



**ROYAL  
COMMISSION  
AND BOARD  
OF INQUIRY**

INTO THE PROTECTION  
AND DETENTION OF  
CHILDREN IN THE  
NORTHERN TERRITORY

**FINDINGS AND  
RECOMMENDATIONS**

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# FINDINGS

# FINDINGS – VOLUME 2A

Findings	Report reference
<i>Chapter 10 (Detention facilities)</i>	
The youth detention centres used during the relevant period were not fit for accommodating, let alone rehabilitating, children and young people.	Vol 2A, p. 101
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.	Vol 2A, p. 101
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.	Vol 2A, p. 101
The youth detention centres created difficult and unsafe working environments for staff.	Vol 2A, p. 101

Findings	Report reference
<b>Chapter 11 (Detention centre operations)</b>	
<p>The requirements of section 150 of the <i>Youth Justice Act</i> (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:</p> <ul style="list-style-type: none"> <li>• the centres' staff failed to explain the rules, rights and responsibilities,</li> <li>• 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,</li> <li>• 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.</li> </ul> <p>As a result of these failures, the experiences of some young people were more distressing than they needed to have been.</p>	Vol 2A, p. 121
<p>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.</p>	Vol 2A, p. 125
<p>Contrary to the intent of the <i>Youth Justice Act</i> (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.</p>	Vol 2A, p. 132
<p>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.</p> <ol style="list-style-type: none"> <li>1. The consequences of transfers have, at times, included the improper treatment of children and young people.</li> <li>2. Section 154 of the <i>Youth Justice Act</i> (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.</li> <li>3. Children under the age of 15 were transferred to and accommodated in an adult correctional facility.</li> </ol>	Vol 2A, p. 145

Findings	Report reference
<b>Chapter 12 (Verbal abuse, physical control and humiliation)</b>	
<p>Detainees were frequently subjected to verbal abuse and racist remarks.</p>	<p>Vol 2A, p. 159</p>
<p>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 <i>United Nations Convention on the Rights of the Child</i> that a child treated with humanity and respect for the inherent dignity of the human person, as well as the specific rights contained in the <i>United Nations Rules for the Protection of Juveniles Deprived of their Liberty</i>, namely:</p> <ul style="list-style-type: none"> <li>• 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,</li> <li>• 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</li> <li>• 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,</li> </ul> <p>all of which the Superintendent had a responsibility under section 151(2) of the <i>Youth Justice Act (NT)</i> for the physical, psychological and emotional welfare of the detainees.</p>	<p>Vol 2A, p.164-165</p>
<p>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:</p> <ul style="list-style-type: none"> <li>• contained in Article 37(c) of the <i>United Nations Convention on the Rights of the Child</i>, which requires that a child be treated with humanity and respect for the inherent dignity of the human person, and</li> <li>• contained in Article 87 of the <i>United Nations Rules for the Protection of Juveniles Deprived of their Liberty</i>, 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.</li> </ul> <p>These obligations are generally embodied in section 151(2) of the <i>Youth Justice Act (NT)</i> 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.</p>	<p>Vol 2A, p. 166</p>

Findings	Report reference
<p>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 <i>Criminal Code Act</i> (NT) and of the superintendent's responsibility under section 151(2) of the <i>Youth Justice Act</i> (NT) for the physical, psychological and emotional welfare of detainees. This conduct was also in breach of Article 87 of the <i>United Nations Rules for the Protection of Juveniles Deprived of their Liberty</i>, 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.</p>	<p>Vol 2A, p. 169</p>
<p>The Commission finds that:</p> <ul style="list-style-type: none"> <li>• mobile phones were used in Don Dale Youth Detention Centre in breach of policy</li> <li>• Conan Zamolo, a youth justice officer, filmed detainees on at least three occasions inappropriately and stored the recordings on his mobile phone</li> <li>• 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</li> <li>• it is likely that Conan Zamolo made a recording of a detainee while he was in the shower.</li> </ul> <p>This conduct was in breach of Article 87 of the <i>United Nations Rules for the Protection of Juveniles Deprived of their Liberty</i> and in breach of the superintendent's responsibility under section 151(2) of the <i>Youth Justice Act</i> (NT) for the physical, psychological and emotional welfare of detainees.</p>	<p>Vol 2A, p. 173</p>
<p><b>Chapter 13 – Use of force</b></p>	
<p>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.</p>	<p>Vol 2A, p.204</p>
<p>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.</p>	<p>Vol 2A, p.204</p>

Findings	Report reference
<p>'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.</p> <p>These actions were inconsistent with PART training.</p>	Vol 2A, p 215
<p>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.</p>	Vol 2A, p. 224
<p>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 <i>Youth Justice Act</i> which limits the force which may be used on a detainee.</p>	Vol 2A, p. 228
<p>Restraints were used from time to time internally within detention centres in situations that were not emergencies.</p> <p>This conduct was contrary to the human rights standards in Article 64 of the <i>United Nations Rules for the Protection of Juveniles Deprived of Their Liberty</i>, which required that restraints should only be used in exceptional circumstances and which were embodied in section 153 of the <i>Youth Justice Act (NT)</i> prior to its amendment in August 2016, which only authorised restraints in emergency situations.</p>	Vol 2A, p.235
<p>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 <i>Youth Justice Act</i>.</p> <p>This conduct may have been contrary to the human rights standards in Article 64 of the <i>United Nations Rules for the Protection of Juveniles Deprived of Their Liberty</i>, which stipulated that:</p> <ul style="list-style-type: none"> <li>• restraints should only be used in exceptional circumstances,</li> <li>• restraints should only be used for the shortest possible period of time,</li> </ul> <p>and which were embodied in section 153 of the <i>Youth Justice Act</i> 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.</p>	Vol 2A, p. 239



Findings	Report reference
<p>The use of restraints on AN while she was unconscious may have been contrary to the human rights standards in Article 64 of the <i>United Nations Rules for the Protection of Juveniles Deprived of Their Liberty</i>, which required 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 <i>Youth Justice Act</i> 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.</p>	<p>Vol 2A, p.239</p>
<p>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.</p> <p>This practice is also contrary to the human rights standards in Article 64 of the <i>United Nations Rules for the Protection of Juveniles Deprived of Their Liberty</i>, which stipulates that:</p> <ul style="list-style-type: none"> <li>• restraints should only be used in exceptional circumstances, and</li> <li>• restraints should only be used for the shortest possible period of time,</li> </ul> <p>and which were embodied in section 153 of the <i>Youth Justice Act</i> 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.</p>	<p>Vol 2A, p. 242</p>
<p>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.</p>	<p>Vol 2A, p. 248</p>
<p>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.</p>	<p>Vol 2A, p. 253</p>
<p>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 <i>Youth Justice Act</i> (NT), which required the Superintendent to form a belief on reasonable grounds in respect of each individual detainee.</p> <p>This practice may not have been in conformity with rules 50 – 53 of the <i>United Nations Standard Minimum Rules for the Treatment of Prisoners</i> 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 <i>Rules for the Protection of Juveniles Deprived of their Liberty</i> which prohibits degrading treatment, and which are embodied in section 161 of the <i>Youth Justice Act</i> (NT).</p>	<p>Vol 2A, p. 257</p>

Findings	Report reference
<b>Chapter 14 (Isolation)</b>	
<p>Isolation of children and young people was used on some detainees excessively, punitively and in breach of section 153(5) of the <i>Youth Justice Act</i> (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.</p>	Vol 2A, p.329
<p>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 <i>Youth Justice Act</i> (NT) can never be known because isolation 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.</p>	Vol 2A, p. 329
<p>Senior executives and senior management responsible for youth detention during the latter part of the relevant period showed a disregard for the 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 the <i>Youth Justice Act</i> (NT).</p>	Vol 2A, p.330
<p>As should have been obvious to all involved in carrying out 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.</p>	Vol 2A, p.330
<p>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 built around a culture where little focus was placed on duty of care, respect and protection to the children and young people to whom it was owed.</p>	Vol 2A, p.330
<p>Senior executives and senior management subordinated strict obligations imposed by the legislation, particularly sections 151 and 153(5) of the <i>Youth Justice Act</i> (NT), to operational convenience.</p>	Vol 2A, p.330

Findings	Report reference
<p>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 section 4(b) and 4(n) of the <i>Youth Justice Act</i> (NT), and the obligations imposed on management by sections 151(2) and 151(3)(a) and (b) of the <i>Youth Justice Act</i> (NT).</p>	Vol 2A, p.330
<p>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 <i>Youth Justice Act</i> (NT).</p>	Vol 2A, p.330
<p>Isolation has continued to be used inappropriately, punitively and inconsistently with s 153 (5) of the <i>Youth Justice Act</i> (NT) at the current Don Dale Youth Detention Centre.</p>	Vol 2A, p.330
<p>The use of 'de-escalation' cells has breached written de-escalation placement procedures.</p>	Vol 2A, p.331
<p>Children and young people held in the High Security Unit continue to be:</p> <ul style="list-style-type: none"> <li>• confined in a wholly inappropriate, oppressive, prison-like environment that is detrimental to their health, wellbeing and prospects of rehabilitation, and</li> <li>• 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.</li> </ul>	Vol 2A, p.331
<p>Even if not isolation at law, the confinement described above 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.</p>	Vol 2A, p.331

Findings	Report reference
<p>The use of isolation on detainees in the circumstances identified above was potentially inconsistent with the following human rights standards:</p> <ul style="list-style-type: none"> <li>• Article 37(a) the <i>United Nations Convention on the Rights of the Child</i>, 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 <i>United Nations Standard Minimum Rules for the Treatment of Prisoners</i> and Article 7 of the <i>International Covenant on Civil and Political Rights</i>)</li> <li>• Article 10 of the <i>International Covenant on Civil and Political Rights</i>, 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</li> <li>• Rule 43 of the <i>United Nations Standard Minimum Rules for the Treatment of Prisoners</i> which prohibits prolonged solitary confinement</li> <li>• Article 67 of the <i>United Nations Rules for the Protection of Juveniles Deprived of their Liberty</i>, 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</li> <li>• which was embodied in section 153 of the <i>Youth Justice Act (NT)</i>, and in the superintendent's responsibility under section 151 (2) of the <i>Youth Justice Act</i> for the physical, psychological and emotional welfare of detainees.</li> </ul>	<p>Vol 2A, p.331</p>
<p><b>Chapter 15 (Health, mental health and children at risk)</b></p>	
<p>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.</p>	<p>Vol 2A, p. 356</p>
<p>FASD screening of detainees is not undertaken despite the likelihood that a significant number of detainees are affected.</p>	<p>Vol 2A, p. 356</p>
<p>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.</p>	<p>Vol 2A, p. 359</p>
<p>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.</p>	<p>Vol 2A, p. 363</p>

Findings	Report reference
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.	Vol 2A, p. 373
The identification of at-risk behaviours was carried out by youth justice officers who had minimal or no mental health training.	Vol 2A, p. 373
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.	Vol 2A, p. 375
The Northern Territory Government did not adequately notify or involve family in relation to the provision of health services.	Vol 2A, p. 375
<b>Chapter 16 (Education in detention)</b>	
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.	Vol 2A, p. 398
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.	Vol 2A, p. 398
<p>During the relevant period, staff members from the Department of Correctional Services and the Department of Education:</p> <ul style="list-style-type: none"> <li>• on occasions directed children and young people not to use Aboriginal language, and</li> <li>• failed sufficiently to recognise the benefits of using Aboriginal interpreters and interpreting services.</li> </ul>	Vol 2A, p. 401
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.	Vol 2A, p. 401
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.	Vol 2A, p. 406

Findings	Report reference
Children and young people in isolation and 'at risk' placements were arbitrarily excluded from education.	Vol 2A, p. 406
At times, children and young people subject to Intensive Management Plans had their access to education limited arbitrarily by Department of Correctional Services' staff.	Vol 2A, p. 406
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 Centre left children and young people with little to do and in a state of boredom, and contributed to poor behaviour within youth detention.	Vol 2A, p. 408
Before 2012, children and young people in youth detention in Alice Springs did not receive adequate access to education.	Vol 2A, p. 411
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.	Vol 2A, p. 411
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.	Vol 2A, p. 411
The vocational education and training services available and delivered to children and young people in youth detention are completely inadequate.	Vol 2A, p. 414
Children and young people in youth detention did not receive transition support to maintain their engagement with education on their return to the community.	Vol 2A, p. 416
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.	Vol 2A, p. 416
<p>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:</p> <ul style="list-style-type: none"> <li>• the subordination of education goals to security considerations, including organising classes using the discipline classification system</li> <li>• the over-use of excluding children and young people from the classroom</li> <li>• the under-utilisation of individualised special education support services and supports, and</li> <li>• the transient population, partly caused by the high rate of children and young people on remand or sentence for short periods.</li> </ul>	Vol 2A, p. 418

Findings	Report reference
<b>Chapter 17 (Girls in detention)</b>	
<p>At times during the relevant period, girls and young women in youth detention:</p> <ul style="list-style-type: none"> <li>• did not receive the same access as males to personal hygiene facilities at all youth detention centres in the Northern Territory</li> <li>• experienced unjustified effective isolation and segregation due to limited facilities and staff numbers at all youth detention centres in the Northern Territory</li> <li>• experienced particularly harsh conditions of unjustified isolation at Aranda House</li> <li>• 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</li> <li>• 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 <i>Convention on the Elimination of All Forms of Discrimination Against Women</i> and Article 26 of the <i>International Covenant on Civil and Political Rights</i>, and which is embodied in section 22 of the <i>Sex Discrimination Act 1984 (Cth)</i> and sections 19, 28 and 41 of the <i>Anti-Discrimination Act 1996 (NT)</i>.</li> </ul>	Vol 2A, p. 439
<p>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 <i>United Nations Standard Minimum Rules for the Treatment of Prisoners</i>, 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).</p>	Vol 2A, p. 447
<p>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.</p>	Vol 2A, p. 449

Findings	Report reference
<p>Female detainees' needs relating to menstruation were not met at the former Don Dale Youth Detention Centre.</p> <p>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 <i>Convention on the Elimination of All Forms of Discrimination Against Women</i> and Article 26 of the <i>International Covenant on Civil and Political Rights</i>, and which is embodied in section 22 of the <i>Sex Discrimination Act 1984 (Cth)</i> and sections 19, 28 and 41 of the <i>Anti-Discrimination Act 1996 (NT)</i>.</p> <p>In relation to this conduct, the superintendent did not comply with section 151 (2) of the <i>Youth Justice Act (NT)</i> which provided that the superintendent was responsible, as far as practicable, for the physical, psychological and emotional welfare of detainees in the detention centre.</p>	<p>Vol 2A, p. 450</p>
<p><b>Chapter 18 (Culture in detention)</b></p>	
<p>The cultural backgrounds of children and young people in detention were not reflected in the detention centre staff profile.</p>	<p>Vol 2A, p. 462</p>
<p>The recruitment and training of detention centre staff members did not adequately equip them to provide culturally appropriate support for detainees.</p>	<p>Vol 2A, p. 462</p>
<p>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.</p>	<p>Vol 2A, p. 466</p>
<p>Until recently, delivery of cultural and culturally appropriate activities and programs lacked continuity of delivery.</p>	<p>Vol 2A, p. 466</p>



# FINDINGS – VOLUME 2B

Findings	Report reference
<b>Chapter 19 (Case management and exit planning)</b>	
<p>Throughout the relevant period, a majority of children and young people were ineligible for intensive, individualised case management and exit planning services. The high remand population in youth detention was and continues to be a barrier to effective rehabilitation planning and program delivery to both remanded and sentenced young people.</p>	Vol 2B, p. 10
<p>Case management services across the detention centres were more often than not understaffed throughout the relevant period. As a result:</p> <ul style="list-style-type: none"> <li>• case managers were commonly unable to perform much more than basic case management functions, and</li> <li>• children and young people did not receive adequate individualised rehabilitation needs assessment and planning while in detention.</li> </ul>	Vol 2B, p. 13
<p>Children and young people in detention in Alice Springs were particularly disadvantaged. Their prospects for rehabilitation were compromised by the absence of local case management services.</p>	Vol 2B, p. 13
<p>Throughout the relevant period, exit planning and post-release service delivery largely depended on external, non-government organisations delivering case management services additional to those offered by the Northern Territory Government’s youth detention case management unit.</p>	Vol 2B, p. 16
<p>At least during the period 2009-2013, family members were not involved routinely in case management planning for children and young people in detention.</p>	Vol 2B, p. 17
<p>During at least 2013-14, the management of detainees failed to achieve a balance between the security of the detention centre and the rehabilitation of the detainees, as required under the <i>Youth Justice Act</i> (NT).</p>	Vol 2B, p. 19
<b>Chapter 20 (Detention centre staff)</b>	
<p>Between at least 2010 and 2015, the recruitment of youth justice officers was ad hoc and crisis-driven, with insufficient emphasis on the skills and training required to perform the role, with the consequence that staff members employed as youth justice officers were not competent to undertake the work.</p>	Vol 2B, p. 39

<p>There was an over-reliance on a casualised workforce in Aranda House and the Alice Springs Youth Detention Centre during the relevant period and in the Don Dale Youth Detention Centre since 2010.</p>	<p>Vol 2B, p. 41</p>
<p>Throughout the relevant period, the training of youth justice officers was poor in a number of respects:</p> <ol style="list-style-type: none"> <li>a. The training was far too brief to cover the range of skills, systems, processes and compliance matters that needed to be addressed.</li> <li>b. The training was not mandatory and was de-prioritised to operational needs, resulting in youth justice officers working in youth detention centres without undertaking even the basic induction training at times.</li> <li>c. The training was not properly refreshed and rolled out when new policies were introduced.</li> <li>d. To the extent that shadow shifts were used as a training tool, they were at times carried out by other inexperienced or underqualified staff.</li> </ol>	<p>Vol 2B, p. 48</p>
<p>From about 2010, the youth detention centres were frequently understaffed, which inhibited the operations of the centres and, at times, resulted in youth justice officers working long or multiple shifts with potentially dangerous consequences.</p>	<p>Vol 2B, p. 50</p>
<p>Some youth justice officers felt they were not sufficiently supported by management despite the exceptionally difficult environment in which they were working.</p>	<p>Vol 2B, p. 51</p>
<p><b>Chapter 21 (Record keeping)</b></p>	
<p>During the relevant period, there were periods of time in which superintendents/assistant general managers failed to maintain adequate registers relating to the activities in youth detention centres in breach of the <i>Youth Justice Act</i> (NT), the <i>Youth Justice Regulations</i> (NT), the <i>Information Act</i> (NT) and Commissioner’s Directives.</p>	<p>Vol 2B, p. 70</p>
<p>During the relevant period, there were several systemic deficiencies in the operation and retention of CCTV footage, including:</p> <ul style="list-style-type: none"> <li>• routine overwriting of CCTV footage after a short period</li> <li>• standard operating procedures that required CCTV footage to only be recalled for allegations of detainees assaulting staff members or each other, but not when staff members assaulted or used force on detainees, and</li> <li>• the potential conflict of interest which arose because, in at least some instances, the officers who could be the subject of complaints were also responsible for maintaining the CCTV system.</li> </ul>	<p>Vol 2B, p. 74</p>
<p>On a number of occasions the written records maintained by detention centre staff or management about serious incidents involving detainees were apparently false, inaccurate or misleading.</p>	<p>Vol 2B, p. 76</p>

## Chapter 22 (Detention system oversight)

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

Vol 2B, p.94

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

Vol 2B, p.102

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

Vol 2B, p.102

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

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

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

Vol 2B, p.104

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

Vol 2B, p.104

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

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

Vol 2B, p.121

<p>Any system of oversight and monitoring is only effective if those who receive reports from those bodies, both internal and external, pay due regard to the findings and recommendations. There was a failure by superintendents, Executive Directors, the Commissioner of Corrections and Ministers to do this during the relevant period. The effectiveness of the oversight of youth detention was compromised by inadequate responses from those to whom the reports were provided.</p>	<p>Vol 2B, p.121</p>
<p><b>Chapter 23 (Leadership and management)</b></p>	
<p>From 2012, management repeatedly failed to address poor record-keeping practices at the current and former Don Dale Youth Detention Centre and the Alice Springs Youth Detention Centre.</p> <p>This poor record keeping hindered proper oversight of the youth detention centres.</p>	<p>Vol 2B, p.140</p>
<p>From late 2013, senior managers were appointed to the Northern Territory youth detention system who, in the main, lacked experience and/or qualifications in youth detention.</p>	<p>Vol 2B, p.142</p>
<p>The lack of experience and qualifications in youth detention of senior managers contributed to a punitive and security-focused approach to the treatment of children and young people in detention.</p>	<p>Vol 2B, p.142</p>
<p>Derek Tasker was appointed to the role as Deputy Superintendent of Alice Springs Youth Detention Centre between February and November 2016 despite an internal review in 2012 identifying his incompetence in his role of Acting Officer in Charge Alice Springs and found problems of such magnitude that he was directed to take leave.</p>	<p>Vol 2B, p.142</p>
<p>During the relevant period, ministers and senior staff members received numerous internal and external reports, reviews, advices and briefings on the failure to develop and implement a comprehensive workforce model for detention centres in the Northern Territory.</p>	<p>Vol 2B, p.147</p>
<p>During the relevant period, ministers and senior management were aware of the risk implications for detainees, staff and the operations of detention centres due to the lack of a comprehensive workforce model for youth detention centres in the Northern Territory.</p>	<p>Vol 2B, p.147</p>
<p>Despite clear warnings, senior management failed to act on those reports, reviews, advices and briefings, to develop, resource and implement a comprehensive workforce model for youth detention centres in the Northern Territory. This resulted in a predominantly unskilled and casual workforce.</p>	<p>Vol 2B, p.148</p>
<p>The failure by ministers and senior management to act led to a deterioration in the application of the objects and principles of the <i>Youth Justice Act (NT)</i> as it related to youth detention.</p>	<p>Vol 2B, p.148</p>

Throughout the relevant period until at least March 2015, successive superintendents of detention centres in the Northern Territory failed to ensure that appropriate staff training was in place.	Vol 2B, p.152
<p>While superintendents were limited in what they could achieve by fiscal restrictions imposed by government, at times they:</p> <ul style="list-style-type: none"> <li>• failed to ensure staff members could be released from work to attend training</li> <li>• allowed casual employees to be rostered on with little or no training</li> <li>• allowed 'shadowing' in the absence of adequate training in circumstances where many of the staff members being shadowed had little experience themselves</li> <li>• knew lack of training was a problem in the detention centres and failed to advocate effectively for adequate staff training.</li> </ul>	Vol 2B, p.152
Throughout the relevant period until at least March 2015, successive executive directors and the Commissioner of Correctional Services failed to ensure that appropriate staff training was in place in youth detention centres in circumstances where they were repeatedly warned that they needed to act.	Vol 2B, p.152
Throughout the relevant period until at least March 2015, the relevant Minister and the Northern Territory Government failed to ensure that appropriate staff training was in place in youth detention centres in circumstances where they were informed that funds would need to be allocated for this purpose.	Vol 2B, p.152
For most of the relevant period, no up to date standard operating procedures were put in place to operationalise the objects, rights and obligations of the <i>Youth Justice Act (NT)</i> in relation to youth detention.	Vol 2B, p.158
The absence of up to date standard operating procedures is attributable to the failure of senior management, including Commissioner Middlebrook and, for a more limited period, Ms Salli Cohen.	Vol 2B, p.158
In the absence of up to date standard operating procedures, superintendents of detention centres oversaw regimes that did not, on many occasions, comply with their obligations under the <i>Youth Justice Act (NT)</i> .	Vol 2B, p.158
Ministers and senior management should have been aware of the deficiencies in the standard operating procedures and did not adequately address the issue.	Vol 2B, p.158

<p>Youth detention management failed to investigate adequately, or ensure adequate investigation, in response to information provided to it concerning potential breaches of the Northern Territory Department of Correctional Services (NTDCS) Code of Conduct and potential serious criminal conduct to ascertain whether the matter should have been referred to Northern Territory Police.</p> <p>In relation to these incidents, procedures and allocations of responsibility for the reporting and investigation of information disclosing potential breaches of the NTDCS Code of Conduct and of the criminal law were inadequate or not adequately implemented.</p> <p>In relation to these incidents, youth detention staff, and the Professional Standards Unit did not make any mandatory reports or report any of these matters to the Northern Territory Police.</p> <p>At the time of these events some staff did not feel comfortable reporting to management information about potential breaches of the NTDCS Code of Conduct or potential criminal conduct.</p> <p>In relation to these incidents, records of information reported by staff to management and management’s responses to those reports of information were inadequately made and maintained.</p>	<p>Vol 2B, p.160</p>
<p>In relation to isolation and authorising the use of the restraint chair, the Commissioner, the executives and managers had insufficient regard to the statutory restrictions on powers conferred by the <i>Youth Justice Act (NT)</i>. This had the consequence that children and young people in detention were not always afforded the statutory protections to which they were entitled.</p>	<p>Vol 2B, p. 165</p>
<p>During the relevant period, both Minister McCarthy and Minister Elferink and the governments of which they were members were continually briefed about the impact of the poor state of the youth detention facilities and on the nature, quality and effectiveness of youth detention, and, by implication, their capacity to help deliver the objects of the <i>Youth Justice Act (NT)</i>.</p>	<p>Vol 2B, p. 179</p>
<p>Both governments failed to address these concerns and failed to invest adequately in replacing those facilities, which significantly contributed to:</p> <ul style="list-style-type: none"> <li>• the harsh conditions that children and young people experienced in all youth detention centres but particularly in Alice Springs</li> <li>• the unjustified isolation and segregation of female detainees</li> <li>• the lack of recreational activities available to detainees, and</li> <li>• the decline in the health, safety and wellbeing of detainees.</li> </ul>	<p>Vol 2B, p. 179</p>
<p>To a large extent, the shortcomings identified in the management and operation of youth detention services were sourced in the attitude of the ministers and governments from time to time who:</p> <ul style="list-style-type: none"> <li>• were responsible for the allocation of funds to the youth detention system, and</li> <li>• set the tone for the attitude and approach towards those detained by those who worked with detainees.</li> </ul>	<p>Vol 2B, p. 179</p>

## Chapter 25 (Path to detention)

Northern Territory Police sometimes fail to comply with the obligation in section 22 of the <i>Youth Justice Act</i> to proceed by way of summons, rather than arrest, except in prescribed circumstances.	Vol 2B, p. 230
Northern Territory Police sometimes fail to comply with the requirement in Article 37 of the CRC and section 4(c) of the <i>Youth Justice Act</i> to use arrest only as a last resort.	Vol 2B, p. 230
Children and young people were held in police custody in the Watch House for unreasonably long periods of time.	Vol 2B, p. 237
There is no legislative provision to prevent children and young people in the Northern Territory being held in custody with adults which would conform with Article 37(c) of the CRC.	Vol 2B, p. 239
The Northern Territory Police in the Top End of the Northern Territory do not always make a reasonable effort to find a support person who is in a parental role, nominated by the child or young person, or a lawyer who has a relationship with the child or young person in custody as a support person in a police interview.	Vol 2B, p. 247
People providing support in accordance with section 18(2) of the <i>Youth Justice Act</i> (NT) do not receive adequate information and training to enable them to fulfil their role in police interviews.	Vol 2B, p. 247
Northern Territory Police overcharge children and young people with offences. The extent to which this occurs could not be determined.	Vol 2B, p. 249
In some cases bail conditions are imposed on children and young people that are not appropriately tailored to address the individual circumstances of the young person.	Vol 2B, p. 290
Decision makers on occasion impose conditions that are not necessary to secure the objectives of ensuring the young person appears at court to answer the charges, and of preventing further offending behaviour.	Vol 2B, p. 290
In some cases decision makers granting bail do not ensure sufficiently that: <ul style="list-style-type: none"><li>• young people understand the conditions of their bail and what is required of them, and</li><li>• the parent or responsible adult with the child understands the bail conditions and what is required of the young person.</li></ul>	Vol 2B, p. 291
Police have on occasions arrested children and young people for breaches of bail when a summons could have been issued.	Vol 2B, p. 297

Police have on occasions arrested young people for breach of bail when they were no longer on bail or where their conditions had been varied.	Vol 2B, p. 297
The Northern Territory has inadequate bail support services, including bail accommodation services, for children and young people.	Vol 2B, p. 301
Contrary to sections 4(r) and 48 of the <i>Youth Justice Act</i> (NT), youth justice proceedings in the Northern Territory are not separated as far as practicable from adult proceedings in all instances.	Vol 2B, p. 306
Contrary to section 92 of the <i>Care and Protection of Children Act</i> (NT), care and protection proceedings in the Northern Territory are not separated from other proceedings in the Local Court in all instances.	Vol 2B, p. 306
Contrary to the Beijing Rules to which Australia is a party, proceedings in the Youth Justice Court are open to the public and identifying material about youth involved in proceedings may be published.	Vol 2B, p. 308
During the relevant period, there were inadequate, or, at times, no support services attached to the court that were funded by the government, such as case managers, liaisons, officers, Aboriginal advisers or Aboriginal language interpreters to facilitate the administration of justice by the Youth Justice Court.	Vol 2B, p. 318
Lack of resources and adequate programs have inhibited the Youth Justice Court's full and effective use of diversion through section 64 of the <i>Youth Justice Act</i> .	Vol 2B, p. 319
In practice, children and young people found guilty of a criminal offence did not have access to pre-sentence conferencing under section 84 of the <i>Youth Justice Act</i> over most of the relevant period.	Vol 2B, p. 321



# FINDINGS – VOLUME 3A

Findings	Report reference
<i>Chapter 33 (Children in out of home care)</i>	
The Northern Territory Government has failed to comply with the statutory requirements that all children in out of home care have timely care plans.	Vol 3A, p. 397
The Northern Territory Government has failed to ensure the preparation of care plans that are tailored to meet the specific needs and status of each child in out of home care.	Vol 3A, p. 397
The Northern Territory Government has compromised the best interests of children in out of home care by not providing adequate care planning for all children in out of home care.	Vol 3A, p. 397
The Northern Territory Government has not adequately or consistently consulted with the carers of children in out of home care while developing care plans.	Vol 3A, p. 397
The Northern Territory Government employs too few Aboriginal Community Workers, so that those employed are not able to effectively carry out their duties.	Vol 3A, p. 403
The Northern Territory Government has failed to ensure compliance with its policies regarding the minimum frequency of contact between children in out of home care and their caseworkers puts children at a direct risk of harm.	Vol 3A, p. 408
The Northern Territory Government has a major shortage of available foster and kinship care placements.	Vol 3A, p. 410
The Northern Territory Government has systematically failed to identify and use kinship carers for Aboriginal children.	Vol 3A, p. 410
Training in understanding Aboriginal kinship systems and culturally appropriate kinship care is not adequate for the purpose of kinship care placements and must be significantly improved.	Vol 3A, p. 416
Too few Aboriginal children in out of home care in the Northern Territory are placed with kinship carers.	Vol 3A, p. 416
Despite the express provisions in Territory legislation, policy and guidelines, Territory Families has not appropriately planned for or managed the interests of many young people leaving out of home care.	Vol 3A, p. 457

# FINDINGS – VOLUME 3B

Findings	Report reference
<i>Chapter 35 (The crossover of care and detention)</i>	
Territory Families, and its predecessors, failed to provide the support needed to some children in care to assist them to avoid pathways likely to lead into the youth justice system.	Vol 3B
<i>Chapter 37 (Child protection oversight)</i>	
The office of the Children’s Commissioner is under-resourced to perform its full range of statutory functions in relation to the care and protection of vulnerable children in the Northern Territory.	Vol 3B





# RECOMMENDATIONS

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# RECOMMENDATIONS - VOLUME 1

## Chapter 1 – The work of the Commission

### **Recommendation 1.1**

The Northern Territory and Commonwealth governments establish a program of community engagement to visit communities and communicate the outcomes and recommendations of this report.

### **Recommendation 1.2**

Amend the *Royal Commissions Act 1902 (Cth)* to allow Counsel Assisting to require persons to appear before him/her for examination on oath and to answer questions.

### **Recommendation 1.3**

Amend the *Royal Commissions Act 1902 (Cth)* to grant records relating to vulnerable witnesses (as defined in the Policy and Procedure for Vulnerable Witnesses) in this Royal Commission the same protections as contained in section 6OM of the *Royal Commissions Act* which relate to information obtained or relating to a 'private session'.

### **Recommendation 1.4**

Amend the *Freedom of Information Act 1982 (Cth)* to exempt from its application records relating to vulnerable witnesses (as defined in the Policy and Procedure for Vulnerable Witnesses) in this Royal Commission.

## Chapter 2 – Personal stories

### **Recommendation 2.1**

The Northern Territory Government provide legislation for a Representative Council of Children who are or have been in and out of home care and who have been in the youth justice system including in youth detention to express their views on the development and implementation of laws and policies which affect children and young people in those systems and that those views be given due weight. The Representative Council of Children should be located in and supported by the Children's Commissioner.

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## Chapter 3 – Context and challenges

### **Recommendation 3.1**

The Northern Territory Government conduct a review into:

- improving cooperation between Northern Territory government and non-government organisations in cross-border jurisdictions on child protection matters, and
- improving access to high quality education for children in remote communities, especially secondary students.

### **Recommendation 3.2**

The Northern, Central, Tiwi and Anindilyakwa Land Councils jointly convene a forum of male children and their advocates, male Elders and ceremonial leaders to review any ceremonial practice which affects the health of male children to ensure compliance with Article 24(3) of the *United Nations Convention on the Rights of the Child*.

## Chapter 6 – Funding and expenditure

### **Recommendation 6.1**

The Productivity Commission undertake a review and audit of Commonwealth expenditure in the Northern Territory in the area of family and children’s services relevant to the prevention of harm to children. The review should address co-ordination of programs, funding agreements and selection of service providers, service outputs and evaluations.

## Chapter 7 – Community engagement

### **Recommendation 7.1**

The Northern Territory Government and the Commonwealth Governments commit to a ‘place-based’ approach for the implementation of the relevant recommendations of this report in partnership with local communities. The partnership should be built on the principles of mutual respect, shared commitment, shared responsibility and good faith. The location of the ‘place’ could be a single community, a group of communities or a region.

### **Recommendation 7.2**

The purpose of the partnership should be to reach agreement on the strategies, policies and programs needed to provide sustained positive outcomes for children and young people at each ‘place’.

### **Recommendation 7.3**

The Northern Territory and Commonwealth Governments immediately engage with Aboriginal community representatives to negotiate the broad terms for the partnership and its implementation across the Northern Territory built on the following principles:

- the best interest of the child
- local solutions for local problems
- local decision-making
- the centrality of family and community to the wellbeing of children and young people
- the Northern Territory Government has the ultimate responsibility to ensure the safety and security of all Northern Territory children and young people, and
- shared responsibility and accountability.

# RECOMMENDATIONS - VOLUME 2A

## Chapter 10 - Detention facilities

### **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<sup>3</sup> 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.

## Chapter 11 – Detention centre operations

### **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 be 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 to comply with section 150 of the *Youth Justice Act* (NT).

### **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.

### **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.

### **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.

### **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 seven days unless extended by a Judge.

## **Chapter 13 – Use of force**

### **Recommendation 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.

### **Recommendation 13.2**

The restraint chair should continue to be prohibited.

### **Recommendation 13.3**

The use of CS gas in youth detention centres should be prohibited.

### **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 only applied 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.

## **Chapter 14 – Isolation**

### **Recommendation 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. Prior to isolating a detainee, verbal and other de-escalation strategies must be attempted.
  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 detainee 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.

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## Chapter 15 – Health, mental health and children at risk

### **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.
  - b. in consultation with Aboriginal Community Controlled Organisations, revise health manuals and tools to ensure they are culturally appropriate.

### **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.

### **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

### **Recommendation 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.

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## Chapter 16 – Education in detention

### **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.

### **Recommendations 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.

### **Recommendations 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 teaches 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.

### **Recommendations 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.

### **Recommendations 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.

## **Chapter 17 – Girls in detention**

### **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.

### **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.

## **Chapter 18 – Culture in detention**

### **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.

# RECOMMENDATIONS - VOLUME 2B

## Chapter 19 – Case management and exit planning

### **Recommendation 19.1**

1. A case management system be implemented in all youth detention centres:
  - to manage behaviours in a therapeutic non-punitive, non-adversarial, trauma-informed and culturally competent way
  - to apply to all detainees including those on remand to include:
    - training case workers in the use of an evidence-based and culturally appropriate individual needs assessment tool, utilised from admission of a child or young person and on an on-going basis
    - give case workers access to a manual that is comprehensive, up-to-date and reviewed on a regular basis
    - training and accrediting case workers to deliver therapeutic, trauma-informed and child-centred case management to all young people within the detention centres
    - resourcing and funding an increase in the case worker to client ratio to ensure that intensive and consistent case management can be delivered to each young person
    - implementing a multi-disciplinary approach to case management engaging with relevant stakeholders, including community service providers, the young person and, where appropriate, the young person's family and/or departmental caseworkers
    - providing each young person with individually tailored rehabilitation, with appropriate programs and services, including drug and alcohol programs ensuring each young person has ongoing access to their case managers, case management programs and activities regardless of security classification
    - ensuring young people on remand are provided with appropriately tailored case management services for release planning, and
    - ensuring case management and release planning for children and young people in detention take account of existing therapeutic and rehabilitation interventions and maintain their existing relationships with service providers.
2. Where appropriate, the young person's community caseworker continues as a caseworker during any period the young person is in detention.

## Chapter 20 – Detention centre staff

### **Recommendation 20.1**

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

### **Recommendation 20.2**

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

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### **Recommendation 20.3**

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

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

### **Recommendation 20.4**

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

### **Recommendation 20.5**

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

### **Recommendation 20.6**

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

### **Recommendation 20.7**

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

### **Recommendation 20.8**

Youth detention centres be sufficiently staffed to ensure that:

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

### **Recommendation 20.9**

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

## **Chapter 21 – Record keeping**

### **Recommendation 21.1**

Territory Families:

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



### **Recommendation 21.2**

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

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

### **Recommendation 21.3**

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

### **Recommendation 21.4**

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

### **Recommendation 21.5**

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

## **Chapter 22 – Detention system oversight**

### **Recommendation 22.1**

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

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

### **Recommendation 22.2**

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

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

### **Recommendation 22.3**

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

### **Recommendation 22.4**

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

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

### **Recommendation 22.5**

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

### **Recommendation 22.6**

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

### **Recommendation 22.7**

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

## **Chapter 23 – Leadership and management**

### **Recommendation 23.1**

The Deputy Chief Executive Officer of Territory Families ensure that training programmes for all management and operational workers in youth detention centres meet the following minimum standards:

- a. that such training programmes ensure that the physical, psychological and emotional welfare of children and young people, as well as their rehabilitation, is a principal focus
- b. that, in accordance with Regulation 64 of the *Youth Justice Regulations (NT)*, workers are trained in ways to exercise understanding, restraint and patience in the care, control and supervision of children and young people and in the maintenance of discipline among children and young people, and to encourage positive behaviour among children and young people consistent with increasing their responsibility and independence
- c. that workers comply with, and understand, the sections of the *Youth Justice Act (NT)* and the *Youth Justice Regulations (NT)* concerning the use of force, restraint, searches and isolation
- d. that such training is consistent with Australia's human rights obligations with respect to children and young people held in detention, and
- e. that such training applies principles and standards of the Australasian Juvenile Justice Administrators.
- f. One of the criteria for the assessment of the Deputy Chief Executive Officer of Territory Families work-place performance be ensuring compliance with the above obligation.

### **Recommendation 23.2**

Territory Families develop, in conjunction with Australian Juvenile Justice Administrators and an appropriate training institute, a course on managing youth detention whose content reflects best practice internationally and from other Australian jurisdictions, to be undertaken by those in senior management positions in youth detention centres in the Northern Territory.

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## Chapter 24 – Leaving detention and throughcare

### **Recommendation 24.1**

An integrated, evidence-based throughcare service be established for children and young people in detention to deliver:

- adequate planning for release including, as appropriate, safe and stable accommodation, access to physical and mental health support, access to substance abuse programs, assistance with education and/or employment
- improved exit planning and post-release services to be made available to all children and young people detained more than once or for longer than one week
- a comprehensive wraparound approach facilitated by cross-agency involvement, and
- planning for detainees to exit from detention as soon as they enter detention.

### **Recommendation 24.2**

The throughcare service be independently evaluated at the end of five years, with a report to the Commission for Children and Young People, including outcomes and rates of reoffending.

## Chapter 25 – The path into detention

### Police

#### **Recommendation 25.1**

1. The position of Aboriginal Community Police Officers be expanded and include the position of Youth Diversion Officers.
2. Establish a specialist, highly trained Youth Division similar to New Zealand Police Youth Aid.
3. All officers involved in youth diversion or youth engagement be encouraged to hold or gain specialist qualifications in youth justice and receive ongoing professional development in youth justice.
4. Northern Territory Police organisation and remuneration structures appropriately recognise officers with specialist skills in youth justice.
5. All Northern Territory Police receive training in youth justice which contains components about childhood and adolescent brain development, the impact of cognitive and intellectual disabilities including FASD and the effects of trauma, including intergenerational trauma.

### Police – Arrest and charge

#### **Recommendation 25.2**

1. Northern Territory Police undergo training every two years to reinforce their obligations under the *Police Administration Act (NT)*, *Youth Justice Act (NT)* and Police General Order – Arrest in relation to the exercise of their discretion to arrest children and young people.
2. Northern Territory Police collect data on the incidence of arrest of children and young people, the reasons for the use of arrest, rather than summons, the outcome of the charges laid against children and young people who were arrested and prepare a report to be published annually.
3. The Northern Territory Commissioner of Police amend the Police General Order – Arrest to provide that children and young people must not be arrested at school unless there is a substantial risk the child or young person will abscond or reoffend if not arrested at school.
4. The Northern Territory Commissioner of Police review Police General Orders and police training to ensure police understand the basis on which charges may be laid against a child or young person.
5. Undertake a review of charging practices over the last three years with respect to children and young people.

### **Recommendation 25.3**

1. The Northern Territory Government ensure all police cells are made suitable for detaining children.
2. Provision be made in either the *Police Administration Act* (NT) or the *Youth Justice Act* (NT) that children and young people may be held in custody without charge for no longer than four hours. Any extension up to a further four hours may only be granted by a Judge.

### **Recommendation 25.4**

1. A custody notification scheme be introduced requiring police to notify a lawyer from an appropriate legal service as soon as a child or young person is brought into custody.
2. The Northern Territory Government commit to resource the custody notification scheme following the initial three-year funding from the Commonwealth Government, including funding the legal services to provide the custody notification scheme.

### **Recommendation 25.5**

1. The Northern Territory collect and report data on Aboriginal deaths in custody to the Australian Institute of Criminology.
2. The Australian Institute of Criminology to publish all data made available on Aboriginal deaths in custody on an annual basis.

### **Recommendation 25.6**

1. The *Youth Justice Act* (NT) be amended to provide that a child or young person must not be interviewed by police:
  - until they have sought and obtained legal advice and assistance, or
  - after exercising their right to silence.
2. The Northern Territory Government take immediate steps:
  - to ensure the register of support persons established under section 14 of the *Youth Justice Act* (NT) includes people from Aboriginal Law and Justice Groups and/or other Aboriginal community bodies for each area of the Northern Territory
  - to amend section 14 of the *Youth Justice Act* (NT) to require that a person may only be on the register of support persons if they have undertaken training by an approved provider on their role as a support person
  - to ensure police provide support people who are not lawyers with information in an easily understood form, including orally, with the use of an interpreter if necessary, or by providing a document or showing a video explaining the support role and outlining what the support person can or cannot do to assist the child during the interview, and
  - to ensure all decisions by police to use a support person from the register of support people are reviewed by a senior officer, including the steps taken to locate a member of the young person's family or an alternative support person.

## **Diversion**

### **Recommendation 25.7**

The Northern Territory Commissioner of Police refresh and reissue Police General Order – Youth promulgated 22 February 2007.

### **Recommendation 25.8**

The Northern Territory Police Youth Diversion Unit be resourced to provide a comprehensive diversion service with adequate specialist staff members and facilities, to give effect to the principles of the *Youth Justice Act* (NT).

### **Recommendation 25.9**

The definition of the 'serious offences' that exclude a young person from eligibility for diversion be reviewed, with a view to removing preclusion from diversion for less serious offending.

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### **Recommendation 25.10**

The *Youth Justice Act* (NT) be amended to remove the restriction on police consideration of diversion in section 39(3)(c).

### **Recommendation 25.11**

The references to offences against Part (V) and Part (VI) of the *Traffic Act* (NT) be reviewed with a view to enabling children and young people charged with offences under these provisions to be eligible for diversion under section 39 of the *Youth Justice Act* (NT).

### **Recommendation 25.12**

The Northern Territory Commissioner of Police amend Police General Order – Youth Pre-Court Diversion to remove the requirement that a child or young person must admit to committing an offence when an officer is considering them for diversion and require instead that the child or young person ‘does not deny’ the offence.

### **Recommendation 25.13**

The *Youth Justice Act* (NT) be amended to require reports about a child or young person’s participation in a diversion program be tendered in court and made available to the child or young person’s legal representative.

### **Recommendation 25.14**

Youth diversion programs in remote communities be developed and operated in partnership with, or by, Aboriginal communities and/or Aboriginal controlled organisations.

## **Bail and Bail Support**

### **Recommendation 25.15**

Ensure that appropriate facilities are available in Alice Springs for girls or young women who need to be held on remand.

### **Recommendation 25.16**

Territory Families investigate the development of electronic means of explaining bail and reminding young people of their bail obligations.

### **Recommendation 25.17**

Electronic monitoring conditions should only be considered when there is no other alternative to remanding the child or young person in detention.

### **Recommendation 25.18**

A formal administrative arrangement between the Office of the Director of Public Prosecutions and Police be developed to update bail and bail condition information to avoid erroneous arrest.

### **Recommendation 25.19**

The *Bail Act* (NT) be amended:

1. to provide that a youth should not be denied bail unless:
  - a. charged with a serious offence and a sentence of detention is probable if convicted
  - b. they present a serious risk to public safety
  - c. there is a serious risk of the youth committing a serious offence while on bail, or
  - d. they have previously failed to appear without a reasonable excuse
2. to require that when imposing bail conditions the police and courts take into consideration:
  - a. the age, maturity and circumstances of the young person, including their home environment, and
  - b. the capacity of the young person to comply with the conditions
3. to require that at the time bail is granted to a young person, each bail condition and the consequences of breach of that condition be explained to the young person, taking steps to ensure their understanding, using interpreters or modified means of communication if necessary
4. to exclude children and young people from the operation of section 37B (offence to breach bail), and
5. to give police the power to:
  - a. issue an informal or formal written warning to a young person believed to have breached any bail condition, or
  - b. where a breach has occurred more than once, issue a summons to a young person who has breached bail requiring them to come before the court to determine the consequences of any breach.

### **Recommendation 25.20**

The Commissioner of Police issue a Directive setting out:

- guidelines for the police in relation to curfew checks, including the circumstances in which they should be used or avoided, and their frequency, and
- that police only arrest a child or young person for breach of bail where the breach occurs as a result of or in connection with further offending and after police have considered and rejected as inappropriate issuing a summons, or where the breaching conduct clearly indicates a materially increased risk of non-attendance at court or further offending.

### **Recommendation 25.21**

Bail support services for children and young people be provided in Darwin, Alice Springs, Tennant Creek, Katherine and Nhulunbuy, together with other such locations as are appropriate, which include the following features:

1. accommodation services in small homelike residences
2. bail support plans developed with a specialist youth worker, covering education, employment, recreation and sporting goals
3. the engagement of the young person and their family, where possible, in the development of the plan, and
4. the availability of, and referral to, services and practical life skills support to assist the young person.

### **Recommendation 25.22**

The Northern Territory Government, in the establishment and delivery of bail support services, give priority to working with Aboriginal community controlled organisations.

## **Courts**

### **Recommendation 25.23**

A separate court venue in Alice Springs for proceedings under the *Youth Justice Act* (NT) and *Care and Protection of Children Act* (NT) be established as a matter of urgency.

### **Recommendation 25.24**

In other locations where the Youth Court and Family Matters Jurisdiction of the Local Court conduct proceedings where there is no separate facility, such as Katherine and Tennant Creek, proceedings under the *Youth Justice Act* (NT) and the *Care and Protection of Children Act* (NT) be scheduled on days or times when no adult matters are scheduled, or alternatively other premises be used where possible to hear those matters or ancillary proceedings such as family group conferencing to give better effect to sections 4(r) and 48 of the *Youth Justice Act* (NT) and section 92 of the *Care and Protection of Children Act* (NT).

### **Recommendation 25.25**

Proceedings under the *Youth Justice Act* (NT) should be heard in closed court, similar to child protection proceedings under the *Care and Protection of Children Act* (NT). The court should retain a discretion to publish all or part of a proceeding upon application.

### **Recommendation 25.26**

All judicial officers in the Northern Territory be provided with access to seminars conducted by experts with particular emphasis on cognitive development, adolescent behaviour, communication with young people appearing in court and Aboriginal cultural competence.

### **Recommendation 25.27**

A separate court be established independent of the Local Court to hear and determine those matters currently within the jurisdiction of the Youth Justice Court and the Family Matters Division of the Local Court.

### **Recommendation 25.28**

A position of President of the new court be established. This position is to be an Executive Council appointment, carrying extra judicial powers and functions modelled on those conferred on the President of the Children's Court in NSW by section 16 of the *Children's Court Act* 1987 (NSW).

### **Recommendation 25.29**

The appointment of judges to the court include consultation with the President (of the new court) and Chief Judge of the Local Court and only those persons who reflect the qualities described in section 46(2) of the *Youth Justice Act* (NT) be appointed.

### **Recommendation 25.30**

The *Youth Justice Act* (NT) and the *Care and Protection of Children Act* (NT) be amended to require all children and young people to be legally represented in contested bail and criminal and care and protection proceedings.

### **Recommendation 25.31**

All legal practitioners appearing in a youth court be accredited as specialist youth justice lawyers after training in youth justice to include child and adolescent development, trauma, adolescent mental health, cognitive and communication deficits and Aboriginal cultural competence.

### **Recommendation 25.32**

A Youth Proceedings Education Committee be established to develop and deliver a training program for Northern Territory legal practitioners in youth justice and care and protection. Membership to include a representative from the Supreme Court, Youth Justice Court (or equivalent), Territory Families, police, health, NAAJA, NTLAC, CAALAS and an academic expert in the field of youth justice.

### **Recommendation 25.33**

The Commissioner of Police by Directive require police to take all reasonable steps to obtain the contact details of a responsible adult for a young person taken into police custody and provide those details to the young person's legal representative as soon as possible.

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### **Recommendation 25.34**

Resources be provided to support Law and Justice groups, or other suitable entities, to allocate adults to be responsible for Aboriginal young people appearing in criminal proceedings whether in remote or urban communities.

### **Recommendation 25.35**

The Youth Justice Court be resourced to employ dedicated youth justice staff and place-based local Aboriginal liaison officers to coordinate case management and facilitate comprehensive referrals to support services for youth.

### **Recommendation 25.36**

The Youth Justice Court be resourced to install hearing loops to help young hearing-impaired accused participate appropriately in the proceedings.

### **Recommendation 25.37**

The Youth Justice Court be resourced to assume responsibility for arranging for reports required pursuant to section 67 of the *Youth Justice Act* (NT).

### **Recommendation 25.38**

The Youth Justice Court in consultation with the Department of Health, Aboriginal health organisations and legal assistance organisations such as NAAJA, CAALAS and NTLAC, establish a panel of child and adolescent health practitioners to facilitate the timely preparation of section 67 reports.

### **Recommendation 25.39**

Territory Families in consultation with Aboriginal health and legal assistance organisations and NTLAC undertake an immediate assessment of the diversion program requirements available to the Youth Justice Court pursuant to section 64 of the *Youth Justice Act* (NT) and make available the necessary resourcing to support their implementation and delivery.

### **Recommendation 25.40**

Adequate resourcing be available to ensure the accessibility of section 84 conferencing, including in remote areas for all children and young people.

### **Recommendation 25.41**

All agencies explore the provision of electronic briefs to prosecution and defence lawyers in proceedings against a youth consistent with section 4(m) of the *Youth Justice Act* (NT) to reduce delays.

### **Recommendation 25.42**

1. Communities be resourced to establish a process to provide:
  - information for pre-sentencing reports for Aboriginal children and young people, and
  - information about local non-custodial sentencing options for Aboriginal children and young people.
2. The *Youth Justice Act* (NT) be amended to require this information be taken into account by the Youth Justice Court.



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### **Recommendation 25.43**

A youth-specific parole body be established with the following features:

- a small number of members, including an Aboriginal representative, an employee from an Aboriginal-led community organisation, and a professional with youth-specific training and experience
- taking a therapeutic and collaborative approach that aims to engage young people in the parole decision-making process
- young people, their lawyers and their responsible adult must be present at hearings and, preferably, when decisions are made, and
- with wide discretion to make a variety of orders.

## **Chapter 27 – Reshaping youth justice**

### **Recommendation 27.1**

Section 38(1) of the *Criminal Code Act* (NT) be amended to provide that the age of criminal responsibility be 12 years.

Section 83 of the *Youth Justice Act* (NT) be amended to add a qualifying condition to section 83(1)(l) that youth under the age of 14 years may not be ordered to serve a time of detention, other than where the youth:

- has been convicted of a serious and violent crime against the person
- presents a serious risk to the community, and
- the sentence is approved by the President of the proposed Children's Court.

# RECOMMENDATIONS - VOLUME 3A

## Chapter 28 – A new model for youth justice

### **Recommendation 28.1**

The Northern Territory design, construct and implement a new model of secure accommodation based on the principles set out in this chapter.

### **Recommendation 28.2**

The Northern Territory:

1. Develop and complete as soon as possible a program of works to further improve the physical environments and facilities at the current Don Dale Youth Detention Centre and Alice Springs Youth Detention Centre.
2. Involve detainees in the project as much as possible, including by consulting with them about the kinds of improvements they would like, taking their views into account in developing the program of works and giving them the opportunity to participate in the work where appropriate.
3. Review the current staff working at youth detention centres to ensure that only those who can work in a trauma-informed therapeutic model of youth detention continue to be employed in frontline roles.

## Chapter 31 – Engagement in child protection

### **Recommendation 31.1**

The Northern Territory Government review periodically its compliance with the Aboriginal and Torres Strait Islander Child Placement Principle.

## Chapter 32 – Entry into the child protection system

### **Recommendation 32.1**

Territory Families review the Structured Decision Making tools to ensure they are appropriate to the Northern Territory.

### **Recommendation 32.2**

Territory Families commission an independent audit of the outcomes of notifications reported to the Central Intake Team to examine the assessment process, the application of the structured decision-making tools and whether cases have been incorrectly screened out.

### **Recommendation 32.3**

All notifications to the Central Intake Team, whether received by hotline or email, be consolidated into a single chronological queue to ensure that they are properly recorded, assessed and given appropriate priority.

### **Recommendation 32.4**

Territory Families:

- develop mandatory reporting guidelines for professional and community notifiers
- conduct information seminars and provide written guidelines to assist professional notifiers meet their reporting obligation under section 26 of the *Care and Protection of Children Act (NT)*, and
- explore the establishment of central points to receive notifications from police and educators.

### **Recommendation 32.5**

Territory Families amend data-recording processes so that any subsequent substantiated notifications in relation to a particular child are separately recorded notifications, so there is a clear recording of the total number of notifications pertaining to that particular child.

### **Recommendation 32.6**

Territory Families:

- adopt a consistent definition of cumulative harm, and
- develop internal guidance for practitioners regarding the assessment of cumulative harm.

### **Recommendation 32.7**

Territory Families ensure that Central Intake is adequately resourced to accommodate peak periods including by the provision of standby practitioners.

### **Recommendation 32.8**

Territory Families in developing its dual pathways model:

- consult with stakeholders regarding the design and operation of the model
- ensure a range of services are available providing 'soft entry' referral pathways
- develop strategies to encourage families to access those services, and
- amend the *Care and Protection of Children Act* (NT) to implement a dual-pathways model.

### **Recommendation 32.9**

Territory Families develop a strategy to address the current backlog of overdue investigations.

### **Recommendation 32.10**

Territory Families:

- review the caseworker workforce requirements
- redesign recruitment strategies
- develop in-service and optional training
- develop fixed caseworker to file ratios taking into account the complexity of the child and family, issues of remoteness and other relevant considerations, and
- develop cultural awareness and competence training in consultation with Aboriginal controlled organisations.

### **Recommendation 32.11**

Child protection income management no longer be required to access the Intensive Family Support Service.

### **Recommendation 32.12**

Territory Families ensure that any family where a child is to be removed is given all appropriate information about the reason for the removal, the steps the family must take to have the child returned, and legal advisors the family may contact in a form and language suitable for the family.

## **Chapter 33 – Children in out of home care**

### **Recommendation 33.1**

Territory Families develop strategies to give better effect to section 11 of the *Care and Protection of Children Act* (NT) at all stages of their engagement with children in their care.

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### **Recommendation 33.2**

Care plans must be kept up to date and provided to parents in clear and understandable language, with an interpreter if necessary, about what is required for reunification with their children.

### **Recommendation 33.3**

Territory Families:

- report on the number of children and young people successfully and unsuccessfully reunified with families and the duration of their period in out of home care and the systemic impediments to reunification, and
- create a senior position with overall responsibility for reunification policy and processes.

### **Recommendation 33.4**

To ensure timely and quality care plans are developed and implemented for each child in out of home care:

- the *Care and Protection of Children Act* (NT) be amended to the effect that:
  - an application to the court for a 'protection order', as that term is defined in the Act, be accompanied by a care plan for the relevant child
  - if the application is not accompanied by a care plan, the court may set a date by which the care plan is to be filed with the court that is no longer than three weeks after filing the application for a protection order, and
  - any subsequent care plan developed and approved by the Chief Executive Officer of Territory Families during the course of the proceedings must be filed with the court within 14 days of its creation or review
- section 130 of the *Care and Protection of Children Act* (NT) be amended to provide that a court may not issue a protection order unless satisfied that the Chief Executive Officer has developed, approved and filed with the court a care plan that meets the needs and best interests of the child
- the Northern Territory Government collect care plan data in a form that will allow it to provide such data to the Productivity Commission for comparison with other states and territories
- section 74(4) of the *Care and Protection of Children Act* (NT) be amended to provide that the Chief Executive Officer 'must obtain, to the extent reasonably practicable, and have regard to the views expressed' by the specified persons, and
- section 70 of the *Care and Protection of Children Act* (NT) be amended to include a requirement that a cultural component of a care plan must be included in all care plans specifically tailored to the child.

### **Recommendation 33.5**

Territory Families:

- develop and implement a campaign in conjunction with Foster Carers Association NT, current carers and other relevant organisations to recognise the contribution of existing foster and kinship carers, draw attention to the current shortage of carers and encourage people in the Northern Territory, particularly in remote areas, to apply to become carers
- review the financial support provided to carers in the Northern Territory and
  - work with Aboriginal organisations to implement a joint program dedicated to increasing the number of Aboriginal foster and kinship carers, using community awareness and individualised community engagement.

### **Recommendation 33.6**

Territory Families create at least two senior positions, to be filled by Aboriginal people, in the Out of Home Care unit, with responsibility for:

- increasing the number of Aboriginal foster and kinship carers
- overseeing training on kinship and kinship care decision-making
- reviewing decisions relating to kinship care, including carer assessments and failure to place children with identified kin, and
- reporting annually on aspects of kinship care, including the number of Aboriginal children placed in or outside kinship care.

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### **Recommendation 33.7**

The Northern Territory Civil and Administrative Tribunal Act (NT) be amended so the Tribunal has jurisdiction to review decisions made by Territory Families about foster and kinship carers or applicants seeking to become carers.

### **Recommendation 33.8**

Territory Families consult with Aboriginal organisations to:

- improve content and the delivery of specific training to Territory Families staff members undertaking kinship care assessments, and
- amend and streamline kinship care assessment forms and processes to ensure that the best interests of the child are considered, consistent with a fully informed assessment of acceptable and unacceptable risks to the child.

The Northern Territory Government undertake the following improvements to its systems to develop quality foster and kinship care:

- properly resource the kinship care assessment unit to ensure the timely assessment of prospective kinship carers, and
- cease using any type of placement or placement arrangement that does not:
  - require a formalised and signed agreement or court order
  - offer carers financial support for the costs of caring for a child
  - require a care plan for a child, including a documented reunification plan, where applicable, and
  - involve case management of a child that is in accordance with the Act.

### **Recommendation 33.9**

The Northern Territory Government phase out the current model of purchased home-based care over a 24month period.

### **Recommendation 33.10**

The Northern Territory Government use residential care only as a therapeutic placement option for children with complex behavioural needs or disabilities, in accordance with therapeutic care criteria.

### **Recommendation 33.11**

The Northern Territory Government develop and establish a professional stream of foster care, to respond to the targeted therapeutic needs of children, and to care for children with complex needs.

### **Recommendation 33.12**

The Northern Territory Government reconsider outsourcing out of home care services to the non-government sector. If it proceeds to do so, it should:

- identify service solutions, including placement types, that meet the specific needs of this population
- design an out of home care accreditation scheme that meets the specific needs of this population
- develop a framework for measuring the wellbeing of children in out of home care, and set clear goals and requirements for service providers, and
- ensure robust oversight which will include both Territory Families and the Commission for Children and Young People.

### **Recommendation 33.13**

The Northern Territory Government implement a collaborative inter-agency approach between Territory Families and Northern Territory Police to manage children and young people absconding from out of home care placements.

### **Recommendation 33.14**

Territory Families standardise screening for these children for FASD when entering out of home care.

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### **Recommendation 33.15**

Territory Families improve access for children and young people in out of home care to effective rehabilitation and counselling services including the prevention and treatment of substance abuse.

### **Recommendation 33.16**

Territory Families:

- review and simplify the process for approving educational enrolments for children in out of home care, and
- introduce a standardised form for a child subject to a protection order, allocating responsibility for ensuring enrolment approval within set time frames.

### **Recommendation 33.17**

Where a child is placed on a protection order but a parent retains guardianship, the Northern Territory Government enable carers to make a range of day-to-day decisions for the wellbeing of a child in their care, if necessary by legislative amendment.

### **Recommendation 33.18**

Territory Families, in partnership with Foster Carers Association NT, establish regular forums to provide carers an opportunity to raise issues with Territory Families that relate to the experience of being a carer.

### **Recommendation 33.19**

Territory Families provide support to foster and kinship carers, including through implementation of training targeting specific populations in out of home care. This training should be accessible to all foster and kinship carers, including:

- those in remote communities, and
- those who cannot attend training during business hours.

### **Recommendation 33.20**

Territory Families ensure that quality respite care is available to foster and kinship carers.

### **Recommendation 33.21**

Territory Families ensure that all young people between aged 15 and 18 have leaving care plans in compliance with section 71 of the *Care and Protection of Children Act* (NT).

### **Recommendation 33.22**

The Department of Housing and Community Development and Territory Families jointly develop a new accommodation service model which meets the specific needs of young people leaving out of home care to live independently. The service be responsible for finding and securing acceptable accommodation for all young people who have left the Chief Executive Officer's care and be available to those young people until they are 25 years old, consistent with section 68 of the *Care and Protection of Children Act* (NT).

### **Recommendation 33.23**

Territory Families:

- ensure that children leaving the care of the Chief Executive Officer are fully informed of the obligation of the Chief Executive Officer to provide child-related services until the individual turns 25 years of age. The information provided to children leaving care to include specific information as to what services are available to the child and how they can be accessed.
- implement a follow up procedure in which a caseworker, or other entity to whom the Chief Executive Officer delegates responsibility, contacts a person who has left the care of the Chief Executive Officer every six months until the individual turns 21 to provide updated information as to what services are available and how they can be accessed pursuant to section 86 of the *Care and Protection of Children Act* (NT). The communication must occur, to the extent practicable, both orally and in writing.

### **Recommendation 33.24**

The Northern Territory Government develop an evaluation plan about the process of leaving care for young people turning 18.

### **Recommendation 33.25**

The Northern Territory Government continue working with the Australian Institute of Health and Welfare to develop a dataset to report on outcomes for children transitioning from out of home care up to age 25. Indicators should include:

- connection to family and/or carers
- education and employment
- housing, and
- health, including mental health.

## **Chapter 34 – Legislation and legal process**

### **Recommendation 34.1**

Amend sections 121 and 129 of the *Care and Protection of Children Act* (NT) so that the term ‘the best means’ is replaced with a requirement that the most appropriate order be made, but that it be the least intrusive order which can be made in the circumstances.

### **Recommendation 34.2**

Amend section 129 of the *Care and Protection of Children Act* (NT) to provide that the court must not make a protection order unless it has considered, and rejected as being contrary to the best interests of the child, an order allowing the child to remain in the care of their parent.

### **Recommendation 34.3**

Amend section 130 of the *Care and Protection of Children Act* (NT) as section 130(1)(cc) to the following effect: ‘In making the decision, the Court must consider if all reasonable steps have been taken by the government agency to provide the services that are necessary in addressing any risks of harm to the child’.

### **Recommendation 34.4**

Territory Families resource audio-visual facilities so that a wider range of experts, both within the Northern Territory and in other states, can be engaged to assist the Court.

### **Recommendation 34.5**

The Department of the Attorney-General and Justice establish and resource a panel of court-appointed experts, including from outside the Northern Territory, from whom the court may seek a report pursuant to section 149 of the *Care and Protection of Children Act* (NT).

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### **Recommendation 34.6**

The *Care and Protection of Children Act* (NT) be amended to:

- include a definition for the term 'recognised entity', which shall be any organisation approved by the Chief Executive Officer of Territory Families, as qualified and meeting relevant criteria, and able to participate and advise in child protection matters under the *Care and Protection of Children Act* (NT), and
- confer an entitlement on recognised entities to be heard in relation to a proceeding about a child.

### **Recommendation 34.7**

Section 127 of the *Care and Protection of Children Act* (NT) be amended to delete the reference to 'mediation' and insert 'family group'. The section then be gazetted as coming into force as soon as practicable. The *Care and Protection of Children (Mediation Conferences) Regulations* be amended to reference 'family group conferences' for 'mediation conferences'.

### **Recommendation 34.8**

Regulations be developed to provide for family group conferences, setting out who must and who may attend and how the conference may be facilitated.

### **Recommendation 34.9**

Amend:

- a. section 49 of the *Care and Protection of Children Act* (NT) so that a mediation conference must be arranged by the Chief Executive Officer if requested by a parent, the separate representative for a child or a recognised entity.
- b. section 49(5) of the *Care and Protection of Children Act* (NT) to specify that the Chief Executive Officer may not appoint an employee of Territory Families to be the convenor of a mediation conference.

### **Recommendation 34.10**

Section 129 of the *Care and Protection of Children Act* (NT) be amended to provide that a protection order directing short or long-term parental responsibility to a specified person cannot be made unless a family group conference has been held in the previous six months.

### **Recommendation 34.11**

Territory Families ensure access to Aboriginal interpreters as required.

### **Recommendation 34.12**

Territory Families ensure that their data management system formally records the languages spoken by families and their proficiency in English so that incoming and subsequent caseworkers have advance notice as to whether an interpreter is required.

### **Recommendation 34.13**

Amend section 140 of the *Care and Protection of Children Act* (NT) to remove the words 'other than a temporary protection order', allowing an appeal to be made to the Supreme Court following the grant of a temporary protection order.

### **Recommendation 34.14**

Amend section 104 of the *Care and Protection of Children Act* (NT) to require the Chief Executive Officer to take reasonable steps, commensurate to the urgency of the application, to provide notice of the application to the parents of the child.



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**Recommendation 34.15**

Amend section 106 of the *Care and Protection of Children Act (NT)* to include the requirement that at the time the order is given to a parent of the child, the length and effect of the order, the right of appeal and information about how to appeal must be appropriately explained to the parent in their preferred language.

**Recommendation 34.16**

Amend section 106 of the *Care and Protection of Children Act (NT)* to provide that where a decision is made to remove the child under a temporary protection order, a Family Support Centre must be informed about the removal of the child as soon as practicable after the decision is made, for referral to or to act as the recognised entity. This amendment to come into force when Family Support Centres have been established.

# RECOMMENDATIONS - VOLUME 3B

## Chapter 35 – The crossover of care and detention

### **Recommendation 35.1**

Further research be undertaken in the Northern Territory to understand the characteristics and needs of children and young people who have been in both out of home care and detention, to identify the size and characteristics of the crossover issue, to measure the prevalence of trauma-related mental health issues within this group, and to identify the type of need and service requirements for this group. This research to be undertaken by the Crossover Unit mentioned below.

### **Recommendation 35.2**

A joint protocol be developed between Territory Families, the out of home care service sector and the police to address the management and response to criminal behaviour in the out of home care environment, with an evaluation of the protocol carried out within two years.

### **Recommendation 35.3**

The Practice Integrity and Performance Unit continue to monitor the use of police callouts by out of home care providers with respect to the behaviour of children in their care.

### **Recommendation 35.4**

The Northern Territory Government in conjunction with Menzies School of Health investigate the development of a tool appropriate for usage in the Northern Territory, the purpose of which is to identify young people for whom intensive support and intervention would be successful in avoiding involvement in the criminal justice system.

Criminogenic risk assessments, if used in the child protection system in the Northern Territory, are to take into account:

- the need for assessments to be properly validated in the different populations in which they are intended to be used, and
- cultural, gender and ethnic differences, especially given the over-representation of Aboriginal children in both systems.

### **Recommendation 35.5**

Territory Families:

- create a Crossover Unit to oversee and manage children in care who fall within the crossover group
- engage specialised caseworkers with training in both child protection and youth detention in the Crossover Unit to work with children who have been, or are, in care and detention, to deliver and coordinate services targeting the needs of the child, to minimise the risk of offending or re-offending and work in co-ordination with any legal service representing the child, and
- develop flexible, dynamic services specific to the needs of crossover youth including:
  - targeted services of high intensity, designed specifically for children in the crossover group
  - therapeutic models that focus on meeting the needs and changing the behaviour of the child while simultaneously addressing social and environmental risk factors, and
  - a mentoring and/or visitor program, to provide the prospect of additional adult connections for children in the crossover group.

### **Recommendation 35.6**

Child protection caseworkers:

- have regular face-to-face contact with any child in detention who is also under care and protection orders
- monitor the wellbeing of children in detention and ensure that their needs are being met, and
- be involved in transition planning for a child in detention from the time of their entry into detention, in consultation with detention staff, key stakeholders and the child.

### **Recommendation 35.7**

A detailed plan for information-sharing and collaboration between workers in the child protection and youth justice sectors of Territory Families, and other relevant agencies, be developed.

## **Chapter 36 – Sexual health and harm**

### **Recommendation 36.1**

The Northern Territory Government consult with Aboriginal communities and the non-government sector with a view to establishing a body, such as a task force, to work with the Northern Territory Government to:

- review the numbers of notifications based on sexual harm or exploitation of children, and the numbers of investigations and their outcomes
- gather further information and ensure ongoing data gathering on relevant sexual issues relating to children and young people, including but not limited to the rates and incidences of contraceptive use, teenage pregnancy and incidences of STIs
- review current policies and procedures relating to sexual matters that involve children and young people, including any pregnancy or STI-related child protection reporting obligations
- engage with communities, government bodies and relevant organisations about how to address sexual issues relating to children and young people, including:
  - the incidence and reporting of child sexual abuse
  - child sexual abuse in care and in detention
  - counselling and support services available to abuse victims in care or detention
  - child and adolescent sexual health, including the rate of STIs, contraception use, pregnancy and fatherhood
  - sexual behaviour or abuse by children and young people, and education programs for offenders, and
  - the need for and implementation of a comprehensive community education strategy.

The body or task force to include representatives of Aboriginal communities and service providers in remote areas, including health professionals, Territory Families and police.

### **Recommendation 36.2**

Territory Families implement:

- sexual health education programs for children and young people, directed at responding to sexualised behaviours
- counselling programs and other forms of therapeutic services for victims following an incident of sexual abuse or assault, and
- specialised expert programs for children and young people who perpetrate sexual abuse or assault on other children or young people.

### **Recommendation 36.3**

Territory Families review departmental policies and processes, identifying improvements to ensure that:

- any history of allegations involving sexualised behaviour or sexually abusive behaviour by children and young people is taken into account in the level of supervision and support afforded to the child or young person, and
- any history of allegations involving sexual assault or indecent assault is taken into account when placing detainees in shared facilities.

### **Recommendation 36.4**

The proposed task force or body review current policies, processes or protocols regarding the health management of girls in care and who are under 16 with respect to:

- contraception, including contraceptive implants
- pregnancy, and
- termination

for issues including informed consent, capacity, and age.

### **Recommendation 36.5**

The proposed task force or body develop policies and protocols regarding data collection, reporting and the introduction and use of audit processes for health professional decision making. Such policy and protocol development include the undertaking or commissioning of studies as appropriate.

## **Chapter 37 – Child protection oversight**

### **Recommendation 37.1**

The internal oversight processes in Territory Families be responsive, transparent and timely and be staffed with highly skilled people who have the capacity to undertake investigative work of a high quality.

### **Recommendation 37.2**

The Chief Executive Officer of Territory Families give effect to the provisions of sections 294-298 of the *Care and Protection of Children Act* (NT) by establishing a review team or teams to oversee the departmental operations of Chapter 2 and monitor the quality of the services.

### **Recommendation 37.3**

Territory Families:

- makes the complaints process more prominent on its website, providing a link on its home page to the complaints policy and a child-friendly version of this policy
- include in its Complaints Management Policy, practical guidance for its staff to inform clients about their rights to raise concerns and complaints
- record information in its complaints database about complaints made by children, with Territory Families reporting on these complaints in its Annual Report
- includes detailed information in its Annual Report about complaints it has received, including the types of issues, classes of complainant, outcomes and complainants' level of satisfaction with the process, and
- regularly survey complainants about their satisfaction with the complaints process and reports on the results of its surveys in its Annual Reports.

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### **Recommendation 37.4**

The Commission for Children and Young People monitor and report on how the Charter of Rights for children and young people is being implemented in the Northern Territory, pursuant to section 68A of the *Care and Protection of Children Act (NT)*.

Territory Families work with the Commission for Children and Young People to provide child-friendly complaints processes, including:

- reviewing the level of knowledge and understanding of the complaints process and the Charter of Rights among children in out of home care and ensuring that information is provided in easy-to-understand language, including for children whose first language is not English, and
- providing the Charter of Rights as an audio and video resource, in different languages, to cater for Aboriginal language speakers and those from culturally and linguistically diverse backgrounds.

### **Recommendation 37.5**

The Northern Territory Government consult with foster and kinship carers and the Foster Carers Association NT to develop complaints mechanisms for foster and kinship carers, as well as individuals who have applied for these roles.

### **Recommendation 37.6**

Territory Families standardise complaints handling processes, including training for carers and residential workers about how to respond to complaints made by children.

### **Recommendation 37.7**

The Commissioner for Children and Young People publish in its Annual Report the number of compulsory notices it issued under section 35 of the *Children's Commissioner Act (NT)* in that year and whether they were complied with, including any delays in compliance.

### **Recommendation 37.8**

Amend Part 3.3 of the *Care and Protection of Children Act (NT)* to require the Commission for Children and Young People in conjunction with the Child Death Review and Prevention Committee to monitor Territory Families' implementation of coronial recommendations relating to children who died while in out of home care.

### **Recommendation 37.9**

The functions of the Child Death Review and Prevention Committee be expanded to include the power to conduct case-specific reviews of serious cases of child abuse in out of home care where the child has survived.

### **Recommendation 37.10**

In light of recommendations the Commission has made in relation to the Office of the Children's Commissioner, the *Children's Commissioner Act (NT)* be amended to provide that the Children's Commissioner is the Convenor of the Child Death Review and Prevention Committee with statutory responsibility for its operations, with the Child Death Review and Prevention Committee adopting a more comprehensive and regular process for reporting on its monitoring of the implementation of recommendations.

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## Chapter 39 – Changing the approach to child protection

### **Recommendation 39.1**

The Northern Territory Government:

- commit to a public health approach to child protection and the prevention of harm to children
- establish consultation procedures with the sector, organisations and communities
- carry out prevalence, needs, service mapping and service referral studies (the studies) to gather information about the needs of children, families and subpopulations, and what services are currently available to meet those needs
- create and maintain a Services Register containing information about the services available in communities
- establish an early support research unit, which would implement a research agenda relating to risk factors, service needs and evaluated outcomes, and
- develop and implement an outcomes and evaluation framework.

### **Recommendation 39.2**

Develop a 10-year Generational Strategy for Children and Families, to be led by the Chief Minister. This Strategy be based on the information gathered in the proposed studies and be overseen by the proposed Tripartite Forum and endorsed by the Children's Sub-Committee of Cabinet.

The Generational Strategy for Children and Families include a strategic framework to govern services for families and children based on local service delivery, covering service location, design, selection, development, delivery, funding and evaluation and:

- plans for the delivery through the Family Support Centres of core services available to all families and services targeting high risk cohorts and prevalent risk factors for involvement in the child protection system, and
- targets, benchmarks and outcome measures.

### **Recommendation 39.3**

Establish a network of no fewer than 20 Family Support Centres, their location to be based on information gathered in the studies and specified in the Generational Strategy for Children and Families, to:

- provide services to and support families and children
- help families understand the child protection system
- act as Recognised Entities, and
- act as an entry point in a dual pathway model.

### **Recommendation 39.4**

The engagement of operators of the Family Support Centres not be by tender, but by a panel made up from the Northern Territory and Commonwealth Governments, including representatives of the Aboriginal community.

The minimum criteria for selection to provide a Family Support Centre include:

- experience in service delivery
- in-depth knowledge and understanding of the Northern Territory Child protection system
- extensive experience of working effectively with Aboriginal children, families and communities
- the trust of the Aboriginal community as a culturally safe and competent service
- the capability to be declared as a Recognised entity, and
- the highest standards of corporate and administrative governance.

### **Recommendation 39.5**

Establish a joint Commonwealth-Territory Co-ordinated Funding Framework, setting policies for an agreed approach to the planning, funding and delivery of services for families and children in the Northern Territory.

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**Recommendation 39.6**

The Commonwealth Government participate in the funding of the Family Support Centres.

**Recommendation 39.7**

The Chief Minister of the Northern Territory to deliver an annual address to the Northern Territory Parliament on progress under the Generational Strategy for Children and Families.

# RECOMMENDATIONS - VOLUME 4

## Chapter 40 – A Commission for Children and Young People

### **Recommendation 40.1**

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

### **Recommendation 40.2**

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

### **Recommendation 40.3**

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

- to consult with various stakeholders, including Ministers, Territory authorities, other bodies, including non-government bodies, all children, young people, their families and carers
- to promote and advocate for the rights and interests of all children and young people in the Northern Territory
- to advise, and make recommendations to Ministers, Territory authorities and other bodies (including non-government bodies) on matters related to the rights, development and wellbeing of children and young people
- to deal with complaints about:
  - a. a service provider's failure to provide services to a vulnerable child that they were reasonably expected to provide
  - b. required services provided to a vulnerable child that failed to meet the standard that was reasonably expected, and
  - c. any complaints made by children or young people in relation to police
- to undertake inquiries in relation to:
  - a. any systemic issue concerning children or young people, and
  - b. the treatment of a vulnerable child or young person in care or detention or at risk of entering detention or care
- to monitor Territory Families' internal complaint handling in relation to:
  - a. children and young people in care
  - b. children and young people in detention, and
  - c. any complaints about harm in care
- to inspect:
  - a. detention centres, residential facilities and any places that are required to be OPCAT compliant, and
  - b. any other place where a child who is in the child protection system resides, if a complaint of serious harm is raised.
- to monitor the implementation of any recommendations made by a relevant inquiry
- to establish and monitor the Official Visitors Program
- to monitor the administration of the *Youth Justice Act* (NT) and the *Care and Protection of Children Act* (NT) and conduct a review of the operation and effectiveness of the Acts at least once every three years
- to undertake and commission research in relation to issues relevant to children and young people and provide a data collection function
- to report to the Minister/Parliament, and
- to provide community education to children and young people generally, with a particular focus on children and young people in care and education.



#### **Recommendation 40.4**

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

#### **Recommendation 40.5**

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

- to inspect a place where children are involuntarily held or routinely accommodated in an institutional setting, without prior notice
- a broader power to undertake inquiries at their own initiative
- to inspect any place where a child or young person who is involved with the child protection system resides if a complaint raising a serious risk of harm to the child is received
- when undertaking an investigation to be able to access information on:
  - children and young people in the child protection and/or the youth justice systems, and
  - facilities where children and young people are held
- to be able to access documents while undertaking an investigation or inquiry, which otherwise may be subject to a legal professional privilege claim, and
- to require relevant departments or Territory authorities to provide reports in relation to compliance with recommendations, and the ability to have the response tabled in Parliament if the Commission for Children and Young People is dissatisfied with the response.

#### **Recommendation 40.6**

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

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

#### **Recommendation 40.7**

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

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

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

## **Chapter 41 – Data and information sharing**

#### **Recommendation 41.1**

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

#### **Recommendation 41.2**

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

### **Recommendation 41.3**

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

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

### **Recommendation 41.4**

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

### **Recommendation 41.5**

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

## **Chapter 42 – Further structural and legislative considerations**

### **Recommendation 42.1**

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

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

## **Chapter 43 – Implementing reform**

### **Recommendation 43.1**

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

### **Recommendation 43.2**

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

### **Recommendation 43.3**

The proposed Commission for Children and Young People:

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

### **Recommendation 43.4**

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

### **Recommendation 43.5**

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

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**Recommendation 43.6**

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

**Recommendation 43.7**

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

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



REPORT OF THE  
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AND DETENTION OF  
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Commonwealth of Australia 2017  
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Detention of Children in the Northern Territory

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