provides advice to staff on culturally appropriate practice.<sup>77</sup> Similarly, at Cavan in South Australia the Adelaide Youth Training Centre has developed a Youth Justice Aboriginal Cultural Inclusion Strategy to strengthen collaborative partnerships with Aboriginal communities and service providers.<sup>78</sup> The strategy is also designed to build a culturally



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competent youth justice workforce and improve family and cultural connections.<sup>79</sup> In South Australia the *Youth Justice Administration Act 2016 (SA)* recognises and responds to the overrepresentation of Aboriginal children and young people in detention, incorporating specific provisions to ensure a best practice approach to their cultural needs.<sup>80</sup>

## CONCLUSION

An approach to youth detention that recognises and uses the value of connection to culture for Aboriginal children and young people will improve rehabilitation,<sup>81</sup> and is also likely to reduce reoffending and make the community safer.<sup>82</sup>

In the future, youth detention services must ensure that where possible cultural practices are meaningfully incorporated into all aspects of its operations, as has been achieved in some other jurisdictions. Staff must be properly equipped to provide culturally appropriate support to detainees. This approach must be supported by senior leadership within Territory Families and within the relevant detention facilities.

### Recommendation 18.1

#### Territory Families:

- a. **implement policies to incorporate Aboriginal cultural competence and safety in the design and delivery of education, programs, activities and services for children and young people in detention**
- b. **implement the recommendations of the 2014 review of the youth justice and community corrections recruitment processes targeted at recruiting more Aboriginal youth justice officers**
- c. **require case management assessments to ascertain a detainee’s personal, family and cultural background, including skin or language group and competence in the English language, and**
- d. **establish a working party comprised of representatives of relevant Aboriginal organisations, the department responsible for youth detention and senior representatives of the detention centres to explore the development, funding and implementation of an enhanced Elders Visiting Program and other culturally appropriate activities and programs.**



## ENDNOTES

- <sup>1</sup> *Youth Justice Act* (NT), s. 4(h).
- <sup>2</sup> *Youth Justice Act* (NT), s. 4(j).
- <sup>3</sup> *Youth Justice Act* (NT), s. 4(o).
- <sup>4</sup> Exh.115.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, para. 17, p.3a.
- <sup>5</sup> Exh.005.001, International Covenant on Civil and Political Rights, 16 December 1966, tendered 11 October 2016, Article 27; Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, Article 30; Exh.006.005, United Nations Standard Minimum Rules for the Treatment of Prisoners ('the Mandela Rules'), 31 July 1957, tendered 11 October 2016, Rules 78 and 79; United Nations Declaration on the Rights of Indigenous Peoples, 2007, United Nations Chapter 20 (Detention centre staff).
- <sup>6</sup> Transcript, John Rynne, 17 March 2017, p. 1308: lines 25-34.
- <sup>7</sup> Exh.115.001, Statement of Olga Havnen Part 1, 16 February 2017, tendered 21 March 2017, para. 17; Transcript, Marius Puruntatameri, 31 March 2017, pp. 2410 and 2411: lines 26-47 and lines 1- 2.
- <sup>8</sup> Exh.435.000, Statement of Phil Brown, 2 May 2017, tendered 12 May 2017, paras 15-17.
- <sup>9</sup> Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 42.
- <sup>10</sup> As at 7 July 2017: only 16 out of 73 youth justice officers across the two detention centres were Aboriginal, and only one of the 22 female youth justice officers was Aboriginal; only two of 14 senior youth justice officers, and 1 of 4 shift supervisors were Aboriginal; and there were no Aboriginal case management staff: Exh.779.002, Correspondence from NTG – further information on detention aspects – Annexure B, 7 July 2017, tendered 22 August 2017, p. 3; Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 42.
- <sup>11</sup> Transcript, Marion Guppy, 16 March 2017, p. 1251: lines 40-45.
- <sup>12</sup> Tauli-Corpuz, V, *End of Mission Statement by UNSR on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Australia*, 2017, United Nations Special Rapporteur on the Rights of Indigenous Peoples, viewed on 20 July 2017. Available at <http://unsr.vtaulicorpuz.org/site/index.php/statements/181-end-statement-australia>.
- <sup>13</sup> Transcript, Leonard De Souza, 22 March 2017, p. 1660: lines 9-11; Transcript, Marius Puruntatameri, 31 March 2017, p. 2403: lines 4-11; Transcript, Ben Kelleher, 21 March 2017, p. 1540: lines 13-21.
- <sup>14</sup> Exh.189.001, Statement of Ian Johns, 1 March 2017, tendered 28 March 2017, para. 81.
- <sup>15</sup> Exh.189.001, Statement of Ian Johns, 1 March 2017, tendered 28 March 2017, para. 81.
- <sup>16</sup> Transcript, Ian Johns, 28 March 2017, p. 2022: lines 27-35.
- <sup>17</sup> Exh.189.001, Statement of Ian Johns, 1 March 2017, tendered 28 March 2017, paras 82-83.
- <sup>18</sup> Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 16; Transcript, Ian Johns, 28 March 2017, p. 2022: lines 37-40.
- <sup>19</sup> Transcript, John Rynne, 17 March 2017, p. 1309: lines 11-22; Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 16.
- <sup>20</sup> Transcript, John Rynne, 17 March 2017, p. 1309: lines 20-25.
- <sup>21</sup> Transcript, Marion Guppy, 16 March 2017, p. 1260: lines 8-36.
- <sup>22</sup> Transcript, John Rynne, 17 March 2017, p. 1308: lines 26-34.
- <sup>23</sup> Transcript, Marion Guppy, 16 March 2017, p. 1252: lines 5-10. The scope of employment of Aboriginal staff in youth detention is discussed further in Chapter 20 (Detention centre staff)
- <sup>24</sup> Exh.753.004, Annexure MP-4 to Statement of Mark Payne, 11 May 2017, Youth Justice and Community Corrections Recruitment Review, November 2014, tendered 25 July 2017, pp. 14-15.
- <sup>25</sup> Exh.189.001, Statement of Ian Johns, 1 March 2017, tendered 28 March 2017, para. 80; Transcript, Marius Puruntatameri, 31 March 2017, p. 2417: lines 20-40.
- <sup>26</sup> Transcript, Marius Puruntatameri, 31 March 2017, p. 2403: lines 14-20.
- <sup>27</sup> Transcript, Ian Johns, 28 March 2017, p. 2036: line 31-p. 2037: line 6
- <sup>28</sup> Submissions North Australian Aboriginal Justice Agency, Detention, 2 August 2017, p.120.
- <sup>29</sup> Closed court transcript, AQ, 28 March 2017, p. 7: lines 28-32.
- <sup>30</sup> Transcript, Marius Puruntatameri, 31 March 2017, p. 2401: lines 4-8.
- <sup>31</sup> Transcript, Dylan Voller, 12 December 2016, p. 686, lines 24 - 34 and 20 April 2017, p. 2680, lines 15 - 32; Closed court Transcript, BF, 13 March 2017, p. 12: lines 44-46; Exh.180.001, Statement of AQ, 14 February 2017, tendered 28 March 2017, para. 65.
- <sup>32</sup> Transcript, Ian Johns, 28 March 2017, p. 2038: lines 23-31.
- <sup>33</sup> Exh.269.001, Statement of Victor Williams, 28 February 2017, tendered 31 March 2017, paras 68-73.
- <sup>34</sup> Exh.256.001, Statement of Marius Puruntatameri, 15 February 2017, tendered 31 March 2017, para. 9; Transcript, Marius Puruntatameri, 31 March 2017, pp. 2400-2404.
- <sup>35</sup> Exh.094.001, Statement of John Rynne, 1 March 2017, tendered 17 March 2017, para. 30; Holmes, C & Stephenson, P, *Evaluation of the Elders Visiting Program*, 2011, Batchelor Institute of Indigenous Tertiary Education Research Division, p. vi.
- <sup>36</sup> Exh.256.001, Statement of Marius Puruntatameri, 15 February 2017, tendered 31 March 2017, para. 14.
- <sup>37</sup> Exh.031.002, Annexure 1 to Witness Statement of Robert Keith Hamburger, 5 October 2016, A Safer Northern Territory Through Correctional Interventions, tendered 05 December 2016, p. 161.
- <sup>38</sup> Exh.269.001, Statement of Victor Williams, 28 February 2017, tendered 31 March 2017, para. 68; Exh.256.001, Statement of Marius Puruntatameri, 15 February 2017, tendered 31 March 2017, paras 7-8; Transcript, Marius Puruntatameri, 31 March 2017, p. 2417: line 41- p. 2418 line 7; Submission, North Australian Aboriginal Justice Agency, Detention, 2 August 2017, p. 122; Exh.153.001, Statement

of Louise Inglis, 15 February 2017, tendered 24 March 2017, para. 92; Transcript, Ian Johns, 28 March 2017, p. 2038: lines 13 - 31; Transcript, Ken Middlebrook, 26 April 2017, p. 3042: lines 30-35; Transcript, Jamal Turner, 13 March 2017, p. 922: lines 40-43.

40 Northern Territory Department of Correctional Services, *2015-16 Annual Report* 27 October 2016, p. 84-85

41 Exh.094.001, Statement of John Rynne, 17 March 2017, para. 30; Transcript, Marius Puruntatameri, 31 March 2017, p. 2407, lines 5-10.

42 Exh.084.001, Statement of BY, 21 February 2017, tendered 16 March 2017, para. 67; Exh.068.001, Statement of BF, 20 February 2017, tendered 13 March 2017, para. 25; Exh.159.001, Statement of AN, 17 February 2017, tendered 24 March 2017, para. 70; Exh.065.001, Statement of Jamal Turner, 21 February 2017, tendered 13 March 2017, para. 74; Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para. 42; Exh.167.001, Statement of BQ, 17 February 2017, tendered 27 March 2017, para. 49; Closed court transcript, AU, 23 March 2017, p. 12: lines 9-12; Closed court transcript, AQ, 28 March 2017, p. 7: lines 25-32.

43 Submission, North Australian Aboriginal Justice Agency, Detention, 2 August 2017, p.153.

44 Submission, Central Australian Aboriginal Legal Aid Service, Detention, 10 July 2017, pp. 91-92.

45 Transcript, Marius Puruntatameri, 31 March 2017, p. 2407: lines 30-42.

46 Exh.068.001, Statement of BF, 20 February 2017, tendered 13 March 2017, para. 71.

47 Exh.189.001, Statement of Ian Johns, 1 March 2017, tendered 28 March 2017, para. 79.

48 Exh.180.001, Statement of AQ, 14 February 2017, tendered 28 March 2017, para. 65.

49 Transcript, Ian Johns, 28 March 2017, p. 2040: lines 44-45; p. 2041: lines 5-25.

50 Exh.538.000, Statement of Dr Christine Fejo-King, 22 May 2017, tendered 21 June 2017, para. 24.

51 Exh.262.001, Statement of Anthony Collins, 24 February 2017, tendered 31 March 2017, para. 28.

52 Transcript, Lisa Coon, 21 April 2017, p. 2725: lines 5-15.

53 Exh.115.001, Statement of Olga Havnen, 16 February 2017, tendered 21 March 2017, para. 26.

54 Exh.115.001, Statement of Olga Havnen, 16 February 2017, tendered 21 March 2017, para. 26.

55 Exh.115.001, Statement of Olga Havnen, 16 February 2017, tendered 21 March 2017, para. 33.

56 Exh.115.001, Statement of Olga Havnen, 16 February 2017, tendered 21 March 2017, para. 33.

57 Transcript, Michael Yaxley, 30 March 2017, p. 2275: lines 5-10.

58 Transcript, Michael Yaxley, 30 March 2017, p. 2275: lines 30-41; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 84.

59 Transcript, Michael Yaxley, 30 March 2017, p. 2275: lines 40-45.

60 The relationship between NAAJA and youth detention management is discussed further in Chapter 23 (Leadership and management).

61 Exh.090.001, Statement of Brett McNair, 21 February 2017, tendered 16 March 2017, para. 28.

62 Those services are discussed further in Chapter 15 (Health, mental health and children at risk).

63 Exh.033.001, Statement of Jeanette Kerr, 2 December 2016, tendered 6 December 2016, para. 15. The Commission notes that in the 7 month period since Ms Kerr's statement, the approval process for hiring such a professional had not been completed: see Transcript, Ken Davies, 30 June 2017, p. 5411: lines 5 - 25 .

64 Exh.375.000, Statement of CB, 10 May 2017, tendered 11 May 2017, para. 84.

65 Transcript, Olga Havnen, 21 March 2017, p. 1589: lines 30-40.

66 Transcript, John Rynne, 17 March 2017, pp. 1307-1308.

67 Transcript, Ian Johns, 28 March 2017, p. 2039: lines 17-42.

68 Transcript, Ian Johns, 28 March 2017, p. 2039: lines 43-45.

69 Transcript, Leilani Tonumaipea, 12 May 2017, p. 3875: lines 7-12.

70 For example, Cobham Juvenile Justice Centre, Adelaide Youth Training Centre and Cleveland Youth Detention Centre.

71 Site visit, Cobham Juvenile Justice Centre, 7 March 2017; Site visit, Adelaide Youth Training Centre, 31 January 2017; Site Visit, Cleveland Youth Detention Centre, 4 May 2017.

72 Transcript, Leilani Tonumaipea, 12 May 2017, p. 3881: lines 37-39.

73 Transcript, Leilani Tonumaipea, 12 May 2017, p. 3881: lines 43-47.

74 Site visit, Cleveland Youth Detention Centre, 4 May 2017.

75 Site visit, Cleveland Youth Detention Centre, 4 May 2017.

76 Site visit, Cleveland Youth Detention Centre, 4 May 2017.

77 Site visit, Cleveland Youth Detention Centre, 4 May 2017.

78 Government of South Australia, 'Youth Justice Aboriginal Cultural Inclusion Strategy 2015-18', Department for Communities and Social Inclusion [website], <[http://www.dcsi.sa.gov.au/\\_\\_data/assets/pdf\\_file/0020/40187/Youth-Justice-Aboriginal-Cultural-Inclusion-Strategy-2015-2018.pdf](http://www.dcsi.sa.gov.au/__data/assets/pdf_file/0020/40187/Youth-Justice-Aboriginal-Cultural-Inclusion-Strategy-2015-2018.pdf)>, accessed 10 October 2017.

79 Government of South Australia, 'Youth Justice Aboriginal Cultural Inclusion Strategy 2015-18', Department for Communities and Social Inclusion [website], <[http://www.dcsi.sa.gov.au/\\_\\_data/assets/pdf\\_file/0020/40187/Youth-Justice-Aboriginal-Cultural-Inclusion-Strategy-2015-2018.pdf](http://www.dcsi.sa.gov.au/__data/assets/pdf_file/0020/40187/Youth-Justice-Aboriginal-Cultural-Inclusion-Strategy-2015-2018.pdf)>, accessed 10 October 2017.

80 *Youth Justice Administration Act 2016* (SA) s 3(3); Youth Justice Administration Regulations 2016 (SA) reg 5.

81 Transcript, Gerry McCarthy, 17 March 2017, p. 1374: lines 10-20.

82 Exh.741.139, Annexure MP-139 to Statement of Mark Payne, 23 February 2017, Northern Territory Department of Correctional Services Elders Visiting Program Policy, tendered 25 July 2017, pp. 1-2.