

Aboriginal Peak Organisations Northern Territory

**An alliance of the Central and Northern Land Councils,
Central Australian Aboriginal Legal Aid Service,
North Australian Aboriginal Justice Agency and
Aboriginal Medical Services Alliance Northern Territory**

APO NT Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory

31 July 2017

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ABBREVIATIONS

ABC	Australian Broadcasting Commission
ABS	Australian Bureau of Statistics
ABSEC	Aboriginal Child, Family and Community Care State Secretariat (NSW)
ACCA	Aboriginal Child Care Agency
ACCHS	Aboriginal Community Controlled Health Service
ACE	Adverse Childhood Experience
ADHD	Attention Deficit Hyperactivity Disorder
AEDC	Australian Early Development Census
AHNT	Aboriginal Housing Northern Territory
AHP	Aboriginal Health Practitioner
AHURI	Australian Housing and Urban Research Institute
AJA	Aboriginal Justice Agreement
ALS	Aboriginal Legal Service
AMPs	Alcohol Management Plans
AMSANT	Aboriginal Medical Services of the Northern Territory
ANCOR	Australian National Child Offender Registry
AOD	Alcohol and Other Drugs
APO NT	Aboriginal Peak Organisations of the Northern Territory
APY Lands	Anangu Pitjantjatjara and Yankunytjatjara Lands
ASEP	Adolescent Sexuality Education Program
ASJDC	Alice Springs Juvenile Detention Centre
ATSI	Aboriginal and Torres Strait Islander
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSILS	Aboriginal and Torres Strait Islander Legal Services
BBF	Budget Based Funding
CAALAS	Central Australian Aboriginal Legal Aid Service

CAMHS	Child and Mental Health and Adolescent Mental Health Service
CBD	Central Business District
CDP	Community Development Programme
CLC	Central Land Council
COAG	Council of Australian Governments
CREDIT	Court Referral and Evaluation for Drug Intervention and Treatment
CROC	United Nations Convention on the Rights of the Child
CRYPAR	Coordinated Response to Young Persons At Risk
CTH	Commonwealth
DCF	Department of Children and Families
DCPFS	Department for Child Protection and Family Support (WA)
DPP	Director of Public Prosecutions
DSS	Department of Social Services
ECEC	Early Childhood Education Care
FASD	Foetal Alcohol Spectrum Disorder
FPDN	First Peoples Disability Network
FVPLS	Family Violence Prevention Legal Service
HRLC	Human Rights Law Centre
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHO	Indigenous Community Housing Organisation
ILAP	Indigenous Legal Assistance Program
ILC	Indigenous Languages and Culture
IPA	Indigenous Protected Area
JJT	Juvenile Justice Teams
LSIC	Longitudinal Study of Indigenous Children
MGF	Maternal Grandfather
MGGM	Maternal Great Grandmother

MOS PLUS	The Mobile Outreach Service Plus
MST	Multi System Therapy
MYEFO	Mid-Year Economic and Fiscal Outlook
NAAJA	North Australian Aboriginal Justice Agency
NAPLAN	National Assessment Plan – Literacy and Numeracy
NATSILS	National Aboriginal and Torres Strait Islander Legal Services
NGO	Non-Government Organisation
NLC	Northern Land Council
NPARIH	National Partnership Agreement for Remote Indigenous Housing
NPM	National Preventative Mechanism
NSW	New South Wales
NT	Northern Territory
NTAHF	Northern Territory Aboriginal Health Forum
NTCOSS	Northern Territory Council of Social Services
NTDCS	Northern Territory Department of Correctional Services
NTLAC	Northern Territory Legal Aid Commission
NTOEC	Northern Territory Open Education Centre
NTPFES	Northern Territory Police Fire and Emergency Services
NWAUs	National Weighted Activity Units
OOHC	Out of Home Care
OPCAT	Optional Protocol to the Convention against Torture
PHC	Primary Health Care
PM&C	Department of the Prime Minister and Cabinet
PTSD	Post-Traumatic Stress Disorder
QLD	Queensland
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
RMIT	Royal Melbourne Institute of Technology
SARC	Sexual Assault Referral Centre

SEWB	Social and Emotional Wellbeing
SMART	Substance Misuse Assessment and Referral for Treatment
SNAICC	Secretariat of the National Aboriginal and Islander Child Care
SPT	Sub-Committee on Prevention of Torture
TCI	Therapeutic Crisis Intervention
TFN	Tax File Number
UN	United Nations
UNCRC	United Nations Declaration on the Rights of the Child
VCE	Victorian Certificate of Education
WETT	Walpiri Education and Training Trust
WYDAC	Walpiri Youth Development Aboriginal Corporation
YJA	Youth Justice Act
YJO	Youth Justice Offenders
YMCA	Young Men's Christian Association

EXECUTIVE SUMMARY

APO NT welcomes the opportunity to provide this submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory. APO NT strongly deplores the mistreatment and abuse of children in youth detention facilities and the systemic failures of Northern Territory's child protection system. These failures require the focused attention this Royal Commission will bring.

Numerous reviews have been conducted and significant reports published documenting Australia's child protection and youth justice systems over recent decades. In 2007 and 2010, inquiries into the Northern Territory child protection system were conducted. Almost 20 years ago, the historical *Bringing Them Home* Report was released, and 30 years have passed since the *Royal Commission into Aboriginal Deaths in Custody* commenced. Despite these seminal inquiries and reports, minimal recommendations have been implemented. Consecutive governments have failed our children and communities by repeatedly neglecting to implement much needed reform. It is therefore pivotal that the Federal Government and Northern Territory Government commit fully to the implementation and independent oversight of all recommendations that this Royal Commission will deliver.

In summary, this submission makes the case for a paradigm shift in children's policy with reference to best practice and key learnings from other jurisdictions. It outlines relevant previous submissions made by APO NT and members of the alliance to various state and federal inquiries that make the case for this paradigm shift. It highlights some of the key areas that need to be addressed to reduce the number of Aboriginal children in out-of-home care and the youth justice system, which will provide the necessary foundation for children to succeed in the Northern Territory. APO NT insists on a complete change in children's legislation and subsequent policy that is shaped by Aboriginal people and their organisations, is built on a trauma informed approach and enshrines international human rights guidelines and protocols.

Chapter 1 of this submission outlines the principles central to APO NT's work, such as Aboriginal empowerment, local ownership and community control. It outlines the context of disadvantage of Aboriginal and Torres Strait Islander people in Australia and calls for a **paradigm shift in our approach to children's policy**, where children are central and paramount, in order to ensure that all children have the opportunity to thrive.

In this chapter, APO NT acknowledges Danila Dilba's comprehensive submission to the Royal Commission on the *Youth Justice Act* and *Care and Protection Act*. APO NT supports Danila Dilba's recommendation for these Acts to be repealed and for the introduction of similar legislation to the *New Zealand Children, Young Persons and Their Families Act* (1989), which

encompasses cultural imperatives, prevention and early intervention and focuses on children and families.

Chapter 2 details the importance of **Aboriginal community control and empowerment and trauma informed healing approaches** in meeting the needs of Aboriginal children and their families. APO NT calls on the Federal and Northern Territory Governments to support and resource action under the APO NT Partnership Principles and be guided by them with respect to the design and delivery of all services to Aboriginal children and their families.

Chapter 3 discusses **racial discrimination** in broad terms and in the context of youth justice in the Northern Territory. It details the prevalence of racism and discrimination experienced by Aboriginal and Torres Strait Islander peoples and emphasises the link between discrimination, poor mental health outcomes and emotional trauma. APO NT calls for research into the views of young people associated with the youth justice system on discrimination, and Australia's international obligations relating to anti-discrimination, to inform policy design and reform of the youth justice system.

Chapter 4 examines **early intervention measures and pathways** for young people who are at risk of exposure to the youth justice system. This chapter looks at the prevalence of substance misuse, poor mental health outcomes and trauma among young people in the youth justice system. The chapter looks at how these are affected by interacting economic, cultural and social factors such as housing, early childhood development, education, employment, family violence, cognitive impairments and disabilities and alcohol-related harm such as Foetal Alcohol Spectrum Disorder. APO NT calls for key reform, centred on therapeutic and rehabilitative services and options available to Aboriginal children and young people who are at risk of exposure to the youth justice system.

Chapter 5 addresses the **systemic failings in care and protection systems** in the Northern Territory. This chapter first outlines APO NT's proposal for a strategy to overhaul the failing Northern Territory child protection system and second highlights the specific systemic issues that provide the rationale for this overhaul.

Chapter 6 addresses the **systemic failings in the youth justice systems** in the Northern Territory. This chapter outlines that the current model is not working and, in many cases, acts to re-traumatise already vulnerable children. APO NT highlights that there is an urgent need for a child-centred and culturally relevant approach to youth justice proceedings which ultimately seeks to ensure that the primary goal of the youth justice system is healing and rehabilitation, and not punishment. APO NT calls for real engagement by all involved in the youth justice system with Aboriginal people, youths and organisations to embed cultural considerations into all aspects of service provision and therapeutic interventions for Aboriginal children.

Chapter 7 addresses the **role of the Australian Government** in addressing the overrepresentation of Indigenous children in the youth justice system, through measures such as inserting justice targets into the Closing the Gap Strategy, ensuring adequate and secure funding to Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services, and implementing the Optional Protocol to the Convention Against Torture (OPCAT) into domestic law and establish National Preventative Mechanisms.

This submission has been prepared with input from APO NT's member organisations and several external organisations including Danila Dilba Aboriginal Health Service, Secretariat of National Aboriginal and Islander Child Care (SNAICC), the National Aboriginal and Torres Strait Islander Legal Services (NATSILS), First Peoples Disability Network (FPDN) and the Human Rights Law Centre (HRLC). Their input strengthens the experience and expertise upon which the submission is based.



John Paterson
CEO
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On behalf of

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RECOMMENDATIONS

CHAPTER 1: A Paradigm Shift

Recommendation 1

That the principles of local Aboriginal control, ownership and empowerment should fundamentally shape the findings and recommendations of this Royal Commission across all the terms of reference.

Recommendation 2

That the Royal Commission recommends the development of a comprehensive framework for reform of Youth Justice and Child Protection, informed by New Zealand's Investing in Children and their Families Blueprint for Reform.

CHAPTER 2: Aboriginal Community Control and Trauma Informed approaches in meeting the needs of Aboriginal children and their families

Recommendation 3

That the Federal and Northern Territory governments support and resource action under the APO NT Partnership Principles and be guided by them with respect to the design and delivery of all services to Aboriginal children and their families.

Recommendation 4

APO NT strongly recommends that a trauma informed healing approach should underpin the findings and recommendations of the Royal Commission across all the terms of reference.

CHAPTER 3: Discrimination

Recommendation 5

That the Royal Commission consider recommending a program to conduct ethical research into the views of young people associated with the youth justice, about discrimination, identity, belonging, culture and related matters to inform policy design.

Recommendation 6

That the Royal Commission consider recommending a community campaign similar to the BeyondBlue campaign to raise awareness about unconscious bias and discrimination impacting on young people and their mental health.

Recommendation 7

That the Royal Commission consider our international obligations in relation to anti-discrimination and related matters at the forefront and in the formation of its

recommendations and findings, including utilising principles of positive discrimination for structural and governance reform of youth justice.

CHAPTER 4: Early Intervention & Pathways for at Risk Children

Recommendation 8

That early childhood programs and related clinical and public health services are provided equitably to all Aboriginal children across the NT through the development and implementation of a three-tiered model of family health care – universal, targeted and indicated – to meet children's needs from before birth to school age. Services should be provided across eight key areas:

- quality antenatal and postnatal care;
- clinical and public health services for children and families;
- a nurse home visiting program;
- parenting programs;
- child development programs;
- two years of preschool;
- targeted services for vulnerable children and families; and
- supportive social determinants policies.

These services need to be responsive to, and driven by, the community at a local level.

Recommendation 9

That the Northern Territory Government, as part of their current review of early childhood programs and policies, conduct a scoping study to assess the accessibility and quality of services across the NT for the eight domains identified above. This study should then inform the development of a service system that delivers high quality, culturally safe, community controlled early childhood programs located within comprehensive primary health care.

Recommendation 10

That the Royal Commission notes the recommendations APO NT made to the Senate Finance and Public Administration References Committee Inquiry into Domestic Violence in Australia that:

- a) intergenerational trauma be recognised as a causal factor in family violence;
- b) healing and violence prevention programs must be adequately resourced by Governments;
- c) the needs of children should feature prominently in violence reduction strategies to reduce intergenerational violence; and,
- d) the Government provide on-going support for Aboriginal Community Controlled Health Services to deliver Social and Emotional Wellbeing programs for Aboriginal children and young people as effective and valuable mechanisms to address domestic and family violence.

Recommendation 11

That the NT Government provides a range of short and long-term public housing options for persons affected by domestic and family violence as an essential measure in dealing with family violence problems.

Recommendation 12

That in child protection matters, where domestic and family violence is present and where housing is a barrier to Aboriginal children being placed with appropriate family members, that the Government source private interim accommodation for both the youth and guardian, where short-term housing is unavailable. This strategy will reduce the Aboriginal child's exposure to family violence whilst also ensuring that they are placed with a family member rather than a stranger.

Recommendation 13

That the Federal and Northern Territory governments provide needs-based, long-term funding for ACCHSs to ensure they are resourced to provide culturally responsive, therapeutic child and adolescent mental health services in remote areas, in conjunction with the services' SEWB teams where possible.

Recommendation 14

That, where required, specialist child and adolescent psychiatry services assess and treat all children and adolescents with mental health needs, without exclusion. Innovative models to provide these services, including the use of telehealth in conjunction with SEWB teams, should be explored.

Recommendation 15

That Recommendations 21, 22, 23, 24, 25, 38, 40, 57, 94 from the Little Children are Sacred report be implemented without delay.

Recommendation 16

That support and counselling for victims of sexual abuse in remote areas be adequately funded and provided as a specialist NT-wide service by SARC.

Recommendation 17

That prevention strategies both at child and community levels be funded, including education on appropriate sexual behaviour for young people and community.

Recommendation 18

That treatment for adolescent perpetrators of child sexual abuse, as well as children and young people with inappropriate sexual behaviours, be funded and accessible, including in

remote areas.

Recommendation 19

That the impact of past policies and history on the social and emotional wellbeing of contemporary Aboriginal youth must be acknowledged. Appropriate services and therapies must be made available to tackle the intergenerational trauma and grief that significantly increase the risk of youth suicide. Investments must be substantial and long-term, in recognition of the lengthy history of dislocation and mistreatment and their consequent effects.

Recommendation 20

That the Royal Commission considers relevant actions arising from the APO NT Central Australian Grog Summit¹ in developing any recommendations in relation to alcohol policy, such as removing cheap grog, introducing a minimum or 'floor' price for take-away alcohol set at the price of full-strength beer, or introduce a volumetric tax.

Recommendation 21

That the recommendations of the NT Parliamentary Inquiry into Foetal Alcohol Spectrum Disorder (FASD) be implemented.

Recommendation 22

To address issues presented by FASD and other cognitive impairments in the youth justice context, the Northern Territory and Australian governments must commit funding urgently to:

- a) improve awareness and understanding of FASD and other forms of cognitive impairment amongst professionals working in the justice system;
- b) improve screening and assessment capacity within the justice system, including through the appointment of specialist court-based clinicians;
- c) establish and expand non-custodial therapeutic options to the courts to ensure that the courts can divert FASD and other cognitively-affected children and young people away from the prison system.

Recommendation 23

That the Northern Territory and Australian governments immediately provide funding to increase the capacity of Aboriginal community controlled health services to provide comprehensive, holistic health and wellbeing services for Aboriginal children and families

¹ Aboriginal Peak Organisations NT. (2013). *Grog in the Territory: Central Australian Summit on alcohol policy and its impact on Aboriginal people and communities – outcomes report*. Retrieved from: <http://www.amsant.org.au/apont/wp-content/uploads/2015/02/Central-Australian-Grog-Summit-Report-FINAL-7-November-20131.pdf>.

affected by substance misuse in the NT, including in relation to Ice, and also in relation to mental health needs and social and emotional wellbeing.

Recommendation 24

That the Northern Territory and Australian governments immediately provide funding to increase the accessibility of voluntary rehabilitation services and ongoing treatment and support services. This should include the establishment of appropriate general purpose youth rehabilitation services (10 to 20 maximum and including visiting psychologists), specialist services for women, and expanded services for those in remote communities. These services should focus on the development of impulse control and self-regulation skills, and addressing violence and mental health issues.²

Recommendation 25

That integrated, holistic alcohol and other drug and mental health services incorporated into primary health care be made available to all Aboriginal people including young people, preferably through community-controlled services.

Recommendation 26

With respect to prevention and early intervention, that:

- a) the impact of disability upon child development, education and justice outcomes be recognised within education, policing and justice systems.
- b) Timely assessments be undertaken to diagnose disabilities at the point at which risks or vulnerabilities to young people emerge; and.
- c) Individualised support services be provided to address complex needs of young young people with disabilities.

Recommendation 27

With respect to youth Justice, APO NT recommends:

- a) Aboriginal young people placed in institutional care must be assessed for disability and provided with a long-term disability support plan.
- b) Aboriginal young people brought before the Court and charged with criminal offences must be screened and assessed for disability.
- c) Courts must have sufficient options to direct diversion of young people away from the criminal justice system and into appropriate and disability and mental health settings in the community.
- d) Magistrates, lawyers, client support offices, probation and parole officers, police officers and others working with Aboriginal young people in contact with the criminal justice system should receive training on identifying disability.
- e) Consideration should be given to the introduction of Disability Advocates to work

² See submission to the Royal Commission from Central Australian Aboriginal Congress.

with Aboriginal young people before the Courts alongside their lawyers, to identify needs, supports and options for diversion.

- f) Case management of Aboriginal young people in detention should be disability-led, trauma informed and culturally appropriate, involving access to individualised treatment and services, education and ongoing needs assessment.
- g) Behaviour management policies and procedures in youth detention should be disability informed. Specific strategies for managing challenging behaviours that manifest as a result of disability must be positive and therapeutic (rather than punitive and disciplinary).
- h) Education and schooling within youth detention must address and include the needs of young people with a disability.
- i) Staff in youth detention must receive training in disability and mental health including awareness of behaviours that result from disability and mental illness and strategies for addressing challenging behaviour in a positive and therapeutic manner.

Recommendation 28

In considering the disability needs of the wider community, that:

- a) Maternal, infant health and early childhood services in the community to encourage the early diagnosis of disability.
- b) Information and discussion about disability be communicated in a culturally appropriate and accessible manner with young people and their families. This should include an awareness of:
 - i. the generally low understanding of disability (as defined and diagnosed by western medicine) amongst many Aboriginal people;
 - ii. the fact that many Aboriginal people with a disability fear discrimination and may be reluctant to seek help; and
 - iii. the distrust many Aboriginal people feel towards non-Aboriginal health service providers given the past practices of institutionalisation of children with a disability and past child removal practices.³
- c) Regular screening for disability in schools and the education system be implemented in order to identify and properly support the needs of children with a disability.

Recommendation 29

That a Policy Translation Group be created to guide the development of a Northern Territory Disability Justice Strategy to address the rights and circumstances of Aboriginal people in contact with the criminal justice system, including young people, and to advise government

³ Avery, S. (2016, 12 October). *Statement to the Royal Commission into the Protection and Detention of Children in the Northern Territory*, [24]. Retrieved from <https://childdetentionnt.royalcommission.gov.au/public-hearings/Documents/evidence-2016/evidence13october/Exh-029-001.pdf>

on a co-ordinated approach to disability policy and government action plans.⁴

Recommendation 30

That the NT Government should provide additional resources to allow organisations such as NAAJA and CAALAS to deliver comprehensive legal education packages to young people across the NT.

Recommendation 31

That government agencies take a coordinated approach in working with children; work in partnership with youth services and Aboriginal families and increase resources allocated to youth services to provide children and young people with meaningful recreation alternatives.

Recommendation 32

That mainstream and Aboriginal organisations providing youth services work collaboratively in partnerships governed by the APO NT Partnership Principles.

Recommendation 33

That individual performance plans be developed for all primary school children from transition to year 2, who are behind in mainstream classrooms. The plans should seek to achieve improvements in engagement and outcomes and identify additional supports required for the child.

Recommendation 34

That priority is given to investment in adolescent literacy programs, vocation and education programs and mentoring programs.

Recommendation 35

That research be undertaken to explore the relationship between education outcomes and the use of suspension and expulsion in the NT and its impacts on rates of youth detention.

Recommendation 36

That population based approaches are provided for disadvantaged families such as Nurse Family Partnerships and Early Childhood Development Centres using the Abecedarian approach. Children who are not keeping up with play based learning games should be further assessed and intervention provided.

Recommendation 37

That consistent school disciplinary policy be developed for the NT, including the grounds and procedures for each category of exclusion of students from school.

⁴ Ibid 36.

Recommendation 38

That accessible and accurate information be developed for parents and students, and training materials for schools made available on procedures for school suspension, exclusion and expulsion, including mechanisms of appeal.

Recommendation 39

That the Northern Territory Department of Education establish a unit with responsibility for developing case management plans for each excluded child and that these children receive counselling or other therapeutic support and access to alternative schooling or education.

Recommendation 40

That all primary and secondary teachers and school counsellors receive professional development training to help them identify children at risk of dropping out of school, and appropriate support services and programs for referral. Where appropriate, this training and additional therapeutic services should be provided by ACCHSs.

Recommendation 41

That the Northern Territory Government fund the establishment of an Aboriginal community controlled peak education body.

Recommendation 42

To ensure community involvement in local schools' decisions and practices, that nominated community based leaders and elders sit on both the school board and school council and to ensure that appropriate training is given.

Recommendation 43

That the local community be engaged in areas of the school curriculum to ensure that Aboriginal people in the community are closely connected with the schools, are valued for their knowledge and expertise and can help students and teachers make the connection between traditional and western education in a culturally safe environment.

Recommendation 44

That the *Northern Territory Education Act*, Regulations and policy be amended to clarify that suspension and exclusion of student from school is an absolute last response option.

Recommendation 45

That the Northern Territory Government work with Aboriginal educators, and with the Aboriginal community controlled peak education body when established, to develop better mechanisms and resources to address the causes of behavioural problems that arise and maintain student engagement with education.

Recommendation 46

That the Australian Government increases funding to Indigenous ranger programs across the Northern Territory to support youth engagement in natural and cultural resource management initiatives.

Recommendation 47

That the Northern Territory Government:

- a) commits to the principles and practices of trauma informed service provision including requiring training and development at all levels of government on the impacts of trauma and trauma informed service provision;
- b) conducts an audit of its policies and service delivery practices in conjunction with AMSANT, particularly within the Departments of Territory Families, Housing and Community Development, and Police; and implements changes to ensure they are trauma informed; and
- c) monitors and evaluates this work.

Recommendation 48

That the Northern Territory Government sets targets to ensure the overall number of public housing stock increases in urban and remote areas to meet demand for public housing

Recommendation 49

That the NT Government:

- a) adequately resource AHNT as the NT Aboriginal peak housing body;
- b) work in partnership with APO NT and AHNT to develop priorities, culturally relevant design and delivery of housing;
- c) commit to reforms proposed in the *Establishment of a Remote Housing Organisation Final Report* to develop an Aboriginal controlled housing sector that is diverse, flexible, locally controlled, generate local employment and suit the needs of Aboriginal people
- d) commit to developing a 10-year Aboriginal housing strategy in partnership with APO NT and AHNT.
- e) implement Health Habitat's *Housing for Health: the guide* in the design, construction, refurbishment and cyclical maintenance of public housing.

Recommendation 50

That the Commonwealth Government commits to fund the National Partnership on Remote Indigenous Housing beyond June 2018, and that the agreement:

- a) provides that the annual investment in construction of new houses in remote communities addresses existing shortfalls and keeps apace with population growth; and
- b) includes properly funded cyclical maintenance programs to be undertaken by local

Aboriginal organisations.

CHAPTER 5: Systemic failings in Care and Protection System

Recommendation 51

APO NT recommends that the position of Co-Commissioner for Aboriginal Children and Young People is established with a focus on prevention and early detection concerning Aboriginal and Torres Strait Islander children.

Recommendation 52

That Territory Families works with APO NT to develop a comprehensive joint strategy to establish an Aboriginal-led and managed Child Protection and Out-of-Home Care Service in the NT in line with the APO NT proposal and guiding principles.

Recommendation 53

That an Aboriginal Childcare Agency with two regional support services be established, in consultation with APO NT. This would draw on the Victorian Aboriginal Child Care Agency Model, but customised to the NT and its unique demographics, culture and needs.

Recommendation 54

That each child who is in care is legally represented by an independent child advocate.

Recommendation 55

That Aboriginal community visitors are appointed to monitor and support children in all Out of Home Care placements.

Recommendation 56

That Territory Families entrenches the principle of removal only as a last resort in the legislation, policy and practice by including safeguards to ensure that children are removed only where there is evidence that all other avenues for their protection have been exhausted.

Recommendation 57

That Territory Families' policy and the relevant legislation reflect that parties should be assisted to access the Commonwealth family law system in preference to the imposition of Permanent Care Orders.

Recommendation 58

That Territory Families commits to better supporting kinship carers by adopting the APO NT proposal outlined above and by:

- a) Creating a simplified and culturally-appropriate process for remote family members to be assessed as kinship carers and providing practical assistance in completing the

- documentation;
- b) Legislating or prescribing in policy prescription of strict timeframes for assessing family members as kinship carers i.e. 28 days maximum;
 - c) Urgently developing a memorandum of understanding between Territory Families and SAFE NT for fast tracking all police checks related to kinship care assessment;
 - d) Developing 'Kinship Care Worker' positions employed specifically for the recruitment and retention, care and support of family members to care for their children and be an advocate and advisor.
 - e) Re-establishing Aboriginal family group conferencing as a matter of urgency so that decision-making can be informed by family members and kinship care options are identified as early as possible if necessary.

Recommendation 59

That the Northern Territory Government adequately funds Territory Families to ensure that:

- a) Aboriginal children who are in temporary placements at a significant distance from their family and community are able to have frequent and regular contact, regardless of whether access is with parent or extended family who should be the next best option for the child.
- b) Aboriginal children and their families are supported to maintain and strengthen access to their culture.
- c) supported access for family is a relevant condition of a permanent care order.

Recommendation 60

That Territory Families:

- a) ensures that caseworkers assess the need for the use of an interpreter with all Aboriginal parents and family members.
- b) support and empower Aboriginal staff and to ensure that Aboriginal staff have quality training opportunities, mentoring and support
- c) prioritise the recruitment and training of Aboriginal staff, including at senior levels.

Recommendation 61

That a set of principles and procedures is established by Territory Families and contracted residential carers and NT Police to ensure children in residential care placements do not enter the criminal justice system wherever possible and are provided with services to reduce re-offending.

Recommendation 62

That the Northern Territory Police, Fire and Emergency Services (NTPFES) and Director of Public Prosecutions (DPP) establish guidelines for the decision to prosecute children in residential care and such decisions are made by specialist youth prosecutors.

Recommendation 63

That child representatives for Aboriginal children are appropriately accredited and appointed by an independent panel or through a specialist service such as an Aboriginal Child Care Agency.

Recommendation 64

That mediation should be made available to families at all stages of the process from early notifications to care plan reviews and for court ordered mediations after application for protection orders has been made.

Recommendation 65

That Territory Families must never regard detention facilities as a suitable child placement and that every effort must be made to ensure that detention of children in care is a last resort.

Recommendation 66

That the Australian Government develops and implements a comprehensive, adequately resourced national strategy and target, developed in partnership with Aboriginal and Torres Strait Islander peoples, to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care. This strategy should include the allocation of federal supports and resources to family and community strengthening initiatives in the Northern Territory.

Recommendation 67

That the Australian Government invests in a national Aboriginal and Torres Strait Islander family support program for early intervention, prevention and family reunification. Federal investment should be used to complement Northern Territory Government programs and drive the short to medium term increases in family support needed to drive long-term outcomes.

Recommendation 68

That the Australian Government invests in an Aboriginal and Torres Strait Islander specific program of early childhood education and care to strengthen existing community-controlled services and introduce new services to target the 15,000 place participation gap.

Recommendation 69

APO NT supports the call by the Making Justice Work coalition for an Aboriginal Justice Agreement that sets out how Northern Territory Government and Aboriginal people will work together to improve justice outcomes for Aboriginal people in the Northern Territory. APO NT, CAALAS and NAAJA are members of the Making Justice Work coalition.

Recommendation 70

It is recommended that in order to address the child protection matters affecting Aboriginal and Torres Strait Islander children, adequate resources be provided to the ATSILS to ensure families and children are provided with access to culturally safe and competent legal assistance.

CHAPTER 6: Youth justice

Recommendation 71

APO NT is encouraged by the commencement of a process to develop an Aboriginal Justice Agreement that sets out how the Northern Territory Government and Aboriginal people will work together to Improve justice outcomes for Aboriginal people in the Northern Territory.

Recommendation 72

That the AMSANT four key principles:

- trauma informed and trauma integrated approach;
- support for community led solutions;
- incorporating Aboriginal worldviews; and
- community/ family approaches child-centred focus

become the foundation for design and implementation of future youth justice and child protection systems in the Northern Territory.

Recommendation 73

APO NT supports Danila Dilba's recommendation for major reform to the youth justice system that includes an overarching legislative framework and organisational cultural change that recognises the interconnectivity between child care and protection system and the youth justice system.

Recommendation 74

That the Northern Territory Government explore options for a holistic whole of government and community approach to the gross over-representation of Indigenous youth in juvenile detention.

Recommendation 75

That Territory Families in partnership with APO NT, holds a conference and workshop with Indigenous and government and non-government stakeholders, to plan the reform of Youth Justice Services, and to ensure Indigenous people are empowered and engaged in developing and implementing reforms.

Recommendation 76

That the age of criminal responsibility in the Northern Territory be raised to the age of 12.

Recommendation 77

That section 38(1) of the Criminal Code Act and section 3 of the Youth Justice Act is amended to reflect the age of criminal responsibility.

Recommendation 78

That protocols be developed in consultation with Aboriginal Legal Services and communities consistent with Royal Commission into Aboriginal Deaths in Custody recommendations, to guide police in their dealings with youth.

Recommendation 79

That government initiate a consultation process with Aboriginal Legal Services with the view of establishing a Police investigation and complaints process that is independent from Police and autonomous, and where Aboriginal people serve roles.

Recommendation 80

That a similar system to the Coordinated Response to Young Persons at Risk (CRYPAR) system be introduced in the Northern Territory to ensure that service providers are notified by police and are subsequently accountable for connecting with and assisting vulnerable young people.

Recommendation 81

That an audit is undertaken of all existing holding cells for youth in remote police stations as to their suitability for children and young people in compliance with the Convention on the Rights of a Child and the United Nations Minimum Standards for the Administration of Juvenile Justice (the Beijing Rules).

Recommendation 82

That youth are only detained as a last resort and appropriate cells in remote police stations.

Recommendation 83

That all young persons are safely detained in youth only cells.

Recommendation 84

That Police practices should encompass the principle that the removal of an Aboriginal child in custody from his or her community should be an action of last resort.

Recommendation 85

That a Practice Direction is implemented by the Youth Court of the Northern Territory that should a youth be refused bail by police and where police are seeking to remand the youth to a detention facility prior to appearing in person at court, that this youth appear remotely for a bail hearing. In these circumstances the youth must be represented by a lawyer before any determination can be made to remand that youth in a detention facility.

Recommendation 86

That support services are provided to family members to attend Court proceedings for their children and for the return of the child to their community of origin.

Recommendation 87

That the Northern Territory Government urgently provides supported bail accommodation for young people in remote communities who are currently being remanded in detention due to a lack of alternatives.

Recommendation 88

That such supported bail accommodation is sourced in remote Aboriginal communities that are run by local Aboriginal organisations or in partnerships.

Recommendation 89

That the Northern Territory Government appropriately resource existing youth accommodation and support services, such as Bush Mob in Alice Springs and Mount Theo.

Recommendation 90

While APO NT welcomed the Stronger Futures amendments allowing customary law and cultural practices to be considered in offences relating to cultural heritage or cultural objects, the restrictions on courts, in bail and sentencing matters, should be repealed completely. The restrictions devalue Aboriginal culture and custom, distorts the bail and sentencing process, and result in unjust outcomes for Aboriginal people.

Recommendation 91

We urge the Committee to inquire into the human rights implications of the restrictions on taking Aboriginal and Torres Strait Islander customary law into account in bail and sentencing decisions. We are particularly concerned by the discriminatory nature of the restrictions, and the impact of the restrictions on equality before the law for Aboriginal and Torres Strait Islander peoples.

Recommendation 92

Pro-bail, youth specific bail provisions should be inserted into either the Bail Act, or as part of a separate bail regime for young people in the Youth Justice Act. The starting point must be that remanding a young person in custody is to be the option of last resort. In Victoria, the *Bail Act 1977* requires a decision maker have regard to a number of youth-specific factors in addition to the general criteria applicable to any grant of bail.⁵

⁵ See *Bail Act 1977* (Vic), s. 3B.

Recommendation 93

That section 36A of the *Bail Act* is reviewed in terms of its application to young people.

Recommendation 94

After section 37B(1)(b) of the *Bail Act* insert –“subsection (1) does not apply to a child”.

The offence of failing to appear in court should not be prescribed in its place.

Recommendation 95

Section 38 of the *Bail Act* should be amended to set out the range of options available to police upon detecting a breach of bail and s38(2A) should be repealed.

The amended section should provide that if a police officer believes, on reasonable grounds, that a person is failing, has failed or is about to fail to comply with a conduct direction, the police officer may:

- a) Take no action
- b) Issue a warning
- c) Require the person to attend court by notice without arresting the person, or
- d) Arrest the person and take them as soon as practicable before a court.

And that, in considering what course of action to take, the police officer must have regard to:

- a) The relative seriousness or triviality of the suspected failure (included threatened failure)
- b) Whether the person has reasonable excuse for the failure
- c) That arrest is a last resort
- d) Insofar as they are apparent to or known by the officer, the person’s age and any cognitive or mental health impairment.

That, if the person is arrested, the officer may afterwards discontinue the arrest.

That, upon being satisfied that the person has failed, or was about to fail to comply with a conduct direction, a court may re determine whether to release or detain the person and whether to impose a condition or a conduct direction.

Recommendation 96

APO NT considers it more appropriate to fund bail programs which target at risk young people and intensively support them and their families to comply with bail conditions.

Recommendation 97

That the NT Government should repeal the current scheme of presumptions contained in sub sections 7A and 8 of the *Bail Act (NT)* and replace it with a uniform presumption in favour of bail for children and young people.

Recommendation 98

That greater emphasis and police training exist around proceeding by way of summons rather than arrest and bail wherever possible.

Recommendation 99

That police utilise Notices to Attend to proceed with charges involving young people wherever possible.

Recommendation 100

That the *NT Youth Justice Act* should be amended to ensure that diversion for certain minor offences, and certain types of offenders is complied with.

Recommendation 101

The court should have an unfettered power to refer a young person onto the diversion program, without requiring prosecution consent.

Recommendation 102

That young people receive more appropriate support to comply with diversion programs.

Recommendation 103

That the National Aboriginal and Torres Strait Islander Legal Services submission in relation to best practice minimum standards for Aboriginal Courts be referred to as best practice guidance for delivering programs in non-urban communities.

Recommendation 104

That there be a physically separate specialist youth court in Alice Springs that takes a therapeutic and diversionary best-practice approach to the young people appearing before it. This would also allow for improved privacy for young people including court cells separate from adult prisoners and reduce unnecessary delays.

Recommendation 105

That consideration be given to vesting the Youth Court with jurisdiction to hear matters relating to Care and Protection as well as Youth Justice.

Recommendation 106

That Government work with Aboriginal legal services to co-develop a model of youth justice which integrates the work of Law and Justice groups (or Cultural Authorities) including empowering, resourcing and authorising these groups across a range of activities and elements of youth justice.

Recommendation 107

APO NT commends NAAJA's Throughcare Project as a best-practice model that should be expanded throughout the Northern Territory.

Recommendation 108

The Northern Territory Government should fund dedicated Throughcare programs that would enable legal services to provide wrap-around and holistic intensive case management support to those with drug misuse problems exiting prison and youth detention.

Recommendation 109

We recommend NTDCS enhance its focus on reintegration and better prepare young people for release by engaging them in individually tailored rehabilitation geared towards their needs and a greater emphasis on post-release planning, including the implementation of regular and documented joint case management meetings with interested parties and support services including Territory Families, community-based NTDCS staff, the young person themselves and their family where appropriate.

Recommendation 110

We recommend the Northern Territory Government, with input from Aboriginal organisations to establish a joint planning forum, similar to the NTAHF to meet regularly to discuss and develop appropriate interventions for/with young people deemed to be at risk and in need of support. Membership of this forum, would include representatives from NTDCS, DSS, PM&C, Territory Families with Aboriginal input led by the proposed Aboriginal Child Care Agency. It should not have community specific services on it, but NT wide peak bodies. The community specific services can seek representation with a mandate from the ACCA.

Recommendation 111

Young people should be supervised by youth specific parole officers who approach their supervisory role using a youth-friendly intensive case management framework, as opposed to a strict statutory compliance model.

Recommendation 112

We recommend NTDCS establish a therapeutic environment within its detention centres and transition from their current punitive approach to offending behaviour and adopt a therapeutic methodology that provides young people with the opportunity to develop in socially responsible ways. This will require cultural change within youth detention and appropriate staff recruitment and training.

Recommendation 113

That the NT Government implement recommendation 3 of the Hamburger Report, relating to a Statutory Authority.

Recommendation 114

APO NT recommends that the NT Government urgently commissions a purpose-built youth

detention facility in both the Central Australian and the Top End regions, based on best practice.

Recommendation 115

That the NT Government implement recommendation 24 of the Hamburger Report, relating to the creation of an Office of Inspector of Correctional Services in the Northern Territory to strengthen overall governance and accountability of the NTDCS. APO NT recommend that this office is independent and the Inspector be Indigenous.

Recommendation 116

We recommend NTDCS ceases the use of security classifications to determine access to rehabilitation and ensures young people have access to rehabilitation and reintegration activities suited to their needs regardless of their classifications.

Recommendation 117

APO NT commends the CAALAS, NAAJA and NTLAC's submission to the Review of Youth Detention in the Northern Territory, and recommend that:

- a) a therapeutic, evidence-based approach to behaviour management be adopted in all detention centres in the Northern Territory, supported by ongoing staff training;
- b) an independent statutory office or body with expertise in custodial services, such as an Independent Custodial Inspector, be introduced in the Northern Territory; and
- c) a contemporary operations manual be developed and implemented, modelled on best practice policies and procedures and that this manual be made available to legal services and other stakeholders.

Recommendation 118

We recommend the implementation of policies, procedures and strategies to minimise the use of force, strictly limit the circumstances in which isolation may be use and place stringent safeguards around its use.

Recommendation 119

That provisions are made in relation to restraint and seclusion to stipulate the situations in which they may be used in Secure Care, the approval required for their use, the way in which they may be used and records that must be maintained with respect to their use. These provisions should emulate sections 61 and 62 of the *Mental Health and Related Services Act*.

Recommendation 120

That each young person be informed, in a language and manner they understand, of detention centre rules and processes and their rights and responsibilities, including their rights under the Australian Children's Commissioners and Guardians Model Charter of Rights for Children and Young People Detained in Youth Justice Facilities.

Recommendation 121

That youth detention staff recruitment and training be immediately brought into line with best-practice standards in other jurisdictions.

Recommendation 122

We recommend NTDCS to:

- a) employ appropriately qualified and experienced staff to guide behavioural interventions, train custodial staff in constructive behavioural management;
- b) work with young people to both address the causal factors associated underpinning problematic behaviours and help them apply socially responsible responses in situations of stress; and
- c) employ Aboriginal mentors who can provide young people with pro-social support in detention centres.

Recommendation 123

That children in detention receive access to education that is culturally appropriate, and can utilise the assistance of interpreters where necessary.

Recommendation 124

Territory Families should ensure that young people in detention are not restricted from participating in cultural practices, such as speaking their own Aboriginal languages.

Recommendation 125

We recommend NTDCS addresses issues related to a young person's access to education while they are in detention and ensures this access is preserved even when a young person is deemed to have behaved offensively.

Recommendation 126

Cultural information should be obtained from young people (to the extent that is culturally permissible), during intake, so that details of the young person's culture, family, language and status within the community are known and can be considered during planning and decision-making for that young person.

Recommendation 127

That NTDCS review their rehabilitation programs and work towards greater responsivity whereby programs are tailored to meet the needs of young people in detention in the Northern Territory. We consider this will require the greater involvement of Aboriginal people, both in terms of program design and facilitation.

Recommendation 128

We recommend the Northern Territory Government establishes a fund similar to the NAAJA Throughcare Program, that services in the Top End and Central Australia can apply to in order to support a disadvantaged young person's interests in engaging in activities such as sport, training and education.

Recommendation 129

Programs and services for young people in detention should be designed and implemented to strengthen ties and understanding of culture. The NT Government should fund a wide range of culture-strengthening programs for youth in detention, whether on remand or serving a sentence.

Recommendation 130

That there be a focus on de-institutionalising the design of youth detention facilities as much as possible to best serve the goal of safety and rehabilitation.

Recommendation 131

We recommend NTDCS and Territory Families drastically improve the health screening of young people in their care through services coordinated through local ACCHSs, and train their staff to better recognise and respond to medical issues, particularly in relation to hearing and sight.

Recommendation 132

We recommend NTDCS and Territory Families be properly resourced to adequately deal with health issues in a timely manner.

Recommendation 133

That all staff within NT Detention Centres are provided Therapeutic Crisis Intervention Training to better equip them to understand and utilise behavioural management techniques and encourage detainees' learning and development through crises.

Recommendation 134

That a therapeutic, evidence-based approach to behaviour management be adopted in all detention centres in the Northern Territory, supported by ongoing staff training.

Recommendation 135

That multi-disciplinary case management of detainees commences from admission, and targets the specific needs of each young person – it is especially important that culturally-strengthening, therapeutic and child centred programs and services be identified for Aboriginal young people in detention and for a period following release to ensure successful reintegration into community.

Recommendation 136

That an appropriate facility be built in Central Australia to avoid the need for young people to be transferred due to overcrowding and infrastructure issues.

Recommendation 137

That any decision-making in relation to potential transfers must involve the young person, their family and their lawyer and that no young person is transferred against their will.

Recommendation 138

That a greater range of programs are made available in Alice Springs, so that young people do not have to choose between remaining in Alice Springs and accessing programs in the Top End.

Recommendation 139

We recommend that the NT Government:

- a) significantly overhauls Territory Families with a view to creating cultural change within the department. We recommend Territory Families be encouraged to take a more inclusive, consultative and strengths-based approach to its care and protection interventions;
- b) develop an Aboriginal Employment and Advancement Strategy to ensure Aboriginal thinking and methodologies significantly permeate institutional cultural change;
- c) adequately fund Territory Families to be able to employ more staff with relevant qualifications and experience to guide and improve current practices.

Recommendation 140

We recommend that Territory Families:

- a) maintain a significant focus on the care and protection issues of a young person in their care, even when they are in detention;
- b) investigate care and protection issues and concerns associated with young people in detention well in advance of a release date, non-parole periods and post release planning to ensure appropriate and well considered parole applications, care plans can be developed and implemented.
- c) ensure that Case Managers maintain regular face to face contact with their allocated young person while they are in detention and take the lead role in consultation with that young person and, where appropriate, their families, in the development of their care plans and post-release plans.
- d) It is recommended a strengths-based approach be taken whereby the young person's goals and perspectives are discussed and meaningfully taken into account.
- e) resource holistic care plans and provide financial support regarding pro-social, vocational and educational endeavours;
- f) preference foster placements rather than residential care homes where out of home

care is necessary;

- g) place greater emphasis and expedite processes to identify, resource and support kinship placements; and
- h) take a criminal justice response to offending behaviours sparingly and as a last resort;
- i) restrict the pursuance of orders placing a young person in their care until the age of 18 and take a participatory approach with young people and their families regarding the development and implementation of reunification planning and both support and adequately resource families to address the challenges and issues underpinning concerns of a care and protection nature;
- j) be resourced to support young people in their care beyond the age of 18. While we accept Territory Families will no longer have statutory care and protection obligations, young people leaving care should be provided with support to help them with their transitional needs and ensure social risks are identified and addressed. This should include supported accommodation and case management service provision;
- k) ensure arrangements relating to a young person in detention's post-release plans extend beyond their 18th birthdays, particularly in circumstances where they are potentially being release early on parole; and
- l) take a collaborative approach to supporting young people in their care and work with other services involved.

Recommendation 141

We recommend kinship carers receive support to manage challenging behaviours in a trauma-informed, therapeutic approach which supports a young person's personal and social development.

Recommendation 142

We recommend foster carers receive training and supervision in order to provide a nurturing environment in which challenging behaviours are responded to in a trauma-informed, therapeutic approach which supports a young person's personal and social development.

Recommendation 143

We recommend that, where placing a young person in a residential care home is unavoidable, care homes be staffed with appropriately trained and experienced carers well placed to respond to challenging behaviours in a trauma-informed, therapeutic approach which supports a young person's personal and social development.

Recommendation 144

We recommend residential care home staff and foster carers receive training about deescalating young people when they are in heightened states.

Recommendation 145

We recommend Territory Families meaningfully engages in a joint case management approach when developing post-release plans with young people in detention and when supporting them post-release, thus meeting jointly with interested parties including the young person and their family members on a regular basis.

Recommendation 146

APO NT calls on governments to move away from their reliance on prisons, and to instead invest in long-term solutions which includes, health, social, culturally appropriate and education services.

Recommendation 147

That the Australian Government insert justice targets into the Closing the Gap Strategy as a matter of priority. In particular, that the Government:

- a) incorporates targets to reduce the high rates of Aboriginal and Torres Strait Islander people in contact with the criminal justice system into the Closing the Gap agenda and
- b) implement Justice Reinvestment strategies in line with the above targets.

Recommendation 148

That the Australian Government work with the Northern Territory Government to ensure the Juvenile Justice National Minimum Data Set data is being received from the NT.

Recommendation 149

Permanently reverse planned funding cuts to the Aboriginal and Torres Strait Islander Legal Services.

Recommendation 150

Adequately and sustainably fund Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services to:

- a) Meet existing demand for services, including culturally safe and specialist prevention and early intervention programs
- b) Address unmet legal need regardless of geographic location
- c) Develop models of holistic support and case management

Recommendation 151

Implement the Productivity Commission's Recommendation from its Access to Justice Arrangements Inquiry Report to provide an additional \$120 million of Commonwealth funding to the Legal Assistance Sector, which includes an amount of at least \$24.3 million

(20.26% of \$120 million)⁶ p.a. to the ATSILS to provide critical civil and family law services, meet rising costs, engage early intervention models, and continue to provide quality legal services in the face of overwhelming increases in demand

Recommendation 152

The Australian Government to develop a funding mechanism, in consultation with NATSILS, that recognises increasing legal needs, strength-based funding models of Aboriginal and Torres Strait Islander community controlled organisations and the additional complexity of providing services to Aboriginal and Torres Strait Islander peoples which necessarily incurs additional costs.⁷ This funding model should be implemented for subsequent budgets. While the exact amount of funding needed should be determined by a robust funding model based on legal need and disadvantage. Further, additional funding should be in line with the Productivity Commission's recommendations that the quantum of additional funding required to meet unmet legal need is in the vicinity of \$200 million, and that Indigenous specific services (ATSILS and Family Violence Prevention Legal Services (FVPLS)) should have priority funding⁸

Recommendation 153

Provide annual increases of 3% to ATSILS funding to cover the necessary and ongoing costs of delivering services, which will allow ATSILS to pay adequate increases in staff remuneration and take into account market forces and significant fluctuations of prices in the sector.

Recommendation 154

That the Australian Government:

- a) Implement the Optional Protocol to the Convention Against Torture (OPCAT) into domestic law and establish National Preventative Mechanisms⁹
- b) Withdraw its reservations to article 10(2) and (3) of the ICCPR, and article 37(c) of the Convention on the Rights of the Child (UNCRC); and
- c) Ensure that youth are not placed in adult prisons as required by the UNCRC.

⁶ ATSILS share of total Commonwealth funding for legal assistance sector in 2012-13 was approximately 20.26%.

⁷ National Weighted Activity Units (NWAUs).

⁸ Note 1, 30 and Recommendation 21.4 of the Australian Government Productivity Commission. (2014). *Productivity Commission Inquiry Overview: Access to Justice Arrangements*. 72. Retrieved from <http://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>.

⁹ Also mentioned in National Aboriginal and Torres Strait Islander Legal Services, *National Aboriginal and Torres Strait Islander Legal Services*, (2012). Letter to Joint Standing Committee on Treaties, 30 March 2012.

CHAPTER 1: A Paradigm Shift

1.1 About this submission

The Aboriginal Peak Organisations of the Northern Territory (APO NT) is an alliance comprising the Central Land Council (CLC), Northern Land Council (NLC), Central Australian Aboriginal Legal Aid Service (CAALAS), North Australian Aboriginal Justice Agency (NAAJA) and the Aboriginal Medical Services Alliance of the NT (AMSANT).

This submission complements APO NT's preliminary submission, provided in December 2016, and the preliminary submissions of APO NT members. As the Commission is aware, the factors that contribute to a child's involvement in the youth justice or care and protection systems can be broad and multifaceted. Accordingly, our preliminary submission appended APO NT's previous submissions to other inquiries and consultations across main themes, including alcohol and substance misuse; remote employment and welfare issues; the Australian Government's Community Development Program (CDP); housing; youth justice; child protection and Indigenous education.¹⁰

This submission has been prepared with input from several external organisations including Danila Dilba Aboriginal Health Service, Secretariat of National Aboriginal and Islander Child Care (SNAICC), the National Aboriginal and Torres Strait Islander Legal Services (NATSILS), First Peoples Disability Network (FPDN) and the Human Rights Law Centre (HRLC). Their input strengthens the experience and expertise upon which the submission is based.

The submission makes the case for a paradigm shift in children's policy with reference to best practice and key learnings from other jurisdictions, as well as our own. It outlines relevant previous submissions made by APO NT and members of the alliance to various state and federal inquiries that make the case for this paradigm shift. And it highlights some of the key areas that need to be addressed to reduce the number of Aboriginal children in out-of-home care and the youth justice system, and provide the necessary foundation for children to succeed in the Northern Territory.

1.2 APO NT's work in context

Since its establishment in 2010, APO NT has been working to develop constructive policies on critical issues facing Aboriginal people in the Northern Territory and to influence the work of the Australian and Northern Territory Governments. As peak organisations in the Northern Territory, we share the aim of protecting and advancing the wellbeing and rights of Aboriginal people and communities. At its core, APO NT has advocated for a paradigm shift in the principles underlying government policy and in the way policy is developed and implemented.

¹⁰ All APO NT submissions to date, can be found on the APO NT website: <http://www.amsant.org.au/apont/>

Central to the work of APO NT is the principle that Aboriginal empowerment, local ownership and community control are critical factors underpinning effective development for Indigenous people and communities.

Aboriginal control is recognised in the United Nations Declaration on the Rights of Indigenous Peoples. Article 23 protects the right to self-determination, including the right to be actively involved in developing and determining health, housing and other economic and social programs affecting us, and as far as possible, to administer such programs through our own institutions. In the context of this Royal Commission, it is also relevant to note that the United Nations Convention on the Rights of the Child, to which Australia is a party, recognises the distinct rights and needs of Indigenous children to practice their culture, language and religion in community with other members of their group.¹¹ The Declaration on the Rights of Indigenous Peoples further recognises Indigenous families' and communities' rights to secure the wellbeing of their children and to have greater control over decision-making about their own lives and futures.¹²

There is strong evidence to show that community-control and ownership create more effective and lasting solutions to problems in Aboriginal communities.¹³ APO NT's work is directed towards driving such lasting solutions.

1.3 The context of disadvantage

Colonisation, dispossession and displacement from traditional lands, weakening of culture, the separation of families through past government policies, high levels of incarceration, and ongoing discrimination and racism, have all contributed to continuing disadvantage, poor health and poor social outcomes for many Aboriginal people.

Combined, these factors have contributed to extreme demographic change in the last fifty years, characterised as pushing Aboriginal society 'out of shape'.¹⁴ This is exemplified by the shortened life expectancy of Aboriginal adults and the rapidly expanding younger age structure of the Aboriginal population.¹⁵ Premature deaths mean that many children and

¹¹ United Nations. (2009). *Convention on the Rights of the Child* art. 30. Retrieved from: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqlkirKQZLK2M58RF%2f5F0vHflzasSOEEedqDWmq9j7BREhPNv8rsqw5s1P9yZnbT0%2bVCtG7gTjfUoMHKWMhfZjxkzJvW8MwfhHmnb02XKpht>.

¹² Amnesty International. (2015). *A Brighter Tomorrow: Keeping Indigenous Kids in the Community and Out of Detention in Australia*, 5 Retrieved from: https://static.amnesty.org.au/wp-content/uploads/2016/09/A_brighter_future_National_report.pdf.

¹³ Havnen, O. (2012). *Office of the Northern Territory Coordinator-General for Remote Services Report: June 2011 to August 2012*. Darwin, Office of the Coordinator-General for Remote Services, 216. Retrieved from: <http://hdl.handle.net/10070/241806>.

¹⁴ Beckett, J. (2010). National Anthropologies and Their Problems. In J. Altman & M. Hinkson (Ed.), *Culture Crisis – Anthropology and Politics in Aboriginal Australia*, University of NSW Press. Sydney, 23-43.

¹⁵ Australian Institute of Health and Welfare. (2015). *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, (AIHW cat. no. IHW 147). Canberra.

young adults are growing up without key adults present, leaving 'gaping holes in the genealogical structure' of Aboriginal society.¹⁶ Nationally, the NT has the highest proportion of Aboriginal births to teenage mothers and this is highest in very remote areas, where 24.9 per cent of births are to young mothers.¹⁷ Additionally, more than half of the NT's Aboriginal population is under 25.¹⁸ A young and fast growing Aboriginal population combined with a high death rate and poor health of senior people, poses formidable challenges to socialisation and the development of self-discipline and respect demanded by traditional institutions and structures. Young Aboriginal people face many challenges in the Northern Territory: they are concurrently living their lives within the continuity of traditional values and amidst the turbulence of contemporary life and on-going change. This is the demographic backdrop of Aboriginal youth in the NT today.

Too many Aboriginal children in the Northern Territory grow up in disadvantage, with unacceptable rates of poverty, overcrowding, exposure to domestic violence and alcohol abuse, and incarceration of family members.¹⁹ Aboriginal children in the Northern Territory are much less likely to enjoy a safe and healthy life than others. These children – especially in remote communities – experience poorer health outcomes, including three times the infant mortality rate, 0-4 mortality rate and low birth weight rate compared to non-Aboriginal children, along with very high rates of hospitalisations for infections.²⁰ They attain much lower Australian Early Development Census (AEDC) and National Assessment Planning Literacy and Numeracy (NAPLAN) scores than the national average, indicating poor readiness for school and predicting lower educational outcomes.²¹

These inequities are some of the main drivers of the 'gap' between Aboriginal and mainstream Australian society and have been deeply-entrenched by intergenerational disadvantage. Intergenerational disadvantage is characterized by the generational layering of disadvantage upon disadvantage - low income, limited education, low job skills, long-term unemployment, and increased involvement with the criminal justice system - driven by ongoing systemic discrimination and racism. Attention to alleviating Aboriginal disadvantage

¹⁶ Brooks, D. (2011). 'Organization within Disorder: The Present and Future of Young People in the Ngaanyatjarra Lands'. In U. Eickelkamp (Ed.), *Growing up in Central Australia: New Anthropological Studies of Aboriginal Childhood and Adolescence* Berghahn Books, Oxford, UK, 183–212.

¹⁷ Steering Committee for the Review of Government Service Provision. (2009). *Overcoming Indigenous Disadvantage: Key Indicators 2009*. Canberra: Productivity Commission. Retrieved from: <http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/keyindicators2009/key-indicators-2009.pdf>

¹⁸ Australian Bureau of Statistics. (2011). *A Population Overview: Aboriginal and Torres Strait Islander Children and Youth*, Australian Bureau of Statistics, Canberra. Retrieved from: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4725.0Chapter100Apr%202011>

¹⁹ Northern Territory Aboriginal Health Forum. (2016). *Report Progress and Possibilities 'What Are the Key Core Services Needed to Improve Aboriginal Childhood Outcomes in the NT?', 13.*

²⁰ Australian Institute of Health and Welfare. (2015). *Child Protection Australia 2014-2015*. Retrieved from: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554973>.

²¹ Northern Territory Aboriginal Health Forum, *Report Progress and Possibilities*, above n 19.

and education, health and socio-economic disparities has a very recent history. Calls for recognition of land rights in the Northern Territory influenced a national movement that led to the historic national referendum in 1967 which gave the Federal Parliament power to pass laws for Indigenous people.

Yet despite a history of rapid change, Aboriginal culture is resilient, and most Aboriginal parents have the knowledge and skills to provide environments and relationships that nurture their children and promote the child's development and wellbeing. We argue that in developing pathways out of disadvantage, a strengths-based approach is needed – one that focuses on and seeks to strengthen factors of resilience, rather than reacting to a deficit-based analysis. Importantly, approaches need to be framed with a therapeutic, rather than managerial or punitive intent.

1.4 A paradigm shift to ensure all children have every opportunity to thrive

Change brought about by the Royal Commission into Child Protection and Detention presents an opportunity to fundamentally re-imagine our approach to children's policy and to ensure that all children have the opportunity to thrive. The current Minister for Territory Families has signalled that she is interested in best practice from other jurisdictions and genuine systemic change that empowers communities to take control of decisions that affect them, and establishes an enabling environment to set children up to succeed.

The Convention on the Rights of the Child recognises each child as an individual *and* a member of a family and community. The Committee on the Rights of the Child, the expert body that monitors compliance with the Convention, has noted that:

*'[m]aintaining the best interests of the child and the integrity of Indigenous families and communities should be primary considerations in development, social services, health and education programs affecting Indigenous children.'*²²

The evidence tells us that child development is achieved through a 'life course' approach (maternal, infant, child, adolescent and early adulthood).

A ground-breaking report published in New Zealand in December 2016 recognised that the child should be the central focus of any government policy, program or legislation relating to children in care, whether through youth justice or the child protection system. This report acknowledged that children *"have the best chance of leading a full and happy life, if they live within families that give them life-long, stable, loving relationships and if they belong to*

²² United Nations. (2009). *Convention on the Rights of the Child*. [47]. Retrieved from: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2f5F0vHflzasSO0EEddqWmq9j7BREhPNv8rsqw5s1P9yZnbT0%2bVCtG7gTjfUoMHKWMhfZjxkzJvW8MwfhHmnb02XKphT>.

communities, which cherish them."²³ Where there are difficulties in the family relationships, it is essential that families are given the support and skills to make the necessary changes for the child.²⁴ Ultimately, this support would be holistic, community-based tailored solutions, where the child 'retains a sense of identity, connection and belonging.' The onus is therefore on government to foster such support and ensure it thrives.

APO NT refers the Royal Commission to the submission provided by Danila Dilba, which goes to the heart of the required systemic change in the youth justice and child protection systems in the NT. Danila Dilba's submission acknowledges that the current system is failing to prevent and reduce offending and provides a 'blueprint for change' with tangible proposals for a paradigm shift based on international best practice. A key recommendation from this submission calls for the current *Youth Justice Act* and *Care and Protection Act* to be repealed with similar legislation to the *New Zealand Children, Young Persons and Their Families Act* (1989). This legislation has a strong focus on the child and family; cultural imperatives; early intervention and prevention responses.²⁵

The remainder of APO NT's submission addresses the terms of reference of the Commission, outlines key principles and evidence that should inform the Commission's deliberations, and provides a detailed set of recommendations. Some of the key principles included in the recommendations are that:

- Aboriginal people and their organisations should be at the centre of shaping a new approach to ensuring children are supported to thrive;
- A trauma informed approach should underpin all areas of the new children's policy;
- The right to adequate housing is a fundamental prerequisite to ensuring children can thrive;
- Universal preventative initiatives must be put in place to support all families and children;
- Early intervention services must be in place to target and meet the needs of vulnerable children and families;
- Ensure holistic Throughcare services are available for youth detainees across the Northern Territory. What is required is:
 - A new life trajectory for Aboriginal and Torres Strait Islander children with disability;
 - A culturally and locally relevant approach to education should be adopted;
 - A human rights compliant approach to care and protection and youth justice integrated into relevant statutes;

²³ Ministry of Social Development. (2016). Investing in New Zealand's Children and their families: Expert Panel Final Report. Retrieved from: <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/investing-in-children/investing-in-children-report.pdf>.

²⁴ Ibid.

²⁵ See *New Zealand Children, Young Persons and Their Families Act 1989* s. 4.

- A child-centred focus to care and protection and youth justice proceedings, with adequate provision for culturally relevant mediation, restorative justice, diversionary and community based alternatives to detention;
- A legislated presumption of bail for children, adequate bail accommodation and support services;
- Purpose built, therapeutic child-appropriate secure facilities where detention is necessary as a genuine last resort;

RECOMMENDATIONS:

1. **That the principles of local Aboriginal control, ownership and empowerment should fundamentally shape the findings and recommendations of this Royal Commission across all the terms of reference.**
2. **That the Royal Commission recommends the development of a comprehensive framework for reform of Youth Justice and Child Protection, informed by New Zealand's Investing in Children and their Families Blueprint for Reform.**

CHAPTER 2: Aboriginal Community Control and Trauma Informed Approaches in meeting the needs of Aboriginal Children and their Families

This chapter addresses terms of reference (h), (i) and (j). As outlined in APO NT's media release responding to the announcement of this Royal Commission, it is vital that the inquiry go beyond a narrow focus on the child protection and youth detention systems.²⁶

The work of APO NT proceeds from the recognition that the solution to the issues facing our communities lies in coordinated action to address the social determinants of health²⁷ across a broad range of policy areas: in early childhood development, housing, employment, education and health; but equally important is ensuring that the right conditions are in place for creating strong, resilient communities.

APO NT considers that Aboriginal community control, empowerment and a trauma informed approach should underpin the delivery of all services to Aboriginal children and their families. This applies to service design and delivery across areas including early childhood, education, health, housing, welfare, prevention of substance misuse, family violence prevention, policing, child protection and youth justice.

2.1 Strengthening and rebuilding an Aboriginal controlled development and service sector in the NT

Evidence shows that control and empowerment are critical determinants of health and wellbeing and that empowerment strategies produce improved outcomes at psychological, organisational, community and population levels, especially in relation to socially excluded populations.²⁸

Aboriginal control is well recognised in international human rights covenants, most notably the UN Declaration on the Rights of Indigenous Peoples. The Declaration protects the right to self-determination for Indigenous peoples including the right 'to be actively involved in developing and determining health, housing and other economic and social programmes

²⁶ Aboriginal Peak Organisations NT. (2017, July 27). Royal Commission: 'do it *with us*, not *to us*' NT Aboriginal organisations write to PM [Media Release]. Retrieved from: <http://www.amsant.org.au/apont/wp-content/uploads/2016/07/20160727-APO-NT-Media-Release-Juvenile-Justice-RC.pdf>.

²⁷ Social determinants are the 'environmental' or 'societal' factors that influence the health outcomes of populations. These include the economic environment, the physical environment and the socio-cultural environment. Relevant social determinants of health include housing, education, health, Aboriginal empowerment; social inclusion, and the protective role of culture, language and land.

²⁸ Aboriginal Peak Organisations NT. (2013). 'Putting Aboriginal people back in the driver's seat: A post-intervention roadmap for the NT Corporate', *Precedent*, no. 118, 24-28.

affecting them and, as far as possible, to administer such programmes through their own institutions.’²⁹

The Northern Territory Emergency Response imposed top-down measures on Aboriginal communities, and wrested control away from Aboriginal individuals, communities and organisations. Aboriginal organisations were framed as part of the problem and sidelined. A focus on ‘failure and crisis’ undermined trust in Aboriginal leadership and community control, resulting in an increasing trend towards ‘mainstreaming’ and funding non-Aboriginal NGOs to deliver services in remote NT communities. This response disregarded the important benefits of services delivered by Aboriginal organisations, both short-term and long-term, and the capacity of Aboriginal organisations to deliver these services.

In the post-Intervention landscape of the NT, Aboriginal people and their organisations are working to re-establish their role in leading service provision and community development in Aboriginal communities. To give practical effect to Aboriginal community control and empowerment, APO NT has developed and promoted the adoption of Partnership Principles for non-Aboriginal organisations working with Aboriginal organisations and communities in the NT (APO NT Partnership Principles).³⁰ The APO NT Partnership Principles were developed in recognition of the need to prioritise and expand Aboriginal-controlled service delivery and development work and on the basis of APO NT’s experience that a fundamental shift is required in policy approaches towards Aboriginal communities from a narrow service delivery focus to one based on a development approach.

These principles require non-Aboriginal organisations³¹ who have endorsed the Partnership Principles to agree to do the following:

1. **Consider their own capacity:** Non-Aboriginal organisations shall objectively assess whether they have the capacity (either in service delivery or development practice) to deliver effective and sustainable outcomes in the NT context.
2. **Recognise existing capacity:** Non-Aboriginal organisations will recognise the existing capacity and particular strengths of Aboriginal NGOs and identify how they can contribute to further developing this capacity.

²⁹ United Nations. (2007). *Declaration on the Rights of Indigenous Peoples*. Article 23. Retrieved from: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

³⁰ Aboriginal Peak Organisations NT. (2013). *Partnership Principles for NGOs working with Aboriginal organisations and communities in the NT*. Retrieved from: <http://www.amsant.org.au/apont/our-work/non-government-organisations/apo-nt-ngo-principles/>.

³¹ To date 21 Non-Aboriginal NGOs have agreed to follow the principles: Amnesty International, Animal Management in Rural and Remote Indigenous Communities (AMRRIC), Anglicare NT, Benevolent Society, Brien Holden Vision Institute, Brotherhood of St Laurence, CatholicCare NT, Fred Hollows Foundation, Jesuit Social Services, Lifestyle Solutions, Mission Australia, National Disability Services, National Shelter, NT Shelter, Oxfam, Reconciliation Australia, Red Cross, Save the Children, The Smith Family, World Vision and YWCA.

3. **Research existing options:** Non-Aboriginal organisations shall thoroughly research existing Aboriginal service providers and development agencies before applying for service delivery contracts or prior to considering community development projects.³²
4. **Seek partnerships:** Where there is an Aboriginal NGO willing and able to provide a service or development activity, non-Aboriginal organisations shall not directly compete with the Aboriginal service provider, but will seek, where appropriate, to develop a partnership in accord with these principles.
5. **Approach to partnership:** Non-Aboriginal organisations will be guided by the priorities of the Aboriginal NGO in developing a partnership. Partnerships will be based on building and strengthening, rather than displacing, Aboriginal organisational capacity and control. Processes for developing partnerships will need to recognise the inherent power imbalance between large non-Aboriginal organisations and small Aboriginal organisations, and will need to allow sufficient time for partnership development.
6. **Recognise, support and promote existing development practice:** Non-Aboriginal organisations acknowledge that many Aboriginal organisations already have robust and effective development practices embedded in a cultural framework, although some of this may be implicit and undocumented. Non-Aboriginal organisations agree to recognise and support these practices, including through partnership arrangements.
7. **Work together with Aboriginal people to create strong and viable Aboriginal organisations:** Non-Aboriginal organisations recognise Aboriginal organisations and communities as lead agents in creating sustainable governance and leadership in Aboriginal communities in the NT, and agree to work within structures and processes that provide Aboriginal decision-making control. This may require formal delegation of power and the dedication of self-generated resources to assist with this process.
8. **Ensure Aboriginal control, not just consultation:** Non-Aboriginal organisations agree that Aboriginal organisations need to be in the 'driver's seat' and have control of development initiatives, services and programs delivered to their communities. This should include having input to decisions regarding resource allocations and staffing.
9. **Develop a clear exit strategy:** Where the desired outcome is for local Aboriginal organisations to deliver services or provide a development role, non-Aboriginal organisations

³² APO NT should be contacted for advice where there appears to be no relevant Aboriginal organisation/s providing services or undertaking development work. Please see contact details on the APO NT website: <http://www.apont.org.au>.

will develop a mutually agreed, transparent exit strategy in consultation with their partners. Contracts with government should incorporate a succession plan and long-term planning for local Aboriginal organisations to deliver services, with appropriate resourcing included.

10. **Ensure robust evaluation and accountability:** Non-Aboriginal organisations will develop a robust accountability framework and evaluation process together with partner Aboriginal organisations and communities.

11. **Cultural competency and appropriate development practice:** Aboriginal organisations and non-Aboriginal organisations will seek to work together to share learnings and establish effective development practice and cultural competency standards for development projects and service delivery initiatives.

To be effective, the APO NT Partnership Principles require a corresponding commitment from the Federal and Northern Territory governments to provide an enabling environment to properly support and resource action.

APO NT's current work with respect to housing, as referenced in the appendix to our preliminary submission, is similarly grounded in the reality that effective housing strategies and solutions will be those developed and implemented by Aboriginal people. Ensuring that the right to adequate housing is fulfilled, will have significant positive flow on effects in the care and protection and youth justice systems.

Over the past six years, APO NT has also actively been advocating for change to address the needs of Aboriginal children in the care and protection and youth justice systems. As outlined in our previous work and in detail in this submission, in order to secure change that will benefit our children, it is vital that the Federal and Northern Territory governments better engage, empower and give control to Aboriginal people and organisations. In this respect, APO NT draws this Royal Commission's attention to the CLC's preliminary submission, which outlines the extent to which Aboriginal people in central Australia are using their own assets to drive social, cultural and economic development through income derived from land use agreements such as rent from leases on Aboriginal land and royalty agreements.³³

CLC community development projects such as the Warlpiri Education and Training Trust support a range of early childhood, school and youth programs planned by Traditional Owners focussed on meeting the needs of the younger and future generations, and supporting activities that are severely underfunded by governments. As outlined in that submission, several other projects throughout central Australia consistently support children and young people who are at risk of offending (including at Imanpa, Mutitjulu and Alekerange).

³³ Central Australian Aboriginal Legal Aid Service. (2016). *Preliminary Submission to the Office of the Royal Commission*.

APO NT also refers the Commission to AMSANT's preliminary submission to the Royal Commission, which outlines possibilities for healing-centred, trauma-informed and community-controlled care and protection and youth detention systems. As the peak body for Aboriginal community controlled health services (ACCHSs) in the NT, AMSANT's members provide around 60 per cent of all episodes of primary health care to Aboriginal people in the NT, including the provision of services and care for children in Out of Home Care (OOHC) and detention as well as post-detention and care. ACCHSs are often aware of children and families in vulnerable circumstances in communities, and in remote settings may be the only local providers of support and referral services.

Community-controlled health services have been operating in the NT for over 40 years, and bring with them strong relationships with communities, understanding of community needs, cultural competence, and a permanent presence in Aboriginal communities. It is imperative that the Royal Commission recognises the strengths of the community controlled sector where it already exists in the NT, and recommends its further development in areas where there is currently a lack of capacity or support, such as in OOHC, family support, education and housing.

Aboriginal people in the NT want to be given a real chance to drive the change needed to secure a better future for our people. The principles of local involvement, ownership and control underpin APO NT's work in advocating for practical and sustainable solutions for Aboriginal people.

2.2 A trauma informed healing approach to meet the needs of Aboriginal and Islander children in the NT

APO NT supports the preliminary submission to this Royal Commission by AMSANT that:

"the most complex health, mental health, substance use, justice and child protection issues within Aboriginal communities throughout Australia can be better understood in the context of historical and transgenerational trauma.

...Systems of care, justice, health and child protection that have been developed for Aboriginal people, but not by Aboriginal people, have a long history of perpetuating and exacerbating traumatic experiences. ... AMSANT proposes that reforming our systems of justice, particularly youth justice, and child protection so that they are trauma informed, culturally informed and effectively working toward recovery and healing is key to meaningful outcomes within these systems.³⁴

³⁴ Aboriginal Medical Services Alliance N, *Preliminary Submission to the Royal Commission into the Protection and Detention of Children*, 1.

APO NT supports a healing approach with a focus on preventing children from entering the OOH and justice systems, and providing evidence-based social and emotional wellbeing solutions when they do enter such systems. APO NT considers it essential that the Royal Commission recognises the significant role trauma plays in the current high levels of Aboriginal children in the care and protection and youth justice systems, and the need for systems and programs that address that trauma rather than perpetuating it.

Considerable research has revealed the ways that traumatic experiences can detrimentally impact the development of a child's brain.³⁵ Such trauma often leads to the dominance of survival mechanisms designed to protect against harm, over learning mechanisms, which are vital to healthy growth and development.³⁶ Often, children in child protection or in the juvenile justice system may express this in behaviours that are violent in nature, aggressive, impulsive, oppositional or unreachable.

Research over the past twenty years has increased our understanding of the biological impact of early developmental stress, including the genetics of PTSD, and the molecular (epigenetic) mechanisms associated with early adverse events that result in brain changes leading to the kinds of changed behaviours mentioned above.³⁷ Griffiths and Hunter also suggest that despite the more persistent, negative effects of epigenetic mechanisms, such mechanisms can also contribute to aspects of resiliency in the ability to survive and overcome stressful environments and to develop supportive interventions.³⁸ Therefore, when a child's behaviour is interpreted in the context of this evidence, we can better understand what underlies these behaviours, for example, the grief of a child who has had to live through traumatic experiences and whose needs remain unresolved after experiences of trauma(s).

Responses based on punishment, exclusion and isolation are known to escalate these kinds of oppositional behaviours and add trauma onto a young person that can best be described as multi-layered. Further, it is widely known that negative punishment may lead to the child

³⁵ Vander Kolk, B. (2005). *Developmental Trauma Disorder: Towards a Rational Diagnosis for Children with Complex Trauma Histories*. *Psychiatric Annals*, 35(3), 401. Retrieved from: https://is.muni.cz/el/1423/jaro2013/PSY403/um/Developmental_Trauma_Disorder_Kolk.pdf.

³⁶ Atkinson, J. (2013). *Trauma-Informed Services and Trauma-Specific Care for Indigenous Australian Children*. Resource sheet no. 21 produced for the Closing the Gap Clearinghouse. Australian Institute of Health and Welfare (AIHW). Retrieved from: <http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Publications/2013/ctg-rs21.pdf>.

³⁷ Sipahi, L., Wildman, D. E., Aiello, A. E., Koenen, K. C., Galea, S., Abbas, A., & Uddin, M. (2014). 'Longitudinal epigenetic variation of DNA methyltransferase genes associated with vulnerability to post-traumatic stress disorder (PTSD)', *Psychological Medicine*, 44(15), 3165–3179. doi: [10.1017/S0033291714000968](https://doi.org/10.1017/S0033291714000968); Voisey J., Young, R. M., Lawford, B. R., & Morris, C. P. (2014). 'Progress towards understanding the genetics of posttraumatic stress disorder', *Journal of Anxiety Disorders*, 28(8), 873-883. doi: [10.1016/j.janxdis.2014.09.014](https://doi.org/10.1016/j.janxdis.2014.09.014); and Blaze, J., Asok, A., & Roth, T. L. (2015). 'The long-term impact of adverse caregiving environments on epigenetic modifications and telomeres', *Frontiers in Behavioral Neuroscience*, 9. doi: [10.3389/fnbeh.2015.00079](https://doi.org/10.3389/fnbeh.2015.00079).

³⁸ Griffiths, B. B., & Hunter, R. G. (2014). 'Neuroepigenetics of stress', *Neuroscience*, 275, 420-435.

being re-traumatised and unresolved trauma is known to continue cycles of trauma and violence into adulthood.

When looking at justice reinvestment as a way to ensure the health and wellbeing of youth and their families, APO NT cautions against an overemphasis on western paradigms and responses that may undermine Indigenous worldviews, Indigenous governance and leadership. It is important not to assume that the best response to trauma is one that is clinically mainstream, but rather that the Indigenous concept of wellness is also considered as part of healing and recovery. Responses need to address the domains of connections to culture, body, mind and emotions, land, family and kinship, spirituality and community.³⁹

Intergenerational trauma is the result of colonisation and historic government policies, but is continued by ongoing policies and institutional racism. Accordingly, we are also calling for a new paradigm of working – a complete systemic and organisational shift that embraces solutions from a social and emotional wellbeing perspective. This will require all organisations within the protection and justice systems, including relevant government departments and NT Police, to become trauma-informed.

AMSANT has identified eight core principles that capture the broader concepts of being trauma informed, which APO NT considers should underpin all proposed changes to better meet the needs of Aboriginal children within the child protection and justice systems. These are:

1. Understanding trauma and its impacts;
2. Creating environments in which families and social groups feel physically, emotionally and spiritually safe;
3. Providing and employing culturally competent staff – staff respect specific cultural backgrounds including reflection of self as a cultural bearer;
4. Empowering and supporting clients' control;
5. Sharing power and governance and including individuals and families in the design and delivery of programs;
6. Integrating and coordinating care to holistically meet the needs of individuals;
7. Supporting relationship building as a means of promoting healing; and
8. Enabling recovery – instilling hope.

³⁹ Gee G., Dudgeon P., Schultz C., Hart A. and K. Kelly. (2014). Aboriginal and Torres Strait Islander Social and Emotional Wellbeing. In Dudgeon P., Milroy H. and Walker R. (Eds.), *Working Together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice* (2nd ed), 55-69; and Telethon Kids Institute, Kulunga Aboriginal Research Development Unit, Department of the Prime Minister and Cabinet (Australia).

RECOMMENDATIONS:

- 3. That the Federal and Northern Territory governments support and resource action under the APO NT Partnership Principles and be guided by them with respect to the design and delivery of all services to Aboriginal children and their families.**
- 4. APO NT strongly recommends that a trauma informed healing approach should fundamentally shape the findings and recommendations of this Royal Commission across all the terms of reference.**

CHAPTER 3: Discrimination

More broadly, the word ‘discrimination’ has many interpretations and is understood differently. The term is applied in the context of the civil rights movement and the goal of treating everybody the same (and having a set of human rights standards to adhere to), and it is also applied in the context of Aboriginal peoples having distinct and inherent rights based on their indigeneity which must be recognised and balanced with the broader system. With respect to the former, it is clear young people associated with the youth justice system do not have an acceptable standard of human rights adhered to in relation to their treatment. With respect to the later, the unique and distinct position of Aboriginal and Torres Strait Islander people and history in the NT, and the cultural strength and differences in language and authority, means there should be greater emphasis on an appropriate balance between these aspects and the broader justice system.

The starting point to understand and draw meaning from ‘discrimination’ in the context of youth justice in the NT is the understanding of young people and particularly those closely associated with the youth justice system. It is to attempt to see through the lens of young people how they view the world and themselves, and how they see themselves within this context.

A young person will understand the term ‘discrimination’ based on the accumulation of their experiences and their own world-view. Their understanding can influence their identity and their perceptions of others. It can shape the level of trust they have in others and their feelings of inclusion and exclusion. Their understanding can help shape their future pathways and their expected place in society. It can fuel stereotypes and shape how the young person perceives the stereotypes placed on them.

There is a lack of research into the actual views and perceptions of young people in the NT who are closely associated with the youth justice system with respect to ‘discrimination’ and related matters. This absence of research limits our understanding of young people’s subjective experience and world-view of discrimination, and our capacity to develop more comprehensive evidence-based approaches. There is also a range of implications and challenges arising from this needed research, including ethical questions and clearances that must be worked through.

3.1 Young peoples’ views of discrimination

In the absence of formal research, it is reasonable to suggest a set of common experiences about how young people understand discrimination based on the collective insight and direct observations of APO NT members.

Young people associated with the youth justice system will view ‘discrimination’ differently

to adults. They interchange the use of the word with other words such as 'racism'. They likely have experienced discrimination as the victim and as the perpetrator. They likely have experienced systemic discrimination and understand and feel the impacts more so than the perpetrator, for whom this type of discrimination is acceptable and standard practice. They are likely to experience negative feelings and emotions as a direct result of discrimination and not know how to channel this energy in meaningful and constructive ways. This may result in a cycle of negative behaviour.

Young people associated with the youth justice system likely see serious and significant matters in the media, including those exposed on ABC's 4 Corner's 'Australia's Shame' episode, and other matters including visual footage of Aboriginal deaths in custody, and attribute the possibilities of these occurring in this day and age as 'discrimination' or 'racism'. They likely have insight into the view that these things cannot occur in a non-discriminatory place where equality is valued.

Young people likely view the discriminatory and racist comments on social media including those attached to stories posted by major news outlets and police. These comments include significantly harsh and inappropriate language. They are very personal for young people associated with the justice system and their families. These comments clearly pose the risk of re-traumatising people. Whilst news outlets and police monitor and delete comments regularly (mainly during business hours), young people likely question why such comments are permitted in the first place or why more active and meaningful responses from the managers of these accounts are not put in place. Young people may wonder why people using discriminatory and racist language, including those making direct threats, are not charged by police and brought before a court. Young people may attribute lack of action in this regard as part of a wide range of acceptable practices collectively seen as discriminatory or racist.

For comments on social media that are not overtly discriminatory or racist, but convey a common and one-sided theme stereotyping them as young Aboriginal criminals, they likely consider this as reflecting the sentiments of a large part of society. They likely see the collection of these comments as covert discrimination and racism. They likely have insight into the attitudes and beliefs of the broad range of commentators on social media as being perverse and discriminatory and racist. When combined with the broader impacts of systemic discrimination these incidences potentially feed into the adverse mental health outcomes of discrimination described below.

Young people likely understand there are limited places where people can openly discuss discrimination and racism and what it means for people in the NT. They likely understand that such discussions are 'not appropriate' or 'too hard' or for 'somebody else' or are 'not relevant'.

Young people likely have insight into the inter-generational effects of a range of policies that have been permissible due to the strongholds of discriminatory and racist attitudes and beliefs.

Young people closely associated with the justice system likely have insight into discrimination when they observe prejudice and stereotypes in public spaces; when they are watched closely in shops; when they get certain looks from members of the public; and when they are in situations where they are talked to in certain ways by those in authority, including education institutions.

3.2 Broader views of discrimination

For Aboriginal people, there is a common view expressed that discrimination is connected to a colonial history manifested in current policies and practices and largely unseen from the dominant culture. This discrimination is linked with the loss of agency, inter-generational trauma and the disconnect between cultural authority and decision-making powers and structures.

Young people associated with the youth justice system likely have insight into the thought patterns of adults in considering discrimination:

Why is there such a backlash in the community and as expressed across social media and the direction taken by editorials and printed media against the Royal Commission and its work and intent?

One reasonable view is there would not be such a backlash if more people in the community saw these young people in detention as part of their family – their sons or daughters or nephews or nieces. Observers of the NT mandatory sentencing laws for youth property offenders in the early 2000s and their subsequent repeal note that a political backlash grew when it was the young people of suburban, non-Aboriginal families in Darwin who were being impacted with terms in detention.

From a political and policy perspective, why hasn't there been more of a systemic shift away from the status quo of how services are delivered to Aboriginal people when Aboriginal people could be more fully integrated and involved in actually delivering these services?

Government departments involved in Aboriginal related services from Justice to Police to Child Protection to other services have Aboriginal employment figures across the hierarchy of their departments that are substantially short of parity with the broader NT population. There have been well-meaning programs to increase Aboriginal employment over decades, with only incremental shifts. Systemic reform is required

for meaningful change, yet there is little evidence of a desire or will to effect systemic change. Whilst these challenges are not absolutely attributed to discrimination, they closely resemble the historical narrative of colonialism and a reluctance to shift power to Aboriginal people.

Why is there strong community pressure advocating a watering down of the already limited protections against discrimination including proposals to amend the Racial Discrimination Act (Cth)?

In 2011 advertisements in Alice Springs targeting young people and run on local television were considered to be racially discriminatory and following formal complaints these advertisements were withdrawn.

What underpins the lack of meaningful responses to implementing the recommendations of multiple reports including the Little Children are Sacred Report,⁴⁰ Growing Them Strong,⁴¹ and the Royal Commission into Black Deaths of Custody.⁴²

Why was child abuse in Aboriginal communities met with the political response of the 'Northern Territory National Emergency Response', and why did this response differ substantially to the political response as a result of the 'Royal Commission Into Institutional Responses to Child Sexual Abuse', and particularly as to how institutions were dealt with (as a comparison to how Aboriginal people were dealt with).

3.3 Telling It Like It Is – research into Darwin Aboriginal perspectives

In 2016, the Larrakia Nation Aboriginal Corporation and University of Tasmania launched the 'Telling It Like It Is: Aboriginal Perspectives On Race And Race Relations'⁴³ research which

⁴⁰ Anderson, P. & Wild, R. (2007). *Ampe Akelyernemane Meke Mekarle 'Little Children Are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*. Darwin, NT, Australia: Northern Territory Government. Retrieved from: http://www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdf

⁴¹ *Growing them strong, together - Inquiry into the Child Protection System in the Northern Territory* was announced on 11 November 2009 and the Board of Inquiry was appointed on 9 December 2009. See: Bamblett, M. Bath, H. and Roseby, R. (2010). *Growing them Strong, Together: Promoting the safety and wellbeing of the Northern Territory's children, Summary Report of the Board of Inquiry into the Child Protection System in the Northern Territory 2010*. Northern Territory Government. Darwin. Retrieved from: https://childprotectioninquiry.nt.gov.au/_data/assets/pdf_file/0020/242444/CPSR_Summary.pdf.

⁴² The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) (1987–1991) was appointed in October 1987 to study and report upon the underlying social, cultural and legal issues behind the deaths in custody of Aboriginal people and Torres Strait Islanders. See: Royal Commission into Aboriginal Deaths in Custody (1991). *National report*. Australian Government Publishing Service, Canberra. Retrieved from: <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>.

⁴³ Telling It Like It Is: Aboriginal Perspectives On Race and Race Relations is a 3-year Australian Research Council funded Linkage project undertaken by Larrakia Nation Aboriginal Corporation (LNAC), the University of Tasmania, and the University of Sydney. See: Larrakia Nation Aboriginal Corporation and the University of Tasmania. (2016). *Telling it like it is: Aboriginal perspectives on race and race relations*. Retrieved from:

referred to Aboriginal views of 'living in a no-win world':

LIVING IN A NO-WIN WORLD Respondents described their daily experience as one of loss, where the odds are stacked against them, no matter what they do. They have already lost their land, and have to deal with the legacy and the damage caused by colonisation. Now they face enormous pressure to lose their culture. They fight to hang onto the things that are important to them but it feels like they never have a fair go or a chance to put their view in a way that will be respected. If they want to be successful they have to conform to the demands of white culture and sacrifice the things that make them who they are - family, culture, language and law. This is an impossible, unfair trade-off. Family provides safety, security, comfort, knowledge and a place where you can be yourself. If they stay true to who they are the chance of success in a white world is limited. Working hard is good, but you only succeed if you're white. If you're Aboriginal the trade-off only buys entry to the lower rungs of white society. Employers stereotype Aboriginal people as unreliable and there's a lot of discrimination. Respondents described going for jobs but no one calls back, or being recruited to meet Indigenous employment targets with no commitment from employers to providing long term or meaningful employment.⁴⁴

Racism, discrimination and disrespect was a daily experience. Respondents felt stereotyped, judged, patronised and found wanting. White people think they are better than Aboriginal people and show this in their interactions with them. They are also ignorant of the depth and richness of Aboriginal culture and its strengths. There's no understanding of how well Aboriginal people are doing given what they've had to deal with. Respondents saw talking about the past as a first step for reconciliation but it's misinterpreted as an excuse for any difficulties they have. They said Aboriginal people get told they can't let go of the past, but it's white Australians who won't own it or let go of a false version of events.⁴⁵

The report is a rare example of research into important matters of Darwin respondents who likely have family or extended networks associated with the youth justice system. These voices are relatively unheard and sit outside the context of policy and decision-making considerations relating to Aboriginal and Torres Strait Islander peoples.

3.4 BeyondBlue 2014 campaign

In 2014, the BeyondBlue organisation commissioned research with TNS Social Research to evaluate the 'reach and impact of a national campaign to highlight the impact of racial discrimination on the social and emotional wellbeing of Aboriginal and Torres Strait Islander people'. TNS Social Research surveyed 1000 people across Australia to 'gain insight into attitudes, beliefs and behaviours in relation to discrimination against Indigenous Australians'. Key findings of the *Discrimination against Indigenous Australians: A snapshot of the views of*

http://www.utas.edu.au/_data/assets/pdf_file/0004/877324/telling-it-like-it-is-linkage-launch-media-handout.pdf.

⁴⁴ Ibid 5.

⁴⁵ Ibid 9.

non-Indigenous people aged 25–44 report:

Discrimination against Indigenous Australians is considered common

Discrimination against Indigenous Australians is considered one of the most prevalent forms of discrimination in Australia. Discrimination refers to behaviours or practices that result in unequal power, resources or opportunities across different groups.⁴⁶ Witnessing acts of discrimination is widespread, with more than half of non-Indigenous Australians claiming that they have witnessed acts of discrimination towards Indigenous Australians.

One in five admit they would discriminate in some situations

As many as one in five admit they would discriminate when sitting near an Indigenous Australian, or in a retail environment. One in 10 would tell jokes about Indigenous Australians, avoid Indigenous Australians on public transport or not hire an Indigenous Australian for a job.

- One in five (21 per cent) admit they would move away if an Indigenous Australian sat near them.
- One in five (21 per cent) admit they would watch the actions of an Indigenous Australian in a retail environment.
- One in 10 (12 per cent) would tell jokes about Indigenous Australians.
- One in 10 (10 per cent) would avoid sitting next to an Indigenous Australian on public transport.
- One in 10 (9 per cent) would not hire an Indigenous Australian for a job.

Negative views and stereotypes towards Indigenous Australians are widespread and motivation to modify behaviours is low for some.

Negative views and stereotypes function as an impediment to reducing discrimination against Indigenous Australians.

- Almost half (42 per cent) believe Indigenous Australians are given unfair advantages by government.
- More than one third (37 per cent) believe Indigenous Australians are sometimes a bit lazy.
- Almost one third (31 per cent) believe Indigenous Australians should behave more like 'other Australians'.
- One in five (20 per cent) believe that terms used to describe Indigenous Australians that are now considered racist are not that bad.

Males and those living in Western Australia are more likely to describe Indigenous Australians as sometimes being a bit lazy and to believe that Indigenous Australians should behave more like other Australians.

Motivation to modify behaviours is low for some.

⁴⁶ Paradies, Y, Harris, R & Anderson, I. (2008). *The Impact of Racism on Indigenous Health in Australia and Aotearoa: Towards a Research Agenda*, Discussion Paper No. 4, Cooperative Research Centre for Aboriginal Health, Darwin. Retrieved from: <https://www.lowitja.org.au/sites/default/files/docs/Racism-Report.pdf>.

- One in five (21 per cent) believe it is hard to treat Indigenous Australians in the same way as everyone else.
- Almost one in five (18 per cent) believe their treatment of Indigenous Australians is irrelevant due to infrequency of interactions.

Many do not recognise examples of discriminatory behaviour as forms of discrimination

Many people do not recognise subtly discriminatory acts as forms of discrimination. Almost half (46 per cent) do not recognise moving away from an Indigenous Australian when they sit near them as an act of discrimination and even one in 10 (9 per cent) do not recognise direct examples of discrimination in the form of verbal abuse as an act of discrimination.

Discrimination against Indigenous Australians is understood to be an automatic response

Discriminatory behaviours are perceived to be undertaken automatically without consideration of impact.

- One-third (31 per cent) believe that telling jokes about Indigenous Australians is an automatic or unconscious action on the part of the discriminator.
- One-quarter (24 per cent) believe that not hiring an Indigenous Australian would be an automatic or unconscious action on the part of the discriminator.

Likelihood to intervene and motivation to reduce discrimination is limited

If encountering an act of discrimination, just over half (57 per cent) would say something or intervene. Understanding of the impact of discrimination is limited. Similarly, understanding of the impacts of discrimination and motivation to reduce levels of discrimination against Indigenous Australians is limited.

- One in five (19 per cent) do not recognise that discrimination impacts on mental health.
- One in four (25 per cent) do not agree that experiencing discrimination has a negative personal impact.
- More than one in four (28 per cent) do not see a reduction in discrimination as a priority.

3.5 Mental health impacts

In its submission to the Parliamentary Joint Committee Inquiry into the operation of the *Racial Discrimination Act 1975* (Cth) and the Australian Human Rights Commission, APO NT submitted:

The experience of racism and racial abuse alienates individuals and communities from society, feeding a sense of disillusion and disempowerment and contributing to the effects of emotional trauma.⁴⁷

⁴⁷ Aboriginal Peak Organisations NT. (2016). *Submission to the Parliamentary Joint Committee Inquiry into the operation of the Racial Discrimination Act 1975 (Cth) and the Australian Human Rights Commission*, 5-6. Retrieved from:

Trauma can alter a person's perception of whether they feel safe in the world and with the people around them.⁴⁸ Trauma can particularly impact people who are living in and /or working in environments which are strongly-related to trauma. This includes Aboriginal communities which have been affected by dispossession, loss of land, poverty, poor health, grief and premature death.⁴⁹ Racism permeates people's lives in Australia and is reported to be frequently experienced by some groups of people including Aboriginal people.⁵⁰ For example, results of the National Australian Aboriginal and Torres Strait Islander Health Survey show:

- 16% of respondents reported being 'treated badly because they are Aboriginal/Torres Strait Islander' in the previous 12 months.
- Of this cohort, 8% reported this occurred 2–3 times per week and 5% reported this was a daily occurrence.
- The most common situation of racially discriminatory behaviour or racism was by members of the public (45%) and applying for work or while at work (29%).⁵¹

Discrimination and racism directly affect health with the impact increasing with increasing frequency of the experiences of discrimination. The unpredictable and anxiety-provoking nature of the racially discriminatory experiences (which may be dismissed by others as trivial or not important), may lead a person to feeling as if there is something wrong with them.⁵² Chronic and ongoing concerns of these experiences may lead to a person being vigilant avoiding such experiences.⁵³ Over time this may extend to further re-traumatisation.⁵⁴ Thus it is not surprising that there is a consistent association between racism and poorer mental health outcomes.⁵⁵

<http://www.amsant.org.au/apont/wp-content/uploads/2015/02/20161223-18C-Submission-APO-NT-FINAL.pdf>.<http://www.amsant.org.au/apont/wp-content/uploads/2015/02/20161223-18C-Submission-APO-NT-FINAL.pdf>.

⁴⁸ Grant, R. (2007). *Complicated Trauma (Diagnosis and Treatment)*. Oakland, California, 94619.

⁴⁹ Ibid.

⁵⁰ Ziersch, A. M., Gallaher, G., Baum, F., & Bentley, M. (2011). Responding to racism: Insights on how racism can damage health from an urban study of Australian Aboriginal people. *Social Science and Medicine*, 73, 1045 – 1053. doi: [10.1016/j.socscimed.2011.06.058](https://doi.org/10.1016/j.socscimed.2011.06.058); and Krieger, N. (1999). 'Embodying inequality: A review of concepts, measures and methods for studying health consequences of discrimination', *International Journal of Health Services*, 29(2), 295 – 352. doi: doi.org/10.2190/M11W-VWXE-KQM9-G97Q

⁵¹ Close the Gap Campaign Steering Committee (2016). *Progress and Priorities Report 2016*, 22. Retrieved from:

https://www.humanrights.gov.au/sites/default/files/document/publication/Progress_priorities_report_CTG_2016_0.pdf.

⁵² Williams, M. T. (2015). The Link Between Racism and PTSD. Retrieved from:

<https://www.psychologytoday.com/blog/culturally-speaking/201509/the-link-between-racism-and-ptsd>.

⁵³ Ibid.

⁵⁴ Carter, R. T. (2007). 'Racism and psychological and emotional injury: Recognising and assessing race-based traumatic stress', *The Counselling Psychologist*, 35(1), 13 - 105. doi: [10.1177/0011000006292033](https://doi.org/10.1177/0011000006292033).

⁵⁵ Paradies, Y. (2007). 'A systematic review of empirical research on self-reported racism and health', *International Journal of Epidemiology*, 35(4), 888 – 901. doi: [10.1093/ije/dyl056](https://doi.org/10.1093/ije/dyl056).

Studies have indicated that racism accounts for one-third of the prevalence of depression and poor self-assessed health status among Aboriginal Australians, as well as having a significant association with psychological distress, diabetes, smoking and substance use.⁵⁶

The demonstrable effects of racism warrant the proportionate and appropriate limitations that 18C and 18D place on freedom of speech.

APO NT supports the submission of AMSANT to this Royal Commission in reference to the context of discrimination:

The most complex health, mental health, substance use, justice and child protection issues within Aboriginal communities throughout Australia can be better understood in the context of historical and transgenerational trauma. Colonisation, dispossession and displacement from traditional lands, loss of culture, the separation of families through past government policies, high levels of incarceration, and ongoing discrimination and racism have all contributed to continuing disadvantage, poor health and poor social outcomes for many Aboriginal people.

Conversely, culture and spirituality are important in addressing intergenerational trauma through supporting resilience and positive social and emotional wellbeing. It is therefore essential that all service delivery to Aboriginal people, and especially when dealing with at risk young people, use approaches that are trauma-informed and that support and validate Aboriginal cultures and ways of being⁵⁷.

3.6 International obligations

Australia has a number of international obligations relating to discrimination. These obligations include references expressed in the United Nations Declaration on the Rights of Indigenous Peoples, which ultimately reaffirm that Indigenous peoples, should be free to exercise their rights without fear of discrimination and that Indigenous peoples possess collective rights, which are indispensable for their existence, well-being and integral development as peoples.⁵⁸ The Universal Declaration of Human Rights also refers to equality before the law without any discrimination.⁵⁹

RECOMMENDATIONS

5. That the Royal Commission consider recommending a program to conduct ethical

⁵⁶ Paradies, Y, Harris, R & Anderson, I. (2008). *The Impact of Racism on Indigenous Health in Australia and Aotearoa: Towards a Research Agenda*, Discussion Paper No. 4, Cooperative Research Centre for Aboriginal Health, Darwin. Retrieved from: <https://www.lowitja.org.au/sites/default/files/docs/Racism-Report.pdf>.

⁵⁷ Aboriginal Medical Services Alliance NT. (2017). Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, 10.

⁵⁸ See also the UNDRIP arts. 2-9, 14-24 and 49.

⁵⁹ See the Universal Declaration of Human Rights art.7.

research into the views of young people associated with the youth justice, about discrimination, identity, belonging, culture and related matters to inform policy design.

6. That the Royal Commission consider recommending a community campaign similar to the BeyondBlue campaign to raise awareness about unconscious bias and discrimination impacting on young people and their mental health.
7. That the Royal Commission consider our international obligations in relation to anti-discrimination and related matters at the forefront and in the formation of its recommendations and findings, including utilising principles of positive discrimination for structural and governance reform of youth justice.

CHAPTER 4: Early Intervention & Pathways for At Risk Children

This Chapter addresses terms of reference (h) and (j). While term of reference (h) relates to improvements within the child protection system, there are widely acknowledged links between family violence, homelessness, OOHC and contact with the youth justice system.⁶⁰ On that basis, APO NT highlights early intervention options and pathways for children at risk of engaging in anti-social behaviour that begin in the health, education and housing systems which are 'reasonably incidental' to term of reference (h).

APO NT emphasises the need for a trauma-informed and culturally appropriate approach focused on preventing children from entering the child protection and justice systems. Trauma, including intergenerational trauma, has significant impacts on child development and later life outcomes. The Adverse Childhood Experiences (ACE) Study showed stress and trauma in childhood are causally linked to adult problems such as depression, suicide attempts and suicide, substance abuse, poorer employment outcomes and chronic disease risk.⁶¹ In turn, these problems can be drivers of involvement in the care and protection and youth justice systems in the NT. However, the evidence is growing that outcomes can be substantially improved after exposure to traumatic events such as domestic violence and childhood abuse, if children are in supportive, loving environments and provided with effective therapeutic interventions.⁶² An Indigenous approach to early intervention includes strategies that emphasise social and emotional wellbeing at individual, family and community levels.

4.1 Early Childhood Services

Extensive research over many years has provided evidence that the early years of life are fundamental to both the physical and emotional health of children, for their social and cognitive development, and for later educational achievement and life chances. Adverse childhood events have been causally linked to poorer long-term outcomes.⁶³ Adverse, traumatic events may include imprisonment of a parent, family or community violence, parental substance misuse, or experiences of poverty and neglect, all of which are drivers of involvement in the care and protection and youth justice systems in the NT. However, the effects of stress and trauma are not irreversible, and there are many protective factors for children in Northern Territory Aboriginal communities, including attachment to culture and being nurtured within broad family networks. Evidence shows that early intervention, and specifically intervention in early childhood, can improve long-term outcomes across a range

⁶⁰ Amnesty International, *A Brighter Tomorrow*, above n 12, 22.

⁶¹ Felitti, V. J., Anda, R. F., Nordenberg, D., Williamson, D. F., Spitz, A. M., Edwards, V., & Marks, J. S. (1998). 'Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults: The Adverse Childhood Experiences (ACE) Study', *American Journal of Preventive Medicine*, 14(4), 245-258.

⁶² Northern Territory Aboriginal Health Forum, *Report Progress and Possibilities*, above n 19, 7.

⁶³ Ibid.

of areas including education, employment, health and wellbeing.

APO NT refers the Commission to the Northern Territory Aboriginal Health Forum's document *Progress and Possibilities*, which examines the Core Services needed to improve Aboriginal childhood outcomes in the NT. This document outlines a comprehensive primary health care framework for improving early childhood development that should underpin strategic investment in integrated core services.

The framework encompasses a tiered approach, with targeted support to high-risk families and statutory intervention as the last resort. A universal, tiered approach to services for children and their families has been identified as an effective way to ensure genuine participation, amelioration of disadvantage and improved developmental, learning and health outcomes for all children.⁶⁴ Such an approach will require sector reform to better integrate child and family health, education and other early childhood services and to ensure these areas work together to provide a holistic service model from prenatal through to school age.

The *Progress and Possibilities* document recommends the adoption of a universal platform for early childhood services across the following areas:

- quality antenatal and postnatal care within Aboriginal primary health care;
- clinical and public health services for children and families, including childhood surveillance, sick care, ear and dental programs, and case management for children with significant physical illness;
- a nurse home visiting program, such as the Australian Nurse Family Partnership Program, made available universally or to all first-time mothers;
- parenting programs after completion of the nurse home visiting program, for families who are assessed as requiring parental support (such as the Let's Start and Let's Start Early programs);
- intensive, evidence-based, quality child development programs that improve educational outcomes: the Abecedarian program is an enriched educational program that has a strong evidence base for long-term educational outcomes, with some early implementation experience in the NT;
- two years of preschool from age three to five, with increased hours for those in targeted groups at higher risk of poor educational outcomes;
- indicated services for vulnerable children and families including targeted (community-based referrals) or intensive (for those already in the child

⁶⁴ Council of Australian Governments. (2009). *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009–2020*. Commonwealth of Australia. Retrieved from: <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business?HTML>.

- protection system) family support; and
- supportive policies in the areas of social determinants.

RECOMMENDATIONS:

8. That early childhood programs and related clinical and public health services are provided equitably to all Aboriginal children across the NT through the development and implementation of a three-tiered model of family health care – universal, targeted and indicated – to meet children's needs from before birth to school age. Services should be provided across eight key areas:

- quality antenatal and postnatal care;
- clinical and public health services for children and families;
- a nurse home visiting program;
- parenting programs;
- child development programs;
- two years of preschool;
- targeted services for vulnerable children and families; and
- supportive social determinants policies.

These services need to be responsive to, and driven by, the community at a local level.

9. That the Northern Territory Government, as part of their current review of early childhood programs and policies, conduct a scoping study to assess the accessibility and quality of services across the NT for the eight domains identified above. This study should then inform the development of a service system that delivers high quality, culturally safe, community controlled early childhood programs located within comprehensive primary health care.

4.2 Family violence prevention

Family violence is one of the main drivers of involvement in the care and protection and youth justice systems in the Northern Territory.⁶⁵ Violence within families has severe and long-term impacts on a child's physical and mental health and often results in feelings of uncertainty, fear, anger and shame which can contribute to disruptive behaviours.⁶⁶

⁶⁵ Aboriginal Peak Organisations NT. (2014). *Submission to the Senate Finance and Public Administration References Committee Inquiry into Domestic Violence in Australia*. Retrieved from: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Domestic_Violence/Submissions.

⁶⁶ United States Department of Justice. (2012). *Report of the Attorney General's National Task Force on Children Exposed to Violence*. Retrieved from: <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

Family violence can extend to physical, psychological, emotional, social and economic abuse and it can be difficult to pinpoint one single factor as a cause of the violence.⁶⁷ In *Speaking Positions on Indigenous Violence* Sonia Smallacombe explains:

“Contemporary violence among Indigenous people has its origins in the violent dispossession of land during the early invasion period. It is also linked to the destruction and dismantling of cultural systems such as destruction of traditional economies, breakdown of social structures and kinship systems, loss of languages, racial stereotyping, and removal of rights and responsibilities.

In the present day, a whole range of social issues is embedded in Indigenous communities: low socio economic status, lack of economic base, unemployment, low income, welfare dependency, poor health, high imprisonment rates, alcoholism and drug addiction, poor government services, and lack of political recognition of rights to name a few. Of course, these social issues are related to a host of psychological problems such as lack of self-esteem or self-respect, powerlessness, frustration, shame, remorse, hopelessness, sexual disturbance, loss of spirituality, anger, hate, apathy and complacency.”⁶⁸

In many communities, children may have no choice but to witness such violence and endure the disruption and mental trauma that result. Many Aboriginal children are growing up in communities where violence has become ‘a normal and ordinary part of life.’⁶⁹ These children, who have witnessed domestic violence or have been physically abused, grow up more likely to be involved in marital aggression themselves.⁷⁰ Poor attendance at school, reduced employment prospects, depression and despair make such children vulnerable to the destructive cycle of abuse and violence.⁷¹ Children living in homes in which violence occurs are vulnerable to physical, emotional and psychological abuse. They are at greater risk of anxiety, depression and behavioural disorders. Also, the experience of violence in childhood is a risk factor for being a perpetrator and victim of violence in adulthood. A pernicious cycle of violence in Indigenous communities may develop and become intergenerational. Breaking

⁶⁷ Ibid and Memmott, P., Stacy R., Chamber C., and Keys C., (2001). *Violence in Indigenous Communities Full Report*, Crime Prevention Branch, Commonwealth Attorney-General's Department, Canberra. Retrieved from: <http://www.aerc.uq.edu.au/filething/get/2022/violenceindigenous.pdf>.

⁶⁸ Smallacombe, S. (2004). ‘Speaking positions on Indigenous violence’, *Hecate*, 30(1), 47. The causes of violence are also looked at in Ibid.

⁶⁹ Stanley, J., Kovacs, K., & Tomison, A., & Cripps, K. (2002). *Child abuse and family violence in Aboriginal communities – Exploring child sexual abuse in Western Australia*, Western Australian Government Inquiry into Responses and Child Abuse in Aboriginal Communities. Retrieved from: <https://aifs.gov.au/cfca/sites/default/files/publication-documents/wabrief.pdf>.

⁷⁰ Tomison, A. M. (2000). *Exploring family violence: links between child maltreatment and domestic violence. Issues in Child Abuse Prevention*, No.13, National Child Protection Clearinghouse, Australian Institute of Family Studies, Melbourne. Retrieved from: <https://aifs.gov.au/cfca/sites/default/files/publication-documents/issues13.pdf>.

⁷¹ Lawrence, C. (2006). ‘A national disgrace: Violence against women and children in Indigenous communities’, *Aboriginal and Islander Health Worker Journal*, 30(5), 29-33. Retrieved from: <http://search.informit.com.au/documentSummary;dn=268556421957602;res=IELAPA>.

this cycle presents a complex and difficult policy challenge.’⁷²

In 2008, Judy Atkinson investigated the link between being a victim (direct or indirect) of childhood trauma and being a perpetrator of higher-level violence in adulthood.⁷³ The results of her study showed that a significant proportion of her sample reported experiencing traumatic and violent events in their youth, and doing so frequently. Atkinson argued that the normalisation of violence and the high prevalence of grief, loss and substance misuse were as much symptoms as causes of traumatic stress.⁷⁴ This research also identified a substantial lack of services that effectively supported victims of abuse and interrupted its intergenerational progression.⁷⁵ This is also true of the Northern Territory where there are limited services equipped to deal with alcohol, drugs, family violence and trauma of Aboriginal people, especially in non-urban areas.

If there is a failure to accurately analyse the causes and contributing factors of violence, solutions will not be complete and will not address the real reasons behind the violence. Intervention strategies must be tailored to the experiences and circumstances of the individual and their community in all their complexity.⁷⁶

There are a handful of examples of family violence programs from New Zealand and Canada that are immersed in tradition and culture, and incorporate the whole family. In New Zealand, *Tu Tama Wahine o Taranaki* and *Te Whare Ruru hau o Meri* violence programs embedded Maori cultural values and primarily through an holistic approach. This allowed for interaction between group members and focused on supporting the whole family in the healing process, which contrasts with western family violence programs that have tended to address only the needs of the individual in isolation.⁷⁷ Both programs acknowledged the strength of healing within extended families and tribes and reflected the voices of the Elders and the

⁷² Cripps, K., Bennett, CM., Gurrin, L.C., & Studdert, D.M. (2009). ‘Victims of violence among Indigenous mothers living with dependent children’, *Medical Journal of Australia*, 191(9), 481-485. Retrieved from: https://www.mja.com.au/system/files/issues/191_09_021109/cr10621_fm.pdf.

⁷³ Atkinson, J., Nelson, J., & Atkinson, C. (2009). Trauma, transgenerational transfer and effects on community wellbeing. *Working together: Aboriginal and Torres Strait Islander and mental health and wellbeing principles and practice*. Canberra: Department of Health and Ageing, 135-144. Retrieved from: https://www.researchgate.net/profile/Roz_Walker/publication/259715124_Working_Together_Aboriginal_and_Torres_Strait_Islander_Mental_Health_and_Wellbeing_Principles_and_Practice/links/579069d008ae0831552a6cf5.pdf#page=169.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Lawrence, C. (2006). ‘A national disgrace: Violence against women and children in Indigenous communities’, *Aboriginal and Islander Health Worker Journal*, 30(5), 29-33. Retrieved from: <http://search.informit.com.au/documentSummary;dn=268556421957602;res=IELAPA>.

⁷⁷ Memmott, P., Chambers, C., Go-Sam, C., & Thomson, L. (2006). Good practice in Indigenous family violence prevention: Designing and evaluating successful programs. Issues Paper 11. University of NSW, Sydney: Australian Domestic & Family Violence Clearinghouse; and Atkinson, J. (1991). Stinkin thinkin: Alcohol, violence and government responses, *Aboriginal Law Bulletin*, 51(2), 4-6. Retrieved from: <http://hdl.handle.net/10070/85904>.

community.⁷⁸ It is important to note here that children will be the indirect beneficiaries of effective prevention strategies.⁷⁹

For further discussion on this topic, APO NT directs the Royal Commission to APO NT's submission and recommendations to the Northern Territory Government's new Domestic and Family Violence Strategy.⁸⁰

RECOMMENDATIONS

- 10. That the Royal Commission notes the recommendations APO NT made to the Senate Finance and Public Administration References Committee Inquiry into Domestic Violence in Australia that:**
 - a) intergenerational trauma be recognised as a causal factor in family violence;**
 - b) healing and violence prevention programs must be adequately resourced by Governments;**
 - c) the needs of children should feature prominently in violence reduction strategies to reduce intergenerational violence; and,**
 - d) the Government provide on-going support for Aboriginal Community Controlled Health Services to deliver Social and Emotional Wellbeing programs for Aboriginal children and young people as effective and valuable mechanisms to address domestic and family violence.**
- 11. That the NT Government provides a range of short and long-term public housing options for persons affected by domestic and family violence as an essential measure in dealing with family violence problems.**
- 12. That in child protection matters, where domestic and family violence is present and where housing is a barrier to Aboriginal children being placed with appropriate family members, that the Government source private interim accommodation for both the youth and guardian, where short-term housing is unavailable. This strategy will reduce the Aboriginal child's exposure to family violence whilst also ensuring that they are placed with a family member rather than a stranger.**

⁷⁸ Brewin, M, and Coggan, C. (2004). Evaluation of the Ngati Porou community injury prevention project. *Ethnicity & Health*, 9(1), 5-15. doi: 10.1080/1355785042000202754.

⁷⁹ Cripps, 'Victims of violence among Indigenous among Indigenous mothers' above n 72.

⁸⁰ Aboriginal Peak Organisations of the Northern Territory. (2014). *Submission to the Northern Territory Government's new Domestic and Family Violence Strategy*. Retrieved from: <http://www.amsant.org.au/apont/wp-content/uploads/2015/02/141102-APO-NT-Submission-Domestic-and-Family-Violence-Northern-Territory-Government.pdf>.

4.3 Availability of trauma support & counselling for Aboriginal young people in the community

In our media release responding to the announcement of this Royal Commission, APO NT highlighted that it is vital that the Royal Commission ‘consider issues closely related to the treatment of young people in detention, including...the availability of trauma support and counselling for Aboriginal young people in the community.’⁸¹

Trauma is a widely recognised contributing factor to criminal offending and involvement with the criminal justice system, with research suggesting around 60% of incarcerated young offenders demonstrate significant mental health problems.⁸² Research suggests that childhood trauma can lead to the development of antisocial and aggressive behaviour in adolescence, especially in young men⁸³ and multiple pathways between trauma and juvenile offending have been identified.⁸⁴

As outlined in AMSANT’s preliminary submission to this Royal Commission, ‘there is a lack of culturally appropriate trauma informed therapeutic counselling services for children and young people and a lack of secondary services (including child and adolescent psychiatric services)’.

This is particularly the case in remote communities, where there are currently no specialist child or adolescent psychiatry services available. The Child and Adolescent Mental Health Services (CAMHS) within the Top End Health Service explicitly excludes children in regional and remote areas who present with issues related to: the child protection system, experiences of sexual abuse, isolated alcohol and drug issues, neurodevelopmental disorders including ADHD and autism spectrum disorder, and those with developmental problems. Those children excluded from this service are managed by adult mental health teams, with CAMHS providing a secondary consultation/liaison service.

⁸¹ Aboriginal Peak Organisations NT, ‘Do it *with us*, not to us’, above n 26.

⁸² Lennings, C.J., Kenny, D.P. & Nelson, P. (2006). ‘Substance use and treatment seeking in young offenders on community orders’, *Journal of Substance Abuse Treatment*, 31, 425-432. Retrieved from: http://s3.amazonaws.com/academia.edu.documents/39919987/Kenny_Lennings_Substance_abuse_and_treatment_seeking.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=1498698185&Signature=y%2FaF6YGsWYIVfRQwH4bY4cwVvho%3D&response-content-disposition=inline%3B%20filename%3DSubstance_use_and_treatment_seeking_in_y.pdf.

⁸³ Krischer, M.K. & Sevecke, K. (2008). ‘Psychopathic traits and risk assessment in children and adolescents’, *International Journal of Law and Psychiatry*, 31(3), 253-262. doi: 10.1016/j.ijlp.2008.04.008.

⁸⁴ Kerig, P.K., Ward, R.M., Vanderzee, K.L. & Moeddel, M. (2009). ‘Posttraumatic stress as a mediator of the relationship between trauma and mental health problems among juvenile delinquents’, *Journal of Youth and Adolescence*, 38(9), 1214-1225. doi: 10.1007/s10964-008-9332-5; Malinosky-Rummell, R. & Hansen, D.J. (1993). ‘Long term consequences of childhood physical abuse’, *Psychological Bulletin*, 114(1), 68-79. doi: 10.1037/0033-2909.114.1.68; Maschi, T., Bradley, C.A. & Morgen, K. (2008). ‘Unravelling the link between trauma and delinquency: the mediating role of negative affect and delinquent peer exposure’, *Youth Violence and Juvenile Justice*, 6(2), 136-157. doi: 10.1177/1541204007305527.

Where CAMHS has provided some outreach services to selected Top End rural and remote areas, AMSANT's member services have identified that they were often not culturally responsive. Providers worked within a predominantly medical model, did not routinely use interpreters, and were unwilling to engage with SEWB teams that work within ACCHSs.

The lack of support for children and young people after a traumatic experience is particularly concerning, as these experiences can impact on mental health over the entire life course and can contribute to depression, post-traumatic stress disorder, suicidality and substance abuse.

To reduce the risk of involvement in the youth justice system, it is essential that young people can access therapeutic support to address past trauma. This support must be available to young people prior to potential contact with the youth justice system and to youth who are already interacting with the youth justice system so that the underlying causes of their offending can be addressed, and the risk of reoffending reduced.

It is important that trauma support and counselling services are sensitive to the unique experience of SEWB for Aboriginal people. As outlined in AMSANT's preliminary submission to the Commission, a SEWB framework encompasses domains of connection to culture, body, mind and emotions, land, family and kinship, spirituality and community.⁸⁵ Understanding the implications of disruption and connection in relation to these domains is central to developing the capacity of staff, services and organisations involved in the child protection and juvenile detention systems to become trauma informed.

RECOMMENDATIONS

- 13. That the Federal and Northern Territory governments provide needs-based, long-term funding for ACCHSs to ensure they are resourced to provide culturally responsive, therapeutic child and adolescent mental health services in remote areas, in conjunction with the services' SEWB teams where possible.**
- 14. That, where required, specialist child and adolescent psychiatry services assess and treat all children and adolescents with mental health needs, without exclusion. Innovative models to provide these services, including the use of telehealth in conjunction with SEWB teams, should be explored.**

4.3.1 Support & counselling for victims of child sexual abuse

Child sexual abuse in the NT is a particularly concerning example of trauma that impacts significantly on young Aboriginal people and requires concerted investment and planning to

⁸⁵ Gee G, 'Aboriginal and Torres Strait Islander Social and Emotional Wellbeing', above n 39.

provide support services and counselling to those children and young people affected.

There is clear evidence of the links between child sexual abuse and a number of adverse outcomes for many children in adolescence and adulthood, including long-term harm to brain development, health risk behaviours including substance use, and impacts on interpersonal and social functioning, mental health, and physical health.⁸⁶ Research also reveals a greater likelihood of behavioural problems, running away, vandalism and juvenile offending.⁸⁷

The full extent of child sexual abuse in the NT is poorly understood, however in 2006, The Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse documented clear evidence of abuse in its report, *Ampe Akelyernemane meke Mekarle* “Little Children Are Sacred”. The report provided 97 recommendations, which have not yet been implemented a decade after its release.

Currently, children who are identified as victims of sexual abuse in remote areas can be initially evacuated out of community for medical treatment and assessment at the Sexual Assault Referral Centre (SARC) in Darwin, Katherine, Tennant Creek or Alice Springs. However, while SARC provides ongoing counselling services in these main centres, they are not currently funded to provide outreach services to children who return to remote communities, meaning that children return to their communities without ongoing follow-up.

This has not always been the case however, with SARC previously funded to provide a mobile outreach service (most recently known as MOS Plus) from 2008 to 2016. This service was defunded in 2016 despite a commitment from the Australian Government to fully fund MOS Plus for ten years from July 2012 as part of the National Partnership Agreement on Stronger Futures in the NT. While APO NT recognises that there were some significant issues with MOS Plus, including a lack of cultural safety, high staff turnover and infrequent visits to communities, it is not acceptable that this service has been defunded without replacement.

Recently, concerns have been raised by AMSANT’s member services about high levels of underage sexual activity and potential child sexual abuse in communities. These concerns were taken by AMSANT to a child safety meeting involving representatives from the NT Department of Health, NT PHN, Territory Families, NT Police, and the Office of the Children’s Commissioner. Promising actions from this meeting were proposed including increasing training and awareness of mandatory reporting requirements and developing community education in collaboration with community elders, AMSANT services, and the NT

⁸⁶ Cashmore J & Shackel R. (2013). *The long-term effects of child sexual abuse*. Child Family Community Australia, Australian Institute of Family Studies. Retrieved from: <https://aifs.gov.au/cfca/publications/long-term-effects-child-sexual-abuse/introduction>.

⁸⁷ Smith, C., & Thornberry, T. P. (1995). ‘The relationship between childhood maltreatment and adolescent involvement in delinquency’, *Criminology*, 33(4), 451–481; and Widom, C. S. (1996). ‘Childhood sexual abuse and its criminal consequences’, *Society*, 33(4), 47–53.

Government. However, there is no clear funding source for this training, and no clear pathway for the actions from the meeting to be implemented.

At present, there is no sexual education aimed at young people in remote communities. A program called Adolescent Sexuality Education Program (ASEP), which provided culturally appropriate sexual education in schools, and also engaged young people not attending education regularly, was previously funded by the Commonwealth Department of Health and implemented by the NT Department of Health from 2012. This program covered both health and social issues regarding sexuality, including appropriate sexual behaviour. Unfortunately, funding ceased in 2015 and this program has not been replaced.

RECOMMENDATIONS:

- 15. That Recommendations 21, 22, 23, 24, 25, 38, 40, 57, 94 from the Little Children are Sacred report be implemented without delay.**
- 16. That support and counselling for victims of sexual abuse in remote areas be adequately funded and provided as a specialist NT-wide service by SARC.**
- 17. That prevention strategies both at child and community levels be funded, including education on appropriate sexual behaviour for young people and community.**

4.3.2 Therapeutic interventions for adolescent perpetrators and children with inappropriate sexual behaviours

There is currently no access to treatment in the Northern Territory for adolescent perpetrators of child sexual abuse, or education programs available for children who present with inappropriate sexual behaviours. It is understood that causes and drivers of inappropriate sexual behaviour occur for a range of reasons, but often these behaviours are a symptom of other forms of abuse and neglect.⁸⁸ These behaviours may not be addressed appropriately, due to the sensitive nature of the issue and due to the high levels of emotion a child may be experiencing.

Therapeutic early interventions targeted at these young people are absolutely essential in curbing inappropriate behaviours and dealing with the underlying issues driving them. A review of five treatment programs designed for young people who sexually offend in Australia and New Zealand showed the programs had positive outcomes in reducing recidivism.⁸⁹ While

⁸⁸ Saunders, V., & McArthur, M. (2017). *Help-seeking needs and gaps for preventing child sexual abuse*. Institute of Child Protection Studies, Australian Catholic University. Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney.

⁸⁹ Macgregor, S. (2008). Sex offender treatment programs: Effectiveness of prison and community based

programs like these in other jurisdictions offer important lessons for comparable services in the NT, it is essential that they are adjusted to the specific context of young Aboriginal people in the NT. These services should integrate an holistic approach that involves the offenders, victims and the families of both.

RECOMMENDATION:

- 18. That treatment for adolescent perpetrators of child sexual abuse, as well as children and young people with inappropriate sexual behaviours, be funded and accessible, including in remote areas.**

4.4 Youth Suicide

APO NT refers the Royal Commission to the Submission from APO NT to the Legislative Assembly of the Northern Territory Inquiry into Youth Suicide in the NT.⁹⁰

The high suicide rates among some groups of Aboriginal Australians are often attributed to a number of factors that combine to magnify the risk for suicidal behaviours and self-harm. These include environmental risk factors including poverty, low socioeconomic status, lack of education, poor employment prospects, reduced access to services, living in rural or remote communities, domestic violence or abuse, and alcohol and other drug abuse.⁹¹ Loss of cultural identity and social isolation is also known to cause a person to lose their sense of purpose and meaning in life. Suicide among Aboriginal people is likely to be a response to the broader social context of pressures on their culture and communities.⁹²

Trauma and grief are often present within Aboriginal communities as a result of the continuing loss and traumatising from past dislocation and mistreatment, as well as grief from the deaths of family and community members and friends.

programs in Australia and New Zealand. *Indigenous Justice Clearinghouse*, Brief 3. Retrieved from: <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/brief003.pdf>.

⁹⁰ Aboriginal Peak Organisations NT. (2011). *Submission to the Legislative Assembly of the Northern Territory on the Inquiry into Youth Suicide in the Northern Territory*, 11-13. Retrieved from: <http://www.amsant.org.au/apont/wp-content/uploads/2015/02/111008-APO-NT-Youth-Suicide-Submission-Oct-2011.pdf>.

⁹¹ Procter, N. (2005). 'Parasuicide, self-harm and suicide in Aboriginal people in rural Australia – a review of literature with implications for mental health nursing practice', *International Journal of Nursing, Practice* 11, 237-241. Retrieved from <http://onlinelibrary.wiley.com/doi/10.1111/j.1440-172X.2005.00529.x/abstract;jsessionid=7085DBF262895BEA1EAC6FA7729374BD.f04t02>.

⁹² Swan, P., & Raphael, B. (1995). *'Ways forward': National Consultancy Report on Aboriginal and Torres Strait Islander Mental Health: Part 1 and Part 2*. Canberra: Australian Government Publications Service. Retrieved from: http://library.bsl.org.au/jspui/bitstream/123456789/353/1/Ways%20forward_vol.1%20%26%202%20_1995.pdf.

Contact with the juvenile justice system is a significant factor recognised as leading to an increased risk of suicide amongst young people.⁹³ APO NT believes that the over exposure of Aboriginal young people to over-policing practices, and the alienating nature of the current youth justice system, represent risk factors in a young person's trajectory towards suicide. Reducing the disproportionate negative contact Aboriginal young people have with police and the youth justice system is likely to reduce rates of youth suicide.

APO NT submits that more effective and equitable youth policing practices, and the development of a therapeutic and non-punitive youth justice system, could contribute to reducing risk factors associated with youth suicide and should be considered amongst any developments aimed at reducing Aboriginal youth suicide rates.

RECOMMENDATION:

- 19. That the impact of past policies and history on the social and emotional wellbeing of contemporary Aboriginal youth must be acknowledged. Appropriate services and therapies must be made available to tackle the intergenerational trauma and grief that significantly increase the risk of youth suicide. Investments must be substantial and long-term, in recognition of the lengthy history of dislocation and mistreatment and their consequent effects.**

4.5 Alcohol policy

Half to two thirds of children in child protection and OOHC have at least one parent with an alcohol and/or drug dependence.⁹⁴ Alcohol misuse is also a prevalent factor in young Aboriginal people in detention, including at the time of an offence resulting in detention.⁹⁵ Alcohol misuse should primarily be viewed as a health problem with the factors of socio-economic status disadvantage, trauma, marginalisation and exclusion driving both alcohol and illicit drug use in Aboriginal people. Dealing with the underlying determinants must be a central part of the response.

Despite the high rates of alcohol misuse and alcohol related harm, previous Northern Territory governments have not provided solid, consistent policy on alcohol. Instead they

⁹³ House of Representatives Standing Committee on Ageing and Health. (2011). *Before it's too late: Report on early intervention programs aimed at preventing youth suicide*, The Parliament of Commonwealth of Australia. Retrieved from: http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=haa/.youthsuicide/report.htm.

⁹⁴ Scott D. (n.d). *Towards a Public Health Model of Child Protection*. Australian Centre for Child Protection, University of South Australia.

⁹⁵ Prichard J. and Payne J. (2005). *Alcohol, drugs and crime: A study of juveniles in detention*. Research and Public Policy Series No .67. Australian Institute of Criminology.

have implemented a somewhat ‘mish-mash’ of government policies.

The Northern Territory’s *Living with Alcohol* program, ran from 1992 to 2000. It included an excise on heavy beer and wine, and the revenue raised from this funded the other components of the program. The Living with Alcohol program was a whole-of-government approach to combat the considerable harm experienced by the community as a result of alcohol. The program was nationally recognised as being highly successful, because firstly, the increased cost of heavy beer led to a shift to light beer, a substantial reduction in the total amount of alcohol consumed, and a concomitant reduction in the amount of harm caused; and secondly, the revenue raised was dedicated to pay for prevention and treatment programs. In the first four years, a total of \$18 million of the levy raised paid for a broad range of new prevention and treatment programs in the Territory. As a result, 129 lives were saved and 2,100 alcohol-related hospital admissions were prevented, with an associated cost saving of \$124 million.⁹⁶ Traffic accidents dropped and the number of alcohol fatalities dropped by 21%.⁹⁷ The High Court Case of *Ha v the State of New South Wales and Others*⁹⁸ ruled against State and Territory revenue raising which in turn stopped the Living with Alcohol program.

4.5.2 APO NT Grog Summit

APO NT refers this Royal Commission to the Report of the Grog Summit convened by APO NT in July 2013 and attended by around 100 people from across the NT.⁹⁹ Contributors included representatives from Aboriginal communities, service providers and a number of experts with academic and community experience. The summit delegates agreed that there was an urgent need for action and better evidence to address alcohol related harm across the NT. All delegates of the summit were concerned about their children’s future and the need to act now.¹⁰⁰

The Grog Summit Report combines Aboriginal community views and expert recommendations on ways forward to address alcohol-related harm in the Northern Territory. The key proposals arising from the summit broadly addressed: reducing supply as a ‘circuit breaker’ in the fight against alcohol related harm; focussing on holistic approaches in treatment, including addressing the underlying causes; children, their future and the need to act now to address Foetal Alcohol Spectrum Disorders (FASD); and building stronger community-based approaches to addressing alcohol-related harm. The summit endorsed 27 actions and priorities under the above headings which are captured in the outcomes report and included in APO NT’s preliminary submission to this Royal Commission.

⁹⁶ National Drug Research Institute. (2000). ‘Preventing Harmful Drug Use in Australia’; and Goldflam, R. (2010). ‘Damming the Rivers of Grog: Taking the hard decisions to stop the violence’, 11.

⁹⁷ Crundall, I A. (2008). *Living with alcohol in the Northern Territory*. Northern Territory Health.

⁹⁸ *Ha v the State of New South Wales and Others* (1997) 189 CLR 465.

⁹⁹ Aboriginal Peak Organisations NT, *Grog in the Territory*, above n 1.

¹⁰⁰ Aboriginal Peak Organisations NT. (2013, July 31). Communique: ‘Alice Spring Grog Summit: Outcomes [Media Release]’. Retrieved from: <http://www.atoda.org.au/wp-content/uploads/APONT.pdf>.

APO NT also directs the Commission to APO NT's response to the Parliamentary Inquiry into the Harmful Use of Alcohol in Aboriginal communities.¹⁰¹

APO NT believes that addressing alcohol and drug misuse, along with the many health and social consequences of this misuse, can only be achieved through a multi-tiered approach incorporating broad-based public health measures to reduce alcohol consumption amongst the whole community. APO NT supports evidence-based alcohol policy reform, including supply reduction measures, harm reduction measures, and demand reduction measures. Without addressing the social determinants of health, policy makers will not achieve long-term reduction of alcohol and drug misuse. APO NT urges the Northern Territory and Australian governments to support policies and programs which reduce alcohol related harm to Aboriginal families and communities; are based on best available evidence, and have the informed consent of local communities.

Stronger community-based approaches to addressing alcohol-related harm are needed. Alcohol Management Plans should be representative of the whole community and driven by the community. Governments should invest in prevention rather than prisons; and engage children and young people in education and solutions to ensure that they do not enter the child protection and justice system.

APO NT has also been calling for a return to the Banned Drinkers Register to restrict the supply of alcohol to problem drinkers, which the NT Government will be re-introducing in September 2017. APO NT welcomes the NT Government's review of alcohol policy and legislation.

RECOMMENDATION:

- 20. That the Royal Commission considers relevant actions arising from the APO NT Central Australian Grog Summit¹⁰² in developing any recommendations in relation to alcohol policy, such as removing cheap grog, introducing a minimum or 'floor' price for take-away alcohol set at the price of full-strength beer, or introduce a volumetric tax.**

4.6 Prevention of FASD

In addition to the actions arising out of the APO NT Central Australian Grog Summit to address

¹⁰¹ Aboriginal Peak Organisations NT. (2014) *Submission to the House of Representatives Standing Committee on Indigenous Affairs Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait communities*, 17 April 2014. Retrieved from: <http://www.amsant.org.au/apont/wp-content/uploads/2015/02/140417-APO-NT-Submission-Into-harmful-use-of-alcohol-in-ATSI-communities.pdf>.

¹⁰² Aboriginal Peak Organisations NT, *Grog in the Territory*, above n 1.

FASD,¹⁰³ APO NT directs the attention of this Royal Commission to our submission to the Northern Territory Select Committee on Action to Prevent Foetal Alcohol Spectrum Disorders.¹⁰⁴ As outlined in that submission, there are a variety of relevant health determinants of compromised child development, such as domestic violence, past and ongoing trauma and multiple sources of stress and disadvantage.

Children of families where a number of these risk factors exist are at risk of ongoing difficulties in relation to physical, cognitive, behavioural and emotional development, including FASD. Without early intervention and support for these families, these children are likely to face extreme educational and social difficulties, which can result in them becoming involved in the child protection and justice systems.

Public health policies and clinical services aiming to prevent FASD must be guided by the evidence base and integrated into broader policies that are working to overcome Aboriginal disadvantage and reduce alcohol and other drugs issues within Aboriginal communities, as outlined above.

APO NT also refers the Commission to the findings of the NT Parliamentary Inquiry into Foetal Alcohol Spectrum Disorder (FASD), which recognised the huge cost that FASD can have to the community, including through coercive interventions, such as imprisonment, to control destructive behaviours¹⁰⁵. The implementation of recommendations identified by the Inquiry should be seen as a vital first step in addressing the alcohol abuse which is inextricably linked to the prevention and treatment of FASD.

RECOMMENDATION:

- 21. That the recommendations of the NT Parliamentary Inquiry into Foetal Alcohol Spectrum Disorder (FASD) be implemented.**

4.7 Cognitive and mental health issues and the Youth Justice System

APO NT directs the Royal Commission to the submission and recommendations of NAAJA and

¹⁰³ These were (1) Work on preventing alcohol use during pregnancy, including through better drug/alcohol services for pregnant women, warning labelling on alcohol products, signage in outlets and pubs, strong messages for girls in schools and men/women in communities, increased antenatal services and a TV advertising campaign about FASD; and (2) Enable early diagnosis and support for children with FASD, including 'educational day-care' and support parents and carers.

¹⁰⁴ Aboriginal Peak Organisations NT, *Grog in the Territory*, above n 1, 19-20.

¹⁰⁵ North Australian Aboriginal Justice Agency, Central Australian Aboriginal Legal Aid Service. (2014). *Submission to the Northern Territory Select Committee on Action to Prevent Foetal Alcohol Spectrum Disorders*, 10. Retrieved from: <http://www.caalas.com.au/Portals/caalas/Submissions/NT%20FASD%20Inquiry%20-%20joint%20CAALAS%20and%20NAAJA%20sub%20-%20May%202014.pdf>.

CAALAS to the Northern Territory Select Committee on Action to Prevent Foetal Alcohol Spectrum Disorders.¹⁰⁶ NAAJA and CAALAS highlight that “urgent steps are needed to improve diagnostic capacity [for FASD] within the criminal justice system.” APO NT also directs the Royal Commission to the recommendations of the NT Parliamentary Report on FASD “The Preventable Disability”. This report adopted a number of APO NT recommendations, which can be implemented.

FASD is in fact one of a range of developmental vulnerabilities which affect physical, language and cognitive development. These are influenced by a complex web of causative factors including anaemia, malnutrition, frequent infections, poor parenting skills, impacts of alcohol and other drug use and lack of access to quality child care and early childhood education. An effective way to reduce the impacts of these factors is through comprehensive primary health care, including screening, quality antenatal care and universal childhood surveillance for developmental vulnerabilities.

The lack of these services at present means that developmental vulnerability, including FASD, often goes unidentified and many children in the youth justice system and child protection system do not receive the support they need to find a way out of the system. NAAJA and CAALAS note that whilst a number of their clients may be suspected of having a FASD, confirmed diagnoses are seldom made in the NT justice system.

Due to strong national evidence of FASD prevalence in children, services that provide supports and psychological/paediatric assessments are needed in the NT. At present, obtaining these assessments is complicated. Even where defence lawyers, police, prosecution or a Magistrate or Judge suspect that a defendant may have FASD or other cognitive impairment, obtaining an assessment can be very difficult because of the dearth of assessment and support services and the lack of mechanisms and training within the justice system to facilitate an assessment efficiently and effectively.

Case Study 1¹⁰⁷

A 15 year Aboriginal girl in the care of the NT Department of Children and Families (DCF) had a history of exhibiting difficult behaviour. As a result of her behaviour, she had been excluded from schooling for approximately five years. Over a period of 14 months, the girl became involved in offending, primarily property damage, which brought her before the courts on several occasions. Due to the girl’s behaviour and concerns about her well-being, DCF was ordered to provide a report to the Court about the girl’s family support and access, accommodation, education and developmental issues. While the report stated that it had been identified that the girl was operating

¹⁰⁶ Ibid.

¹⁰⁷ Aboriginal Peak Organisations NT. (2014). *Submission to the House of Representatives Standing Committee on Indigenous Affairs Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait communities*, 17 April 2014, 19. Retrieved from: <http://www.amsant.org.au/apont/wp-content/uploads/2015/02/140417-APO-NT-Submission-into-harmful-use-of-alcohol-in-ATSI-communities.pdf>.

intellectually as a seven year old, no formal FASD diagnosis was referred to and there was no proposed FASD management plan.

Case Study 2¹⁰⁸

A 22 year old Aboriginal female who resided in Alice Springs had been diagnosed with Foetal Alcohol Syndrome. Despite this, the female had repeated contact with the criminal justice system over a 6 year period and consequently experienced many periods of imprisonment. Magistrates in Alice Springs commented on the inappropriateness of imprisoning the woman but noted the dearth of alternate options:

“The Northern Territory Government has chosen not to provide any services for people such as [X] The Northern Territory Government is well aware that there are people such as [X] in this community who need assistance, and they have chosen, at an executive level, to make a decision not to provide those services....I expect they’re saying that the criminal justice system should be picking up and dealing with people who suffer as she suffers from an illness. In my opinion that’s highly inappropriate....There are... few sentencing options available to this court....There is nothing to be gained from giving consideration to specific deterrence, there is very little gained in giving consideration to ... rehabilitation.”

The female was sentenced to a period of imprisonment.

If a child or young person is not identified as being FASD or otherwise developmentally affected, then processes and decisions made within the justice system, including bail and sentencing decisions, cannot be tailored to reflect their circumstances and their offending behaviour. When children suffering from cognitive or other mental health conditions encounter the criminal justice system, it is imperative that any impairments are considered when choosing a pathway for the offender, and that therapeutic options are made available as a priority.

Issues such as reduced culpability as a result of FASD or other cognitive impairments, or the need for carefully tailored conditions on a community-based sentence, are unlikely to be considered. The characteristics of FASD and other cognitive impairments, if not accurately attributed, may result in the court adopting a more punitive approach, as behaviours which may be symptomatic of such impairments – such as difficulty complying with court orders – may be viewed as aggravating factors warranting a harsher penalty.

APO NT considers that processes need to be in place at all stages of the justice system to prevent offending by FASD- and other cognitively-affected children and young people.

RECOMMENDATION:

- 22. To address issues presented by FASD and other cognitive impairments in the youth justice context, the Northern Territory and Australian governments must commit**

¹⁰⁸ Ibid 20-1.

funding urgently to:

- a) improve awareness and understanding of FASD and other forms of cognitive impairment amongst professionals working in the justice system;**
- b) improve screening and assessment capacity within the justice system, including through the appointment of specialist court-based clinicians;**
- c) establish and expand non-custodial therapeutic options to the courts to ensure that the courts can divert FASD and other cognitively-affected children and young people away from the prison system.**

4.8 Substance misuse

As outlined in our submission to the 2015 Northern Territory Government Inquiry into the Drug known as ice, APO NT is extremely concerned about the impacts of ice in urban, community and remote settings. As outlined in that submission, NAAJA's family lawyers have noted that around 30-40% of their cases involve concerns of a parent or a caregiver using Ice.

In relation to young people, APO NT has been informed about alarming situations of children using ice, including reports of children obtaining ice at schools. NAAJA's youth justice team (which comprises lawyers and a dedicated social worker) has reported an escalation in ice-related offending by young people in Darwin, as well as an increasing trend towards ice-affected offending sprees lasting a number of days or even weeks.

NAAJA's youth justice team has identified a dearth of residential detoxification and rehabilitation options available for children across all parts of the NT.

It is critical that ongoing support and counselling is provided in the community. Provided they are adequately funded, ACCHSs are ideally placed to deal with many issues faced by those impacted by substance misuse, including poor physical health, risk of blood borne viruses, mental health problems (depression, anxiety and psychosis) and family issues including detrimental effects on children.

APO NT refers the Commission to AMSANT's model for integrating AOD and mental health services and primary health care in Aboriginal community controlled health services in the NT¹⁰⁹. The model calls for a collaborative needs-based planning approach to: deal with high rates of dual diagnosis (coexistence of mental health and AOD conditions); integrate mental health and AOD services into other aspects of primary health care; provide a full range of services to remote populations; address AOD and mental health issues in a culturally-

¹⁰⁹ Aboriginal Medical Services Alliance NT. (2011). A model for integrating alcohol and other drugs, community mental health and primary health care in Aboriginal Medical Services in the Northern Territory. Retrieved from: <http://www.amsant.org.au/wp-content/uploads/2014/10/AMSANT-Policy-AOD-and-Mental-Health-2008-reviewed-2011-Final.pdf>.

effective, holistic way and establish multidisciplinary SEWB health teams with a strong Aboriginal workforce.

RECOMMENDATIONS:

- 23. That the Northern Territory and Australian governments immediately provide funding to increase the capacity of Aboriginal community controlled health services to provide comprehensive, holistic health and wellbeing services for Aboriginal children and families affected by substance misuse in the NT, including in relation to Ice, and also in relation to mental health needs and social and emotional wellbeing.**
- 24. That the Northern Territory and Australian governments immediately provide funding to increase the accessibility of voluntary rehabilitation services and ongoing treatment and support services. This should include the establishment of appropriate general purpose youth rehabilitation services (10 to 20 maximum and including visiting psychologists), specialist services for women, and expanded services for those in remote communities. These services should focus on the development of impulse control and self-regulation skills, and addressing violence and mental health issues.**
- 25. That integrated, holistic alcohol and other drug and mental health services incorporated into primary health care be made available to all Aboriginal people including young people, preferably through community-controlled services.**

4.9 Disability supports for Aboriginal children and young people

APO NT directs the Royal Commission to the submissions and recommendations of NAAJA in response to the Terms of Reference of the Parliamentary Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system¹¹⁰ and the Submission to the Senate Standing Committee on Community Affairs into Violence, abuse and neglect against people with disability in institutional and residential settings.¹¹¹ APO NT also directs the Royal Commission to the submissions, statement and evidence which the First

¹¹⁰ North Australian Aboriginal Justice Agency. (2009). *Submission in response to the Terms of Reference of the Parliamentary Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system*, 3; and Central Australian Aboriginal Legal Aid Service. (2009). *Submission in response to the Terms of Reference of the Parliamentary Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system*.

¹¹¹ North Australian Aboriginal Justice Agency. (2015). *Submission to the Senate Standing Committee on Community Affairs: Violence, abuse and neglect against people with disability in institutional and residential settings including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, 5-9.

Peoples Disability Network have provided.¹¹²

Children and young people living with a disability are more likely to experience neglect, exploitation and violence, which can lead to removal from their home community and loss of contact and support of family and culture, which places them on a trajectory to imprisonment. The FPDN's research indicates that at least fifty per cent of children in detention have some form of disability. This cohort may also have a co-occurring disability or disadvantage, which means they may be living with a cognitive impairment *and* hearing impairment *and* are exposed to trauma. Acknowledging the lack of services and the systemic barriers in place, there is a lack of appropriate support services for people with disability and their families, especially in remote areas.¹¹³ This is a major issue that leads to unnecessary removal of children and increases the risk of contact with the youth justice system.

The FPDN believes that the Northern Territory Government should adopt a model of justice based on wellness and healing that identifies and addresses the needs of the young person and supports them towards a path of growth and education. Any response aimed at preventing contact with the criminal justice system and the 'matriculation pathway into prison' experienced by many Aboriginal people with a disability must include the support of people with a disability and their families from an early age. The FPDN also acknowledges that at a policy level, understanding the issues affecting Aboriginal and Torres Strait Islander people with a disability requires a multi-disciplinary approach. APO NT supports these views.

RECOMMENDATIONS:

- 26. With respect to prevention and early intervention, that:**
 - a) The impact of disability upon child development, education and justice outcomes be recognised within education, policing and justice systems.**
 - b) Timely assessments be undertaken to diagnose disabilities at the point at which risks or vulnerabilities to young people emerge; and.**
 - c) Individualised support services be provided to address complex needs of young people with disabilities.**
- 27. With respect to youth Justice, that:**
 - a) Aboriginal young people placed in institutional care be assessed for disability and provided with a long-term disability support plan;**
 - b) Aboriginal young people brought before the Court and charged with criminal offences be screened and assessed for disability;**
 - c) Courts have sufficient options to direct diversion of young people away from**

¹¹² First Peoples Disability Network. (2016). *Preliminary Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory*; and Avery, above n 3.

¹¹³ Ibid.

the criminal justice system and into appropriate disability and mental health settings in the community;

- d) Magistrates, lawyers, client support offices, probation and parole officers, police officers and others working with Aboriginal young people in contact with the criminal justice system receive training on identifying disability;
- e) Consideration be given to the introduction of Disability Advocates to work with Aboriginal young people before the Courts alongside their lawyers, to identify needs, supports and options for diversion;
- f) Case management of Aboriginal young people in detention be disability-led, trauma informed and culturally appropriate, involving access to individualised treatment and services, education and ongoing needs assessment;
- g) Behaviour management policies and procedures in youth detention be disability informed. Specific strategies for managing challenging behaviours that manifest as a result of disability must be positive and therapeutic (rather than punitive and disciplinary);
- h) Education and schooling within youth detention address and include the needs of young people with a disability; and
- i) Staff in youth detention be given training in disability and mental health, including awareness of behaviours that result from disability and mental illness and strategies for addressing challenging behaviour in a positive and therapeutic manner.

28. In considering the disability needs of the wider community, that:

- a) Maternal, infant health and early childhood services in the community to encourage the early diagnosis of disability.
- b) Information and discussion about disability be communicated in a culturally appropriate and accessible manner with young people and their families. This should include an awareness of:
 - i. the generally low understanding of disability (as defined and diagnosed by western medicine) amongst many Aboriginal people;
 - ii. the fact that many Aboriginal people with a disability fear discrimination and may be reluctant to seek help; and
 - iii. the distrust many Aboriginal people feel towards non-Aboriginal health service providers given the past practices of institutionalisation of children with a disability and past child removal practices.¹¹⁴
- c) Regular screening for disability in schools and the education system be implemented in order to identify and properly support the needs of children with a disability.

¹¹⁴ Avery, above n 3.

29. That a Policy Translation Group be created to guide the development of a Northern Territory Disability Justice Strategy to address the rights and circumstances of Aboriginal people in contact with the criminal justice system, including young people, and to advise government on a co-ordinated approach to disability policy and government action plans.¹¹⁵

4.10 Community Legal Education

There is a significant need for legal education for young people in the NT delivered by appropriately qualified legal educators and by appropriately skilled cross-cultural educators. This need is identified in the NAAJA submission to the Youth Justice Review Panel.¹¹⁶ Specific areas of need in the delivery of legal education include a lack of understanding about:

- answering police powers and police complaint mechanisms;
- their rights in the criminal justice system;
- the court process; and
- civil law rights, for example when entering a mobile phone plan.

RECOMMENDATION:

30. That the NT Government should provide additional resources to allow organisations such as NAAJA and CAALAS to deliver comprehensive legal education packages to young people across the NT.

4.11 Youth Services

There is a need for increased resources to provide young people with access to meaningful recreation, including drop-in centres, to prevent children from engaging in offending behaviours. It has been shown that, with careful planning and implementation, sport and physical activity programs can contribute to reducing and preventing crime, particularly when combined with other programs to address personal and social development.¹¹⁷ The Australian Institute for Criminology has long recognised recreational activities, community and drop-in centres as effective elements in reducing young people's involvement in crime.¹¹⁸

¹¹⁵ Ibid 36.

¹¹⁶ North Australian Aboriginal Justice Agency. (2011). *Submission to the Youth Justice Review Panel – A Review of the Northern Territory Justice System*, 68-69. Retrieved from: <http://www.naaaja.org.au/wp-content/uploads/2014/05/Youth-Justice-Review-Submission.pdf>.

¹¹⁶ Clearinghouse for Sport. *Crime Reduction and the Role of Sport*. Retrieved from: https://www.clearinghouseforsport.gov.au/knowledge_base/organised_sport/sport_and_government_policy_objectives/crime_reduction_and_the_role_of_sport.

¹¹⁷ Ibid.

¹¹⁸ Australian Institute of Criminology. (2002). *What works in reducing young people's involvement in crime*:

To ensure that these kinds of youth services are effective and meaningful in the context of Aboriginal communities it is imperative that youth programs take account of the culturally specific aspects of young people's lives and do not rely on the assumption that young Aboriginal people have the same aspirations, needs, and interests as mainstream Australian children.¹¹⁹ Programs need to be constant, reliable and regular, offer variety, focus on engagement, and be context-specific, meaning they should focus on the provision of meaningful, culturally relevant, gender and age-appropriate activities.¹²⁰ Achieving these outcomes will require strong relationships and collaborative work with other agencies, including Aboriginal community-led organisations. APO NT recommends that these relationships are governed by the APO NT Partnership Principles.¹²¹

RECOMMENDATIONS:

31. **That government agencies take a coordinated approach in working with children; work in partnership with youth services and Aboriginal families and increase resources allocated to youth services to provide children and young people with meaningful recreation alternatives.**
32. **That mainstream and Aboriginal organisations providing youth services work collaboratively in partnerships governed by the APO NT Partnership Principles.**

4.12 Education

APO NT emphasises the importance of education as a social determinant of health and that Aboriginal control is a key determinant in the delivery of effective, culturally-appropriate services to Aboriginal people in the Northern Territory, including education.

Aboriginal people should have greater control and involvement in education; this includes policy development, program management and the delivery of services. With this ownership comes pride and empowerment which fosters respect, trust and purposeful reciprocal

Review of current literature on youth crime prevention. Canberra: Australian Capital Territory Government. Retrieved from: http://www.aic.gov.au/media_library/archive/publications-2000s/what-works-in-reducing-young-peoples-involvement-in-crime.pdf.

¹¹⁹ Fietz P. (2006). *A good practice model for youth program development in Southern Central Australia.*

Retrieved from:

<https://static1.squarespace.com/static/50061cbb84ae216bb5cb9339/t/58b4b41720099e8b54a88a95/1488237592839/Pauline+Fietz+2006+A+Good+Practice+Model.pdf>.

¹²⁰ Lindeman M. Flouris A. and Lopes J. (2013). *Youth Programs in Remote Central Australian Aboriginal Communities.* Centre for Remote Health. Retrieved from:

<https://static1.squarespace.com/static/50061cbb84ae216bb5cb9339/t/52967ea4e4b0316936dd2293/1385594532245/CRH+Youth+report.pdf>.

¹²¹ See Chapter 2.1 of this submission.

working relationships. The Closing the Gap Clearinghouse Report *What works to overcome Indigenous Disadvantage* summarised key evidence from Australian and international research in relation to schooling and education. It found that projects characterised by a high degree of Indigenous involvement and control produced significant benefits for participants; and that engaging parents in children's learning was of critical importance.

APO NT directs the attention of the Royal Commission to our submissions to the Northern Territory Government Reviews of the Education Act (NT)¹²² and Indigenous Education,¹²³ and the House of Representatives Standing Committee on Indigenous Affairs inquiry into educational opportunity.¹²⁴ APO NT's three submissions cover broader issues with respect to education policy in the Northern Territory, including the lack of a peak Aboriginal community controlled body to lead culturally-appropriate educational outcomes. Importantly, they also highlight the need to ensure community involvement in local schools' decisions and practices and to ensure culture and language are embedded in the school, as well as the importance of early childhood education. However, reconciling what Aboriginal people in the Northern Territory want from their schools – the inclusion of local language and culture – and what schools routinely deliver is not often achieved in practice.¹²⁵

Indigenous Language and Culture (ILC) programs are an optional inclusion in the curriculum of Northern Territory schools. Fundamentally, two-way learning in schools is operationalised through an ILC program. However, the scope, focus and delivery of ILC programs are highly variable across schools in the Northern Territory, largely dependent on the attitudes of the school principal. Schools across the Northern Territory can choose an ILC program, however it is treated as an elective activity rather than as a core component of a school's teaching and learning program.¹²⁶

As outlined in the submission to the House of Representatives Standing Committee Inquiry, it is worrying that Aboriginal cultures, history and languages are not embedded in the education system in the Northern Territory given that 30% of the total population are Aboriginal; 58% of the Aboriginal population live in very remote areas, and many Aboriginal children speak two or three languages, other than English. AMSANT has identified that the

¹²² Aboriginal Peak Organisations NT. (2014) *Submission to the Northern Territory Government on the Review of the Education Act*. Retrieved from: <http://www.amsant.org.au/apont/wp-content/uploads/2015/02/140502-APO-NT-Submission-Review-of-the-Education-Act-NTG.pdf>.

¹²³ Aboriginal Peak Organisations NT. (2015). *Submission to the House of Representatives Standing Committee on Indigenous Affairs: Inquiry into educational opportunities for Aboriginal and Torres Strait Islander students*. Retrieved from: <http://www.amsant.org.au/apont/wp-content/uploads/2015/02/20151130-APO-NT-Submission-Educational-Opportunities-FINAL.pdf>.

¹²⁴ Ibid.

¹²⁵ Douglas J. (2011). *Learning from country: the value of country visits in remote schools for community engagement and natural and cultural resource management*. DKCRC Report 69. Ninti One Limited, Alice Springs.

¹²⁶ Ibid.

persistent suppression of the cultural practices of Indigenous people is disruptive, and can cause susceptibility to trauma, collective helplessness and endemic maladaptive coping practices.

By contrast, international and local evidence shows that Indigenous cultures and languages are protective factors against health and wellbeing risks and are associated with higher self-esteem and psychological wellbeing.¹²⁷ APO NT believes that culture is a positive and enabling factor and a form of early intervention that can prevent contact with the justice system.

To ensure community involvement in local schools' decisions and practices, nominated community leaders and elders should be encouraged and supported on school councils and receive adequate training and support to effectively fulfil this role. This will assist in facilitating open communication between Aboriginal people in the community, school staff and the Department.¹²⁸

The local community should also be engaged in areas of the school curriculum, where people have particular expertise, such as art, storytelling, sports, cooking and history. This would ensure that Aboriginal people in the community are closely connected with the school and are valued for their knowledge and expertise. Students would have the opportunity to hear and see local leaders impart their knowledge and it would allow students and teachers to make connections between traditional and western education in a culturally safe environment. NAAJA has been running innovative legal education programs in Lajamanu which seek to transmit information about the Western legal system in tandem with Warlpiri Elders conveying information about the Warlpiri legal system.¹²⁹

In this submission, APO NT primarily highlights issues within the education system that are currently directly contributing to contact with the child protection and youth justice systems. Consistent with other focus areas in this chapter, the recommendations are directed towards terms of reference (h) and (j) by identifying early intervention strategies and pathways to prevent issues within schools from escalating into contact with the justice system.

¹²⁷ Garvey, D. (2008). *Review of the social and emotional wellbeing of Indigenous Australian peoples – considerations, challenges and opportunities*. Retrieved from http://www.healthinonet.ecu.edu.au/sewb_review; Dudgeon, P. Walker, R. Scrine, C. Shepherd, C. Calma, T. and Ring, I. (2014). *Effective strategies to strengthen mental health and wellbeing of Aboriginal and Torres Strait Islander people*. Issues paper 12, Closing the Gap Clearinghouse. Retrieved from: http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Our_publications/2014/ctgc_ip12.pdf; Bates P., Chiba M., Kube S., Nakashima D., 2009 *Learning and Knowing in Indigenous Societies Today*, UNESCO, Paris; and Zubrick, S, Silburn, S, Lawrence, D, Mitrou, F, Dalby, R, Blair, E, Griffin, J, Milroy, H, De Maio, J, Cox A & Li, J 2005, *The Western Australian Aboriginal Child Health Survey, The Social and Emotional Wellbeing of Aboriginal Children and Young People (Vol 2)*, Curtin University of Technology and Telethon Institute for Child Health Research, Perth.

¹²⁸ Aboriginal Peak Organisations NT. (2014). *Submission on the Review of Indigenous Education in the Northern Territory*, 16. Retrieved from: <http://www.amsant.org.au/apont/wp-content/uploads/2015/02/140314-APO-NT-Submission-Indigenous-Education-Review.pdf>

¹²⁹ Ibid 16.

4.12.1 Education, disciplinary measures and youth justice

The nexus between poor educational outcomes, school disciplinary strategies and interaction with the youth justice system is well-recognised.¹³⁰ Research shows that education outcomes, engagement, and involvement with youth justice are highly correlated at every point in time.¹³¹ Certain groups of students are more likely to be suspended based on their race, socio-economic background, gender or due to cognitive impairments or learning difficulties.¹³²

Research shows that disciplinary processes disproportionately affect at-risk students characterised as those students with low academic achievement and from disadvantaged socio-economic backgrounds.¹³³ Disciplinary processes are not effective in modifying challenging behaviour of at-risk students as these measures do little to address the range of social and emotional issues that sit behind such behaviour. As Stanley et al. suggest:¹³⁴

The students who act out, or disrupt the social order, are likely those with unmet social, emotional or academic needs, and punitive responses for the sake of achieving order leave these needs unaddressed and these students perpetually underserved. In an institution that prioritises order above all else, an action that jeopardizes order is punished without regard for cause of behaviour. Thus, the most vulnerable students are sanctioned at higher rates and left without supports and services they need.

Disciplinary processes often have unintended and cumulative effects on students, reducing self-esteem and contributing to further disengagement from education. Students that need the most support from schools can end up feeling alienated. Schools need a process for addressing challenging and disruptive behaviour, however the measures used should include strategies to increase student engagement in education. Research conducted outside of the NT shows that Indigenous parents prefer 'in-school' suspensions where their child continues to receive classroom work.¹³⁵ However, even 'in-school' suspensions can be problematic if

¹³⁰ Rud, I., Van Klaveren, C., Groot, W., Maassen van den Brink, H., (2013). *Education and Youth Crime: A Review of the Empirical Literature*. TIER Working Paper Series. The Top Institute for Evidence Based Research, Maastricht University. Retrieved from: <http://www.tierweb.nl/assets/files/UM/Working%20papers/TIER%20WP%2013-06.pdf>.

¹³¹ Anderson, M. (2014). 'In School and Out of Trouble? The Minimum Dropout Age and Juvenile Crime', *The Review of Economics and Statistics*, 96(2), 318-331. Retrieved from: http://www.mitpressjournals.org/doi/abs/10.1162/REST_a_00360.

¹³² Petras, H., Masyn, K., Buckley, J., Ialongo, N., & Kellam, S. (2011). 'Who is most at risk for school removal? A multilevel discrete-time survival analysis of individual- and Context-level influences', *Journal of Educational Psychology*, 103(1), 223-237.

¹³³ Daly, E. (2013). *Student Suspensions: A Research Review, Stage One*. Commissioner for Children Tasmania. Retrieved from: http://www.childcomm.tas.gov.au/wp-content/uploads/2013/11/Student-Suspensions_A-Research-Review-November-2013.pdf.

¹³⁴ Stanley, M., Canham, D., & Cureton, V. (2006). 'Assessing prevalence of emotional and behavioural problems in suspended middle school students', *The Journal of School Nursing*, 22(1).

¹³⁵ Hayes, D., Johnston, K., Morris, K., Power, K., and Roberts, D. (2009). Difficult Dialogue: Conversations with Aboriginal parents and caregivers. *Australian Journal of Indigenous Education*, 38, 55-64.

students are segregated from other students (further compounding stigmatisation) and left to 'bide their time with nothing to be engaged in'.¹³⁶

Another concerning issue in the NT is the high numbers of Indigenous students being moved from mainstream settings to special classes or school arrangements. The rationale for these decisions is not always clear and there needs to be greater transparency on this issue. Anecdotally, there is a lack of concern or program logic for transitioning students from specialist programs back into mainstream.

Case Study 3¹³⁷

A 15 year old Aboriginal male (the client) was before the Youth Justice Court for property offences. The offences had been committed at night and while the client was affected by alcohol. The clients' matters were adjourned for representations during which time the client was bailed with a condition to attend school. The client consistently breached his bail by not attending school and when queried about this instructed his lawyer that he felt ashamed at school because he was 15 and unable to read. Consequently he could not participate in class, and experienced feeling of isolation and boredom.

Once students are expelled or suspended, boredom and 'not being at home or at school' becomes an issue. Suspended students may spend their time with little or no supervision, depending on their family circumstances and parental involvement.¹³⁸ Previous research suggests that youth offending is 'often a result of boredom rather than calculated criminal thought'.¹³⁹ Also, a repeated pattern of suspension and interrupted schooling has a long-term negative impact on future employment opportunities.¹⁴⁰

Throughout many schools in the Northern Territory, disciplinary measures are ad hoc. Since the grounds for excluding students differ between schools, there is a need for a uniform policy that ensures the consistent application of disciplinary measures. National research shows an overrepresentation of Indigenous students in suspension and expulsion rates with the Indigenous rate of suspensions being three times higher than the non-Indigenous rate.¹⁴¹ Research specific to the NT is required to determine the extent to which the disciplinary processes exclude young people from school and the extent of the connection between

¹³⁶ Michail, S. (2011). *Understanding School Responses to Students' Challenging Behaviour, A review of Literature*, Uniting Care Social Justice Unit Research Paper no. 5, June 2011. Retrieved from: <http://www.education.vic.gov.au/Documents/about/programs/pathways/youthpartnerships/Understanding%20School%20Responses%20to%20Students.pdf>.

¹³⁷ Central Australian Aboriginal Legal Aid Service. (2011). *Submission to the Review of the NT Youth Justice System*, p.46.

¹³⁸ Michail, S, *Understanding School Responses to Students' Challenging Behaviour*, above n 136.

¹³⁹ Luallen, J. (2006). 'School's Out... Forever: A Study of Juvenile Crime, At-Risk Youths and Teacher Strikes', *Journal of Urban Economics*, 59(75).

¹⁴⁰ Knipe, D., Reynolds, M. and Milner, S. (2007). 'Exclusion in schools in Northern Ireland: the pupil's voice', *Research Papers in Education*, 22(4), 407-424.

¹⁴¹ Daly, E, *Student Suspensions*, above n 133.

school exclusion and contact with the juvenile justice system. What is unclear is whether the high levels of suspension are due to inconsistency in the application of disciplinary measures. If the status quo remains, the risk is that Aboriginal youth in the NT will be uneducated, permanently unemployable, on low income or welfare, and participating in crime. Remediation in the adolescence years is possible, but costly.¹⁴²

The relationship between poor educational outcomes and youth offending warrants greater investment and improvement in education. Investment in education needs to consider cost-benefit analyses of interventions that aim to reduce youth involvement in the criminal justice system.

As reflected in APO NT's submission to the Review of Indigenous Education in the Northern Territory, we are extremely concerned by policy developments that further exclude, rather than support young Aboriginal people in remote communities. For example, the Review of Indigenous Education recommended that school attendance efforts should be focussed on students currently attending school on average three days a week or more, by implication giving up on those students that are not. The Review concludes that 'there is likely to be little benefit in schools pursuing children who are attending less than this' and does not set out any alternative pathways that should be made available to secondary school students not currently attending three days a week, stating that "the education system has not to date identified a solution for this significant group of disengaged secondary-aged young people".¹⁴³

Failure to deal with disengaged children and young people in this way would place them at greater risk of completely disengaging from schooling and at increased risk of further societal marginalisation. This would in turn mean they are more likely to find themselves at greater risk of involvement in the youth justice system. APO NT is also concerned with the way that behavioural issues at school are dealt with. Too often issues that could be addressed through the involvement of families, community leaders and elders, where early intervention strategies would be more appropriate, instead escalate into contact with police and youth justice service.

As outlined in our submission to the NT Education Act Review, to ensure better community involvement in local schools APO NT believes that nominated community leaders and elders must be encouraged and supported on school councils in addition to parents.

APO NT supports increasing the role of the school council in dealing with behavioural challenges, provided community members/ Aboriginal leaders are supported to sit on the

¹⁴² Cunha, F. & Heckman, J. J. (2007). 'The Technology of Skill Formation', *American Economic Review*, 97(2), 31-47.

¹⁴³ Aboriginal Peak Organisations NT, *Review of Indigenous Education in the Northern Territory*, above n 128.

council. The development of agreed behavioural management plans is clearly one avenue for including parents and community members in dealing with inappropriate behaviour without needing to resort to involving police or risking escalation.

Any future policy reforms by the Northern Territory Government should focus on implementing positive initiatives to involve both families and the wider community in the delivery of education for their children and re-engagement of those who are not attending.

APO NT opposes punitive measures to address safety in school and school attendance. Suspension and exclusion of students from school should only be implemented as an absolute last response option. Better mechanisms and resources need to be developed to address the causes of problems that arise and maintain student engagement with education.

RECOMMENDATIONS:

- 33. That individual performance plans be developed for all primary school children from transition to year 2, who are behind in mainstream classrooms. The plans should seek to achieve improvements in engagement and outcomes and identify additional supports required for the child.**
- 34. That priority is given to investment in adolescent literacy programs, vocation and education programs and mentoring programs.**
- 35. That research be undertaken to explore the relationship between education outcomes and the use of suspension and expulsion in the NT and its impacts on rates of youth detention.**
- 36. That population based approaches are provided for disadvantaged families such as Nurse Family Partnerships and Early Childhood Development Centres using the Abecedarian approach. Children who are not keeping up with play based learning games should be further assessed and intervention provided.**
- 37. That consistent school disciplinary policy be developed for the NT, including the grounds and procedures for each category of exclusion of students from school.**
- 38. That accessible and accurate information be developed for parents and students, and training materials for schools made available on procedures for school suspension, exclusion and expulsion, including mechanisms of appeal.**
- 39. That the Northern Territory Department of Education establish a unit with**

responsibility for developing case management plans for each excluded child and that these children receive counselling or other therapeutic support and access to alternative schooling or education.

40. That all primary and secondary teachers and school counsellors receive professional development training to help them identify children at risk of dropping out of school, and appropriate support services and programs for referral. Where appropriate, this training and additional therapeutic services should be provided by ACCHSs.
41. That the Northern Territory Government fund the establishment of an Aboriginal community controlled peak education body.
42. To ensure community involvement in local schools' decisions and practices, that nominated community based leaders and elders sit on both the school board and school council and to ensure that appropriate training is given
43. That the local community be engaged in areas of the school curriculum to ensure that Aboriginal people in the community are closely connected with the schools, are valued for their knowledge and expertise and can help students and teachers make the connection between traditional and western education in a culturally safe environment.
44. That the *Northern Territory Education Act*, Regulations and policy be amended to clarify that suspension and exclusion of student from school is an absolute last response option.
45. That the Northern Territory Government work with Aboriginal educators, and with the Aboriginal community controlled peak education body when established, to develop better mechanisms and resources to address the causes of behavioural problems that arise and maintain student engagement with education.

4.13 Indigenous ranger programs as a pathway for at risk children and young people
Indigenous ranger programs provide significant benefits to Aboriginal children and their families and to the wider community.¹⁴⁴ In addition to environmental benefits, there is an

¹⁴⁴ See Northern Land Council, Ranger Programs. Retrieved from: <http://www.nlc.org.au/articles/info/ranger-programs1/>; Central Land Council, *CLC Ranger Program Report 2014-2015*. Retrieved from: <http://www.clc.org.au/files/pdf/2014-15-CLC-Ranger-Report-Web.pdf>; Central Land Council, Independent Evaluation of the Central Land Council Community Development and Governance Programmes. See http://www.clc.org.au/files/pdf/CLC_CDU_Eval_Report_Update_small.pdf for more information about the Indigenous ranger programs.

increasing body of evidence that demonstrates that Indigenous ranger programs deliver significant cultural, social and economic impacts for Aboriginal communities, including for children and young people who are at risk of, or in, contact with the justice system.¹⁴⁵ For example a recent evaluation for the Department of Prime Minister and Cabinet specifically noted the benefits of the ranger program on the Warddeken Indigenous Protected Area (IPA) ranger program in curbing the over-representation of Aboriginal people in the justice system.¹⁴⁶

The Warddeken IPA has worked closely with the NT Department of Correctional Services in relation to three offenders who have returned to country to serve their parole and have gained employment as Rangers with Warddeken. Once on country, these Rangers are supported and mentored by Senior Rangers and Elders in the community, who are in regular contact with their Probation and Parole Officer or Case Manager. The Department sees employment as a significant factor which reduces reoffending, as a job provides routine, pride, and interaction with others. Being on country also helps offenders re-connect with their identity and culture. Anthony Jones from the Department observes:

*"If Warddeken was not there, these men would be more susceptible to reoffending. It is a vicious cycle in the communities; resources are so limited and there are the temptations that come with living in the bigger communities, such as the pressure from family and friends."*¹⁴⁷

The Warlpiri Youth Development Aboriginal Corporation/Mt Theo program and the Kimberley Aboriginal Law and Culture Centre's Yiriman Project are examples of Aboriginal-led youth services partnering with Indigenous rangers to improve the wellbeing of young people, reduce the risk of contact with the justice system and deliver diversionary programs to prevent further contact with the justice system.¹⁴⁸ A magistrate concluded that Yiriman is more capable in this regard than most other diversionary and sentencing options. There is certainly evidence (tracked through case studies) that a range of young people have been nurtured through their involvement in Yiriman and have used Yiriman as a stepping-stone, moving into

¹⁴⁵ Department of the Prime Minister & Cabinet. (2016). Consolidated report on Indigenous Protected Areas following Social Return on Investment analyses. Retrieved from:

<http://www.socialventures.com.au/assets/Consolidated-SROI-Report-on-IPA-WoC.pdf>.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ See for example the [Independent Evaluation of the Central Land Council Community Development and Governance Programmes](#): Country visits are really important, kids get to know their grandfather and skin names. It is good CLC rangers, the school, [Warlpiri Education and Training Trust, Warlpiri Youth Development Aboriginal Corporation, all working together but it needs more support"... "Mt Theo always going out doing country visits with school and rangers. We come together with elders to go on country visits to teach the kids. We usually have country visits twice a year. We had one this year, we went to Ngukulku [Wilson Creek Floodout]."

positions of leadership in community.¹⁴⁹

The Warlpiri Youth Development Aboriginal Corporation (WYDAC) delivers youth programs in four Warlpiri communities: Yuendumu, Lajamanu, Nyirrpri and Willowra. It also delivers a range of other services including a rehabilitation program based at Mt. Theo outstation and a counselling service at Yuendumu. The allocation in 2007 of significant Warlpiri Education and Training Trust (WETT) funds by the Warlpiri community enabled the program to expand to Nyirrpri and Lajamanu, and to support the Willowra youth program. In 2011 they began to expand from a basic diversionary program to include formal and informal training, employment, youth leadership and life pathways.

The Federal Minister for Indigenous Affairs recently acknowledged the potential for Indigenous ranger programs to engage children and young people in and around Kalgoorlie, Western Australia.¹⁵⁰ Funding was provided to establish a local Indigenous ranger program which will, among other things, develop training and youth engagement strategies.¹⁵¹

RECOMMENDATION:

- 46. That the Australian Government increases funding to Indigenous ranger programs across the Northern Territory to support youth engagement in natural and cultural resource management initiatives.**

4.14 Housing and the child protection and youth justice systems

The chronically high rates of homelessness, overcrowding¹⁵² and inadequate housing across the NT, particularly in remote communities, is well documented¹⁵³ and regularly attracts

¹⁴⁹ Palmer, D. (2013). *"We know they healthy cos they on country with old people"* demonstrating the value of the Yiriman Project, Murdoch University, p.122. Retrieved from: [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Evidence+Lookup+by+Com+ID\)/CE6B9A9ADFD67A1C48257FD8000CE525/\\$file/Submission+to+Inquiry.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/CE6B9A9ADFD67A1C48257FD8000CE525/$file/Submission+to+Inquiry.pdf)

¹⁵⁰ Scullion, N. (2016 November 5). *Engagement strategy for Kalgoorlie-Boulder Indigenous youths* [Media Release]. Retrieved from <https://ministers.pmc.gov.au/scullion/2016/engagement-strategy-kalgoorlie-boulder-indigenous-youths>.

¹⁵¹ Scullion, N. (2016 November 5). *Indigenous rangers supported to care for country in the Goldfields* [Media Release]. Retrieved from <http://www.nigelscullion.com/media+hub/Indigenous+rangers+supported+to+care+for+country+in+the+Goldfields>.

¹⁵² Australian Bureau of Statistics. (2012, November). *Census Population of Housing: Estimating Homelessness*. Retrieved from [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/EB59F237159F7102CA257AB100170B61/\\$File/20490_2011.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/EB59F237159F7102CA257AB100170B61/$File/20490_2011.pdf). The NT has by far the highest rates of homelessness and overcrowding in Australia (731 people per 10,000 people compared to a national average of 49 per 10,000).

¹⁵³ Northern Territory Department of Housing. (2014). *Annual Report 2013-2014*. Retrieved from: https://cmsexternal.nt.gov.au/_data/assets/pdf_file/0010/266167/Department_of_Housing_Annual_Report_2013-14.pdf. Approximately 11,000 occupants in urban areas living in 5,080 dwellings. In remote areas, there are 22,000 occupants living 5,096 dwellings.

approbation, including in relation to failures under international human rights instruments¹⁵⁴ to provide adequate housing.¹⁵⁵

Housing issues disproportionately impact on Aboriginal people, who comprise one third of the NT's population. Housing has been identified as the most significant issue facing remote and very remote communities¹⁵⁶ where 80 per cent of the NT's Aboriginal population reside. Overcrowding in these communities is acute with an occupancy rate estimated to be above eight persons per household.¹⁵⁷ Overcrowding is also rife in Town Camps. The NT has the nation's highest rate of homelessness at 15 times the national average. This excludes the hidden homeless who are constantly on the move between houses of extended families without any permanent address.¹⁵⁸

¹⁵⁴ The right to housing is recognised in 12 UN covenants, conventions, commissions and recommendations. These include the ICESCR (1966), International Convention on the Elimination of All Forms of Racial Discrimination (1965), Convention on the Elimination of All Forms of Discrimination against Women (1979), Convention on the Rights of the Child (1989), Declaration on the Rights of Indigenous Peoples (2007).

¹⁵⁵ Koziol, M. (2017, April 3). United nations appalled at Indigenous youth detention and living conditions. *The Sydney Morning Herald*. Retrieved from: <http://www.smh.com.au/federal-politics/political-news/united-nations-appalled-at-indigenous-youth-detention-and-living-conditions-20170403-gvcdqe.html>.

Both the United Nations Special Rapporteur on adequate Housing and the Special Rapporteur on the Rights of Indigenous peoples have observed the disparity and discrimination between Indigenous and non-Indigenous Australians in terms of access to adequate housing. See: Miloon, K. (2006, May 11). *Report of the Special Rapporteur on the right to housing as a component of the right to an adequate standard of living*, A/HRC/4/18/Add.2. Retrieved from: https://www.ishr.ch/sites/default/files/article/files/sr_housing.pdf; Anaya, J. (2010, June 1); and *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms on indigenous people*, A/HRC/15/37/Add.4. Retrieved from: http://unsr.jamesanaya.org/docs/countries/2010_report_australia_en.pdf.

¹⁵⁶ Aboriginal Peak Organisations NT, Shelter NT and Central Australian Affordability Company. (2015). *Home is Where the Heart is: Aboriginal Remote Housing Report*, Retrieved from: http://www.amsant.org.au/apont/wp-content/uploads/2015/02/APONT-Housing-Forum-12-13-March-2015-Report_LOW_RES.pdf.

¹⁵⁷ Havnen, O. (2012). *Office of the Northern Territory Coordinator-General for Remote Services Report: June 2011 to August 2012*. Darwin, Office of the Coordinator-General for Remote Services. Retrieved from: <http://hdl.handle.net/10070/241806>

¹⁵⁸ Ibid.

The NT has a high demand for public housing¹⁵⁹ while public housing stock is reducing,¹⁶⁰ placing pressure on the overwhelmingly unaffordable private housing market for those on low and statutory incomes.¹⁶¹

Recent and projected new housing construction is insufficient to address the current deficiencies, let alone the estimated increase in the Aboriginal population of around 34,000 people over the next twenty-five years. This presents an alarming scenario when it is considered that issues relating to overcrowding, homelessness and inadequate housing are significant contributing factors to children entering the child protection and youth justice systems.

Unless the contribution that these factors have on the rates of children entering the child protection and youth justice systems is adequately recognised and addressed, the Northern Territory Government's welcome commitment to a 'whole of life approach to supporting families and placing child protection and youth justice within a broader framework of prevention and early intervention' will be derailed.¹⁶²

APO NT refers the Commission to:

- APO NT joint preliminary submission with the Human Rights Law Centre (HRLC) and Danila Dilba Health Service which highlights the disastrous lack of adequate housing for Aboriginal people in the NT and the role of housing as a social determinant of health,¹⁶³
- APO NT joint opinion piece with the HRLC which describes the ongoing housing crisis in the NT,¹⁶⁴ and

¹⁵⁹ The Department of Housing recently estimated that 36,000 people lived in remote areas in the NT. Department of Housing and Community Development communique to Aboriginal Housing NT, March 13, 2017. There is no publically available wait list for public housing in remote areas.

¹⁶⁰ In mid-2015 it was reported that Minister for Housing had released figures which indicated that there were 76 fewer public dwellings across the Territory than the previous year— 53 fewer in remote communities and 23 fewer in urban centres. Hope, Z. (2014, April 24). 'Public housing dwellings in Northern Territory shifted to affordable rent scheme for middle class.' *NT News*. Retrieved from: <http://www.ntnews.com.au/news/northern-territory/public-housing-dwellings-in-northern-territory-shifted-to-affordable-rent-scheme-for-middle-class/news-story/c4aed25bd3af46c267ede0348268e6df>.

¹⁶¹ Anglicare Australia. (2017, April). *Rental Affordability Snapshot*. Retrieved from: <http://www.anglicare.asn.au/docs/default-source/default-document-library/rental-affordability-snapshot-2017.pdf?sfvrsn=4>. "The Anglicare Australia Rental Affordability Snapshot demonstrates clearly there is a housing affordability crisis in the Northern Territory as we have identified 0% of properties that were affordable for families who currently receive the Newstart or parenting allowances."

¹⁶² Northern Territory Government. (2017). Minister for Territory families, the Hon Dale Wakefield MLA Communique to Stakeholders *Progress and Challenges in Child Protection and Youth Justice*, June 2017, 5.

¹⁶³ Aboriginal Peak Organisations NT, the Human Rights Law Centre and Danila Dilba Health Service. (2016). Royal Commission into the Protection and Detention of Children in the Northern Territory [Joint Submission]. Retrieved from <http://www.amsant.org.au/apont/wp-content/uploads/2015/02/161104-APONT-DDHS-HRLC-joint-submission-to-NTRC-final.pdf>.

¹⁶⁴ Ross, D and Walters, A. (2017, February 16). 'The gap grows wider for remote communities struggling with

- NAAJA's submission to the Northern Territory Government's Review of Housing, which details how tenancy management practices can exacerbate homelessness, create and entrench barriers to accessing public housing and contribute to insecurity of public housing, all of which have detrimental impacts on children.

APO NT considers that an Aboriginal controlled housing sector will provide better outcomes for families and children, and describe current initiatives to develop this sector in this Chapter.

4.14.1 Identifying and addressing the interrelationship between housing and outcomes for children

Overcrowding, inadequate housing and homelessness:

- are risk factors for child neglect;¹⁶⁵
- are associated with poorer health, including skin diseases, endemic childhood ear disease¹⁶⁶ and other chronic disease outcomes;¹⁶⁷
- impede the capacity of parents to provide safe and protective environments to nurture their children;¹⁶⁸
- prevent or hinder reunification of families and placement with kinship carers;¹⁶⁹
- are a key contributing factors for high rates of juvenile offending;¹⁷⁰
- impact on the ability to escape domestic and family violence;¹⁷¹

severe overcrowding.' *The Sydney Morning Herald*. Retrieved from: <http://www.smh.com.au/comment/the-gap-grows-wider-for-remote-communities-struggling-with-severe-overcrowding-20170215-gudd3d.html>.

¹⁶⁵ Australian Institute of Family Studies. (2013, March). *Risk and Protective Factors for Child Abuse and Neglect*, CFCA Resource Sheet. Retrieved from: <https://aifs.gov.au/cfca/publications/risk-and-protective-factors-child-abuse-and-neglect>.

¹⁶⁶ The worst ear disease occurs in communities where there is greatest general disadvantage; such as remote Aboriginal communities. Vanderpoll, T., & Howard, D. (2012). 'Massive prevalence of hearing loss among Aboriginal inmates in the Northern Territory', *Indigenous Law Bulletin*, 7(28), 3.

¹⁶⁷ Australian Bureau of Statistics. (2008). *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples: Housing and Health*. Retrieved from: <http://www.abs.gov.au/ausstats/abs@.nsf/0/F4302CEC55D5B8EECA2574390014A785?opendocument>.

¹⁶⁸ 'Overcrowded Households' *The State of Western Australia's Children and Young People* (2nd Ed). Retrieved from: <https://www.cyp.wa.gov.au/media/1193/the-state-of-was-children-young-people-material-wellbeing-53-overcrowded-households.pdf>

¹⁶⁹ Australian Institute of Family Studies. (2015, August). *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle*, paper no. 34. Retrieved from <https://aifs.gov.au/cfca/publications/enhancing-implementation-aboriginal-and-torres-strait-islander-child/export>.

¹⁷⁰ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs. (2011). *Doing Time – Time for Doing: Indigenous youth in the criminal justice system*, [2.48]. Retrieved from http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=atsia/sentencing/report.htm.

¹⁷¹ North Australian Aboriginal Justice Agency. (2016, February). Northern Territory Housing Issues Paper and Response to the Housing Strategy Consultation Draft, p. 12. Retrieved from <http://www.naaaja.org.au/wp-content/uploads/2014/05/NAAJA-submission-NTG-Housing-Strategy-2016.pdf>; Terzon, E. (2016, February 15). Why Indigenous women in remote Northern Territory have 'no realistic way' to escape violence. Retrieved

- are drivers for informal carer arrangements;¹⁷² and
- are associated with poor school attendance.¹⁷³

Living in overcrowded living conditions can also lead to trauma and complex trauma. This often underlies health, social and emotional factors which lead to the involvement of child protection and youth justice services.¹⁷⁴

Despite this, APO NT is not aware of any Northern Territory Government initiative which seeks to document, explore and address the relationship between the impact of overcrowding, inadequate housing, and homelessness in the Northern Territory and young peoples' entry into the youth detention and child protection systems. This is despite the NT having by far the nation's highest rate of homelessness, with 52% of the NT homeless population being aged under 25 years, and 27% under 12 years.¹⁷⁵

Whilst the Northern Territory Government does acknowledge that 'overcrowding is a major issue in Aboriginal communities and is often a barrier to Aboriginal families being kinship carers',¹⁷⁶ overcrowding and its impact on kinship care placements is not the sole interplay between issues with housing and the child protection and youth detention systems.

APO NT members have observed unsafe living conditions are often part of the complex mix of protection concerns held by Territory Families in applications under the *Care and Protection of Children Act*. Common protection concerns relating to housing are exposure to domestic violence due to overcrowded living conditions or issues with house repairs, such as broken locks. In these ways, housing issues often create barriers to children being reunified with their parent or carer.

from: <http://www.abc.net.au/news/2016-02-15/housing-shortage-domestic-violence-victims-northern-territory/7105242>

¹⁷² Senate Community Affairs References Committee. (2014, October). *Grandparents who take primary responsibility for raising their grandchildren*, [7.27]. Retrieved from http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Grandparent_Carers/Report.

¹⁷³ The average number of people per bedroom in these communities ranged from one to almost four. For each extra person per bedroom, there was a 20% reduction in the rate of school attendance: See Silburn, S., McKenzie, J., Guthridge, S., Li, L., & Li, S.Q. (2014). *Unpacking Educational Inequality in the Northern Territory*. Research Conference 2014. Retrieved from: (http://research.acer.edu.au/cgi/viewcontent.cgi?article=1234&context=research_conference; and 'How crowded homes can lead to empty schools in the bush' (2014, September), *The Conversation*, Retrieved from: <http://theconversation.com/how-crowded-homes-can-lead-to-empty-schools-in-the-bush-30971>.

¹⁷⁴ Ralph, N. Hamaguchi, K and Cox, M. (2006). 'Transgenerational trauma, suicide and healing from sexual abuse in the Kimberley region, Australia', *Pimatisiwin; A Journal of Aboriginal and Indigenous Community Health*, 4(2), 118–36.

¹⁷⁵ Northern Territory Government, Department of Housing and Community Development. (2017). *Pathways out of Homelessness Discussion Paper*.

¹⁷⁶ Northern Territory Government, *Progress and Challenges in Child Protection and Youth Justice*, above n 163, 5.

It is difficult for parents to address underlying issues relating to protection concerns or create meaningful change when their housing situation is unstable. Simple activities of daily life such as keeping household possessions and paperwork safe, charging a mobile phone, making appointments for medical or rehabilitation services and storing food become difficult or impossible.

At times, the failure of the NT Government to take the welfare of families and children in remote communities into consideration when planning and delivering its commitment to housing, particularly when it is upgrading premises and responding to requests for repairs and maintenance, generates harm and compounds existing trauma. For example, recently up to 240 residents of Maningrida were left homeless and forced to take shelter with relatives while their houses were upgraded – no transitional accommodation was provided.¹⁷⁷ APO NT has also observed families in Millingimbi being required to vacate their homes for repairs with nowhere else to stay, in the wet season, and during mourning and funeral preparations following the recent death of an elder. These are not isolated incidents.

Further complicating matters is the apparent lack of co-ordination between Territory Families and the Department of Housing in addressing these issues, when the parent or carer lives in or is eligible for public housing. APO NT members have observed that the best interests of children is not the paramount consideration in decision making by Territory Families, despite a policy which recognises the Department of Housing's role in 'safeguarding the wellbeing of children'.¹⁷⁸ Pragmatic collaboration between the Department of Housing and Territory Families to address barriers to reunification or protection concerns relating to public housing is imperative and should be a priority.

De-identified case studies from APO NT members' casework indicate that unless parents and carers have access to stable housing their ability to address protection concerns and make positive change or have the capacity to parent is deeply compromised:

Case study 4

A mother, a survivor of multiple significant traumatic events, with the care of two children was living in a 2 bedroom public housing flat in an unsafe area. Before she could be reunified with her other 3 children, Territory Families advised she needed to be upgraded to a larger house. She asked to be transferred urgently because of the safety issues. The Department of Housing refused to approve the application, due to the mother having outstanding debts. This decision was appealed and reversed. The Department of Housing then required that she pay \$2500 bond and rent in advance as a condition of the transfer. The mother was unable to save money from her Centrelink payments and support

¹⁷⁷ Dias, A. (2017 May 16). 'Aboriginal residents left homeless while houses upgraded by NT Government'. ABC News. Retrieved from: <http://www.abc.net.au/news/2017-05-16/aboriginal-residents-left-homeless-as-houses-upgraded-by-nt-govt/8528770>.

¹⁷⁸ Department of Housing and Community Development, *Care and Protection of Children Policy*, 31 January 2017.

services had run out of funds allocated for this purpose. Territory Families refused a request to pay these costs, despite being aware that the mother had made reports to police about one of her children being followed, her concerns about her children's safety, and that the transfer was in the children's best interests. NAAJA appealed this decision and was successful. By the time that the transfer went ahead, the mother had lived in a state of fear for a year and reunification was further delayed.

Case Study 5

A family living in public housing in a remote community had a faulty hot water system. Their hot water system failed and they did not have hot water for a period during the Dry Season. Their children did not want to bathe in cold water, and as a result, did not want to go to school. The hot water system was not repaired by the Department of Housing for a month. Territory Families became involved.

Case Study 6

Parents had their child removed due to concerns regarding alcohol abuse and domestic violence. The child was placed with the grandparents. As the parents were homeless, they would often stay with the grandparents, jeopardising the kinship care placement. The parents asked Territory Families to help them get a house, and were refused as it wasn't 'their job'. The couple were assisted into rehabilitation by Territory Families. The couple completed an application for housing, and although they were homeless, were not advised by the Department of Housing that they were eligible for priority housing. NAAJA assisted the clients to have their application backdated by a calendar year.

Case Study 7

A single mother with three young children had her tenancy terminated by the Department of Housing because of damage caused to the house by extended family. The Department of Housing said that she could not apply for another house until she had paid off the debt due to damage.

She and her children moved between living with family in overcrowded conditions and living in hostels. Territory Families became involved and removed her children – the majority of the protection concerns related to the instability of housing.

The mother consented to a two year order for her children so she could find permanent housing and employment. When the court order was made, Territory Families promised that they would support and help the mother to find suitable housing; this was limited to a letter of support.

Because the waiting list for public housing in the NT is so long, the mother moved interstate, secured housing and now has her children back in her care.

In evidence before the Senate Community Affairs Reference Committee into Grandparents who take primary responsibility for raising their grandchildren, a NAAJA lawyer described how overcrowding is a barrier to children being placed with family members:

I have a grandmother at the moment who has six grandchildren; she is on the [housing] waiting list; she is about nine months away. Once she gets the house her grandchildren will come back with her, so she will be looking after all six grandchildren. She does not smoke, does not drink. She is a senior woman. But because her housing is overcrowded and she does not have locks

*on the doors, people come and go – the house is not safe for the children. That is the only hurdle.*¹⁷⁹

To remedy the evident gap in knowledge, the Government should collect the data specified in recommendations 28 and 29 of the APO NT/HRLC Preliminary Submission, and use this to inform its commitment to the 'whole of life approach'. Such data is likely to indicate that issues relating to housing are present in a significant proportion of child protection investigations, unsuccessful applications for kinship care and failed or delayed reunification attempts.

This data is also highly likely to show a strong link between young people offending and their housing situation. The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs found that inadequate accommodation in many Indigenous communities is a key contributing factor for high rates of juvenile offending.¹⁸⁰

Overcrowding and homelessness can contribute to youth offending in a number of ways. Homelessness can create necessities that a young person may not be able to lawfully meet – for food, money, clothing, items for personal hygiene, or funds for travel. A young person may commit survival offences to obtain these necessities of life. Unstable housing and homelessness can contribute to or exacerbate a lack of supervision and support which can lead to disengagement from pro-social activities, such as school and sport. This can lead to anti-social activity like substance misuse to escape an otherwise unhappy situation and further illegal activity. If a young person is homeless or if they feel unsafe at home, they are more likely to conduct their lives in public places, thereby attracting attention of police.¹⁸¹ This can lead to being charged with public order offences, such as obscene, offensive or threatening language, or being drunk in a public place.¹⁸²

Living in overcrowded housing makes it difficult to obtain and comply with often unrealistic bail conditions imposed on young people around residential requirements, which the NT Government accepts. As a partial solution, Territory Families has commenced identifying

¹⁷⁹ Senate Community Affairs References Committee. (2014, October). *Grandparents who take primary responsibility for raising their grandchildren*, [7.27]. Retrieved from http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Grandparent_Carer_s/Report.

¹⁸⁰ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing*, above n 170.

¹⁸¹ Australian Government (2015). Australian Institute of Criminology, *Trends and issues in crime and criminal justice*, "Homelessness and housing stress among police detainees: Results from the DUMA program' No 492, February 2015

¹⁸² Walsh, T. (2004). 'Who is the 'public' in 'public space'? A Queensland perspective on poverty, homelessness and vagrancy', *Alternative Law Journal*, 18, 29(2) and Goldie, C. (2002). 'Living in Public Space: A Human Rights Wasteland?', 27(6) *Alternative Law Journal* 277.

potential sites for supported bail accommodation.¹⁸³ These facilities and services must be trauma-informed and adequate to meet demand.

In addition to the initiatives already underway, Territory Families and the Department of Housing should collaborate to:

- establish a cross-agency working group to identify ways to support families and reduce barriers to accessing public housing for parents and carers of children in care and young people in detention. At present, interagency collaboration appears limited to exchanging information about reporting harm, without any constructive assistance being provided to prevent harm;
- update Department of Housing policies and procedures to ensure that the best interest of children is given primacy in its decision making, including but not limited to decisions to terminate tenancies where children and young people will be affected, applications for priority housing, allocations, requests for repairs and maintenance, requests for safe rooms to protect children and their families from domestic and family violence, and applications for transfer;
- train Department of Housing staff on the profound traumatic impacts of child removal on the child, parents and the community, and their entry into the criminal justice system, so that all decision-making processes use a trauma-informed approach;
- train and adequately resource Territory Families' staff to assist young people, their families and kinship carers to overcome barriers to accessing adequate public housing and ensuring that issues in the home which will have an impact on a parent or carers' ability to care for the child, such as blocked toilets or broken locks, are actioned by the Department of Housing. For example, at the beginning of a two year order giving care of a child to the CEO where the parents or carers are homeless, Territory Families should assist the family to apply for priority public housing. The sooner parents or carers have stable housing, the sooner they are in a better position to make positive change; and
- address barriers to kinship care, by including kinship care as an eligibility criteria for priority public housing¹⁸⁴ and enabling approval of kinship care subject to appropriate housing, so that when housing is obtained the placement of the child or children is expedited.

4.14.2 Housing policy as an instrument of disempowerment and trauma

The recent history of Aboriginal housing policy and the ongoing housing crisis as causal factors

¹⁸³ Northern Territory Government, *Progress and Challenges in Child Protection and Youth Justice*, above n 163, 7.

¹⁸⁴ The current grounds are homelessness, at risk of homelessness, experiencing domestic or family violence, have serious medical or social problems. See NT Government's website on how to apply for priority housing: <https://nt.gov.au/property/public-housing/apply-for-priority-housing>.

of disempowerment and widespread trauma are important matters for consideration of this Royal Commission.

Abundant literature indicates that Aboriginal people have been exposed to a variety of traumatic events associated with official policies of successive governments.¹⁸⁵ Commonwealth and Territory policies have resulted in significant disempowerment of Aboriginal people and communities in the NT over the past decade, with a pronounced shift away from self-determination. Arguably these changes have been felt acutely in relation to housing, including:

- the dismantling of Indigenous Community Housing Organisations (ICHOs) by the Northern Territory Government which had managed housing in remote communities;
- the compulsory acquisition of five year leases over remote communities by the Commonwealth Government under the Northern Territory Emergency Response (land which had been hard fought for in the land rights movement);
- the wholesale transfer of housing management and capital works in remote communities to the NT Government;
- the imposition of the Department of Housing's public housing model onto remote communities, with chronic delays in repairs and maintenance, poor rent collection and record keeping, policies which did not allow for cultural practices and a lack of transparency in allocation decisions;
- the concentration of funding for new housing construction limited to 16 of the 73 government-designated 'prescribed' communities, with construction conditional on consent to long-term leases controlled by a Commonwealth statutory office holder;
- no funds allocated to approximately 400 Homelands for new housing construction;
- no funds allocated for new construction to the majority of 43 Town Camps in the Territory; and
- multiple changes to the arrangements for repairs and maintenance from being the responsibility of ICHOs to Shire Councils to private contractors, which has resulted in entrenched external reliance and underutilised local trade knowledge and expertise and diminished work skills.¹⁸⁶

These changes were imposed and reflected an ongoing paternalism that was blind not only to the implications of pre-existing trauma in the affected communities, but also to an understanding that the impact of trauma is worsened when traumatic events are 'designed,

¹⁸⁵ Exposure to traumatic events, prevalence of posttraumatic stress disorder and alcohol abuse in Aboriginal communities. Nadew, GT. (2012). 'Exposure to traumatic events, prevalence of posttraumatic stress disorder and alcohol abuse in Aboriginal communities', *Rural and Remote Health*. 12(1667), 1. Retrieved from: http://www.rrh.org.au/publishedarticles/article_print_1667.pdf.

¹⁸⁶ Aboriginal Peak Organisations NT, Shelter NT and Central Australian Affordability Company, *Home is Where the Heart is*, above n 156.

planned and systematically executed by the very people looked to for protection'.¹⁸⁷

The housing crisis in remote communities both generates and compounds pre-existing trauma¹⁸⁸ experienced by Aboriginal people:

*We feel confused; we don't know what's going on anymore, what's happening next. We aren't respected; our culture and our leaders aren't respected; our communities are suffering; people are hurting; people are turning to grog and gambling who didn't before; nobody is listening to us; they took our power away; why don't they [the government] trust us to manage our own affairs, run our own housing.*¹⁸⁹

This describes a sense of helplessness; loss of control; disrupted cultural connection; grief and depression; shattered assumptions; guilt and shame - the core components of trauma.¹⁹⁰

4.14.3 The uncertain future of public and social housing in the NT

There is considerable uncertainty in the future of public and social housing in the NT. With the National Partnership Agreement on Remote Indigenous Housing (NPARIH) due to expire in June 2018, there is currently no Commonwealth Government commitment to funding for remote housing in forward estimates.¹⁹¹ A Review of NPARIH was called on 18 November 2016 at short notice to examine its effectiveness and the level of demand for housing in remote Indigenous communities.¹⁹² The expert panel charged with the review was due to report to the Minister in February 2017; this report has not yet been released.¹⁹³

APO NT welcomes the current NT Government's commitment to a \$1.1b investment in housing over the next ten years, which incorporates funding for new housing, transition to a

¹⁸⁷ Ibid 2

¹⁸⁸ Exposure to traumatic events, prevalence of posttraumatic stress disorder and alcohol abuse in Aboriginal communities. Nadew, above n 1.

¹⁸⁹ Community Updates Report, AHNT meeting, March 12-13 2017

¹⁹⁰ Kaplan, I. (2014). *Rebuilding Shattered Lives*. Forum of Australian Services for Survivors of Torture and Trauma.

¹⁹¹ Australian Government (2017). 'Reducing Pressure on Housing Affordability', Budget 2017-18 Fact Sheet 1.7 – A new National Housing and Homelessness Agreement. Retrieved from: http://budget.gov.au/2017-18/content/glossies/factsheets/html/HA_17.htm.

¹⁹² See the announcement on the Remote Housing Review website: <https://www.pmc.gov.au/indigenous-affairs/housing/remote-housing-review>.

¹⁹³ In the absence of the NPARIH Review, we draw the Commission's attention the following reports, which provide a comprehensive critique of NPARIH with key recommendations: Habibis, D., Phillips, R., Spinney, A., Phibbs, P., & Churchill, B. (2016). *Remote Indigenous housing is best delivered through locally adopted arrangements*, AHURI Research & Policy Bulletin, Australian Housing and Urban Research Institute, Melbourne. Retrieved from: www.ahuri.edu.au/research/research-and-policy-bulletins/216 and Habibis, D., Phillips, R., Spinney, A., Phibbs, P. and Churchill, B. (2016). *Reviewing changes to housing management on remote Indigenous communities*, AHURI Final Report No. 271, Australian Housing and Urban Research Institute, Melbourne. Retrieved from: www.ahuri.edu.au/research/final-reports/271.

community housing model, provision of government employee housing, repairs and maintenance and building more living spaces for existing houses.¹⁹⁴

Current efforts appear focused on the 'Room to Breathe' early works program, which aims to build extra living spaces in public houses in 22 remote communities.¹⁹⁵ These works will not have an impact on existing household infrastructure that supports health and stable parenting – cooking and washing facilities, toilets, showers and adequate sewerage, which overcrowding places pressure on.¹⁹⁶ Further, Homelands are excluded from these works.

We are currently awaiting confirmation of timelines for the NT Government's broader commitments to housing reform. These include moving from the public housing model to a community-led model to fundamentally empower communities, establishing a Remote Housing Organisation¹⁹⁷, and the construction of Government employee housing for 'local recruits'.¹⁹⁸

Further, a comprehensive review of the land tenure, leasing arrangements, infrastructure and service delivery of the Territory's 43 Town Camps which was commissioned by the NT Government has not yet been released – its reporting date was 24 March 2017.¹⁹⁹

It is incumbent on governments to recognise that imposing top-down policies that frequently change creates uncertainty, induces further stress and contributes to the high burden of trauma experienced by Aboriginal people.²⁰⁰ This has been the experience of Aboriginal housing policy in the NT. However, an important opportunity has now been created for governments to embrace much-needed reform and develop long-term bipartisan policies in real partnership with Aboriginal communities and organisations.

¹⁹⁴ See: NT Government's website on the Room to Breathe Program <https://dhcd.nt.gov.au/community-development/housing-programs/room-to-breathe-early-works-program>.

¹⁹⁵ Ibid.

¹⁹⁶ Australian Bureau of Statistics. (2010). *Housing circumstances: Overcrowding*, Australian Bureau of Statistics, Canberra. Retrieved from: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter865Oct+2010>.

¹⁹⁷ *Establishment of a Remote Housing Organisation*, Final Report, Ernst and Young, for the Department of Housing and Community Development, October 2016.

¹⁹⁸ NT Government employees who work in the community they are from have historically been shut out of Government Employee Housing, see: Everingham, S. (2017, April 6). 'NT Government short on detail for employee housing allocation three months before funding kicks in'. [Media Release]. Retrieved from: <http://www.abc.net.au/news/2017-04-06/nt-govt-short-on-detail-for-employee-housing-allocation-in-bush/8420554>

¹⁹⁹ See NT Government website for information on the Town Camp Review. <https://dhcd.nt.gov.au/community-development/homelands-and-remote-communities/town-camp-review>.

²⁰⁰ Ralph, above n 174.

4.14.5 The way forward: Aboriginal community controlled housing sector

APO NT strongly advocates that the way forward is for housing is a return to Aboriginal community control.

In 2015, APO NT hosted a two-day Aboriginal Housing Forum in Darwin, where 200 delegates from across the NT discussed the housing crisis in remote communities, homelands and town camps. Three key outcomes were:

- the desire of all delegates to work with government to find solutions to the housing crisis;
- recognition that only solutions developed with Aboriginal people in the lead will succeed; and
- the need to form the Aboriginal Housing NT (AHNT) body to provide a coordinated Aboriginal voice on housing issues, and work with government on solutions on these issues.

A comprehensive report with recommendations was developed which has informed and influenced government policy.²⁰¹

Since its formation, AHNT, with APO NT's support, has undertaken the role of an interim peak Aboriginal housing body, and made considerable progress in working in partnership with the Australian and NT governments. AHNT has recently secured interim funding from the NT Government and plans to host a second NT Aboriginal Housing Forum in September 2017.

AHNT's formation and achievements, and its efforts to rebuild trust with government, are significant steps toward self-determination, healing some of the trauma and regaining some of the lost ground caused by past government actions.

AHNT is committed to partnering with the Territory Government in support of its commitment to empower local communities through local decision-making, including in housing,²⁰² and build the capacity of Aboriginal Community Housing Organisations to meet legislative and contractual responsibilities. The overall aim is for local knowledge and best practice directed through local decision-making and utilising local employment and skills to underpin Aboriginal housing reform for the benefit of Aboriginal families and communities in the NT.²⁰³

²⁰¹ Aboriginal Peak Organisations NT, Shelter NT and Central Australian Affordability Company, *Home is Where the Heart is*, above n 156.

²⁰² Territory Labor. (2016). Labors Plan, *The Most Extensive Return to Local Control in the Territory's History*. Retrieved from: <https://territorylabor.com.au/indigenoussaffairs>.

²⁰³ Aboriginal Housing Northern Territory, Aims, activities and achievements are detailed at www.amsant.org.au/APONT/AHNT.

RECOMMENDATIONS:

- 47. That the Northern Territory Government:**
- a) commits to the principles and practices of trauma informed service provision including requiring training and development at all levels of government on the impacts of trauma and trauma informed service provision;**
 - b) conducts an audit of its policies and service delivery practices in conjunction with AMSANT, particularly within the Departments of Territory Families, Housing and Community Development, and Police; and implements changes to ensure they are trauma informed; and**
 - c) monitors and evaluates this work.**
- 48. That the Northern Territory Government sets targets to ensure the overall number of public housing stock increases in urban and remote areas to meet demand for public housing.**
- 49. That the NT Government:**
- a) adequately resource AHNT as the NT Aboriginal peak housing body;**
 - b) work in partnership with APO NT and AHNT to develop priorities, culturally relevant design and delivery of housing;**
 - c) commit to reforms proposed in the Establishment of a Remote Housing Organisation Final Report to develop an Aboriginal controlled housing sector that is diverse, flexible, locally controlled, generate local employment and suit the needs of Aboriginal people;**
 - d) commit to developing a 10-year Aboriginal housing strategy in partnership with APO NT and AHNT; and**
 - e) implement Health Habitat's Housing for Health: the guide in the design, construction, refurbishment and cyclical maintenance of public housing.**
- 50. That the Commonwealth Government commits to fund the National Partnership on Remote Indigenous Housing beyond June 2018, and that the agreement:**
- a) Provides that the annual investment in construction of new houses in remote communities addresses existing shortfalls and keeps apace with population growth; and**
 - b) includes properly funded cyclical maintenance programs to be undertaken by local Aboriginal organisations.**

CHAPTER 5: Systemic failings in the Care and Protection System

This chapter addresses terms of reference (a) failings in the child protection system and (h) what improvements could be made to the child protection system in the Northern Territory, including identification of early intervention pathways for children at risk and (i) any matters incidental.

The first section of this chapter outlines APO NT's proposal for a strategy to overhaul the failing Northern Territory child protection system. The subsequent sections outline specific systemic issues that provide the rationale for this overhaul.

5.1 History and Context of Australian Child Protection Policy

As a result of colonisation, Aboriginal people have never experienced a break in government policy with respect to child protection. Initially, a high proportion of Aboriginal children were removed from their families and placed with non-Aboriginal carers or in the government's care under racially-discriminatory government policies that served to either 'protect' or 'assimilate' the child.²⁰⁴

As time progressed and policies changed with respect to 'self-determination', some jurisdictions implemented the 'Aboriginal Child Placement Principle', which guides the OOHC placement of Aboriginal children with Aboriginal communities and included Aboriginal child care agencies in the decision-making process.²⁰⁵ It was expected that the child removal rate would decline, but instead it increased. This was thought to be due to a number of reasons: Aboriginal people were never fully in control of the decisions, there was prejudice against Aboriginal child-rearing practices, the socio-economic deprivation experienced within Aboriginal families and the ongoing inter-generational effects of the stolen generations' era.²⁰⁶ To gain an understanding of the intergenerational effect of colonisation on Aboriginal people we need to compare it to the 60,000 year period free from "Government intervention" and ask the question: are Aboriginal people better off?

Colonisation did not just take away our land, nor just forbid us to practice our religion and custom, speak our language or observe our laws. In doing all of these things it also challenged and tried to destroy our rights to our children. We have always maintained our sovereignty in these matters, and that is why...

²⁰⁴ National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (Australia), Wilson, R. D., & Australia Human Rights and Equal Opportunity Commission. (1997). *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*. Sydney: Human Rights and Equal Opportunity Commission. Retrieved from: https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf

²⁰⁵ McRae, H., Nettheim, G., Anthony, T., Beacroft, L., Brennan, S., Davis, M., Janke, T. (2009). *Indigenous Legal Issues, Commentary & Materials*. 4th Ed. NSW: Thomson Reuters, 625.

²⁰⁶ Ibid.

*we have incessantly called for national federal legislation to restore and safeguard the rights of our children and their families. Our children are no less important than our land... without one there will be no guarantee for the other.*²⁰⁷

It is accepted by independent historians and anthropologists that there were no prison structures or child protection OOHC systems prior to 1788. After first contact, there was quickly a raft of laws passed to manage and control the first peoples, and included where Aboriginal people lived and the power to control their daily lives. The Aboriginal experience of colonisation is not unique to Australia and is accepted around the world that the effects of colonisation has created horrendous outcomes and mistrust for the colonised families. The behaviour and responses of Aboriginal people are not cultural responses, they are trauma responses based on traumatic experiences.

We ask the Commission and the wider public to look at their own children, nephews' and nieces and ask what trauma it would cause to their children if they were removed from their parents. What trauma will it cause to the mothers that carried these children and what trauma would it cause to the fathers and grandparents. We ask that the Commission and policy makers to understand the severity of trauma caused in the ongoing removal of our Aboriginal children, now and over the last 150 years, from their families. The direct connection between removals and the trauma injuries, rippling through the generations, has been the genesis of the Aboriginal disadvantage.

Aboriginal people mistrust, are disengaging and even despise the current child protection system, because it makes them feel powerless in advocating for their children and their needs. Aboriginal people love their children and grandchildren. We take a zero-tolerance approach to the sexual abuse of any child, Aboriginal or non-Aboriginal. The data shows that these cases are overwhelmingly in the minority where children are removed, and pale in comparison to the non-Aboriginal children in care for sexual abuse. We believe that Aboriginal children and "all" children need to be and feel safe.

Aboriginal people believe that the removal of Aboriginal people based on neglect is vastly over-represented in the system based on ABS data. Aboriginal people are historically disadvantaged by any measure if you compare their material wealth against the greater Australian population. Aboriginal people would strongly argue that disadvantage should not be given much weight when making "judgement on an Aboriginal person's fitness to look after their children." Material wealth and economic opportunities have been denied Aboriginal people throughout Australia's short but traumatic history and those policies have achieved

²⁰⁷ Ibid 626.

their goal, that is, the majority of Aboriginal people are poor in material wealth.²⁰⁸

APO NT believes that the relationship between Aboriginal people, the Government and non-Aboriginal NGOs must be built on mutual trust and respect. For this to occur, the NT Government needs to acknowledge this history of misinformed protection policies, which have caused ongoing grief and trauma for Aboriginal people over the last two hundred years. This has been expressed through the recent apology from the Australian Psychological Society.²⁰⁹ If there is an honest acceptance on what has happened in the past and what is currently happening today, then there is hope that the same practices will not continue. This will ultimately set the foundation of a paradigm shift in the NT's child protection system.

5.2 Commissioner for Aboriginal Children and Young People

The objective of the present Royal Commission is to provide a fundamental shift towards ensuring improvement in the lives of children in the child protection system and particularly Aboriginal and Torres Strait Islander children. The creation of a Commissioner for Aboriginal Children and Young People based on the Victorian²¹⁰ child protection system will bring about a fundamental shift that centres the focus to the Aboriginal child.

The Victorian Commissioner for Aboriginal Children and Young People has existed since 2013. In accordance with the Act, its purpose is to promote continuous improvement and innovation in policies and practices relating to the safety and wellbeing of children and young people generally and in particular, those who are vulnerable; and the provision of out-of-home care services for children.

To ensure that the report and recommendations put forward by this Royal Commission are not simply added to the long history of failed responses, a mechanism to provide oversight and monitoring and ensure parties are held accountable is necessary. APO NT is calling for an Aboriginal Co-Commissioner for children. The Aboriginal Children's Co-Commissioner would play a central role in providing this accountability by providing six monthly reports on progress made in response to the Royal Commission's findings. The Aboriginal Children's Co-Commissioner would focus on prevention and early detection and leave the responsibility for monitoring OOHC, child protection and youth justice issues to the current commissioner. This creates clear role delineation and will help shift greater scrutiny on the lack of and quality of prevention and early detection services.

²⁰⁸ See the Australian Human Rights Commission's Timeline - History of separation of Aboriginal and Torres Strait Islander children from their families for further information on government policy impacting on Aboriginal people <https://www.humanrights.gov.au/timeline-history-separation-aboriginal-and-torres-strait-islander-children-their-families-text>.

²⁰⁹ To see a full copy of the apology, see here: https://www.psychology.org.au/news/media_releases/15September2016/. The Society have also provided an option to listen to a recording of the presentation on Soundcloud.

²¹⁰ *Commission for Children and Young People Act 2012* (VIC)

5.2.1 Functions

Pursuant to the Act²¹¹ the Victorian Commissioner must act independently and impartially in performing its functions and concerning vulnerable children and young people, and these functions must be performed to promote their best interests.

The Commissioner's functions include providing advice relating to the safety or wellbeing of vulnerable children and young persons; promoting the interests of vulnerable children and young people; monitoring and reporting to Ministers on the implementation and effectiveness of strategies relating to the safety or wellbeing of vulnerable children and young persons; promoting child-friendly and child-safe practices in the Victorian community and promoting the provision of out-of-home care services that encourage the active participation of those children in the making of decisions that affect them; advising the Minister and Secretary on the performance of out-of-home-care services; and, at the request of the Minister, investigating and reporting on an out-of-home care service.

RECOMMENDATION:

- 51. APO NT recommends that the position of Co-Commissioner for Aboriginal Children and Young People is established with a focus on prevention and early detection concerning Aboriginal and Torres Strait Islander children**

5.3 Strategy for the establishment of Aboriginal-led and managed child protection and out-of-home care (OOHC) services in the Northern Territory

The NT child protection system has been the subject of numerous critical reviews, with particular attention given to the need for changes to provide better protections to Aboriginal children from neglect and abuse.²¹²

Despite the plethora of reports and inquiries, there has been little improvement in the system overall. Services, processes and practices are required that better support Aboriginal children and their families to safely care for children. The rate of removal of Aboriginal children from their families remains unacceptably high. Between 2011 and 2015 the number of children in out-of-home care rose by an average of 16% per year—a growth entirely due to the increased numbers of Aboriginal children who had been removed from their families.²¹³

²¹¹ See section 8 of the *Commission for Children and Young People Act 2012* (VIC).

²¹² Anderson, above n 40; Bamblett, above n 41; and Gwynne, C. (2015). *Children's Commissioner Northern Territory, Annual Report 2014-2015*. Darwin: Office of the Children's Commissioner, Northern Territory Government. Retrieved from: <http://www.childrenscommissioner.nt.gov.au/publications/Childrens%20Commissioner%20Annual%20Report%202014-15.pdf>.

²¹³ Office of the Children's Commissioner NT. (2016). *Annual Report 2015-2016*. Retrieved from:

Successive Northern Territory governments have failed to act on the well-documented concerns about the NT out-of-home care system and unacceptably high removal rates of Aboriginal children from their families. On 20 July 2016, leaders from the out-of-home care sector met in Alice Springs in to develop a proposal for urgent action by the new Northern Territory Government. The proposal draws on the evidence:

- Building on the strengths of families and communities to support their continuing safe care of their children offers the best prospect to secure children's long-term wellbeing.
- Culturally appropriate services lead to increased access to services by Aboriginal families.
- Culturally appropriate services lead to better outcomes for Aboriginal children and families.
- Australian jurisdictions that have adopted or are considering a similar approach to learn valuable lessons.

A clear goal of the meeting was to ensure that Aboriginal children and young people in out-of-home care in the NT are cared for by Aboriginal carers and supported by Aboriginal caseworkers in culturally appropriate settings, managed by Aboriginal community controlled organisations.

APO NT wrote to the new Minister for Territory Families, Dale Wakefield, with a proposal for a comprehensive medium to long-term strategy for the establishment of Aboriginal led and managed child protection and OOHC services in the Northern Territory.²¹⁴ The Minister has responded positively and it has been agreed that resources will be provided to APO NT to lead work on developing the strategy in partnership with Territory Families and relevant Aboriginal organisations and other stakeholders.

Guiding principles of the proposed strategy include:

- Adopt APO NT Partnership Principles.
- Service models will implement the Aboriginal child placement principle utilising Family Group Conferencing to ensure absolute priority is given to finding appropriate kinship carers and if not, Aboriginal foster carers within the same region.
- Services models are based on trauma-informed practice principles.
- An Aboriginal lens guides service development and service delivery.

<http://www.childrenscommissioner.nt.gov.au/publications/OCCNT%20Annual%20Report%202015-16%20web.pdf>.

²¹⁴ Aboriginal Peak Organisations NT. (2016, October 31). *Letter to Minister for Territory Families - Development of a Comprehensive Strategy to Establish Aboriginal run Out-of-Home Care Services in the Northern Territory*.

- Aboriginal organisations deliver holistic family strengthening, placement prevention, reunification and OOHC services to children and families.
- Realistic and flexible funding for OOHC services is based on need and for service models that are appropriate for the communities in each region.
- Transition of OOHC to the Aboriginal community controlled sector builds on existing service infrastructure in regions.
- Aboriginal organisations are supported to become accredited OOHC service providers through partnerships and/or capacity building strategies.

Through strong Aboriginal community ownership, leadership and consultation, a strategy specific to the Northern Territory will be developed to meet the needs of vulnerable children and families.

5.3.1 Regional focus

The strategy will have Top End and Central Australian regional hubs from which the roll out will be managed. A regionalised approach recognises Aboriginal nations and cultural connections across the NT, including those that exist across existing State and Territory borders in the Western Desert, Anangu, Pitjantjatjara and Yankunytjatjara (APY Lands) and Gulf of Carpentaria. It would also seek to address the present lack of co-ordination of child protection services in cross-border regions. Each hub will develop close relationships with and support the participation of each region of the Northern Territory, with a service approach best suited to their needs. This will also ensure the voice and leadership of communities to drive their service needs and responses

5.3.2 Sector development approach

The strategy will focus on sector development and support hubs, to equip local Aboriginal services with the skills and expertise required to operate effective, efficient and responsive services across the out-of-home care spectrum for Aboriginal children and families. Where there is not current capacity or potential for short-term capacity development, the strategy will explore the potential for genuine partnerships with mainstream services, learning from the successful NSW model²¹⁵ with the goal of then handing back full responsibility for service provision to the local community.

The strategy will incorporate growing, recruiting and training a strong and sustainable Aboriginal workforce to support OOHC. Local Aboriginal services and government and private OOHC providers must work in partnership in a coordinated care approach using primary health care, prevention, and public and population health approaches to the care and protection of Aboriginal children in the NT. This is important for those children already in the

²¹⁵ The Aboriginal Child, Family and Community Care State Secretariat (ABSEC) NSW.
<https://www.absec.org.au/>

child protection system and also those at risk of entering it.

An Aboriginal workforce akin to the South Australian 'Kinship Care Worker' would provide essential support with such assistance as supporting, training and educating kinship carers in practical day to day issues; monitoring and supervision of placements; assisting with complex family negotiations; providing information on the needs of the child and kinship carers and facilitating links with the community and support services.²¹⁶

The strategy will explore a mixed approach of Aboriginal services, Aboriginal services partnering with Aboriginal or mainstream services and mainstream services supporting start-up of local Aboriginal organisations over time. It will also develop a timeline and measured plan for the set-up of Aboriginal-led and managed out-of-home care services in the NT. To be sustainable this will take time. The Project staff will work closely with the government in developing a realistic, time-limited plan for service development and delivery by Aboriginal services.

RECOMMENDATIONS:

- 52. That Territory Families works with APO NT to develop a comprehensive joint strategy to establish an Aboriginal-led and managed Child Protection and Out-of-Home Care Service in the NT in line with the APO NT proposal and guiding principles.**
- 53. That an Aboriginal Childcare Agency with two regional support services be established, in consultation with APO NT. This would draw on the Victorian Aboriginal Child Care Agency Model, but customised to the NT and its unique demographics, culture and needs.**

5.4 Provision of oversight mechanisms

It is understood that Territory Families has been chronically under-resourced and lacking in internal mechanisms to ensure consistency, transparency and accountability. There is an urgent need for Territory Families to build the capacity to engage constructively with Aboriginal children, parents and families where there are protection concerns or orders.

NAAJA has previously outlined the lack of legislative provisions for review of the effectiveness of protection orders. The Northern Territory Coroner made a range of recommendations in the Melville inquest in 2010, including legislative and regulatory change to ensure basic standards of care and regular independent visits for children in care in the Northern

²¹⁶ Job description for Kinship Care Worker – South Australian Government
<https://drive.google.com/open?id=0B81jXNFapr-tSHZMaTZhRDg3RFU>

Territory.²¹⁷

Regular monitoring and support of child placements—whether OOHC placements or kinship care—could be carried out through Aboriginal community visitors such as the Community Visitor Program²¹⁸ employed by the proposed Co-Commissioner for Aboriginal Children and Young People or Children’s Commissioner.

Rigorous oversight would be achieved by the appointment of child advocates who have an ongoing role for each child in care, such as those employed by the Public Guardian in Queensland. In Queensland, child advocates are lawyers who provide support and representation on legal matters to children or young people in the child protection system. The *Public Guardian Act 2014* (Qld) prescribes broad functions for child advocates including developing a trusting and supportive relationship with the child and providing advice and information to the child on matters the child is concerned about, and supporting the child in family conferences, mediations or any other meetings.²¹⁹

Significantly, child advocates are given extensive powers in relation to information exchange and may ask a prescribed entity for particular information about a child and a child’s circumstances to facilitate their advocacy functions.²²⁰ The role of child advocates is unique in Australia in that they can intervene and provide advocacy and assistance to children in OOHC whenever necessary.²²¹

In addition, there is no legislative option for review of departmental decisions. The only option for review is through the complaints process or judicial review through the Supreme Court. Other jurisdictions such as Queensland have the option of merits review of departmental decisions through the Queensland Civil and Administrative Tribunal. Decisions relating to access, approval of kinship carers, placement and care plans should all be open to review.

RECOMMENDATIONS:

54. That each child who is in care is legally represented by an independent child advocate.

55. That Aboriginal community visitors are appointed to monitor and support children

²¹⁷ Northern Territory Magistrates Court. (2010). *Inquest into the death of Deborah Leanne Melville-Lothian*. Retrieved from: <http://www.localcourt.nt.gov.au/judgements/2010%20NTMC%20007.pdf>.

²¹⁸ The Community Visitor Program is an independent service located in the Anti-Discrimination Commission protecting the rights of people under the *Mental Health & Related Services Act*, *Disability Services Act* and *Alcohol Mandatory Treatment Act*.

²¹⁹ *Public Guardian Act 2014* (Qld) s. 13.

²²⁰ *Ibid* s. 84 and s. 87.

²²¹ See Public Guardian. (2015). Annual Report 2014-2015. Retrieved from: http://www.publicguardian.qld.gov.au/_data/assets/pdf_file/0005/458672/annual-report-2014-15-final.pdf.

in all Out of Home Care placements.

5.5 Removal to be undertaken as a last resort

APO NT is deeply concerned that removal of children from their families in practice, action and commitment, is not an option of last resort in the Northern Territory.

NAAJA's and CAALAS's experience is that inappropriate interventions by Territory Families and its former incarnations are resulting in removal of children in circumstances where other options should be considered. NAAJA and CAALAS are troubled that the types of orders sought by Territory Families are not currently appropriate. For example, CAALAS noted in their preliminary submission to this Royal Commission that they have observed an increasing trend by Territory Families to seek Protection Orders that will last until a child is 18, rather than shorter-term orders that would enable a review of the situation and whether family circumstances have changed. Once a long-term Protection Order is made it is very difficult to have it reviewed despite a review being in the child's best interests. NAAJA has also noted that there is a lack of consistency in the approach taken by Territory Families.

NAAJA is also concerned with the failure of Territory Families to consider the best interests of newborns and babies that are breastfeeding when considering removal. There have been several occasions where Territory Families have removed babies from their mothers shortly after birth. NAAJA has observed that in some cases, the concerns that prompted removal related to historical notifications for a previous child/children. In many cases, no or inadequate arrangements were made for breastfeeding or contact between the mother and child to take place in the crucial first months of life.

It is also disturbing that Territory Families consistently justifies its interventions and the need for the CEO to have 'parental responsibility' or 'daily care and control' in cases where there is a need to remove the child urgently. While there is some legislative basis for this argument – Territory Families cannot take a child into provisional protection under section 51 of the *Care and Protection of Children Act* when there is an order in place and parental responsibility is not with the CEO. The effect from the overuse of this section is to disempower Aboriginal families and parents.

APO NT advocates that no Aboriginal or Torres Strait Islander child should be removed from the jurisdiction of the Northern Territory²²² with any placement without the prior consultation of the child's family or a Court order and plans to ensure connection with the child's language and culture.

APO NT directs the Commission to the submissions and recommendations of NAAJA in the

²²² *Melville v CEO Dept of Health & Families* [2011] NTCA 8 on extra territorial jurisdiction.

Major Review of the Care and Protection of Children Act (NT)²²³ and the submission of NAAJA and the Northern Territory Legal Aid Commission (NTLAC) on the Care and Protection of Children Amendment Bill²²⁴

APO NT supports the submission of NAAJA and NTLAC which states that the child protection system should have the resources to enable a focus on early intervention and reunification with parents and other carers, especially when children are Aboriginal and the carers are not. APO NT shares their concern about the chronic lack of services and intensive family support that are available to assist families in need.

APO NT further directs the Royal Commission to the Family Matters Roadmap.²²⁵ Among the recommendations of the roadmap is the suggestion that all governments must prioritise the development of effective measures to ensure removal is an option of last resort and support the safe return of children to their families. Further, that adequate safeguards to protect Aboriginal and Torres Strait Islander children's right to family and culture are ensured.

RECOMMENDATIONS:

- 56. That Territory Families entrenches the principle of removal only as a last resort in the legislation, policy and practice by including safeguards to ensure that children are removed only where there is evidence that all other avenues for their protection have been exhausted.**
- 57. That Territory Families' policy and the relevant legislation reflect that parties should be assisted to access the Commonwealth family law system in preference to the imposition of Permanent Care Orders.**

5.6 Lack of adherence to Aboriginal Child Placement Principle and Cultural care plans

APO NT is concerned that the Aboriginal Child Placement Principle ('the Principle') is not being followed. History has revealed that child protection policies of the Northern Territory and Australian governments have shown little to no consideration, respect or acceptance of the Aboriginal Kinship systems that have governed Aboriginal family relationships.

²²³North Australian Aboriginal Justice Agency, [Major Review of the Care and Protection of Children Act \(NT\)](#) 24 April 2012

²²⁴ Ibid.

²²⁵ Secretariat of National Aboriginal and Islander Child Care (2016). *The Family Matters Roadmap*. Retrieved from: <http://www.familymatters.org.au/wp-content/uploads/2016/11/TheFamilyMattersRoadmap.pdf> This is a collaborative effort of the Family Matters campaign. Roadmap development was led by SNAICC – National Voice for our Children, in close consultation with members of the Family Matters Policy & Advocacy Working Group.

In 2015, only 34.7% of Aboriginal children in the Northern Territory were placed in care in accordance with the Aboriginal and Torres Strait Islander child placement principle—a principle embedded in legislation across all jurisdictions (including the NT) to reflect the importance of connection to family and culture. This is far lower than the national average of 65.6%.²²⁶ Even more distressing is the data concerning placement with relatives or kin—only 3.3% of our children were placed with relatives or kin, compared with a national average of 48.8%. Our children in care in the Northern Territory are 15 times more likely to be placed with non-relatives than the national average for all Aboriginal and Torres Strait Islander children in out-of-home care.²²⁷

The Northern Territory and South Australia are the only Australian jurisdictions which do not report the number of children in their child protection systems with documented case plans. This is problematic when attempting to objectively assess the quality of care afforded to any children, particularly Aboriginal and Torres Strait Islander children. In the Northern Territory, 65.2 percent of Aboriginal children in OOHC are placed with non-Aboriginal carers – the highest rate in Australia.²²⁸ This means that children are not being placed with people who will necessarily know about, or have the commitment to support that child’s connection with their family and culture.

The capacity of the current system to work effectively with Aboriginal families to identify the extensive kinship systems that would enable placement with an appropriate kinship carer is very limited. Statistics show the current mainstream system simply does not value the importance of placing children with kin wherever possible. In its preliminary submission to this Royal Commission, CAALAS noted that it observes a frequent lack of compliance with the Principle.

Case Study 8

We act for a maternal grandfather (“MGF”) who seeks reunification with his two grandchildren, aged 2 and 4 years.

The children were visiting Perth for a funeral when they were removed from their mother by the Department of Child Protection Western Australia (“DCPFS”) in September 2016. Prior to travelling to Perth the children and their mother lived with our client in community outside of Alice Springs. Upon their removal the children were placed in out of home care and they have since experienced

²²⁶ Steering Committee for the Review of Government Service Provision. (2016). *Report on Government Services 2016*. Productivity Commission, 1309-1331, Table 15A.24. Retrieved from: http://www.pc.gov.au/research/ongoing/report-on-government-services?id=141009&queries_year_query=2016&search_page_191702_submit_button=Submit¤t_result_page=1&results_per_page=0&submitted_search_category=&mode.

²²⁷ Ibid, 1309-1331, Table 15A.23. Retrieved from: http://www.pc.gov.au/research/ongoing/report-on-government-services?id=141009&queries_year_query=2016&search_page_191702_submit_button=Submit¤t_result_page=1&results_per_page=0&submitted_search_category=&mode.

²²⁸ Office of the Children’s Commissioner NT, *Annual Report 2015-2016*, above n 213.

three difference placements, including a commercial residential facility placement – widely acknowledged to be inappropriate and traumatic for children of such a young age.

Despite the 'Aboriginal Placement Principle' and our client's significant relationship with the children (involvement in their lives from age zero) DCPFS were opposed to assessing our client as a kin carer.

Our client was reluctant to agitate the matter with DCPFS. Both his parents were stolen generation and he has an innate fear of dealing with government authorities. He initially consulted CAALAS in relation to sending cards and correspondence to the children.

We explained the client's legal entitlement to: (1) be joined as a party to the proceedings; (2) seek regular contact with the children; and (3) seek restoration of the children to his care in Alice Springs. Prior to the second interim hearing we assisted our client in obtaining a National Police and Working with Children clearances.

At interim hearing DCPFS strongly opposed our client's application, raising several unsubstantiated CP concerns as to his suitability. Submissions were made in response to said concerns and ultimately Interim Orders were made for: (1) our client to be joined, (2) DCPFS to facilitate bi-weekly video conference contact between the children and our client (facilitated from CAALAS' conference room); (3) DCPFS must file and serve a report setting out reasons for their decision by COB 13 June 2017; and (4) Final Hearing on 22 June 2017.

Our client is elated at having re-established a relationship with the grandchildren he believed had been 'stolen'. Moreover, we have reviewed all subpoenaed materials disclosed to date and believe we have good prospects of securing Orders for the return of the children to the Northern Territory. Had we not advocated for the MGF it is likely the children would have remained in long term out of home care in Western Australia, without any connection to family or country.

APO NT directs the Commission to the NAAJA Briefing Paper, Senate Community Affairs References Committee Inquiry into Out of Home Care, and the joint submission of NAAJA and the NTLAC about the Care and Protection of Children Amendment Bill 2014.²²⁹ In the latter submission both NAAJA and NTLAC outlined their concerns with the lack of cultural safeguards for Aboriginal children in the current legislation. Unlike other jurisdictions, the Northern Territory has no current legislative provisions mandating 'cultural plans' for Aboriginal children in OOHC²³⁰ and there are no provisions for Aboriginal agencies to advise on the placement of Aboriginal children.²³¹

As NAAJA highlighted in its Senate Inquiry submission, in its experience, one of the greatest impediments to Aboriginal children being placed by Territory Families in accordance with the Principle is the unnecessarily lengthy and cumbersome bureaucratic processes involved in assessment of potential family as kinship carers.

²²⁹ North Australian Aboriginal Justice Agency and Northern Territory Legal Aid Commission. (2014). *Joint Submission Care and Protection of Children Amendment Bill 2014*, 6-7. Retrieved from:

<http://www.naaaja.org.au/wp-content/uploads/2014/05/Care-of-Children-and-Protection-Act-12-2-15.pdf>.

²³⁰ See for example the *Children Youth and Families Act 2005* (Vic) s. 176.

²³¹ *Ibid* s. 13.

This is acknowledged by the NT Government in their own submission to the Senate Inquiry into Out of Home Care:

Neither DCF policy nor the Care and Protection of Children Act (Placement Arrangement) Regulations (the Regulations) distinguish between foster and kinship carers. The Regulations stipulate that all adults providing home based care to a child on orders must undergo an assessment and authorization process, including a criminal history check.²³²

NAAJA noted that very little support is provided to kinship carers to ensure that assessment processes take place as quickly and efficiently as possible. The situation is even starker for those potential kinship carers in remote communities, who may have limited literacy, speak English as a second language and who may require guidance and assistance in completing multiple forms.

Territory Families advise that once the paperwork for kinship and foster care applications is received, it will take a further 12 weeks to complete the assessment of family members. However, this is an overly optimistic time frame and our experience is that average kinship care assessments of family members in remote communities can range from three to six months. CAALAS and NAAJA are frequently told that there is “nothing they (the department) can do” to fast track the assessment process.

Case Study 9²³³

A mother’s five children were removed. Close family member immediately contacted DCF to indicate her ability and willingness to care for the children. Family member held long term public sector employment, had a long-term partner with stable employment and two older children of her own. Family member and partner immediately completed all paperwork for kinship carer assessment.

DCF informed that assessment process would take at least 12 weeks and that there was no way to fast track this process. In the meantime, the five children were separated in two different foster care placements in Darwin with non-Aboriginal carers. They had never been in care before.

As a result of concern for the wellbeing of the children, mother instructed NAAJA to make an application for an order giving daily care and control of the children to the family member while the child protection proceedings were in Court. The application was opposed by DCF. SAFE NT fast tracked police checks on NAAJA’s request. The Court made an order giving daily care and control to family member finding, on the evidence, that it was ‘more than satisfied’ that the family member was a suitable person to care for the children and that it was in the children’s best interests to be placed with her.

²³² Northern Territory Government. (2014, October 29). Submission No. 23 to the Senate and Community Affairs References Committee Inquiry, *Out of Home Care*, 7.

²³³ North Australian Aboriginal Justice Agency, above n 111.

After children placed with family member, the Court proceedings were eventually discontinued with no order made. DCF provided minimal handover and refused to provide financial or other support to family member who now had seven children in her care.

After several months, lack of financial support (including child care costs) led to the three youngest children returning to the care of the mother. The three youngest children were removed a few weeks after their return. They were placed with non-Aboriginal foster carers in Darwin while DCF commenced a second set of court proceedings. Family member again immediately contacted DCF to indicate her ability and willingness to care for the children, albeit this time, requesting DCF support. Family member and partner were required to repeat foster carer assessment process. 6 months after completing the paperwork for kinship carer assessment for the second time, family member and partner were approved as foster carers. Three months after foster care approval DCF consented to an order giving shared parental responsibility for the three youngest children to DCF and the family member and placing the children back in the family member's care, this time with financial support.

It's difficult not to feel in this case that had the family member been swiftly assisted, assessed in a timely manner and adequately supported, the children could have been placed in a stable, loving family placement that was undoubtedly in their best interests, immediately after their initial removal.

Aboriginal men and women who come forward for kinship care assessment for the care of children who have been removed do so during times of great family stress and sadness. They are almost always hard working and respected members of their community who have raised their own healthy children. The in-ordinate delays in assessment and the initial removal of children to non-Aboriginal foster care placements in towns pending decisions, can defeat the purpose of the Principle of keeping the child within his or her own community, culture and peers.

Further, there is no legislative right of review for decisions of unsuitability of a family member as a kinship carer. The only existing mechanism is through Territory Families' complaints process. APO NT supports a balancing of the need of thorough assessments of potential carers and the fast tracking and simplification of assessment processes to ensure that the Aboriginal child placement principle is followed.

RECOMMENDATION:

58. That Territory Families commits to better supporting kinship carers by adopting the APO NT proposal outlined above and by:

- a) Creating a simplified and culturally-appropriate process for remote family members to be assessed as kinship carers and providing practical assistance in completing the documentation;**
- b) Legislating or prescribing in policy prescription of strict timeframes for assessing family members as kinship carers i.e. 28 days maximum;**
- c) Urgently developing a memorandum of understanding between Territory Families and SAFE NT for fast tracking all police checks related to kinship care**

assessment;

- d) **Developing 'Kinship Care Worker' positions employed specifically for the recruitment and retention, care and support of family members to care for their children and be an advocate and advisor.**
- e) **Re-establishing Aboriginal family group conferencing as a matter of urgency so that decision-making can be informed by family members and kinship care options are identified as early as possible if necessary.**

5.7 Need for meaningful support for access of child

APO NT directs the Royal Commission to the Briefing Paper submitted by NAAJA to the Senate Community Affairs References Committee into Out of Home Care.²³⁴ In that submission NAAJA highlighted the significant barriers to children remaining truly connected to their families once placed in a foster care placement.

NAAJA has noted the pain that Aboriginal families experience in their separation from loved ones due to their own limited means or Territory Families' inability to arrange access visitation. NAAJA noted that this has affected many families from the Katherine region, where many children are being placed in Darwin due to lack of Katherine carers. Territory Families can only offer fortnightly access (at best) that significantly interrupts the connection of the children in OOHC to their kin and country.

Other issues of concern raised by NAAJA on behalf of families is that access visits do not increase in frequency or length during the period of short-term or long-term orders. There is no commitment to best practice in deciding on the frequency and type of access and no apparent consideration of the impact that disconnection with family and culture might have on the child.

The ensuing disconnection often becomes a reason why children are not reunified either promptly, or at all, with families once the initial care concerns have been addressed. The continued foster care or OOHC placement then becomes the default position and for reasons of 'stability' there is less prioritisation of reunification of the child with his or her family or community.

Case Study 10

NAAJA's client was a chronic paint sniffer and was unable to care for her child. Her child was taken into care eight years ago when he was four weeks old and has been with his carer since then. Since then the client has worked hard to get her life on track and do everything asked of her by the Department. She has not sniffed solvents since 2007 and dealt with her addictions through

²³⁴ North Australian Aboriginal Justice Agency. (2015, April 2). *Senate Community Affairs References Inquiry into Out of Home Care*. [Briefing Paper], 9.

appropriate rehabilitation and clean drug screens. She has a stable relationship with a man that she has known for 15 years. The couple have a new baby for whom there are no protection concerns. She has stable accommodation and has had a stable job for 2 years. The client has completed three parenting courses.

However, despite achieving this stability and doing everything asked of her by Department, access between the client and her child was not increased and consequently there was no opportunity to build a bond between mother and child. The Department sought a long term parental responsibility direction to the CEO until the child attained 18 years, on the basis that the child has been in care for 7 years and there is not a strong bond between mother and child. This application was inconsistent with the underlying principle of the Act that "As far as practicable, and consistent with section 10, if a child is removed from the child's family...the child should eventually be returned to the family".

As the client pointed out, there cannot be a bond when she and her child are only allowed to spend one hour of supervised access together per week. The Department's attitude was that the client should do another parenting course, yet the psychologist who assessed the client found that she had shown that she clearly understood the parenting lessons she had undertaken. The doctor's report confirmed that there had been no opportunity for the client to put her parenting into place for a prolonged period.

Eventually, the Department agreed to a two year protection order. NAAJA advocated for strict conditions which required the client and the Department to take positive action to increase the time she spends with the child and build the connection. In our submission, this order better balances and accommodates for the child's need for stability with the Act's underlying principle that as far as practicable and consistent with the best interests of the child, a child should be returned to the family.

5.7.1 Support for access of children on permanent care orders

Continuing access to community and culture are equally important considerations for children on permanent care orders. APO NT supports the adoption of requirements similar to those of the *Victorian Children Youth and Families Act 2005*, whereby, the Court may stipulate conditions about contact with parents and other family prior to any permanent care orders being made for Aboriginal children.

AMSANT has noted the significant barriers imposed by the high cost of travel and the need to take time off (or risk breaching) Centrelink workplace activity requirements when visiting their children in out of home care. AMSANT has recommended that children in out-of-home care who have been away from their communities need to be supported to maintain connection to family and culture.

RECOMMENDATION:

59. **That the Northern Territory Government adequately funds Territory Families to ensure that:**
- a) **Aboriginal children who are in temporary placements at a significant distance from their family and community are able to have frequent and regular contact, regardless of whether access is with parent or extended family who**

should be the next best option for the child.

- b) Aboriginal children and their families are supported to maintain and strengthen access to their culture.**
- c) supported access for family is a relevant condition of a permanent care order.**

5.8 Caseworker communication and the need for culturally competent, cooperative and coordinated child protection services

The most fundamental concern that exists within the Child Protection system is poor communication, which tends to compound all of the issues outlined in this submission. For example, clients regularly report to NAAJA they do not clearly understand the steps as parents that they are expected to take to enable their children's return. Poor communication arises due to lack of cultural competency, inadequate use of Aboriginal language interpreters and poor coordination within Territory Families.

Communication deficiencies can occur in the following instances:

- Frequent change of caseworkers and case managers and poor handover practices.
- Lack of understanding around maintaining contact with case workers.
- Where contact is sought the difficulty of access when phone calls are not returned.
- Clients are in a position of reduced power and as such are not likely to be a proactive agent and will rather sit back and wait for Territory Families to approach them.
- Historical legacies of child removal under previous welfare policies and negative experiences cause parents to lose heart and disengage from the process and their children.

In NAAJA's experience, health professionals similarly fail to communicate effectively with parents, which can have a significant impact on children's health outcomes as well as child protection proceedings. If interpreters are not used or treatment is not explained carefully, parents do not understand why their child is sick and what needs to be done to make them better. For children with disabilities, parents may not understand the additional care they may need. In some cases, they are then accused of 'neglecting' their child and that child is taken into care unnecessarily.

Case study 11

A 16 year old mother from a remote community had her child removed. During a meeting (where no interpreter was available despite NAAJA attempting to arrange one) with DCF to establish what steps the mother was required to take to address protection concerns, the mother was asked "are you willing to do an anger management course." The mother replied "no", which was promptly recorded. The NAAJA representative intervened and asked the mother "do you know what an anger management course is?" The mother replied "no". It was then explained to her and she agreed that

she would like to do such a course. This highlights the dangers of having no interpreter, or other support person in meetings with families; what would have been recorded as the mother's unwillingness to engage was simply a lack of understanding on her part as to what was being asked of her.

These experiences underscore the importance of employing local Aboriginal staff, and particularly of investing in support and training for Aboriginal Health Practitioners (AHPs). There is significant evidence for the positive role played by Aboriginal health professionals in community controlled PHC settings.²³⁵ "Home grown" professionals are also more cost effective than high turnover staff from external providers.²³⁶ They also bring with them invaluable language skills and an understanding of local cultural, community and family dynamics that can facilitate effective communication with parents regarding children's health outcomes as well as child protection proceedings.

RECOMMENDATION:

60. That Territory Families:

- a) ensures that caseworkers assess the need for the use of an interpreter with all Aboriginal parents and family members**
- b) support and empower Aboriginal staff and to ensure that Aboriginal staff have quality training opportunities, mentoring and support**
- c) prioritise the recruitment and training of Aboriginal staff, including at senior levels.**

5.8.1 The provision of adequate care plans creates a system of accountability for both parents and Territory Families.

While there is a legislative requirement for care plans to be developed and regularly reviewed with input from the parents—and to be provided to the parents—NAAJA and NTLAC both note that in their experience Territory Families does not undertake this care planning in accordance with their obligations under the Act. Consequently, the opportunity for parents to know what is happening for their children and what is expected of them is lost. In some cases, this results in children remaining in care for longer than necessary.

²³⁵ Schierhout, G. Brands, J. Bailie, R. (2010). *Audit and Best Practice for Chronic Disease Extension Project: 2005-2009 Final report*. Menzies School of Health Research, ABCD, Lowitja Institute. Retrieved from: https://www.lowitja.org.au/sites/default/files/docs/ABCDE_Report2011.pdf.

²³⁶ Australian Medical Association. (2013). *Best Practice and Good News Stories: 2012-13 AMA Indigenous Health Report Card - The Healthy Early Years - Getting the Right Start in Life*, Retrieved from: https://ama.com.au/system/tdf/documents/AMA_Indigenous_Health_Report_Card_2012_2013.pdf?file=1&type=node&id=35458.

5.9 Criminalisation of youth in residential care homes

NAAJA has raised concerns about youth who enter the youth justice system for low-level offending following their placement in residential care homes. There have been instances of youths charged with trivial offences such as damaging doors or throwing of foodstuffs or spilling of tomato sauce. Such behaviour has resulted in arrests, transportation to watch house or charges and prosecutions for which the majority are subsequently withdrawn. There is an inconsistent approach amongst privately-run residential care homes of procedures to deal with behavioural issues and a zero-tolerance approach in all instances. This has led to police being contacted and youth charged for minor offences.

NAAJA has advocated for a protocol for Territory Families, privately-run residential care providers and NT Police to reduce offending and criminalisation of children in care. The United Kingdom's Protocol for South East England²³⁷ provides for local authorities to manage challenging behaviours by way of internal resolution and where that is not appropriate, police should consider the use of discretionary powers to apply informal resolution processes. The Crown Prosecution Service of the United Kingdom in its prosecution guidelines, addresses the issue of offending in children's homes, with the decision to prosecute made by a specialist youth prosecutor.

APO NT draws the Royal Commission's attention to the New South Wales Joint Protocol to divert young people in residential services from unnecessary contact with the criminal justice system.²³⁸ The Protocol notes that all parties "share a commitment to working collaboratively on early intervention and prevention strategies which support vulnerable people enhance their wellbeing and assist them to develop positive behaviour patterns which are less likely to bring them into contact with the criminal justice system". It contains procedures for residential staff to determine the most appropriate response to a young person's behaviour on a case-by-case basis and also sets out how police should work with service providers in responding to incidents that do occur.

RECOMMENDATIONS:

- 61. That a set of principles and procedures is established by Territory Families and contracted residential carers and NT Police to ensure children in residential care placements do not enter the criminal justice system wherever possible and are provided with services to reduce re-offending.**
- 62. That the Northern Territory Police, Fire and Emergency Services (NTPFES) and**

²³⁷ South-East protocol to reduce offending and criminalisation of children in care.

²³⁸ Family & Community Services. (2017). *Joint Protocol to reduce the contact of young people in residential out-of-home-care with the criminal justice system*. [Factsheet]. NSW Government. Retrieved from: http://www.community.nsw.gov.au/_data/assets/file/0010/408691/Factsheet_JP.pdf.

Director of Public Prosecutions (DPP) establish guidelines for the decision to prosecute children in residential care and such decisions are made by specialist youth prosecutors.

5.10 Issues in care and protection proceedings

APO NT directs the Royal Commission to the submissions and recommendations of NAAJA in the Major Review of the *Care and Protection of Children Act* (NT)²³⁹ and the submission of NAAJA and the Northern Territory Legal Aid Commission (NTLAC) on the Care and Protection of Children Amendment Bill.²⁴⁰ In the latter submission, NAAJA notes their concern that child protection orders are made in the absence of one or often both parents and with little guidance or support provided to parents about what they need to do to address protective concerns. Consequently, the opportunity for parents to know what is happening with their children and what is expected of them is lost and in some cases this results in children remaining in care for longer than necessary.

CAALAS also noted similar concerns in their preliminary submission to this Royal Commission,²⁴¹ that Courts are limited in their ability to make decisions in the best interests of the child, due to parents and family members often not being included in care and protection proceedings.

5.11 Child Representative Issues

APO NT directs the Commission to the Law Society Northern Territory Submission to the Inquiry into the Child Protection System in the Northern Territory. There is little legislative guidance for the appointment of a child representative which, in practice, is usually at discretion of the Local Court Judge on application of Territory Families.

At present, child representatives tender for an appointment to a panel. Once the Court decides a child representative is required in a particular matter, they are chosen from the panel and paid for by Territory Families. APO NT supports the view of the Law Society that there is a perceived conflict of interest where Territory Families is directly or indirectly involved in the decisions about who is appointed to the panel or the payment of the child representative.²⁴² In other jurisdictions, the child representative is appointed through the Legal Aid Commission.

²³⁹ North Australian Aboriginal Justice Agency, above n 223.

²⁴⁰ North Australian Aboriginal Justice Agency and Northern Territory Legal Aid Commission, above n 229, 5. Retrieved from: <http://www.naaaja.org.au/wp-content/uploads/2014/05/Care-of-Children-and-Protection-Act-12-2-15.pdf>

²⁴¹ Central Australian Aboriginal Legal Aid Service, *Preliminary Submission*, above n 33.

²⁴² Law Society Northern Territory. (2009). *Submission to the Child Protection Inquiry*, 6. Retrieved from: https://childprotectioninquiry.nt.gov.au/_data/assets/pdf_file/0008/242387/Law_Society_NT.pdf.

Moreover, there appears to be no quality control and no required expertise or training, which is problematic if the practitioner is making submissions on the child's 'best interests'. While the Law Society has recently worked on a draft Protocol for Lawyers Representing Children²⁴³ there are no guidelines for child representatives in the NT and in some cases, there is often no clear 'value add' when the child is unable to give instructions.

In the experience of NAAJA and CAALAS, there is a varying quality of practitioners who tender for child representative work. Some problems observed include where a child representative:

- may only see the child once,
- does not take a considered and proactive approach to acting 'on instructions' (e.g. by sourcing evidence to support the child's instructions, by including the child in the proceedings),
- does not fully consider and protect against the potential for conflict (e.g. by agreeing to represent all children in a family even though some are able to give instructions; some may have different instructions to the others; and others are being represented on a 'best interests' basis),
- regularly acts for Territory Families as well as children

In addition, NAAJA is uncertain about the extent to which a child representative is appointed when long-term orders are sought, when there are children who are over 10 and where parents are not taking part. Child representatives are appointed in most of the cases in which NAAJA is involved. However, it would be concerning if there were applications involving children over 10 and a child representative was not appointed, effectively denying them a voice in proceedings affecting them.

RECOMMENDATION:

- 63. That child representatives for Aboriginal children are appropriately accredited and appointed by an independent panel or through a specialist service such as an Aboriginal Child Care Agency.**

5.12 No mediation of child protection matters

APO NT directs the Commission to the NAAJA Submission on Mediation in Child Protection Matters.²⁴⁴ In many comparable jurisdictions, including New Zealand, the United Kingdom and the United States, mediation conferencing in one form or another has been regularly

²⁴³ Law Society Northern Territory. (2017). Protocols for lawyers representing children. Retrieved from: <http://www.lawsocietynt.asn.au/images/stories/publications/170509-protocols-for-lawyers-representing-children-web.pdf>.

²⁴⁴ North Australian Aboriginal Justice Agency. (2012). *Submission on Mediation in Child Protection Matters*, 7-8.

utilised in child protection matters since at least the late 1980s. Across Australia, the legislative provisions for conferencing, prevalence of use, and models used in care and protection mediation vary widely.

The Northern Territory is the only Australian jurisdiction that has little to no mediation conferencing as a decision-making tool in child protection matters, though collaborative decision-making processes are occasionally utilised in informal ways through case planning or 'Family Way Placement' meetings between parents, families and DCF workers. For example, the Family Group Conferencing model was implemented in Alice Springs from 2011 until 2013.

The provisions of the *Care and Protection of Children Act* which allow for court ordered mediation are not in effect. Since the introduction of the new Family Matters Practice Direction (in Katherine and Darwin) a conference is usually organised for all matters which are likely to proceed to hearing. However, the success of these depends on those involved. There is no independent mediator or convenor, nor are there clear guidelines about how the conference is to proceed or, for example, that such conferences be conducted on a 'without prejudice' basis.

APO NT is strongly supportive of mediation conferencing, particularly Family Group Conferencing, being activated in child protection matters and has advocated on behalf of Aboriginal families to the Minister of Territory Families for this as a mechanism to identify, locate and support kinship carers. The Care and Protection of Children Act currently provides for mediation conferences arranged by the CEO.²⁴⁵ The Care and Protection of Children (Mediation Conferences) Regulations 2010 (NT) outlines the procedural aspects of the mediation conference, including powers and functions of convenors, conduct of the mediation conference and reporting requirements. However, NAAJA has been told that there is no funding to operationalise these mediation provisions. The pilot program in Alice Springs was facilitated by the support of the funding body, the Alice Springs Transformation Plan.

RECOMMENDATIONS:

- 64. That mediation should be made available to families at all stages of the process from early notifications to care plan reviews and for court-ordered mediations after application for protection orders has been made.**

5.13 Territory Families: youth detention as a 'placement'

APO NT is deeply concerned that children and young people are remaining in detention through an inability to obtain bail or post release options due to a lack or failure by Territory

²⁴⁵ *Care and Protection of Children Act 2007* (NT) s. 49.

Families to adequately consider alternative placement options. It is not uncommon for particularly high-risk and high-needs young people who are in care to spend considerable periods remanded in detention due to the absence of accommodation and supervision planning by Territory Families. Caseworkers have submitted to Youth Court that the child's needs would be best addressed in detention because there is no other appropriate facility to house and look after the young person, or even that a child continue to be detained upon completion of their sentence.²⁴⁶

As CAALAS observed in their preliminary submission to this Royal Commission, a local Judge felt compelled to clarify "*that detention should not be used as an alternative placement option for Territory Families*". CAALAS also noted to this inquiry, a lack of service provision and information by the Department can prevent the Court from properly considering bail applications and other non-custodial alternatives. A child or young person can also be remanded in custody for longer periods due to a lack of other placement options.²⁴⁷

Case Study 12²⁴⁸

A 17 year old girl from a remote Central Australian community is in the care of DCF and has been for several years. The girl is also before the Youth Justice Court in relation to offending. While DCF have been vigilant in attending court for all the girl's appearances, they have not yet provided a care plan to the Court outlining their plans for the girl including her accommodation, supervision, education and treatment plans.

Consequently, the Court has not been satisfied that the criminal matter can be finalised as the Magistrate feels there is insufficient information about her personal circumstances before him to inform his determination about an appropriate sentencing disposition. DCF have also provided numerous reports to the Court about the girl which have contained inaccurate and misleading information. The matter remains ongoing after three months with the girl remanded in detention due to the absence of a bail plan that is endorsed and supported by DCF.

Case Study 13²⁴⁹

A 13 year old male was before the court in relation to property offences and offences against the person. The male is in the care of DCF and has been for the significant majority of his young life. The court indicated that it was open to the boy being conditionally bailed provided that there was an appropriate bail proposal before the Court. DCF workers attended Court for the clients' matters however repeatedly advised the court both verbally and in written reports that there was no secure and supported placement for the client and therefore DCF requested that he be remanded in detention.

APO NT condemns continued detention as a human rights violation that cannot be regarded

²⁴⁶ Central Australian Aboriginal Legal Aid Service, *Submission to the Review of the NT Youth Justice System*, above n 137, 43.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Ibid.

as a substitute for an appropriate out-of-home care placement. International obligations, including The Convention on the Rights of the Child and International human rights standards, require that detention for all children must be a last resort and for a minimal length of time.

See further discussion on Territory Families in Chapter 6.16.

RECOMMENDATION:

- 65. That Territory Families must never regard detention facilities as a suitable child placement and that every effort must be made to ensure that detention of children in care is a last resort.**

5.14 Role of the Australian Government

The Australian Government has a crucial role to play in, and a responsibility to assist with, remedying failures of the Northern Territory's child protection system. While the Northern Territory Government administers the child protection system, areas of federal responsibility are particularly pertinent to prevention efforts. Such efforts include those to strengthen and support families so that children are not put at risk in the first place; do not require child protection system intervention; and further are not removed and placed in out-of-home care. The Australian Government currently resources family support activities in the Northern Territory through services such as Intensive Family Support; Stronger Communities for Children; early childhood education and care; and Indigenous Advancement Strategy funded child and family supports.

Currently, the Commonwealth Department of Social Services provides grants for intensive family support services across the Northern Territory and Anangu Pitjantjatjara Yankunytjatjara (APY) Lands totalling about \$8.4 million per year.²⁵⁰ The current grants to non-government organisations, in place since 2015 and for a period of about 5 years each, are vastly inadequate considering the need of children and families in the Northern Territory. The Australian Government also has responsibility for service delivery in key sectors impacting children's pathways into the child protection system, such as housing and homelessness, disability, health and mental health, and legal services.

The Australian Government's role regarding child protection in the Northern Territory is further defined by its commitment to various international human rights instruments that define responsibilities for ensuring protection and assistance is provided for children and families, including Aboriginal and Torres Strait Islander children and families, throughout

²⁵⁰ Data from Commonwealth Department of Social Services grants report, available at: <https://www.dss.gov.au/grants/grants-funding>.

Australia.²⁵¹ According to these international human rights instruments, the Australian Government must take necessary steps and measures, and in some cases ‘special measures’,²⁵² to give effect to the rights of children and families recognised by the instruments and accepted by Australia as a signatory.

International human rights treaty bodies have found that the Australian Government has failed in significant respects in fulfilling its human rights obligations to children and families. In relation to Aboriginal and Torres Strait Islander children in particular, various international bodies have made serious and repeated recommendations to the Australian Government about the need for better protection and support for children and families, and their rights. The United Nations Committee on the Rights of the Child, in its most recent concluding observations noted with concern “the serious and widespread discrimination faced by Aboriginal and Torres Strait Islander children, including in terms of provision of and accessibility to basic services and significant over-representation in the criminal justice system and in out-of-home care”.²⁵³

The Committee also expressed concern about the large numbers of Aboriginal and Torres Strait Islander children separated from their family and community and placed into out-of-home care in a way that “does not adequately facilitate the preservation of their cultural and linguistic identity”.²⁵⁴ The Committee went on to make numerous recommendations, including that the Australian Government take urgent measures to address disparities in access to services by Aboriginal and Torres Strait Islander children and their families; and observe the Committee’s previous recommendations to fully implement the [Aboriginal and Torres Strait Islander] Child Placement Principle and intensify its cooperation with Indigenous community leaders and communities to find suitable solutions to Indigenous children in need of alternative care within Indigenous families.²⁵⁵

The Australian Government has recognised its role and responsibility for child safety and well-being through its commitment to the National Framework for Protecting Australia’s Children 2009-2020. This long-term collaboration with state and territory governments – endorsed by the Council of Australian Governments (COAG) – and non-government organisations, is now proceeding through implementation of its Third Three Year Action Plan 2015-2018. The National Framework is premised on a goal to introduce a public health model to keep children safe and well, focusing on providing the universal and targeted services that will prevent

²⁵¹ Relevant instruments include the ICCPR, ICESCR, United Nations Convention on the Rights of the Child, and the UNDRIP.

²⁵² See for example, ICESCR art. 10.

²⁵³ Committee on the Rights of the Child, *Consideration of Reports submitted by States parties under article 44 of the Convention – Concluding observations: Australia*, CRC/C/AUS/CO/4, distributed 28 August 2012, para. 29.

²⁵⁴ *Ibid* para. 37.

²⁵⁵ *Ibid*.

children entering out-of-home care. The current Action Plan includes a commitment to reducing the number of Aboriginal and Torres Strait Islander children needing child protection services; sets out a strategy to focus on early intervention in a way that will support families; and seeks to embed the Aboriginal and Torres Strait Islander Child Placement Principle throughout its work. However, now in the ninth year since the National Framework was introduced, governments across Australia are manifestly failing to implement its core commitment as family support investment continues to fluctuate and remain inadequate relative to child protection spending, and the number and over-representation of Aboriginal and Torres Strait Islander children in out-of-home care increases annually.²⁵⁶

Following from this policy commitment and lack of progress, and despite child protection being primarily a state or territory responsibility, the Australian Government has a responsibility, and importantly capacity, to increase efforts to address the root causes of child removal in the Northern Territory.

The following sections present priorities for Australian Government action to improve the safety and wellbeing of Aboriginal and Torres Strait Islander children in the Northern Territory. They reflect priorities developed through the Aboriginal and Torres Strait Islander-led national *Family Matters – Strong Communities, Strong Culture, Stronger Children* campaign which is made up of a strategic alliance of over 150 Aboriginal and Torres Strait Islander and non-Indigenous organisations. The campaign aims to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 2040.

5.14.1 A national target and strategy to address over-representation

The persistent, escalating rate of removal of Aboriginal and Torres Strait Islander children and their placement into out-of-home care is a national crisis that requires a clear and concerted national response. Projections developed by the University of Melbourne in 2016 show that the population of Aboriginal and Torres Strait Islander children in out-of-home care will triple in the next 20 years if nothing is done to interrupt current trajectories.²⁵⁷ Political recognition of, and commitment to, the urgent need to redress this over-representation has grown significantly at state, territory, federal and COAG levels over recent times. In June 2016, state and territory Children and Families Ministers from across Australia met and signalled their intent to take national action and seek COAG support, stating in their communiqué of 24 June:

Children and Families Ministers agreed to pursue national action to address the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care ... Ministers will work through First Ministers to seek consideration of these issues at COAG as a priority for national reform.²⁵⁸

²⁵⁶ Family Matters. (2016). The Family Matters Report: Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal. Retrieved from: http://www.familymatters.org.au/wp-content/uploads/2016/12/Family_Matters_Report_2016.pdf.

²⁵⁷ Ibid.

²⁵⁸ Children and Families Ministers, *Communique*, 24 June 2016.

The December 2016 meeting of COAG addressed the issue directly, with its communiqué stating that “leaders discussed the critical importance of early intervention efforts to reduce the flow of children into the system as well as the benefits of better information sharing and identifying opportunities to reduce the over-representation of Indigenous children.”²⁵⁹

Evidence calls for an integrated strategy that redresses the causes of Indigenous child removal. These cover areas of both federal and state powers, including: family support; inadequate housing and homelessness; social security; family violence; drug and alcohol misuse; health and mental health; early childhood education and care; and child protection. Strategies must include public measures of accountability, which are essential tools to drive intra and inter-government focus, resourcing and monitoring of outcomes.

RECOMMENDATION:

- 66. That the Australian Government develops and implements a comprehensive, adequately resourced national strategy and target, developed in partnership with Aboriginal and Torres Strait Islander peoples, to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care. This strategy should include the allocation of federal supports and resources to family and community strengthening initiatives in the Northern Territory.**

5.14.2 Supporting families – a national investment in intensive family support

As noted in other sections of this submission, evidence demonstrates the enormous long-term social and economic benefits of investing early to provide supports that strengthen families, prevent family breakdown and ensure children can stay safely in the care of their families.

Despite Australia-wide endorsement of a public health model for child safety that would increase the use of preventive approaches, 83 per cent of the \$4.34 billion child protection expenditure across all jurisdictions remains targeted at the tertiary end of the spectrum, that is, child protection and out-of-home care.²⁶⁰ Australia is in fact moving backwards, with investment in family support services for vulnerable families decreasing from 19.2 per cent to 16.6 per cent of total child protection expenditure over 2011-12 to 2014-15.²⁶¹

²⁵⁹ Council of Australian Governments. (2016, December 9). *COAG Communiqué*. Retrieved from: <https://www.coag.gov.au/sites/default/files/communique/communique-9-december-2016.pdf>.

²⁶⁰ Steering Committee for the Review of Government Service Provision, *Report on Government Services 2016*, above n 226.

²⁶¹ Steering Committee for the Review of Government Service Provision. (2013). *Report on Government Services 2012*. Productivity Commission. Retrieved from: <http://www.pc.gov.au/research/ongoing/report-on-government-services/2012/2012/government-services-2012-volume1.pdf> ; Steering Committee for the Review

Research evidence in Australia and internationally has supported the effectiveness of targeted approaches that provide intensive support to vulnerable families to reduce child protection intervention.²⁶² The promise of intensive family support approaches that have been adapted to the cultures and needs of Aboriginal and Torres Strait Islander peoples, and led by Aboriginal and Torres Strait Islander organisations, have been strongly recognised.²⁶³

Given widespread failures to invest adequately in early intervention and the lack of culturally appropriate services, it is unsurprising that only 1.4 per cent of Aboriginal and Torres Strait Islander children on average accessed an intensive family support service across Australia in 2012-14,²⁶⁴ compared with 14.6 per cent of Aboriginal and Torres Strait Islander children who received a child protection service in 2014-15.²⁶⁵

Further funding is essential across the child protection spectrum. However, the rate of removal of Aboriginal and Torres Strait Islander children into out-of-home care cannot change without a focus on intervening early to support, strengthen and heal families. What is most urgent is a nation-wide emphasis on Aboriginal and Torres Strait Islander-led holistic, best practice, intensive family support, preservation and reunification services tailored to vulnerable Aboriginal and Torres Strait Islander families, provided at the earliest possible point.

RECOMMENDATION:

- 67. That the Australian Government invests in a national Aboriginal and Torres Strait Islander family support program for early intervention, prevention and family reunification. Federal investment should be used to complement Northern Territory Government programs and drive the short to medium-term increases in family support needed to drive long-term outcomes.**

of Government Service Provision, *Report on Government Services 2016*, above n 226.

²⁶² Lutzker, J. and Edwards, A. (2009). Safe Care: Towards wide-scale implementation of a child maltreatment prevention program, *International Journal of Child Health and Human Development*, 2(1), 7-15; Robins and Rowlands (2012). cited in *FFT Evidence Studies Implementation*. Retrieved from:

<http://www.fftllc.com/documents/FFT-CW-Model-Effectiveness.pdf>; Tilbury, C. (2015). *Moving to Prevention: Intensive family support services for Aboriginal and Torres Strait Islander children*. Retrieved from: https://www.dss.gov.au/sites/default/files/documents/03_2015/moving_to_prevention.pdf.

²⁶³ Tilbury, C. (2015). *Moving to Prevention: Intensive family support services for Aboriginal and Torres Strait Islander children*. Retrieved from:

https://www.dss.gov.au/sites/default/files/documents/03_2015/moving_to_prevention.pdf.

²⁶⁴ Steering Committee for the Review of Government Service Provision, *Report on Government Services 2016*, above n 226.

²⁶⁵ Australian Institute of Health and Welfare. (2015). *Child Protection Australia 2014-2015*, Table A45. Retrieved from: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554973>.

5.14.3 Early childhood education and care

Aboriginal and Torres Strait Islander community controlled early childhood education and care (ECEC) services can provide a universal access point that links Aboriginal and Torres Strait Islander children experiencing vulnerability to critical early childhood supports. Such services can also provide families experiencing vulnerability with links to essential family support services which is evidenced to prevent Aboriginal and Torres Strait Islander children entering the child protection system.²⁶⁶ Currently, Aboriginal and Torres Strait Islander children are twice as likely to be developmentally vulnerable early in life,²⁶⁷ and only half as likely to access early education as non-Indigenous children.²⁶⁸ The Productivity Commission has identified a 15,000 place gap in early learning places for Aboriginal and Torres Strait Islander children.²⁶⁹ It is concerning therefore that in the Northern Territory in 2015, Aboriginal and Torres Strait Islander children had about an 80 per cent lower chance of attending a child care benefit approved child care service than non-Indigenous children.²⁷⁰

Further, the introduction of a broad suite of reforms to the child care system with the introduction of the Jobs for Families Child Care Package, is concerning for Aboriginal and Torres Strait Islander families in the Northern Territory as it abolishes the Budget Based Funding (BBF) program. Currently, the Northern Territory has the highest rate of BBF utilisation by Aboriginal and Torres Strait Islander families in Australia.²⁷¹ The Commonwealth Department of Education and Training has quarantined funding for BBF services to transition to the new system, however details around the funding arrangements are unclear, presenting uncertainty for the future funding security of Aboriginal and Torres Strait Islander ECEC services in the Northern Territory. BBF services go further than mainstream child care services by providing a range of non-child care services, with over one third of the services being outside school hours care for older children and one sixth are mobile services.²⁷²

²⁶⁶ Family Matters. (2016). The Family Matters Report: Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal. Retrieved from: http://www.familymatters.org.au/wp-content/uploads/2016/12/Family_Matters_Report_2016.pdf.

²⁶⁷ Australian Government Productivity Commission. (2014). *Productivity Commission Inquiry Report Volume Two: Childcare and Early Childhood Learning*. 73, 526. Retrieved from: <http://www.pc.gov.au/inquiries/completed/childcare/report/childcare-volume2.pdf>.

²⁶⁸ Australian Government. (2013). *A Snapshot of Early Childhood Development in Australia 2012 – AEDI National Report*. Re-issue November 2013, 13.

²⁶⁹ Australian Government Productivity Commission. (2014). *Productivity Commission Inquiry Report Volume Two: Childcare and Early Childhood Learning*. 73, 644. Retrieved from: <http://www.pc.gov.au/inquiries/completed/childcare/report/childcare-volume2.pdf>.

²⁷⁰ Steering Committee for the Review of Government Service Provision. (2017). *Report on Government Services 2017*. Productivity Commission, ch 3, table 3A.13. Retrieved from: <http://www.pc.gov.au/research/ongoing/report-on-government-services>.

²⁷¹ Australian Government Department of Education and Training, Presentation to SNAICC, October 2016. In SNAICC – National Voice for Our Children. (2017). *Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory*. Retrieved from http://www.snaicc.org.au/wp-content/uploads/2017/03/SNAICC_Submission_Royal_Commission_Protection_Detention_Children_Northern_Territory-Feb_2017.pdf

²⁷² Family Matters. (2016). The Family Matters Report: Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal, 27. Retrieved from: <http://www.familymatters.org.au/wp->

Aboriginal and Torres Strait Islander ECEC are driven by the dedication and commitment of community members who want a better future for their children. All the evidence supports Aboriginal and Torres Strait Islander ECEC services as the most successful organisations in engaging with Aboriginal and Torres Strait Islander children because they:

- actively access vulnerable children who are not accessing other services – particularly due to the discrimination families experience in mainstream services;
- engage with the most vulnerable and isolated families in our community and are a key entry point for vulnerable families to engage with a broad range of support services that can enhance the safety and well-being of children;
- support parents who may be experiencing long-term or entrenched unemployment to access support in their transition into the workforce and provide an incentive to transition into the workforce. They often offer culturally safe options for training and a stepping stone into paid local work, some being among the larger employers in their communities.

Recent reforms by the Australian Government threaten to undermine these services, particularly for Aboriginal and Torres Strait Islander children, including those living remotely in the Northern Territory. Child care reforms scheduled for implementation in mid-2018 reduce the minimum number of subsidised hours of care; remove dedicated funding for Aboriginal and Torres Strait Islander early years services; and tie child care to parental engagement in work and study. It is unclear whether there will be a sufficient safety net to maintain current services.

The Australian Government holds significant responsibility for child care funding, providing the majority of funding, including to state and territory governments, and so plays an important role in ensuring these services continue to support children and families. We urge the Australian Government to commit a dedicated funding program for Aboriginal and Torres Strait Islander ECEC services to not only maintaining current early childhood education and care services, but addressing gaps in service provision.

RECOMMENDATION:

- 68. That the Australian Government invests in an Aboriginal and Torres Strait Islander specific program of early childhood education and care to strengthen existing community-controlled services and introduce new services to target the 15,000 place participation gap.**

5.14.4 Access to legal aid services

Accessible legal aid services are critical in child protection matters, to ensure families are fully informed and represented. These legal services should be physically available, affordable (economically accessible), appropriate and acceptable. Legal aid services can be inaccessible if providers do not acknowledge and respect cultural factors, physical barriers and economic barriers, or if the community is not aware of available services.

There are many strategies for successfully improving Indigenous legal aid access to remote, urban and regional legal aid. Individual service providers need to consult with their local community to identify the specific issues relating to their context and selectively adapt the strategies as a result of community feedback.

Few Legal aid evaluations have been set up to specifically assess accessibility of legal aid in remote communities. CAALAS would be interested if funded to partner in Government Research on this matter. However, there are a broad range of health and education research and documented practice experience suggests that health services can effectively promote the four main facets of accessibility.

CAALAS would argue in the absence of detailed research from government or legal bodies that the following principles could be applied to a legal setting:

- Improving the accessibility of CAALAS legal services urban and regional settings for Indigenous people
- Addressing physical and economic barriers to legal aid through strategies such as:
 - providing services locally – providing transport to health services; having flexibility in setting appointments – using home visitation as part of a multi-faceted engagement strategy, and increasing services that do not require co-payment – improving access to trusted services
- Addressing cultural competence, acceptability and appropriateness through strategies such as:
 - Trauma and intergenerational trauma- informed legal service,
 - developing services around the holistic model of health and wellbeing,
 - building therapeutic and clinical relationships based on trust and mutual respect with other service providers,
 - employing Indigenous staff and professionals to promote culturally safe service delivery, where feasible, providing a choice between Indigenous-specific and non-Indigenous services and support mentoring and training of Aboriginal staff,
 - specific legal professionals and services – adopting strategies that support cultural competency and safety at the systemic, organisational and individual levels, including appropriate communication styles, and working through

community Elders and kinship networks – providing services in non-traditional settings

5.14.5 Funding for ATSILS

The higher levels at which Aboriginal and Torres Strait Islander peoples experience legal issues across all areas of the justice system are well documented.²⁷³ From significantly higher rates of imprisonment and involvement with child protection systems,²⁷⁴ to vast unmet need for civil and family law services, access to justice directly impacts upon Aboriginal and Torres Strait Islander peoples' physical, emotional and social wellbeing.

The Productivity Commission has recognised that our people face vast unmet need. They have highlighted what we have known for a long time: that a lack of adequate funding for civil and family law services is a major issue that leads to involvement with child protection systems and experiences of violence. The Productivity Commission also found that the “inevitable consequence of these unmet legal needs is a further cementing of the longstanding over-representation of Indigenous Australians in the criminal justice system”.²⁷⁵

Concern should be raised in relation to the lack of funding ATSILS receives to ensure adequate ability to provide legal assistance in child protection matters. The ATSILS are currently drastically underfunded to deliver legal services in child protection matters. This is particularly apparent in the Northern Territory, where NAAJA and CAALAS lack appropriate funding to ensure legal services are able to meet the needs of families in remote Aboriginal communities. It is also concerning, where Aboriginal clients are going before the court, or making decisions without legal representation (see case studies below).

Case Study 14

CAALAS acted for the Maternal Great Grandmother (“MGGM”), who holds parental responsibility for her 14 year old granddaughter, whom recently gave birth to baby K.

Territory Families commenced child protection intervention in April 2017, placing baby K in the care and control of the CEO due to purported concerns including neglect and domestic violence between the 14 year old mother and her partner.

CAALAS attended court on a duty basis in May 2017 and MGGM was referred to the family lawyer by the court based Aboriginal Liaison Officer. MGGM instructed the family lawyer that neither

²⁷³ For more on this issue see the publications of the Indigenous Legal Needs Project:

<https://www.jcu.edu.au/indigenous-legal-needs-project>.

²⁷⁴ In 2014, Aboriginal and Torres Strait Islander children were 9.2 times more likely to be in out of home care than their non-Indigenous peers. See Child Family Community Australia. (2016). *CFCA Resource Sheet: Child protection and Aboriginal and Torres Strait Islander children – October 2016*. Retrieved from:

<https://aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-children>.

²⁷⁵ Australian Government Productivity Commission. (2014, September 5). *Productivity Commission Inquiry Report Volume Two: Access to Justice Arrangements*. 72, 784. Retrieved from <http://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume2.pdf>.

MGGM, the 14 year old, nor baby K were legally represented. Moreover, MGGM had signed over care and control of her 14 year old granddaughter, and therefore baby K, by way of temporary placement agreement. MGGM expressed regret at having signed the agreement without seeking legal advice as to its effect.

CAALAS immediately put TF on notice that we would be making an application to join the client as a party to the proceedings. We have subsequently supported MGGM at a case conference during which we strongly opposed the proposed separation of baby K from the 14 year old mother. They are currently in the same out of home care placement.

In accordance with the client's instructions CAALAS will be advocating for the return of the 14 year old mother, and baby K, to the client's care, with the provision of intensive family support.

Case Study 15

CAALAS acted for the father. The mother relocated from Alice Springs to Katherine in 2013 and subsequently alienated the client from the four year old child by not disclosing her whereabouts. The client lives in a remote regional area and he experienced difficulties and delays in obtaining appropriate legal advice and in completing the 'pre-action' procedures, namely Family Dispute Resolution. An application for parenting orders was filed in the Federal Circuit Court and Orders were subsequently made for (1) bi-weekly telephone contact between the client and the child, and (2) for the client to spend fifty percent of the school holidays with the child. The child is now benefiting from a meaningful relationship with the client.

RECOMMENDATIONS:

- 69. APO NT supports the call by the Making Justice Work coalition for an Aboriginal Justice Agreement that sets out how Northern Territory Government and Aboriginal people will work together to improve justice outcomes for Aboriginal people in the Northern Territory. APO NT, CAALAS and NAAJA are members of the Making Justice Work coalition.**
- 70. It is recommended that in order to address the child protection matters affecting Aboriginal and Torres Strait Islander children, adequate resources be provided to the ATSILS to ensure families and children are provided with access to culturally safe and competent legal assistance.**

CHAPTER 6: Youth Justice

This chapter addresses terms of reference (a) failings in the child protection and youth justice systems and (h) what improvements could be made to the child protection system of the Northern Territory, including the identification of early intervention options and pathways for children at risk of engaging in anti-social behaviour and (j) any matter reasonably incidental to a matter mentioned in paragraphs (a) to (i).

6.1 Aboriginal Justice Agreement

As this Royal Commission is aware, the Northern Territory youth justice system, like the child protection system, has been the subject of numerous critical reviews over the years, with particular attention given to the need to address the overrepresentation of Aboriginal children and young people at all stages of the system, and particularly in detention.

APO NT highlights the need for a dramatic transformation of the current approach to law and justice in the Northern Territory which reflects a real, bipartisan commitment by government to work with Aboriginal people to find solutions. The current model is not working and in many cases acts to re-traumatise already vulnerable children. There is an urgent need for a child-centred, trauma-informed and culturally relevant approach to youth justice proceedings which ultimately seeks to altogether remove the need for the detention of children.

With each new inquiry/ report a raft of fresh approaches follow that are like a fresh coat of paint over a rotten wall. If this Government is serious about dealing with this issues then it must get serious about rebuilding the wall first. Aboriginal people are still suffering significantly from the effects of dispossession, dislocation, disempowerment and dis-culturation. Aboriginal youth feel this acutely. Many do not have a strong cultural and self-esteem base to draw on to deal with their problems. Nothing will change until they do.²⁷⁶

An Aboriginal Justice Agreement (AJA) can provide the foundation for this new approach by giving Aboriginal people a real stake in helping to build justice systems which are culturally relevant and accessible to the community. APO NT is encouraged by the support for an AJA expressed by the Northern Territory and Australian governments and their facilitation of a process to develop an agreement. It is imperative this process is able to follow through with substantial and systemic reform across government and across government agencies using the voices of Aboriginal people it consults as the basis for reform.

In Victoria, the introduction of an AJA has resulted in significant improvements in justice outcomes for Aboriginal people. An independent evaluation in 2012 found there were lower

²⁷⁶ North Australian Aboriginal Justice Agency. (2009). *Submission in response to the Terms of Reference of the Parliamentary Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system.*

numbers of Aboriginal people in prison and fewer offenders and offences than expected.²⁷⁷ In its submission to this Royal Commission, the Centre for Innovative Justice explains that a core principle of the Victorian AJA is maximising participation of the Aboriginal community in the design, development, delivery and implementation of all justice policies and programs that impact on Aboriginal people.²⁷⁸ This is facilitated by partnership structures which bring together the Aboriginal community and government stakeholders across local, regional and state-wide levels.²⁷⁹

The Victorian AJA provides vital lessons from which we can build an AJA that is specific to the needs of the Northern Territory. The remainder of this chapter will set in more detail some of the particular concerns with the current system that provide the rationale for such a radical overhaul of the youth justice system.

RECOMMENDATION:

- 71. APO NT is encouraged by the commencement of a process to develop an Aboriginal Justice Agreement that sets out how the Northern Territory Government and Aboriginal people will work together to Improve justice outcomes for Aboriginal people in the Northern Territory.**

6.2 Reform of Youth Justice System

We are failing children and young people involved in the criminal justice system. Our youth detention system is poorly resourced, anti-therapeutic and, at times, dangerous.²⁸⁰ It does not comply with Australian and international standards. There is an urgent need for reform with regards to detention facilities, management and operations in the NT, if we are to address the high rate of youth recidivism in the NT and ensure that vulnerable child and youth detainees' basic rights are adequately safeguarded. With no current independent oversight and scrutiny over the youth justice system, our concerns are only heightened.

Change brought about in response to this Royal Commission presents an opportunity to

²⁷⁷ Nous Group. (2012). *Evaluation of Aboriginal Justice Agreement – Phase 2: Final Report*. Retrieved from: <https://assets.justice.vic.gov.au/justice/resources/563ef24a-b23d-4e50-95f0e4c69c34c912/aja2evaluationfinalreport.pdf>.

²⁷⁸ Centre for Innovative Justice. (2016). Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, 15. Retrieved from: <http://mams.rmit.edu.au/ovsmzmhmnerl1.pdf>.

²⁷⁹ Jackomos, A. (2013). Q&A: *Victoria's Aboriginal Justice Agreements*, 25. Retrieved from: http://vcoss.org.au/documents/2013/06/Insight.QA_AndrewJackomos.pdf.

²⁸⁰ Central Australian Aboriginal Legal Aid Service., Northern Territory Legal Aid Commission., & North Australian Aboriginal Justice Agency. (2014). *Submission to the Review of Youth Detention in the Northern Territory*. Retrieved from: <http://www.naaaja.org.au/wp-content/uploads/2014/05/Joint-CAALAS-NAAJA-and-NTLAC-submission-to-the-Independent-Review-of-You....pdf>

fundamentally re-imagine our Youth Justice system to ensure that it is child and family oriented. Given the extent of Aboriginal youth involvement in the youth justice system, making up 96 per cent of youth incarceration, only a paradigm shift can bring meaningful change.²⁸¹

Keith Hamburger first acknowledged the need for a paradigm shift in his report '*A Safer Northern Territory through Correctional Interventions*.'²⁸² Hamburger called for a 'fundamental reimagining of our approach to child protection and youth detention, which is able to deliver rehabilitation programs and most importantly, to offer alternative options to the detention of young people'.²⁸³ APO NT believes that this paradigm shift must ensure that the youth justice system will be reformed with the primary goal of healing and rehabilitation and not punishment.²⁸⁴

APO NT refers the Royal Commission to Danila Dilba's submission,²⁸⁵ which goes to the heart of addressing the overrepresentation of Aboriginal youth in detention and out-of-home care, causal factors and social determinants and the need to implement systemic change in the youth justice and child protection systems in the NT.

Danila Dilba's submission acknowledges that the current infrastructure and systems are failing to prevent and reduce offending and provides a 'Blueprint for Change' with tangible proposals for a paradigm shift based on international models and best practice. The Blueprint urges immediate actions that focus on prevention, diversion and remedial care as opposed to punishment, containment and confinement. A key recommendation from Danila Dilba's submission calls for the current *Youth Justice Act* and *Care and Protection of Children Act* to be repealed and replaced with a new overarching complementary legislative framework that has a strong focus on the child and family; cultural imperatives; early intervention and prevention responses.²⁸⁶

AMSANT recommends that a paradigm shift must occur in line with the following principles²⁸⁷:

- trauma informed and trauma integrated approach

²⁸¹ Central Australian Aboriginal Legal Aid Service, *Submission to the Review of the NT Youth Justice System*, above n 137, 43.

²⁸² Hamburger, K., Ferris, A., Downes, L., Hocken, J., Ellis-Smith, T. & McAllister, N. (2016). *A safer Northern Territory through correctional interventions: Summary report of the review of the Northern Territory Department of Correctional Services*. BDO, Perth/ Knowledge Consulting, Brisbane.

²⁸³ Aboriginal Medical Services Alliance NT. (2017). *Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory*.

²⁸⁴ Ibid.

²⁸⁵ Danila Dilba Health Service, (2017). *A Blueprint for Change: Part 1 Youth Justice*. Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory.

²⁸⁶ See *New Zealand Children, Young Persons and Their Families Act 1989* (NZ) s. 4.

²⁸⁷ Aboriginal Medical Services Alliance NT. (2017). *Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory*.

- support for community led solutions
- incorporating Aboriginal worldviews
- community/ family approaches with a child-centred focus.

RECOMMENDATIONS:

- 72. That the AMSANT four key principles:**
- **trauma informed and trauma integrated approach;**
 - **support for community led solutions**
 - **incorporating Aboriginal worldviews; and**
 - **community/ family approaches child-centred focus**
- become the foundation for design and implementation of future youth justice and child protection systems in the Northern Territory.**
- 73. APO NT supports Danila Dilba’s recommendation for major reform to the youth justice system that includes an overarching legislative framework and organisational cultural change that recognises the interconnectivity between child care and protection system and the youth justice system.**
- 74. That the Northern Territory Government explore options for a holistic whole of government and community approach to the gross over-representation of Indigenous youth in juvenile detention.**
- 75. That Territory Families in partnership with APO NT, holds a conference and workshop with Indigenous and government and non-government stakeholders, to plan the reform of Youth Justice Services, and to ensure Indigenous people are empowered and engaged in developing and implementing reforms.**

6.3 Age of Criminal responsibility

APO NT refers the Royal Commission to the submission by NAAJA and CAALAS to the National Children’s Commissioner’s inquiry on the Optional Protocol to the Convention against Torture (OPCAT) in the context of Youth Justice Detention Centres.²⁸⁸

APO NT considers that the current minimum age of criminal responsibility in Australia and the

²⁸⁸ North Australian Aboriginal Justice Agency and Central Australian Aboriginal Legal Aid. (2016). *Joint Submission on the Optional Protocol to the Convention against Torture (OPCAT) in the context of Youth Justice Detention Centres*. Retrieved from: <https://www.humanrights.gov.au/sites/default/files/22.%20NAAJA%20and%20CAALAS%20June%202016.pdf>.

Northern Territory²⁸⁹ is out of touch with international youth justice systems, and the body of expert evidence concerning children's brain development that children under 12 years lack the necessary capacities for full criminal responsibility. In its Concluding Observations in 2005 the Committee on the Rights of the Child said that the age of criminal responsibility in Australia is "too low", and recommended raising it to 12.²⁹⁰ This recommendation was reiterated in 2012.²⁹¹

NAAJA, along with a group of prominent legal, human rights and social services organisations called on Territory, State and Australian Attorneys-General to lift the age of criminal responsibility to 12 years of age. This was released alongside a discussion paper setting out the relevant issues that make the case for the age to be lifted.²⁹² APO NT endorses that paper.

APO NT also recommends that the scope of the youth justice framework be expanded to allow for the possibility of young people up to the age of 21 to be detained in a youth detention facility where appropriate, as is the case in other jurisdictions.²⁹³ This would allow for youth to get additional support.

RECOMMENDATIONS:

- 76. That the age of criminal responsibility in the Northern Territory be raised to the age of 12.**
- 77. That section 38(1) of the Criminal Code Act and section 3 of the Youth Justice Act is amended to reflect the age of criminal responsibility.**

6.4 Girls and young women in youth detention

In 2015-2016, Aboriginal and Torres Strait Islander girls and young women made up 53 per

²⁸⁹ Age of criminal responsibility is 10 years of age and a rebuttable presumption for a child age under 14 see *Criminal Code Act* (NT) ss. 38(1), 38(2) and 43AP.

²⁹⁰ United Nations. (2005). *Convention on the Rights of the Child*. [15]. Retrieved from: https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwi-y_bP3LnUAhVNNbwKHaEECq8QFggoMAA&url=http%3A%2F%2Fdocstore.ohchr.org%2FSelfServices%2FFilesHandler.ashx%3Fenc%3D6QkG1d%252FPPRiCAqhKb7yhsgnXZ0ChBsrwmcY8%252F%252BFNoDGE9kezfu6QQVHcPsu5ODnholmUW11ikkcmdS4vIFnPoND%252BPodjbTyzuRqtYMXTVpT0JzXW8fLUQG%252BC2XatsTc4&usg=AFQjCNF5CgZOn4oHK1Pln9ZuBj8V_63ADA&sig2=c6oIFA-1B6H2D1Y48FifNQ.

²⁹¹ United Nations. (2012). *Convention on the Rights of the Child*. [4]. Retrieved from: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf.

²⁹² Jesuit Social Services. (2015). *Too much too young: Raise the age of criminal responsibility to 12*. Retrieved from: http://jss.org.au/wp-content/uploads/2016/01/Too_much_too_young_-_Raise_the_age_of_criminal_responsibility_to_12.pdf.

²⁹³ See for example, *Children (Criminal Proceedings) Act 1987* (NSW) s. 15A and for more detailed reading in Central Australian Aboriginal Legal Aid Service's submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, Topic 1: Regulatory framework of youth detention in the NT.

cent of the female youth detention population and, on an average day, were nearly 20 times more likely to be in youth detention than their non-Indigenous counterparts.²⁹⁴ Yet, girls and young women in youth detention have been described as having ‘an invisible minority status in detention.’²⁹⁵

Firstly, the chronic and growing over-representation of Aboriginal and Torres Strait Islander people in the criminal justice systems and our prisons has been examined by numerous reports, however, few focus on women specifically.²⁹⁶ Importantly, there is little research on the particular circumstances of girls in detention and more is urgently required.²⁹⁷

Secondly, institutions do not accommodate for the needs of girls and young women.²⁹⁸ The United Nations Special Rapporteur on the Rights of Indigenous Peoples has stated that prior human rights violations and disregard for collective and individual Indigenous rights, such as abuse, mental health problems and poverty, have been identified as causal factors in criminal behaviour among Indigenous women.²⁹⁹ High numbers of women in prison are survivors of family violence and/or sexual violence.³⁰⁰ The experience and effects of sexual violence have been described as ‘central features of women’s pathways into offending, their experiences of custody, and their capacity to engage in rehabilitation programs’.³⁰¹ Prisons are ill-equipped to help women build lives free from violence.³⁰² Many systems and practices within prisons, such as routine strip searches conducted by male officers, replicate the dynamics of power

²⁹⁴ Australian Institute of Health and Welfare. (2017). *Youth Justice in Australia 2015-16*, bulletin 139. Retrieved from: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129559053>.

²⁹⁵ Tobin, E. (2017, February 8). *Statement to the Royal Commission on the Protection and Detention of Children in the Northern Territory*, para. 69.

²⁹⁶ Human Rights Law Centre and Change the Record. (2017). Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women’s growing over-imprisonment, 10. Retrieved from: https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/59378aa91e5b6cbaaa281d22/1496812234196/OverRepresented_online.pdf.

²⁹⁷ Danila Dilba Health Service. (2017). *Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory: A Blue Print for Change: Part I: Youth Justice*, 8, para. 3.5.

²⁹⁸ Ibid.

²⁹⁹ Tauli Corpuz, V. (2015, August 6). *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, Victoria Tauli Corpuz, UN DOC A/HRC/30/41, paras. 40-41.

³⁰⁰ Stathopoulos, M., Quadara, A., Fileborn, B., & Clark, H. (2012). Addressing women’s victimisation histories in custodial settings. *Australian Institute of Family Studies*, 13. Retrieved from: <https://aifs.gov.au/publications/addressing-womens-victimisation-histories-custodial-settings/introduction>; Moloney, K., et al. (2009). Women in prison: the central issue of gender characteristics and trauma history, *Public Health*, 123, 426; Johnson, H. (2004). Drugs and crime: a study of incarcerated female offenders, Research and Public Policy Series No 63. Australian Institute of Criminology. Retrieved from: http://www.aic.gov.au/media_library/publications/rpp/63/rpp063.pdf.

³⁰¹ Stathopoulos, M. and Quadara, A. (2014). Women as offenders, women as victims: The role of corrections in supporting women with histories of sexual abuse. Corrective Services New South Wales, 4.

³⁰² Human Rights Law Centre and Change the Record. (2017). Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women’s growing over-imprisonment, 17. Retrieved from: https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/59378aa91e5b6cbaaa281d22/1496812234196/OverRepresented_online.pdf.

and control in violent relationships and such practices can re-traumatise girls and women.³⁰³ Additionally, as ‘histories of physical and sexual abuse often make it less likely that young women will have a stable home environment to return to’,³⁰⁴ housing insecurity and homelessness have been identified as significantly contributing to the number of Aboriginal and Torres Strait Islander women denied the opportunity of diversion through bail and instead placed into prison on remand.³⁰⁵

Despite their small numbers relative to boys and young men in the justice system, the numbers of girls and young women in detention are growing.³⁰⁶ It is critical that there are culturally appropriate programs that are tailored to the interests of girls and young women, including those in the child protection system who are most at risk of entering the youth justice system.³⁰⁷ Giving attention to the specific needs and rights of Aboriginal and Torres Strait Islander girls and young women in detention can prevent entrenching cycles of disadvantage and imprisonment into the future.³⁰⁸

6.5 Police

6.5.1 Consequences of over-policing of Aboriginal youth

APO NT refers the Royal Commission to our 2011 submission to the Inquiry into Youth Suicide in the NT.³⁰⁹

Unnecessary and continuous police contact has adverse effects on young people, often causing feelings of victimisation or discriminatory treatment. For instance, many CAALAS and NAAJA clients raise allegations of inappropriate police behaviour. These include the use of excessive force, impropriety, threats, intimidation and unlawful arrests and detention.

³⁰³ Stathopoulos, M., Quadara, A., Fileborn, B., & Clark, H. (2012). Addressing women’s victimisation histories in custodial settings. *Australian Institute of Family Studies*, 13. Retrieved from:

<https://aifs.gov.au/publications/addressing-womens-victimisation-histories-custodial-settings/introduction>.

³⁰⁴ Victorian Equal Opportunity and Human Rights Commission. (2013). Unfinished business: Koori women and the justice system, p. 50. Citing Wong, K. et al (2009). Bail me out: NSW young offenders and bail. Youth Justice Coalition. Retrieved from:

http://www.humanrightscommission.vic.gov.au/media/k2/attachments/Unfinished_business_-_Koori_women_and_the_justice_system.pdf.

³⁰⁵ Victorian Equal Opportunity and Human Rights Commission. (2013). Unfinished business: Koori women and the justice system, p. 50. Retrieved from:

http://www.humanrightscommission.vic.gov.au/media/k2/attachments/Unfinished_business_-_Koori_women_and_the_justice_system.pdf.

³⁰⁶ Human Rights Law Centre and Change the Record. (2017). Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women’s growing over-imprisonment, 34. Retrieved from:

https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/59378aa91e5b6cbaaa281d22/1496812234196/OverRepresented_online.pdf.

³⁰⁷ Ibid.

³⁰⁸ Ibid 10.

³⁰⁹ Aboriginal Peak Organisations NT. (2011). *Submission to the Legislative Assembly of the Northern Territory on the Inquiry into Youth Suicide in the Northern Territory*, 24-25. Retrieved from:

http://www.amsant.org.au/apont/wp-content/uploads/2015/02/111008-APO-NT-Youth-Suicide-Submission_Oct-2011.pdf.

Aboriginal young people are also the least likely to make complaints against police. Some young people fear reprisals, whereas others think there is no point because they will never be believed when opposed to police. Many young people and their families are aware that Police deal with their own complaints internally and that the complaint investigation process operates as part of the Police. In the work of legal education we are aware that many families and communities don't understand that formal complaints can be made about Police and understand that Police operate as a law unto themselves.

In dealing with these matters it is necessary for a paradigm shift within the Police force itself and for a specialised and distinct service working with youth and taking into account the specific needs of youth and from an Aboriginal perspective. A paradigm shift cannot occur in this context unless a mechanism is established for investigation and complaints of Police that is independent of Police and autonomous and has the necessary powers to perform its functions. Aboriginal people must be involved in this structure, including in key and leading roles.

Case Study 16³¹⁰

A young Aboriginal boy who was in the care of the Department of Children and Families (DCF) was approached by police while he was using an iPod. Police questioned him about how he came to be in possession of the iPod and the young boy honestly responded that it had been a gift from a DCF worker. The police did not accept this response and confiscated the iPod on suspicion of it being stolen. Later, it was necessary for the DCF worker to attend the Alice Springs police station to reclaim the iPod.

Over-policing can result in Aboriginal young people being charged where non-Aboriginal young people would be warned, formally cautioned, or offered diversion. This results in increased contact with the criminal justice system. It can also occur in the context of police charging Aboriginal young people with numerous charges arising out of the same circumstances, or charging several co-accused based on the legal principle of common purpose.

Both NAAJA and CAALAS are concerned that there has been a failure to implement the Recommendations of the Royal Commission into Aboriginal Deaths in Custody, especially recommendations 234-245 on Aboriginal youth. These recommendations could take the form of police general orders once implemented. For example, a failure to implement these recommendations has meant there have been no negotiations on 'protocol' around notifying NAAJA or CAALAS when an Aboriginal youth is in police custody.³¹¹

³¹⁰ Ibid 24.

³¹¹ See Royal Commission into Aboriginal Deaths in Custody. (1991). *National report*. Australian Government Publishing Service, Canberra, recommendation 243. Retrieved from: <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>.

Case Study 17³¹²

A 16 year old Aboriginal male (the client) was arrested by police in the CBD of Alice Springs in the early hours of the morning, around 4 or 5am. A few hours later, CAALAS criminal lawyers were notified by police that the client was in custody at the Alice Springs police watch house. At approximately 11am the CAALAS Community Youth Justice Project worker visited the client in the police watch house cells where she was informed by police that they were trying to locate a responsible adult for the client in order to interview him in relation to an alleged minor offence, believed to have been committed while the client was intoxicated. At 2pm, the Project worker again visited the client in the police cells and again police advised her that they had been unsuccessful in locating a responsible adult.

Upon leaving the police watch house, the Project worker attended the clients' home. His mother answered the door and told the Project worker that she had been home all day except while dropping her other children to school in the morning. The mother advised that she had not been contacted by police and immediately accompanied the Project worker to the police station.

At 6pm, the mother contacted the Project worker to advise that she was still waiting at the police station as the police were yet to question the client. The client was released from police custody at 8pm, some 16 hours after his arrest, without charge.

RECOMMENDATION:

- 78. That protocols be developed in consultation with Aboriginal Legal Services and communities consistent with Royal Commission into Aboriginal Deaths in Custody recommendations, to guide police in their dealings with youth.**
- 79. That government initiate a consultation process with Aboriginal Legal Services with the view of establishing a Police investigation and complaints process that is independent from Police and autonomous, and where Aboriginal people serve roles.**

6.5.2 Need for coordinated approaches for young people

APO NT directs the Royal Commission to its submission to the Legislative Assembly of the Northern Territory Inquiry into youth suicide in the NT³¹³ and the CAALAS Submission to the Review of the NT Youth Justice System.³¹⁴

Police are key actors in the lives of many Aboriginal youth whether it is in relation to their

³¹² Central Australian Aboriginal Legal Aid Service, *Submission to the Review of the NT Youth Justice System*, above n 137, 11.

³¹³ Aboriginal Peak Organisations NT. (2011). *Submission to the Legislative Assembly of the Northern Territory on the Inquiry into Youth Suicide in the Northern Territory*, 24. Retrieved from: <http://www.amsant.org.au/apont/wp-content/uploads/2015/02/111008-APO-NT-Youth-Suicide-Submission-Oct-2011.pdf>.

³¹⁴ Central Australian Aboriginal Legal Aid Service, *Submission to the Review of the NT Youth Justice System*, above n 137, 7-13.

protection and safety in the community, child protection and early and ongoing contact with children and young people in the Youth Justice system. Police are uniquely positioned to refer vulnerable children to appropriate services to assist them with their needs.

In many instances, police equally encounter the difficulties of different silos in government and service agencies in not providing a co-ordinated service approach to children at risk or who are in the care and protection system that they encounter.

APO NT notes that the SupportLink initiative currently facilitates referrals by police of community members they encounter when responding to domestic violence incidents. These referrals are aimed to assist both the victim and alleged perpetrator through putting them in touch with the relevant support services. APO NT understands that police do make SupportLink referrals for youth, but it is our concern that there is no oversight mechanism or follow up on the youth or family once a referral is made.

An appropriate system presently exists in Queensland with the Coordinated Response to Young Persons at Risk (CRYPAR) as a pathway for police to refer young people, aged between 6 and 25, who are at risk and their families, to services.³¹⁵

RECOMMENDATION:

- 80. That a similar system to the Coordinated Response to Young Persons at Risk (CRYPAR) system be introduced in the Northern Territory to ensure that service providers are notified by police and are subsequently accountable for connecting with and assisting vulnerable young people.**

6.5.3 Police detention in remote communities

The arrest and detention of Aboriginal youth in remote Aboriginal communities of the Northern Territory should be a matter of last resort. In many remote police stations the cells for youth are not suitable or substandard. APO NT refers the Commission to **Article 37** of the United Nations Convention of the Rights of the Child (CROC), which state that:

- a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

³¹⁵ Ibid 13.

- c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

It is the experience of NAAJA and CAALAS that there are no separate or specifically-designed holding cells for youth in remote communities they service and that youth are detained in cells that are standard for all prisoners. In many instances prisoners are segregated by gender and not age and it is not uncommon for an Aboriginal youth to be held in the same cell with multiple adult prisoners. In remote communities, young people can be kept in standard cells, which are adjoining other adult cells. This is in direct conflict with Article 37 (c) Convention of the Rights of the Children.

NAAJA and CAALAS' experiences of attending on and visiting youth in holding cells in remote communities is that they are co-located with adjoining cells for adults and non-air-conditioned, dark, concreted and poorly ventilated and natural light sources. CAALAS notes, even in relation to the Alice Springs Police Station, that young people are often detained in cells at the front of the watch house where they can see adults coming in and out of custody, often in an agitated state.

There are no suitable client conferencing facilities for lawyers to interview and obtain instructions from youth clients in custody and NAAJA and CAALAS lawyers will interview with their clients locked in the same cell with multiple other persons.

RECOMMENDATIONS:

- 81. That an audit is undertaken of all existing holding cells for youth in remote police stations as to their suitability for children and young people in compliance with the Convention on the Rights of a Child and the United Nations Minimum Standards for the Administration of Juvenile Justice (the Beijing Rules).**
- 82. That youth are only detained as a last resort and in appropriate cells in remote police stations.**
- 83. That all young persons are safely detained in youth only cells.**

6.6 Removal of Aboriginal youth from remote communities as last resort

It is the long experience of NAAJA and CAALAS that Aboriginal youth and young people are arrested and remanded in custody for what in many instances will be for minor offences for property offending or traffic offences or administrative type of offences of breaches of bail or Orders.

When a young person finalises these minor offences, generally on their first appearance before a Court, it will result in a non-custodial disposition or are re-bailed to their home community. The release of a young person poses many practical difficulties for the child and their legal representative in ensuring their safe travel and return to the community. These costs will fall on legal services such as NAAJA who will finance or assist in the child's travel.

The experience of CAALAS is that when a young person is remanded into custody in Alice Springs and then bailed to return to their remote community, the Court will pay for a bus fare. CAALAS does not have the financial capacity and generally cannot financially assist in facilitating the young person's travel, however, there have been occasions where CAALAS staff has supervised a young person when they have been released from custody, early in the day and the bus to their remote community does not depart until 7pm. There are also many practical and financial burdens on the young person's family as they may have to travel into Alice Springs to be present for the Court date.

Where children are remanded in detention they will be flown or driven from their communities many hundreds of kilometres to Youth Courts in major towns of Darwin, Katherine and Alice Springs. The transportation of youth detainees by road can occur over vast distances and through dangerous terrain and it is the experience of NAAJA that they will be confined with adult prisoners in the same police caged vehicle. The practice of confinement of children with adults or with other genders in police vehicles is not adequate and an inappropriate risk³¹⁶ and such assessments should occur with each child.

With the removal of each Aboriginal child from his or her community they are removed from their support networks of immediate carers, family, language and culture. The impact on an Aboriginal child can be traumatic, isolating and harmful to their emotional and mental wellbeing. A remand to a Youth Court in major towns places an additional barrier in not having a responsible adult present at proceedings or to provide support and can unduly delay legal proceedings.

The West Australian Children's Court³¹⁷ has dealt with similar issues of the remanding of young persons in remote and country police stations and has provided guidance to prevent

³¹⁶ Police General Order Transport of Person in Custody or by Consent.

³¹⁷ *West Australian Children's Court Practice Direction No 1 of 2011* rule 7.3(b).

the unnecessary detention of young persons in police stations and processes for the early determination of bail or proceedings by telephone or video link.

NAAJA has raised with Courts, Court user forums and with the Commonwealth for the use of modern technology of video link, 'Skype' or basic telephone communication to Judges based in towns for children to have their first appearance while remaining in the community and the child's family can be in attendance and appropriate bail applications can be made. Importantly, with such appearances there is immediacy to the young person of their offending and responsibility. It also begs the question why there is not a willingness to negotiate a protocol between police and ALS to ensure they are notified every time an Aboriginal youth has been arrested to enable legal services to be able to speak with the youth and family at that stage and best obtain information to assist a bail application (See RCIADIC recommendation 243).

It is the view of APO NT that should the practice of remanding of youth and young people in detention continue, that support services are provided to responsible adults to also travel and attend court proceedings.

RECOMMENDATIONS:

- 84. That Police practices should encompass the principle that the removal of an Aboriginal child in custody from his or her community should be an action of last resort.**
- 85. That a Practice Direction is implemented by the Youth Court of the Northern Territory that should a youth be refused bail by police and where police are seeking to remand the youth to a detention facility prior to appearing in person at court, that this youth appear remotely for a bail hearing. In these circumstances the youth must be represented by a lawyer before any determination can be made to remand that youth in a detention facility.**
- 86. That support services are provided to family members to attend Court proceedings for their children and for the return of the child to their community of origin.**

6.7 Locally based non-custodial alternatives

In a submission to the Royal Commission, RMIT explains that:

Spending time in custody has a proven negative effect on young people. Research has shown incarceration leads to social isolation and disconnection, institutionalism increases the likelihood of reoffending. More specifically, recidivism is correlated highly with future juvenile offending, and adult offending. The most significant reasons for this were found to be the

*stigmatisation of young people, formation of criminal associations and networks, placing vulnerable young people at risk, and reduction of opportunities for positive rehabilitation. Remand has been shown to have negative impacts on a young person's family, relationships, education and work. Remanding a young person in custody also comes at a significant economic cost to the community.*³¹⁸

In order to prevent the remand of Aboriginal children from their community or in the case of inappropriate parental supervision or alternative accommodation, APO NT considers supported bail accommodation and other non-custodial alternatives in remote communities are urgently needed.

NAAJA has previously highlighted that a lack of suitable supervised bail accommodation is a significant issue that impacts on the high rates of remand of Aboriginal young people.³¹⁹ In their preliminary submission to this Royal Commission, CAALAS have also expressed that there is a lack of supported bail accommodation options, alternative housing and care facilities for young people in Alice Springs and Tennant Creek who come into contact with the youth justice system. Amnesty International has previously noted that pre-trial remand of children due to a lack of alternatives is contrary to Australia's human rights obligations. AMSANT has also raised similar concerns in their submission to the Royal Commission.³²⁰

APO NT supports Amnesty International's recommendation that government quantify the level of unmet need and fund Indigenous community controlled bail accommodation and support services to ensure that Indigenous young people are not held in detention on remand solely due to a lack of other options, with a particular focus on those with mental health issues and cognitive impairments, including those with FASD.³²¹

The Committee on the Rights of the Child outlines that these alternatives must be 'carefully structured to reduce the use of pre-trial detention... rather than "widening the net" of sanctioned children.'³²²

RECOMMENDATIONS:

- 87. That the Northern Territory Government urgently provides supported bail accommodation for young people in remote communities who are currently being**

³¹⁸ Centre for Innovative Justice. (2016). *Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory*, 3-4. Retrieved from: <http://mams.rmit.edu.au/ovsmzmhmnerl1.pdf>.

³¹⁹ Amnesty International, *A Brighter Tomorrow*, above n 12, 31. Retrieved from: https://static.amnesty.org.au/wp-content/uploads/2016/09/A_brighter_future_National_report.pdf.

³²⁰ Aboriginal Medical Services Alliance NT, *Preliminary submission*, above n 34.

³²¹ Amnesty International, *A Brighter Tomorrow*, above n 12.

³²² Committee on the Rights of the Child. (2007). *General Comment No. 10*, para. 80: Where there is no alternative to remand, the CRC Committee provides that this detention must 'be limited by law and be subject to regular review. Retrieved from: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

remanded in detention due to a lack of alternatives.

88. That such supported bail accommodation is sourced in remote Aboriginal communities that are run by local Aboriginal organisations or in partnerships.
89. That the Northern Territory Government appropriately resource existing youth accommodation and support services, such as Bush Mob in Alice Springs and Mount Theo.

6.8 Bail

6.8.1 Bail and sentencing - Customary law

Schedule 4 of the *Stronger Futures in the NT (Consequential and Transitional Provisions) Act 2012* amends the *Crimes Act 1914* (Cth) by inserting section 16AA. This effectively prohibits a court, in bail and sentencing matters, from taking into account customary law or cultural practices which may lessen or aggravate the seriousness of criminal behaviour.

The law distorts ordinary and well-established principles for setting fair sentences. It prevents courts from taking into account all relevant factors when sentencing Aboriginal people. This is fundamentally unjust.³²³ It is important to recognise that customary law has never been a defence to violent crimes. It has only been relevant as one of the factors that a court should consider in understanding the context of an offence in determining an appropriate sentence.

These provisions deny the existence of a fundamental truth – that customary law affects the lives of many Aboriginal people. These provisions compel a court to sentence Aboriginal people in an artificial and false context. In ‘Aborigines and the Court, The Northern Territory Experience’, the Chief Justice of the Northern Territory Supreme Court said:

‘[The Provisions] mean that the court must sentence in a partial factual vacuum. Although the level of moral culpability of an offender may have been substantially reduced because he or she acted in accordance with, and under pressure to perform, a cultural practice, the court is barred from taking these matters into account. The effect is that the court is not entitled to consider why an offender has offended and pass an appropriate sentence. The court is required to ignore the actual circumstances that led to the offending. The artificiality involved is obvious. When the [Provisions were] recently amended no change was made to ameliorate the harm done.’

The Chief Justice goes on to comment that ‘Aboriginal offenders do not enjoy the same rights

³²³ The relevant human rights enlivened by the Provisions are: The right to self-determination (ICCPR art. 1 and ICESCR art. 1; UNDRIP art. 3), The right to equality before the law, The right to non-discrimination on the basis of race or ethnic origin; The right to equality; culture; free prior and informed consent; laws and customs; and to settle disputes according to custom and tradition (UNDRIP arts. 2, 11, 19, 34, 40).

as offenders from other sections of the community.’ Therefore, the rule of law is undermined, and community respect for the law is diminished.³²⁴

RECOMMENDATIONS:

90. **While APO NT welcomed the Stronger Futures amendments allowing customary law and cultural practices to be considered in offences relating to cultural heritage or cultural objects, the restrictions on courts, in bail and sentencing matters, should be repealed completely. The restrictions devalue Aboriginal culture and custom, distorts the bail and sentencing process, and result in unjust outcomes for Aboriginal people.**
91. **We urge the Committee to inquire into the human rights implications of the restrictions on taking Aboriginal and Torres Strait Islander customary law into account in bail and sentencing decisions. We are particularly concerned by the discriminatory nature of the restrictions, and the impact of the restrictions on equality before the law for Aboriginal and Torres Strait Islander peoples.**

6.8.2 Bail Act

Unlike other Australian jurisdictions, the NT has failed to legislate for youth-specific bail considerations. The presumptions in the *Bail Act 1982* (NT) (‘the *Bail Act*’), apply in relation to young people just as they apply to adults. This is of concern because the presumptions against bail in the *Bail Act* are in conflict with the YJA principle that custody be a matter of last resort. Presumptions against bail should not apply to children. Further the offence of breaching bail should not apply to children.

Whilst detention as a last resort is enshrined in the Territory’s YJA, in reality children in the Territory are detained on remand because of welfare concerns (including lack of a responsible adult), health concerns, substance misuse and because of a lack of suitable accommodation. In addition, a young person may breach bail conditions, which results in their remand.

Case Study 18³²⁵

A 17 year old Aboriginal client was bailed by the Court to reside at BushMob. He had an additional condition not to return to his usual place of residence with family at an Alice Springs town camp unless in the company of a BushMob worker. It was accepted that given the strong family ties exhibited by the client, it was important to provide some mechanism for him to maintain contact with his family. Due to the BushMob facility being at full capacity and under-resourced, BushMob staff were unable to accompany the client to visit family and consequently he sought to attend his family's residence on his

³²⁴ Riley, T. (2012). ‘Aborigines and the court: The Northern Territory Experience’, *Northern Territory Law Journal*, 2(4), 15 -16.

³²⁵ Central Australian Aboriginal Legal Aid Service, *Submission to the Review of the NT Youth Justice System*, above n 137, 19.

own. He was arrested for a conditional breach of his bail and was held in police custody until being brought before the court for his breach. The court remanded the client for a further few days as they were unwilling to re-bail him to BushMob. The client spent several days in custody before an alternative bail proposal was submitted for him to reside at a remote facility.

Case Study 19³²⁶

A 17 year old Aboriginal client is charged with drink driving offences. He is also on a suspended sentence for an unlawful entry charge. Police refuse him bail and he is remanded in detention. The client acknowledges that he has a history of petrol sniffing and since he stopped sniffing has been drinking on a regular basis. As a result of this history the young man has significant communication difficulties and was therefore assessed as unsuitable for supervision. Given that he is under 18, the only rehabilitation service available to him is Ilpurla Outstation. However, he is very close to his family who all live in Alice Springs and does not want to go to Ilpurla. The client pleads guilty to the substantive offences and for breaching the suspended sentence. The Magistrate has no option but to sentence him to a period of detention.

NT Police are apprehending young people more readily and more frequently for breach of bail than ever before. In the 2015-16 period, 697 youth were apprehended for breaching bail, some 343 (49%) of whom were within the ages of 10-14 years. 662 (95%) of those apprehended were Aboriginal.³²⁷

In its current application, APO NT believes that Section 36A of the Bail Act, the immediate review and stay of decision to grant bail, should be restricted to persons charged with a serious offence, being murder or any other offence punishable by imprisonment for life, or serious sexual offences against children, as in other bail regimes in Australia. CAALAS is of the view that the review of section 36A should require the written approval of the Director of Public Prosecutions and Commissioner of Police before the review (and corresponding stay of the grant of Bail) may be made.

In addition, 24 hours or one business day should be the maximum period of time allowed to lapse before the Supreme Court hears a review under 36A or the stay of the grant of bail otherwise lapses. There also needs to be a mechanism to ensure that young people who are subject to a review are transferred out of police custody and into a youth detention facility as soon as possible.

³²⁶ Central Australian Aboriginal Legal Aid Service. (2009). *Submission in response to the Terms of Reference of the Parliamentary Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system*, 8-9.

³²⁷ See further Yick, J. (2016, October 14). Statement to the Royal Commission into the Protection and Detention of Children in the Northern Territory. Retrieved from: <https://childdetentionnt.royalcommission.gov.au/public-hearings/Documents/evidence-2016/evidence9december/Exh-045-001.pdf/>.

APO NT draws this Royal Commission to the submissions by CAALAS³²⁸ and NAAJA³²⁹ to the Review of the Bail Act (NT). Both submissions set out in considerable detail the specific issues with the Bail Act that are driving high rates of Aboriginal youth detention both on remand and due to the offence of breach of bail, and recommendations to remedy the situation. See also NAAJA submissions to the New NT Government on Law Reform.³³⁰

APO NT is concerned that ‘breach of bail’ apprehension is being used as a policing strategy that is contributing to the significant over-representation of young Aboriginal people in the justice system and being sent to youth detention on remand in circumstances where the original offence would not have led to a prison sentence.

Section 37B (1) of the *Bail Act* makes it an offence to breach bail. This provision applies to children and young people as well as adults. In NAAJA’s experience,³³¹ there has been a significant increase in the numbers of young people in custody and the number of young people on remand in particular since the introduction of this offence. On any given day, the number of youth in custody on remand is around 60% or more, most of these are Aboriginal.³³²

Some unavoidable injustices arise from the operation of s37B in that:

- Issues of mobility and remoteness are particularly acute for young people. They have considerably less control and agency over their own personal circumstances than adults. For example, young people are invariably reliant on their parents or other family members to transport them to court. This lack of control and agency is most pronounced for young people in the care of the DCF.
- These young people often face challenges in compliance where they have a condition to reside at a residential placement but are distressed/dissatisfied with this placement. It is not uncommon for these young people to ‘self-place’ with biological family after being removed from their care. In our view, this is a complex social issue that should not attract criminal sanction.
- Aboriginal young people may enjoy a broad network of family support, sometimes meaning that a young person, may reside at the homes of various family members.

³²⁸ Central Australian Aboriginal Legal Aid Service. (2013). *Submission to the Review of the Bail Act (NT)*, 11-16. Retrieved from:

[http://www.caalas.com.au/Portals/caalas/Submissions/2013/Submission%20to%20the%20Review%20of%20the%20Bail%20Act%20\(NT\)%20-%20March%202013.pdf](http://www.caalas.com.au/Portals/caalas/Submissions/2013/Submission%20to%20the%20Review%20of%20the%20Bail%20Act%20(NT)%20-%20March%202013.pdf).

³²⁹ North Australian Aboriginal Justice Agency. (2013). *Submission to the Review of the Bail Act (NT)*, 1-12.

³³⁰ North Australian Aboriginal Justice Agency. (nd). *Position Paper: Brief to NT Government Legislative change*.

³³¹ Ibid.

³³² See further Yick, J. (2016, October 14). Statement to the Royal Commission into the Protection and Detention of Children in the Northern Territory. Retrieved from:

<https://childdetentionnt.royalcommission.gov.au/public-hearings/Documents/evidence-2016/evidence9december/Exh-045-001.pdf/> and evidence of the Trident Taskforce policy around bail breaches.

Imposing a residential condition and curfew that requires a young person to stay at the same residence every night can be culturally inappropriate and at odds with the family networks and daily life of the young person.

A number of other factors also underpin the high ‘breach of bail’ rates for young Aboriginal people including a person’s linguistic capacity, hearing difficulties and intellectual disability, all of which make it difficult for a young person to understand the bail conditions. Further complicating factors are mental illness, multiple adjournments and legal practice issues, such as insufficient time to conference with their lawyer.

Research conducted by Mr Mark Evenhuis for the Central Australian Aboriginal Legal Aid Service ‘investigates how the current bail system sets up young Aboriginal people in Central Australia to breach bail and attract further criminal sanctions through its inability to take into account their often distinct circumstances, such as mobility, unstable housing and cultural obligations (e.g sorry business)’.³³³

RECOMMENDATIONS:

- 92. Pro-bail, youth specific bail provisions should be inserted into either the Bail Act, or as part of a separate bail regime for young people in the Youth Justice Act. The starting point must be that remanding a young person in custody is to be the option of last resort. In Victoria, the *Bail Act 1977* requires a decision maker have regard to a number of youth-specific factors in addition to the general criteria applicable to any grant of bail.³³⁴**
- 93. That section 36A of the *Bail Act* is reviewed in terms of its application to young people.**
- 94. After section 37B (1) (b) of the *Bail Act* insert –“subsection (1) does not apply to a child”. The offence of failing to appear in court should not be prescribed in its place.**
- 95. Section 38 of the Bail Act should be amended to set out the range of options available to police upon detecting a breach of bail and s38 (2A) should be repealed. The amended section should provide that if a police officer believes, on reasonable grounds, that a person is failing, has failed or is about to fail to comply with a conduct direction, the police officer may:**

³³³ Evenhuis, M. (2013). *Set Up To Fail: Aboriginal Youth, Bail and Children’s Rights in Central Australia*.

Retrieved from:

[http://www.caalas.com.au/Portals/caalas/Submissions/2013/Appendix%20to%20Submission%20to%20the%20Review%20of%20the%20Bail%20Act%20\(NT\)%20\(M%20Evenhuis'%20Research%20Paper\)-%20Appendix.pdf](http://www.caalas.com.au/Portals/caalas/Submissions/2013/Appendix%20to%20Submission%20to%20the%20Review%20of%20the%20Bail%20Act%20(NT)%20(M%20Evenhuis'%20Research%20Paper)-%20Appendix.pdf).

³³⁴ See *Bail Act 1977* (Vic) s. 3B.

- a) Take no action
- b) Issue a warning
- c) Require the person to attend court by notice without arresting the person, or
- d) Arrest the person and take them as soon as practicable before a court.

And that, in considering what course of action to take, the police officer must have regard to:

- a) The relative seriousness or triviality of the suspected failure (included threatened failure)
- b) Whether the person has reasonable excuse for the failure
- c) That arrest is a last resort
- d) Insofar as they are apparent to or known by the officer, the person's age and any cognitive or mental health impairment.

That, if the person is arrested, the officer may afterwards discontinue the arrest.

That, upon being satisfied that the person has failed, or was about to fail to comply with a conduct direction, a court may re determine whether to release or detain the person and whether to impose a condition or a conduct direction.

96. APO NT considers it more appropriate to fund bail programs which target at risk young people and intensively support them and their families to comply with bail conditions.

6.8.3 7A: Presumption against bail for certain offences

In regards to ss7A and 8 of the Bail Act, NAAJA supports a uniform presumption in favour of bail in place of a neutral presumption for all offences.³³⁵ Placing the onus of proof on the applicant, or defendant, creates a presumption against bail. Introducing a neutral presumption will seriously erode principles which are central to the operation of a criminal justice system, in particular, the right to personal liberty and the presumption of innocence.³³⁶

As discussed in the NSW Bail Review, a uniform presumption in favour of bail is simpler, fairer, more consistent with the position at common law and the presumption of innocence until proven guilty, and protects unnecessary intrusions on a person's freedom and liberty.³³⁷

The implementation of a presumption in favour of bail would not result in the release of accused persons who pose a serious risk to the community as the bail decision-maker would

³³⁵ North Australian Aboriginal Justice Agency. (2013). *Submission to the Review of the Bail Act (NT)*, 10-12.

³³⁶ Central Australian Aboriginal Legal Aid Service. (2013). *Submission to the Review of the Bail Act (NT)*, 17-19. Retrieved from:

[http://www.caalas.com.au/Portals/caalas/Submissions/2013/Submission%20to%20the%20Review%20of%20the%20Bail%20Act%20\(NT\)%20-%20March%202013.pdf](http://www.caalas.com.au/Portals/caalas/Submissions/2013/Submission%20to%20the%20Review%20of%20the%20Bail%20Act%20(NT)%20-%20March%202013.pdf).

³³⁷ Ibid.

still be required to take the s24 considerations into account when making a bail determination, which includes consideration of the risks to others associated with the accused person's release.

RECOMMENDATIONS:

- 97. That the NT Government should repeal the current scheme of presumptions contained in sub sections 7A and 8 of the Bail Act (NT) and replace it with a uniform presumption in favour of bail for children and young people.**
- 98. That greater emphasis and police training exist around proceeding by way of summons rather than arrest and bail wherever possible.**
- 99. That police utilise Notices to Attend to proceed with charges involving young people wherever possible.**

6.9 Youth Diversion

Aboriginal youth have to be given the opportunity to enjoy a healthy life, a strong culture, a proper education and decent housing from the start of their lives. Those Aboriginal youth who offend despite enjoying these opportunities then have to be given the opportunity of being diverted from the criminal justice system by virtue of well-funded and appropriate diversionary programs. Then only the most persistent offenders will front the courts. Basically as it is for non-Aboriginal youth in the country.³³⁸

The philosophy of diversion recognises the negative consequences of exposing young people to the criminal justice system. It also recognises the reality that most young people have the capacity to change when exposed to positive interventions. Research indicates that young Aboriginal people are less likely to be diverted when compared with non-Aboriginal young people.³³⁹ The impact of this discrepancy is that Aboriginal young people have a higher rate of entrenchment in the more punitive aspects of the criminal justice system.³⁴⁰

³³⁸ North Australian Aboriginal Justice Agency. (2009). *Submission in response to the Terms of Reference of the Parliamentary Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system.*

³³⁹ Richards, K. (2010). Police-referred restorative justice for juveniles in Australia. *Trends and Issues in Crime and Criminal Justice*. Australian Institute of Criminology. Retrieved from: http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi398.pdf.

³⁴⁰ Behrendt, L. Cunneen, C and Libesman, T (Ed). (2000). *Indigenous Legal Relations in Australia*. Melbourne: Oxford University Press, 101.

Case Study 20³⁴¹

A 15 year old Aboriginal male (the client) in Alice Springs was arrested for alleged property offences in early 2011. The client had no criminal history and was assessed by police for diversion and found to be unsuitable. He was therefore charged and required to come to court to have his matters dealt with. The CAALAS Community Youth Justice Project worker contacted the Police Diversion Unit prior to the clients' court date to discover the reason the boy was refused diversion. She was advised that the clients' father had been rude with the police officer who was assessing the clients' suitability for diversion and consequently, despite both the client and his father consenting to diversion, the officer decided to decline diversion.

Case Study 21³⁴²

A CAALAS lawyer was informally advised by police in Tennant Creek in 2009 that diversion used to be offered to young people and their families where police considered that they did not have sufficient evidence to guarantee a conviction. However, where prospects of a conviction were high, police preferred to proceed by way of charge and court proceedings.

Case Study 22³⁴³

A twelve-year old young man in Katherine was charged with criminal damage and trespass for jumping the fence to gain access to the local pool. He had no criminal history. Police preferred to bail and charge him, rather than offer him diversion. The reason for not diverting the young person at first instance, was because the young boy spoke Gurundji, and could not communicate in English. He was also very shy, and so appeared to be non-cooperative to the police. An interpreter was not used. Representations were made to police, asking that they reconsider the young person for diversion, however they were not accepted. The *Youth Justice Act* NT does not allow for the Magistrate to review a police denial of diversion.

Case Study 23³⁴⁴

In 2010, H was issued with a Trespass Notice at Casuarina Square Shopping Centre. Police arrested him in front of family and strangers and took him to the Watch House. In addition, they made the decision to put him on bail for this offence, despite the fact that the offence is not one that carries jail as a contemplated penalty.

This last case study raises serious concerns given that H was arrested and bailed for an offence that he could not be sentenced to detention for, as well as the failure by police to comply with the principle that all other avenues, such as diversion, be exhausted before proceeding

³⁴¹ Central Australian Aboriginal Legal Aid Service. (2013). *Submission to the Review of the Bail Act (NT)*, 14. Retrieved from:

[http://www.caalas.com.au/Portals/caalas/Submissions/2013/Submission%20to%20the%20Review%20of%20the%20Bail%20Act%20\(NT\)%20-%20March%202013.pdf](http://www.caalas.com.au/Portals/caalas/Submissions/2013/Submission%20to%20the%20Review%20of%20the%20Bail%20Act%20(NT)%20-%20March%202013.pdf).

³⁴² Ibid 16.

³⁴³ Aboriginal Peak Organisations NT. (2011). *Submission to the Legislative Assembly of the Northern Territory on the Inquiry into Youth Suicide in the Northern Territory*, 24. Retrieved from: http://www.amsant.org.au/apont/wp-content/uploads/2015/02/111008-APO-NT-Youth-Suicide-Submission_Oct-2011.pdf.

³⁴⁴ North Australian Aboriginal Justice Agency, *Submission to the Youth Justice Review Panel*, above n 116.

to arrest a young person and formally charge them.

The NAAJA submission to the Youth Justice Review Panel³⁴⁵ highlights the need for significant improvements to diversionary programs for youth within the Youth Justice system. In particular, there is a need to increase access to diversionary programs across regional and remote areas of the NT and for referral to these programs to be carried out in an appropriate time frame.

Diversionary officers should act as broader case managers and consider diversion an opportunity to address a host of underlying criminogenic and social issues. Diversion programs should target young Aboriginal people at first point of contact with police and the criminal justice system.

Intensive Case Management and Family Support Services, such as Multi-systemic Therapy (MST), should be available for all young people. This kind of therapeutic intervention could be provided through properly resourced ACCHSs, and has the potential to prevent young people either dropping out of school or becoming entrenched in the criminal justice system. Approaches such as MST have demonstrated effects on reducing rates of recidivism and are considerably more cost-effective than detention³⁴⁶. Such an approach would need to be adapted to the specific social and cultural context of young Aboriginal people in the Northern Territory. These services should address all issues holistically and not be over specialised.

APO NT believes that there should be a move to transfer the administration of diversion from the discretion of police officers. CAALAS frequently observes young people not being considered or found suitable for diversion by police in instances where the *Youth Justice Act* requires it. Further, CAALAS has observed that young people have been found unsuitable for diversion for reasons that are not permitted under the Act. The best option would be to empower Aboriginal elders and communities to play a role in decisions around diversion. Alternatives could involve elders in alternative dispute mechanism or family group conferencing.

In Western Australia, diversion could be undertaken by Juvenile Justice Teams (JJT), involving Aboriginal elders. It would be best to recommend that the court be empowered to order diversion to JJT, regardless of whether police had either declined or refused the option. Aboriginal groups across the Central Land Council region have developed local strategies for supporting their young people to reduce the chance of them offending or engaging in the youth justice system.

³⁴⁵ Ibid 34-8.

³⁴⁶ McGinness, A. and McDermott, T. (2010). *Review of Effective Practice in Juvenile Justice: Report for the Minister for Juvenile Justice*. Noetic Solutions Pty Limited. Manuka, ACT.

RECOMMENDATIONS:

100. That the NT Youth Justice Act should be amended to ensure that diversion for certain minor offences, and certain types of offenders is complied with.
101. The court should have an unfettered power to refer a young person onto the diversion program, without requiring prosecution consent.
102. That young people receive more appropriate support to comply with diversion programs.

6.10 Restorative justice

APO NT directs the Royal Commission to NAAJA's submission to the National CEOs Group on the National Guidelines or Principles for Restorative Justice Programs and Processes for Criminal Matters. This submission supported culturally relevant restorative justice practices and recommended that Aboriginal culture and people be consulted and empowered at each stage of the Restorative justice process.³⁴⁷

6.10.1 Youth Conferencing

Youth conferencing and victim-offender group conferencing have substantial behaviour-change potential in relation to defendants in the criminal justice system. Group conferencing brings together the victim of an offence, community representatives, members of the defendant's families, and other appropriate stakeholders can have a powerful restorative impact on both the defendant and victim.

Group conferences have existed for many years as part of the NT Police Youth Diversion program and have been evaluated as being highly effective in reducing recidivism.³⁴⁸ The 2010 KPMG Review of the Youth Justice Group Conferencing Program in Victoria, also demonstrated that Group Conferencing significantly reduces recidivism amongst youth participants.³⁴⁹ The results of the report were overwhelmingly positive as they concluded that young people who participated in Group Conferencing were much less likely to have reoffended within 12 or 24 months (80 percent) than young people who received initial

³⁴⁷ North Australian Aboriginal Justice Agency. (2011). *Submission to the National Justice CEO's Group*, 2. Retrieved from <http://www.naaaja.org.au/wp-content/uploads/2014/05/NAAJA-Restorative-Justice-Submission-1-Sept-2011.pdf>.

³⁴⁸ Cunningham, T. (2007). 'Pre-court diversion in the Northern Territory: impact on juvenile reoffending.' *Trends & Issues in Criminal Justice*, Australian Government: Australian Institute of Criminology. Retrieved from: http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi339.pdf.

³⁴⁹ KPMG. (2010). Review of the Youth Justice Group Conferencing Program. Final Report to the Department of Human Services, Victorian Government. Retrieved from: http://www.dhs.vic.gov.au/_data/assets/pdf_file/0009/665586/Review-of-Youth-Justice-Group-Conferencing-program-2010.pdf.

sentences of probation or a Youth Supervision Order (57 per cent).³⁵⁰

In order to ensure youth conferencing and victim-offender mediation to play a significant role in reducing the overrepresentation of young Aboriginal people in the justice system, they must be properly resourced and operate in a culturally-relevant way. Also, with trained, experienced and qualified conveners, young offenders and their families would be encouraged to better recognise the causes of offending and would be better able to address those matters to reduce future offending.³⁵¹

The Committee on the Rights of the Child has encouraged States to support Indigenous Peoples to design and implement restorative justice systems and community-based programmes and services that consider the needs and cultures of Indigenous children, their families and communities.³⁵²

Court referred Youth Justice Conferencing has recently been reintroduced in Queensland, in recognition of its positive impacts for recidivism rates. The Jesuit Social Services are currently convening youth justice group conferences under section 8 of the *Bail Act* and commenced their group conferencing program in Darwin in February 2017. The group conferencing process occurs after a child has pleaded guilty and before they are sentenced. The conference is convened by a specialist convenor, and brings the young person, their parent/guardian, the victim and their support person, agencies working with the young person and police together to discuss the impact of the offending on the victim and how the harm caused by the child can be remedied. The outcomes are formulated into an outcome plan, which is then considered by the court prior to making a decision as to what sentence to impose on the child.

Case Study 24³⁵³

Interviews were conducted in early 2011 in Alice Springs with eight young recidivist Aboriginal offenders to inform a NGO report to the UN Committee on the Rights of the Child. As part of the interviews, the young people were introduced to the concept of group conferencing. All of the young people were receptive to the idea of group conferencing, commenting that they felt that it would be better to say sorry to the person to whom they caused harm and that it would be more beneficial

³⁵⁰ Ibid 2.

³⁵¹ Central Australian Aboriginal Legal Aid Service, *Submission to the Review of the NT Youth Justice System*, above n 137, 30.

³⁵² United Nations. (2009). *Convention on the Rights of the Child*. para. 75. Retrieved from: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAghKb7yhsqlkirKQZLK2M58RF%2f5F0vHflzasSO0EEddqWmq9j7BREhPNv8rsqw5s1P9yZnbT0%2bVCtG7gTjfUoMHKWMhfZjxkzJvW8MwfhHmnb02XKpht>; See also Human Rights Council. (2007). *Expert Mechanism on the Rights of Indigenous Peoples, Advice No 6: Restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities*, recommendation B.10. Retrieved from: http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Session7/A-HRC-EMRIP-2014-3_en.pdf; UNDRIP arts. 11, 18.

³⁵³ Central Australian Aboriginal Legal Aid Service, *Submission to the Review of the NT Youth Justice System*, above n 137, 28.

than court proceedings.

Case Study 25³⁵⁴

Families of four young Aboriginal offenders indicated to the CAALAS Community Youth Justice Project worker that they were extremely concerned about the criminal behaviour of the boys. In particular, the families were anxious that the four boys, who are all immediate family for each other, were increasingly engaging in criminal activity together rather than positive social activities. The families stated that they wanted to participate in family mediation together to identify the reasons for the boys' behaviour and identify strategies to encourage the boys to interact positively together. The families were also very vocal in their desire to participate in group conferencing together around the offending. Unfortunately, as no such services are available in Alice Springs, this was not possible. The boys were detained at the Alice Springs Juvenile Detention Centre for offending in which they were co-accused. Police raised concerns that as the boys had not undergone any therapeutic interventions together, they were likely to re-offend as a group upon their release.

6.10.2 Peer Panel

APO NT refers the Royal Commission to the Peer Panel Project as outlined in the NAAJA's Peer Panel Annual Report 2015-2016.³⁵⁵

The Peer Panel Project is a diversionary restorative justice program for students who have committed minor offences on school grounds. The project was established to harness positive peer influence as a way of assisting young people; engage young people to become active participants in the youth justice system; provide an opportunity for young people to learn about the law; and provide a career pathway for young people interested in the law.

The Peer Panel process holds the participant accountable for their actions by requiring them to accept responsibility and accept the penalty imposed by their peers. It also encourages a more active role on the part of the victim, by giving them an opportunity to explain to the panel and participant how the offending behaviour has negatively impacted upon them. In this way, Peer Panels have the ability to resolve conflict and repair the harm caused as a result of the misconduct.

The Peer Panel also has the ability to link troubled teens to needed services, including tutoring, mentoring, anger management, and drug and alcohol programs. The project has been influenced by the successful format of Youth Courts in the United States as well as Restorative Justice initiatives, including 'Circle Sentencing' employed in New Zealand.

NAAJA has developed a Student Court proposal building on the success of its Peer Panel initiative in 2016 and based on the successful Youth Court model across thousands of sites in

³⁵⁴ Ibid 30.

³⁵⁵ Campbell, O. (2016). *NAAJA Peer Panel Annual Report 2015-2016*.

the USA.

Funding has been secured from the Public Purpose Trust to contribute to the program. NAAJA's intent is to develop a sustainable, 3 year program including coverage for 4 schools in the greater Darwin region and expansion to Katherine and more broadly to enable the Northern Territory to be a leader nationally in this field.

6.11 Specialist courts

6.11.1 Specialist Youth Court

APO NT directs the Royal Commission to the initial CAALAS submission to the Office of the Royal Commission³⁵⁶ as well as the CAALAS and NAAJA's Submission to the Review of the NT Youth Justice System.³⁵⁷ APO NT also refers the Royal Commission to the NATSILS document *'Minimum standards for Aboriginal and Torres Strait Islander courts in Western Australia, South Australia, Victoria, Queensland & Northern Territory 2007-2010*, which outlines in detail how programs and community courts should be established and delivered in non-urban communities.

There is currently no specialist Youth Justice Court in Alice Springs. The current approach is alienating and intimidating for youth, and is often not conducive to therapeutic, diversionary and non-custodial options being properly explored. In Central Australia, young accused persons in custody are held within the same cell complex as adult offenders and those on bail are summonsed to appear await their court appearances in the same foyer as adult accused persons. The Youth Justice Court list is displayed at the end of the main court list within the court foyer.³⁵⁸

Case Study 26³⁵⁹

On a busy court day a young Aboriginal girl was in custody to appear in the Youth Justice Court. In addition to the girl's matter, there were several men, women and male youths in custody for court appearances. The Alice Springs court complex only has facilities for three separate cells; the largest cell was occupied by adult men in custody, the next cell by adult females in custody and the final cell by two young boys who were appearing before the Youth Justice Court. The young girl, being in the minority, was seated alone in the common area of the secure court cell complex alongside the prison guards. While waiting for several hours for her matter to be called before the court, the young girl was facing the transparent cells occupied by other alleged offenders and in clear sight of all of them.

³⁵⁶ Central Australian Aboriginal Legal Aid Service, *Preliminary Submission*, above n 33, 6.

³⁵⁷ Central Australian Aboriginal Legal Aid Service, *Submission to the Review of the NT Youth Justice System*, above n 137,; North Australian Aboriginal Justice Agency, *Submission to the Youth Justice Review Panel*, above n . Retrieved from: <http://www.naaaja.org.au/wp-content/uploads/2014/05/Youth-Justice-Review-Submission.pdf>.

³⁵⁸ Central Australian Aboriginal Legal Aid Service, *Submission to the Review of the NT Youth Justice System*, above n 137, 23.

³⁵⁹ Ibid.

When spoken to by her legal representative, the girl stated that she felt shame for sitting there in front of everyone.

It is essential that a specialist youth court in Alice Springs be established, and that as part of this all stakeholders and professionals engaged in the court environment, undertake specialist training to enable a more responsive child-centred approach to the needs of vulnerable young clients. The Royal Commission has heard evidence about a range of benefits of the specialist model available in Darwin. Legal outcomes for CAALAS' young clients will continue to be prejudiced if there is no provision for a Youth Justice Court in Alice Springs.

Both NAAJA and CAALAS have also identified that courtrooms used for Youth Justice Court proceedings, should be set up in a youth- friendly fashion. This will allow young people to be engaged in, rather than alienated from, the court process. Intimidating processes and formal courtroom procedures serve to further marginalise young people. This is particularly so for Aboriginal young people. It is NAAJA's experience that many Aboriginal young people do not understand the court process they are subject to – they experience it as foreign and rely on their lawyer to make sense of proceedings.³⁶⁰

APO NT is calling for a youth court for the NT, similar to that of the Koori Youth Court in Victoria. In Victoria, youth friendly court processes are facilitated by prosecutors not being in uniform, and counsel not standing when addressing the court. The Koori Youth Court has Aboriginal art and flags decorating the room. Other youth friendly features include:

- Addressing the young person by their first name (as opposed to Master or Ms);
- The magistrate not sitting on a raised platform;
- Sitting in a circle arrangement;
- Using youth friendly, simple language;
- Young people having the charge read in plain English; and
- Family and Elders being included in proceedings.³⁶¹

With Aboriginal young people comprising the majority of clients accessing the Youth Justice Court, it is important for the court to be both youth friendly, and culturally relevant. Youth justice will only be effective for Aboriginal young people if it is tailored to their socio-cultural needs, and they are encouraged and able to participate in proceedings. Likewise, magistrates, prosecutors and defence counsel servicing the court should be provided with youth-specific training to ensure they have appropriate skills for the clientele. This should include training in effective communication with young people, effective behaviour change techniques, and Aboriginal cultural awareness training.³⁶²

³⁶⁰ North Australian Aboriginal Justice Agency, *Submission to the Youth Justice Review Panel*, above n 116.

³⁶¹ Ibid 48.

³⁶² Ibid.

Substantial funds need to be allocated to the appropriate resourcing of Youth Justice Courts, in both Central Australia and the Top End, including for separate court infrastructure, wrap around services and specialist practitioners.

6.11.2 SMART & CREDIT Courts

The Government should continue to support programs that align with re-investment strategies such as the Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) Program and Substance Misuse Assessment and Referral for Treatment Court (SMART) COURT.

Winner of the Chief Minister's Award in 2006, the CREDIT program was a successful drug and alcohol diversionary program. It operated as a bail diversionary process for those charged with an offence linked to their drug or alcohol dependency. Since its inception in May, 2003, 286 clients have been referred by the Court to CREDIT NT. The overall completion rate for clients accepted into the program is 78.5% - being 56% of people referred to the program in Alice Springs and 83% of those referred in Darwin. The success of CREDIT NT in reducing illicit substance use harm surpassed expectation.³⁶³

On leaving her role as Chief Magistrate of the NT, Hilary Hannam delivered a presentation at the Indigenous Justice Conference where she highlighted:

"The fundamental issue that imprisonment does not operate as a deterrent to potential offenders, and generally does not appear to result in rehabilitation, particularly for those with mental illness or drug or alcohol issues. This is of course demonstrated by the number of repeat offenders and the difficulty many offenders have in reintegrating into their community after imprisonment."

To counter this, the SMART Court commenced operating in a limited capacity in the NT on 1 July 2011 and from 1 July 2012, the court operated with full capacity which included a holistic integrated case management model for people being issued with SMART orders. The court issued 108 orders by the end of March 2012. This court was of 'therapeutic jurisprudence' and heard criminal matters where the offender had a history of serious substance misuse and had committed an offence.

The court aimed to:

- Reduce offending and antisocial behaviour associated with substance misuse;
- Increase rehabilitation

³⁶³ Northern Territory Government. (2006). Chief Minister Awards, Retrieved from: <http://www.nt.gov.au/chiefministerawards/award-past-winners/2006-awards.html#collab>.

- Reduce the number of people re-offending and provide a pathway into treatment for problem drinkers; and
- Reduce the harms associated with substance misuse through improved health and social outcomes for people whose offending was related to substance abuse.

Ms. Hannam believed that this model of SMART Court:

“was potentially one of the best models in Australia, as it was the only court that could address both misuse of alcohol and illicit drugs, was available for youths and adult offenders, and enabled the Court to make orders appropriate for less serious and more serious and more serious offenders.”

Yet still after only 18 months of operation it was abolished by the Country Liberal Government in its December 2012 budget. An extract of Hilary Hannam’s speech highlights the inability of the government, in particular the Attorney General at the time, to understand the importance of therapeutic jurisprudence and the importance of drug and alcohol courts for offenders in the Northern Territory.

In the Second Reading Speech for the Act, he said *“this concept of therapeutic jurisprudence does not work in the Northern Territory”*, because *“It is beyond the capacity of many of the people who come before the SMART Court to change and to take change seriously. Many of them are welfare dependent and are quite happy that way.”* He went on to say that *“there is an expectation that Courts impose sentences which work as punishment, as well as deterring crimes. This concept of therapeutic jurisprudence steps away from the idea of punishment for a crime and of deterrent, and actually tries to embrace the individual and say: ‘you have to go and correct yourself and once you have corrected yourself, we will be nice to you’”*. Finally, he stated: *“it is that failure of therapeutic jurisprudence which has seen the increases in crime that we have seen.”*³⁶⁴

Strategies like the CREDIT Court and SMART Court, community controlled initiatives, alcohol management plans and voluntary residential rehabilitation are urgently needed to break the cycle of physical and social harm and the rate of incarceration. Given the increasing over-representation of Indigenous offenders, the financial and social costs of incarceration should be recognised, along with urgent consideration for alternative and more effective ways of reducing alcohol and drug misuse-related offences.

6.11.3 Law and Justice Groups

Law and Justice Groups (or Cultural Authorities) are an example of Aboriginal community-

³⁶⁴ Hannam, H. ‘Current Issues in Delivering Indigenous Justice: Challenges for the Courts’, Australasian Institute of Judicial Administration Indigenous Justice Conference. Retrieved from: <https://childdetentionnt.royalcommission.gov.au/public-hearings/Documents/evidence-2017/evidence8may/Exh-337-052.pdf> and Elferink, J (Shadow AG at the time), Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Bill – second reading in continuation, 5 May 2011.

driven responses to justice issues which empower local community Elders to participate in the criminal justice system, enhance traditional authority structures and work to resolve conflicts that arise in the community.

Successful examples of these Justice Groups are outlined in the NAAJA Submission to Senate Inquiry into the Value of a Justice Reinvestment approach³⁶⁵ and we have discussed some of these below.

APO NT directs the Royal Commission to the example of the Kurdiji³⁶⁶ currently operating in Lajamanu as an example of a successful community-led initiative that has been accommodated within the court system. The law and justice committee was formed in recognition of the need for customary law and the mainstream justice system to work together and asked for government assistance to establish a forum that could interface with the mainstream justice system and could work to bring the “two laws” together in a practical and meaningful way.

Despite being defunded in late 2003, the Lajamanu group reformed in 2010 with the support of NAAJA following community requests for its reinvigoration. The Kurdiji group meets before each Lajamanu court sitting to discuss community safety issues and provide crime prevention advice and contribute to pre-sentence reports to the court. NAAJA staff provide practical support for these groups to consider and write reference letters for the court. They are also routinely involved in informal dispute resolution, with the aim of proactively resolving small conflicts before they turn into larger problems. Much of this work is not observable by services and government yet has a substantial impact in the context of addressing issues before they escalate.

NAAJA does not receive dedicated funding for its support of Kurdiji and other Law and Justice groups and provides existing resources and capability to supporting these groups. NAAJA staff recognise the value and importance of supporting these groups and work over and above the standard expectations of their work role to support the leadership and work of these groups. Key staff have developed relationships with these groups over many years. The contribution of these groups is not resourced, and so Elders serve as volunteers in contributing to the legal process and on behalf of communities. Many of these Elders have significant, other responsibilities including supporting family.

There is significant potential to utilise, resource and empower Law and Justice groups (or Cultural Authorities) by more formally linking them into the justice system and by enabling

³⁶⁵ North Australian Aboriginal Justice Agency. (2013). *Submission to Senate Inquiry into the Value of a Justice Reinvestment Approach*.

³⁶⁶ Central Land Council. (2016). *Kurdiji 'Shield – to protect and discipline' Lajamanu Law and Justice Group*. Retrieved from: <http://www.clc.org.au/files/pdf/KurdijiNEbook-6.pdf>.

these groups to identify, support or facilitate culturally appropriate youth diversion activities and other engagements with youth. In the Top End, NAAJA is uniquely placed to be resourced and provide input into a model building on its established relationships and support of these groups and insight into the youth justice system.

RECOMMENDATIONS:

- 103. That the National Aboriginal and Torres Strait Islander Legal Services submission in relation to best practice minimum standards for Aboriginal Courts be referred to as best practice guidance for delivering programs in non-urban communities.**
- 104. That there be a physically separate specialist youth court in Alice Springs that takes a therapeutic and diversionary best-practice approach to the young people appearing before it. This would also allow for improved privacy for young people including court cells separate from adult prisoners and reduce unnecessary delays.**
- 105. That consideration be given to vesting the Youth Court with jurisdiction to hear matters relating to Care and Protection as well as Youth Justice.**
- 106. That government work with Aboriginal Legal Services to co-develop a model of youth justice which integrates the work of Law and Justice groups (or Cultural Authorities) including empowering, resourcing and authorising these groups across a range of activities and elements of youth justice.**

6.12 Throughcare Support

APO NT directs the Royal Commission to the recommendations discussed in APO NT's Submission to the NT Legislative Assembly Select Committee on the Prevalence, Impacts and Government Responses to illicit use of the drug known as "ice" in the NT.³⁶⁷

It is essential that Throughcare support be provided to young people across the Northern Territory. Whilst such a program operates successfully in the Top End, there is no equivalent in Central Australia, because of a lack of funded through-care service provision. This means that youth in Central Australia are not afforded equality of experience in the supports available to them. It also means that there is an increased chance that youth could re-offend post release. This is a time where there is a need for intensive supports, from across each

³⁶⁷ APO NT directs the Royal Commission to the recommendations discussed in Aboriginal Peak Organisations NT. (2015). *Submission to the NT Legislative Assembly Select Committee on the Prevalence, Impacts and Government Responses to illicit use of the drug known as 'ice' in the NT*, 9-11.

sector, to ensure that the youth gets back on track.³⁶⁸

The NAAJA Throughcare Program ('the Program') started in 2009 and is funded by the Department of the Prime Minister and Cabinet. The Program aims to reduce repeat offending by addressing the 'throughcare' needs of adults in prison and young people in detention. It has two prison-based Throughcare Support Workers who help clients with parole, and four Palmerston-based Intensive Case Managers who help clients prepare their post-release plans and provide assistance and support once they are back in the community. One of the Program's Case Managers works specifically with young people leaving the Don Dale Youth Detention Centre ('Don Dale'), many of whom are in the care of Territory Families. Accordingly, the NAAJA Throughcare Program Youth Case Manager ('the Youth Worker') has significant contact with key stakeholders in both youth justice and child protection contexts.

Youth Workers provide strength-based case management and referral services to help young people leaving detention access the support and services they need to reintegrate successfully and avoid future contact with the criminal justice system. To be eligible for the program, the young person must be Aboriginal or a Torres Strait Islander with a custodial sentence and be willing to participate in the Program voluntarily. Where possible, the Youth Worker starts working with eligible young people six months prior to their release dates to build a relationship and assist them to identify their post-release goals, needs and risks which informs the development of their post-release plan. Once a client is released from detention, the Youth Worker provides them with post-release support for as long as the young person deems necessary. This includes liaison with family and other service providers; practical assistance to meet appointments and access services; and the provision of social and emotional support.

The Program takes a collaborative approach to its case management. Accordingly, the Youth Worker works alongside relevant agencies, services and government departments when assisting a young person in detention to develop their post-release plans; and when supporting a young person after they are released from detention. Good relationships and a culture of collaboration with personnel from both the Northern Territory Department of Correctional Services (NTDCS) and Territory Families enhances the quality of the throughcare support the Youth Worker provides. While Program staff acknowledge those personnel within NTDCS and Territory Families who have worked with NAAJA collaboratively, the Program's work within the youth justice space means we are well placed to comment on the challenges our Youth Workers have faced doing their work, and the issues they see as affecting their clients' reintegration. Significant challenges have been observed by Youth Workers and have been expressed through this chapter.

³⁶⁸ See the recent work of Save The Children in Tasmania: <https://www.savethechildren.org.au/about-us/media-and-publications/media-releases/media-release-archive/years/2015/tasmanian-youth-justice-programs-make-3.5-to-1-return-on-investment-independent-study>

Case Study 27³⁶⁹

B, aged 17, was placed in the care of the Minister in Queensland as child and frequently moved between foster homes and her grandparents. When her mother moved to Katherine, B followed, though she did not have permission to do so. Soon after, her mother evicted her. B drifted to Darwin where she soon found herself in trouble. She served a portion of her sentence and was recently released under a suspended sentence.

Whilst in detention, NAAJA's Indigenous Throughcare Project worked extensively with B to plan her transition post-detention. From the outset of this process, B expressed an ambition to study nursing. To do so, would need to complete school. There is no statutory bar to someone of B's age enrolling in school, but schools that wish to exclude particular students can use age as a reason to obstruct enrolment.

B and her throughcare worker discussed the school she was to attend, the principal from the Don Dale School was consulted and preliminary contact was made with that school. The school balked at enrolling B, stating her age as a barrier and suggesting that a work ready program may best suit her needs. B's Throughcare worker made enquiries within the Education Department which confirmed there was no reason that B could not enrol in the school of her choice. The Education Department has a team that works specifically with students such as B who have special needs. B was awarded a caseworker who has worked tirelessly to secure B's education.

B enrolled in the Northern Territory Open Education Centre (NTOEC). NTOEC offered B a pathway into mainstream schooling. Without the support of NAAJA's Indigenous Throughcare Project, B may have fallen through a gap following the school system's rejection of her application. Without the focus of schooling and the motivation of a potential nursing career, she would have been at risk of re-offending.

RECOMMENDATIONS:

- 107. APO NT commends NAAJA's Throughcare Project as a best-practice model that should be expanded throughout the Northern Territory.**
- 108. The Northern Territory Government should fund dedicated Throughcare programs that would enable legal services to provide wrap-around and holistic intensive case management support to those with drug misuse problems exiting prison and youth detention.**
- 109. We recommend NTDCS enhance its focus on reintegration and better prepare young people for release by engaging them in individually tailored rehabilitation geared towards their needs and a greater emphasis on post-release planning, including the implementation of regular and documented joint case management meetings with interested parties and support services including Territory Families, community-based NTDCS staff, the young person themselves and their family**

³⁶⁹ North Australian Aboriginal Justice Agency, *Submission to the Youth Justice Review Panel*, above n 116, 66.

where appropriate.

- 110. We recommend the Northern Territory Government establishes a joint planning forum, similar to the NTAHF to meet regularly to discuss and develop appropriate interventions for/with young people deemed to be at risk and in need of support. Membership of this forum, would include representatives from NTDCS, DSS, PM&C, Territory Families with Aboriginal input led by the proposed Aboriginal Child Care Agency. It should not have community specific services on it, but NT wide peak bodies. The community specific services can seek representation with a mandate from the ACCA.**

6.13 Youth-Specific Parole Board

APO NT considers that there is a need to add provisions into the *Parole Act* to make it more youth-friendly and culturally appropriate. As identified in NAAJA's Submission to the Youth Justice Review Panel³⁷⁰ an important aspect of young people engaging in rehabilitation and a supported release, is allowing for their active engagement in parole proceedings and providing for natural justice.

APO NT also recommends that young people be supervised by youth specific parole officers. A transparent, youth-friendly parole system which engages young offenders is central to successfully reintegrating serious young offenders, and keeping them out of jail.

Case Study 28³⁷¹

A young Aboriginal man with limited English skills was found guilty of manslaughter following a fight that resulted in the tragic death of his 17 year old brother. Because the victim was under 18, the offender was placed on the Australian National Child Offender Registry (ANCOR) and was therefore subject to ongoing ANCOR reporting obligations on his release. These obligations were explained to him by his Parole Officer on one occasion approximately 6 months prior to his release, without the use of an interpreter. When released, he did not comply with the ANCOR obligations as he did not understand what they meant. As a result, he was arrested and returned to custody.

RECOMMENDATION:

- 111. Young people should be supervised by youth specific parole officers who approach their supervisory role using a youth-friendly intensive case management**

³⁷⁰ Ibid 67-8.

³⁷¹ Central Australian Aboriginal Legal Aid Service. (2013) *Submission to the Legal and Constitutional Affairs Committee Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia*, p.16. Retrieved from: <http://www.caalas.com.au/Portals/caalas/Submissions/2013/Submission%20to%20the%20Commonwealth%20Inquiry%20into%20Justice%20Reinvestment%20-%20March%202013.pdf>.

framework, as opposed to a strict statutory compliance model.

6.14 Conditions of youth detention

APO NT believes that youth detention should only be considered as a last resort. This section critiques the current application of youth detention, based on the experience of NAAJA and CAALAS.

The observations of NAAJA's Throughcare staff suggest the approach to offending behaviour at Don Dale is largely punitive in nature. When young people are deemed to have misbehaved, we understand options available to staff include removing privileges such as game consoles, denying them contact with family and/or placing them in the Behavioural Management Unit. A young person's security classification can also be increased which in turn affects their participation in programs and reintegration initiatives.

NAAJA is aware young people in Don Dale are asking for restorative responses to offending behaviours on the basis punishments meted out by YJOs fail to teach them anything and generate a sense of anger, resentment and a loss of control. As highlighted in the Hamburger Report, an effective system works to build positive relationships between troubled youth and positive, caring well-trained adults.³⁷² Our observations suggest this isn't the case at Don Dale. We note our understanding that young people in detention are not involved in the development of Behavioural Management Plans, thus missing an opportunity to engage young people in discussions about their behaviour. While we understand there is some access to group work orientated rehabilitation in Don Dale, it is our view a more therapeutic approach within the detention centre setting whereby offending behaviours are constructively responded to contemporaneously will be more effective in generating positive change.

RECOMMENDATION:

- 112. We recommend NTDCS establish a therapeutic environment within its detention centres and transition from their current punitive approach to offending behaviour and adopt a therapeutic methodology that provides young people with the opportunity to develop in socially responsible ways. This will require cultural change within youth detention and appropriate staff recruitment and training.**

6.15 Oversight of Youth Detention and Independent Office of Custodial Services

APO NT refers the Royal Commission to the Submission of NAAJA and CAALAS to the National

³⁷² Hamburger, above n 282.

Children's Commissioner³⁷³, in which the significant shortcomings in the current oversight, complaints and monitoring mechanisms that operate in the NT are highlighted.

In relation to complaints mechanisms it has been noted that young people face possible language and literacy barriers, as well as significant cultural barriers to utilising the complaints system, and will be affected by the power imbalance that exists between them as individuals and the Corrections system. It is therefore critical that a rigorous external complaints process exists and that there is an independent mechanism to identify and address systemic issues.

Australia is a signatory to the Australasian Juvenile Justice Administrators Standards for Juvenile Custodial Facilities³⁷⁴, which outline best practice standards regarding complaints and grievances processes at section 2.7. It is stated that best practice standards would require that "the centre provides young people with clear, accessible and fair avenues for lodging and resolving complaints and grievances, and with the opportunity to appeal decisions."

There is overwhelming need for an independent statutory body to be established to identify systemic issues in the delivery of correctional services in the NT, and to ensure greater governmental accountability. A Statutory Authority was recommended in the Hamburger Report to deliver adult corrections and youth justice services. To provide governance and oversight to this authority, it was also recommended that a board be established, which would be chaired by an Indigenous person. It would be encompass membership from: Indigenous people, experts in particular disciplines and industrial unions.³⁷⁵ APO NT supports this recommendation.

Also recommended in the Hamburger Report, is the need for an Inspector of Correctional Services to provide a 'watchdog' function over the correctional services governance and provide independent scrutiny of the department.³⁷⁶ The Office of the Inspector of Correctional Services will need to be independent from government, to ensure transparency and accountability.

RECOMMENDATIONS:

- 113. That the NT Government implement recommendation 3 of the Hamburger Report, relating to a Statutory Authority.**

³⁷³ North Australian Aboriginal Justice Agency and Central Australian Aboriginal Legal Aid. (2016). *Joint Submission to the National Children's Commissioner*.

³⁷⁴ Australasian Juvenile Justice Administrators. (1999) *Standards for Juvenile Custodial Facilities*, s 2.7. Retrieved from: <https://www.humanrights.gov.au/sites/default/files/Annexure%20H%20-%20AJJA%20Standards.pdf>.

³⁷⁵ Hamburger, above n 282, 7-8.

³⁷⁶ Ibid.

- 114. APO NT recommends that the NT Government urgently commissions a purpose-built youth detention facility in both the Central Australian and the Top End regions, based on best practice.**
- 115. That the NT Government implement recommendation 24 of the Hamburger Report, relating to the creation of an Office of Inspector of Correctional Services in the Northern Territory to strengthen overall governance and accountability of the NTDCS. APO NT recommend that this office is independent and the Inspector be Indigenous.**

6.16 Concerns with the NT Youth Justice System

6.16.1 Organisational Culture

The submissions and evidence presented to the Royal Commission detail a youth justice system that is not working. The ultimate goal should be to divert young people from involvement in the criminal justice system and avoid the use of detention, but this is not happening.

There is broad acknowledgement that there needs to be an overhaul of the organisational culture in the Department of Corrections, to ensure the focus is on therapeutic rehabilitation, not punishment. Change in the organisational culture of the youth justice system across the Northern Territory must be informed by the trauma informed principles outlined in Chapter 2.2.

APO NT refers the Royal Commission to the NAAJA and CAALAS' comprehensive submissions to the Youth Justice Review Panel in 2011 and also the recent submissions from NAAJA, CAALAS, Amnesty International, Danila Dilba, Central Australian Aboriginal Congress and AMSANT which acknowledge the need for an organisational change in NT Corrections.³⁷⁷

6.16.2 Classifications

As the Commissioners will be aware, a young person's security classification determines their access to opportunities within Don Dale, including rehabilitation. A high security classification should not be a barrier to a young person's access to rehabilitation. Where security concerns make it difficult for a young person to participate in a group setting, consideration should be given to the provision of alternative means of support and assistance.

We are concerned the review of security classifications is sometimes ad hoc and, like the imposition of a Behavioural Management Plan, it's our experience that the steps a young

³⁷⁷ North Australian Aboriginal Justice Agency, *Submission to the Youth Justice Review Panel*, above n 116, 28-30.

person needs to take to achieve a down-grade are often poorly-communicated, inconsistently implemented and unrealistic, without the provision of adequate behavioural support. The security classification system and the provision and withdrawal of privileges often seem to be determined on a subjective basis, depending on the relationship between a detainee and particular staff members. In our view, NTDCS staff appear to not take particular behavioural needs into account.

While we appreciate there are sometimes security risks and community safety concerns, security classifications also determine a young person's access to activities linked to their reintegration, for example, opportunities to leave Don Dale and engage in off-site treatment or education.

APO NT refers the Royal Commission to the Joint Submission from CAALAS, NAAJA and the NTLAC on the Review of Youth Detention in the Northern Territory, November 2014.³⁷⁸

RECOMMENDATION:

- 116. We recommend NTDCS ceases the use of security classifications to determine access to rehabilitation and ensures young people have access to rehabilitation and reintegration activities suited to their needs regardless of their classifications.**

6.16.3 Absence of standard operating procedures & Behavioural Management

APO NT refers the Royal Commission to the Joint Submission from CAALAS, NAAJA and the NTLAC on the Review of Youth Detention in the Northern Territory, November 2014³⁷⁹, and NAAJA's Submission to the Youth Justice Review Panel Review of the Northern Territory Youth Justice System.³⁸⁰

The Vita Report acknowledged that youth detention facilities in the NT are struggling to maintain service level standards in the absence of a coherent operating philosophy, staff training, direction, appropriate infrastructure and resourcing.³⁸¹

CAALAS has raised concern that there has been no Procedures Manual for the Alice Springs Juvenile Detention Centre (ASJDC), in contrast to the Don Dale Detention Centre, which instructs staff on procedures and management techniques with detainees.³⁸² The ASJDC was

³⁷⁸ Central Australian Aboriginal Legal Aid Service., Northern Territory Legal Aid Commission., & North Australian Aboriginal Justice Agency, above n 280.

³⁷⁹ Ibid 8-9.

³⁸⁰ North Australian Aboriginal Justice Agency, *Submission to the Youth Justice Review Panel*, above n 116, 28-30.

³⁸¹ Vita. M. (2015). Review of the Northern Territory Youth Detention System Report. Retrieved from: https://www.nt.gov.au/_data/assets/pdf_file/0004/238198/Review-of-the-Northern-Territory-Youth-Detention-System-January-2015.pdf

³⁸² Central Australian Aboriginal Legal Aid Service submission to the Royal Commission 2017.

opened prior to the development of a location appropriate manual. Apparently, existing staff had been tasked with amending the Don Dale Procedures Manual to apply to the ASJDC and have been engaged in this process.

In the absence of a Procedures Manual, CAALAS is concerned about the lack of consistency between the way different officers respond to issues within the ASJDC and methods of response adopted, such as the prevalence of solitary isolation. CAALAS is aware that several young detainees in the ASJDC are particularly high-risk and high-need clients who have previously been diagnosed with behavioural problems. CAALAS considers that periods spent in detention, particularly prolonged periods, provide a valuable opportunity to engage with detainees to improve their situation. However, in CAALAS' experience, the current procedures within the ASJDC do not reflect best practice in behavioural management.

Overwhelmingly, it appears that behavioural issues within the ASJDC are managed through solitary isolation of young detainees. Several detainees have reported to CAALAS that they have experienced significant periods in isolation although it is noted that these reports have not yet been substantiated with ASJDC staff. Northern Territory detention centres must develop and comply with evidence-based therapeutic policies and procedures to prevent, minimise and respond to behavioural issues. The Royal Commission has heard extensive evidence in relation to the ineffectiveness of isolation as a means of de-escalation and behavioural change, and the continued subjection of young people in such harsh confinement is unconscionable.

RECOMMENDATION:

117. APO NT commends the CAALAS, NAAJA and NTLAC's submission to the Review of Youth Detention in the Northern Territory, and recommend that:

- a) a therapeutic, evidence-based approach to behaviour management be adopted in all detention centres in the Northern Territory, supported by ongoing staff training;
- b) an independent statutory office or body with expertise in custodial services, such as an Independent Custodial Inspector, be introduced in the Northern Territory; and
- c) a contemporary operations manual be developed and implemented, modelled on best practice policies and procedures and that this manual be made available to legal services and other stakeholders.

The role of Corrections Officers and DFC workers should be redefined. Client-centred approaches that assist young offenders deal with the issues linked to their offending that place a greater emphasis on support, supervision and mentoring should be preferred to the

current approaches, which are characterised by a focus on statutory compliance.³⁸³

6.16.4 Use of restraints, force, isolation and 'placements'

APO NT directs the Royal Commission to the Joint Submission from the CAALAS, the NAAJA and the NTLAC on the Review of Youth Detention in the Northern Territory, November 2014³⁸⁴ and the Joint Submission from CAALAS and NAAJA to the NT Department of Children and Families³⁸⁵

APO NT is extremely concerned about the over-reliance of force and isolation as a response to behavioural issues. The use of force and solitary confinement can have an extremely adverse impact on the health and wellbeing of detainees, and often exacerbates rather than quells, challenging behaviours. Both NAAJA and CAALAS believe that the legislative protections under section 153 of the *Youth Justices Act* and the Youth Justice Regulations around the use of force and isolation are inadequate. Also, if isolation is used as a disciplinary response to behavioural issues, then it constitutes a breach of rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Beijing Rules), as well as the Australian Juvenile standards.

The least restrictive means should be applied and exhausted before restraints should be used. Restraints should not become a common tool for the movement of detainees. The use of restraints on a routine basis potentially could exacerbate the effects of trauma on a youth who may have been subjected to abuse or confinement previously.

The focus should be on relational security which requires properly trained staff with a firm understanding of their role and the youth they are responsible for, and with whom they develop positive working relationships with. The Children's Commissioner's Final Investigation Report³⁸⁶ went to these issues and made 21 recommendations to the NT Government, which included prohibiting the use of restraint chairs on youth detainees. In response to the recommendations in this Report, the NT Government introduced the *Youth Justice Amendment Bill 2016* and committed to engaging with stakeholders to 'ensure our

³⁸³ See recommendation 12, from the Northern Territory Government. (2011). Review of the Northern Territory Youth Justice System: Report, 30. Retrieved from:

https://www.nt.gov.au/_data/assets/pdf_file/0017/238211/youth-justice-review-report.pdf

³⁸⁴ Central Australian Aboriginal Legal Aid Service., Northern Territory Legal Aid Commission., & North Australian Aboriginal Justice Agency, 10.

³⁸⁵ North Australian Aboriginal Justice Agency and Central Australian Aboriginal Legal Aid. (2012). *Joint Submission to the NT Department of Children and Families: Secure Care, Care and Protection (Therapeutic Orders) Amendment Bill 2012*. Retrieved from: <http://www.naaja.org.au/wp-content/uploads/2014/05/120720-CAALAS-NAAJA-Submission-to-the-Secure-Care-Consultation-Final.pdf>.

³⁸⁶ Office of the Children's Commissioner NT. (2016). *Own Initiative Investigation Report - Services Provided by the Northern Territory Department of Correctional Services to Don Dale Youth Detention Centre Alice Springs Youth Detention Centre*. Retrieved from: http://www.childrenscommissioner.nt.gov.au/pdfs/other_reports/PDF%20Final%20Investigation%20Report.pdf.

youth justice system in the Northern Territory becomes a leading example of evidence-based best practice.’³⁸⁷

RECOMMENDATIONS:

- 118. We recommend the implementation of policies, procedures and strategies to minimise the use of force, strictly limit the circumstances in which isolation may be use and place stringent safeguards around its use.**
- 119. That provisions are made in relation to restraint and seclusion to stipulate the situations in which they may be used in Secure Care, the approval required for their use, the way in which they may be used and records that must be maintained with respect to their use. These provisions should emulate sections 61 and 62 of the Mental Health and Related Services Act.**

6.16.5 Training of staff working with youth in detention centres

APO NT directs the Royal Commission to our Media Release in response to the Children’s Commissioner’s report into the services provided by the Department of Correctional Services (“DCS”) and the Don Dale Youth Detention Centre.³⁸⁸

The Commission has heard considerable evidence about the importance of staff training and necessary qualifications when working with youths in youth detention services. A significant issue that has been acknowledged, is that staff lack training in working with vulnerable children and de-escalation skills.

Both NAAJA and CAALAS have repeatedly stressed to governments that there is a critical need for improvements to corrections staff recruitment, training and development. In a submission to the Youth Justice Review in 2011, CAALAS expressed:

That human resourcing in the Alice Springs Juvenile Detention Centre is not appropriately focused on the recruitment and retention of staff specifically trained to work with young people... It has become apparent that officers are being encouraged to apply for work on a part-time basis in the ASJDC. Consequently, many staff in the ASJDC possess a background in security and/ or adult correctional services rather than the necessary restorative

³⁸⁷ Wakefield, D. (2016, October 26). NT Government takes action on Children Commissioner’s report. Retrieved from: <http://newsroom.nt.gov.au/mediaRelease/21441>.

³⁸⁸ Aboriginal Peak Organisations NT. (2015, September 24). *Don Dale Crisis: Report Highlights Shocking Treatment of Kids in Juvenile Detention* [Media Release]. Retrieved from: <http://www.amsant.org.au/apont/report-highlights-shocking-treatment-of-kids-in-detention-and-need-for-urgent-action/>.

characteristics and experience requisite for positive engagement with young people.³⁸⁹

More concerning is that:

Discussions with clients who were in custody at this time (and at ASYDC after the closure of Aranda House) have indicated that there was an entrenched culture of abuse, in which they saw violent and abusive behaviour by staff as the norm rather than the exception. Clients have confirmed that they thought this behaviour was normal, and have asked how their treatment was meant to be different. Clients apparently had little knowledge of their rights in a system and have indicated it was hard to access this information from corrections staff.³⁹⁰

APO NT believes that there is a critical need for improvements to youth detention and corrections staff recruitment, training and development. APO NT supports Danila Dilba's stance that 'All frontline staff should receive ongoing training in trauma informed practice, child development and leadership to build professional workforce capacity, consistent practice and collaboration'.³⁹¹

Case Study 29

NAAJA was conducting a clinic with the detainees regarding their rights. The NAAJA staff repeated that, although the deprivation of freedom is punishment, the centre is meant to be a place of rejuvenation and not punishment. The NAAJA staff repeatedly stated that it is incumbent on all staff to send the young people out in the best possible condition and to nurture their ambitions. A staff member asked the NAAJA representatives what they were talking about. The NAAJA representative explained that the Youth Justice Act emphasises the difference between adults and young people, and that rehabilitation of youth is an important principle. The system must reflect that; all people working with the young people must be mindful of furthering the young person's rehabilitation prospects. This staff member stated that this was the first time anyone had said this to him.

RECOMMENDATIONS:

- 120. That each young person be informed, in a language and manner they understand, of detention centre rules and processes and their rights and responsibilities, including their rights under the Australian Children's Commissioners and Guardians Model Charter of Rights for Children and Young People Detained in Youth Justice Facilities.**
- 121. That youth detention staff recruitment and training be immediately brought into line with best-practice standards in other jurisdictions.**

³⁸⁹ Central Australian Aboriginal Legal Aid Service. (2011). *Submission to the Review of the NT Youth Justice System*, 34.

³⁹⁰ Central Australian Aboriginal Legal Aid Service. (2016). *Initial submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory*, 9.

³⁹¹ Danila Dilba Health Service, above n 285.

122. We recommend NTDCS to:

- a) employ appropriately qualified and experienced staff to guide behavioural interventions, train custodial staff in constructive behavioural management;**
- b) work with young people to both address the causal factors associated underpinning problematic behaviours and help them apply socially responsible responses in situations of stress; and**
- c) employ Aboriginal mentors who can provide young people with pro-social support in detention centres.**

6.16.6 Education in youth detention

In our experience, the system's interest in responding punitively to a young person's offending behaviour while in detention prevails over their right of access to education. When young people are placed in the Behavioural Management Unit for misbehaving, they are denied access to the classroom, thereby disrupting their education. We also note they are also unable to participate in offender programs. As pointed out in the Hamburger Report, there is research showing that academic difficulties and offending behaviour is linked and that educational achievement can reduce a youth's propensity to offend.³⁹²

APO NT is concerned about youth in detention being deprived of education. APO NT acknowledge that youth in detention will at times pose serious challenges in relation to how to manage their behaviour, but youth should not be punished through withdrawing educational material or access to tuition. APO NT members were also shocked to hear the evidence before the Royal Commission of Aboriginal children being told that they cannot speak their language in classes and the lack of interpreters in the detention education setting.

Obviously, education promotes access to pro-social opportunities and can lead to a sense of achievement and purpose – and therefore represents a significant protective factor. While acknowledging the challenging behaviours some of the young people in Don Dale, we are of the view that restricting their access to education further disadvantages them and their prospects of a successful reintegration. There is a lack of programs encouraging pro-social activities, such as the recently completed Darwin Sailing Program run by Mission Australia, and the lack of funding available to support disadvantaged young people to access pro-social activities such as sport, vocational training and study. We also note many youth in detention struggle in mainstream education and often find it difficult to enrol in formal education options due to release dates not coinciding with school semester systems.

APO NT would like to draw the Royal Commission's attention to RMIT's Centre for Innovative

³⁹² Hamburger, above n 282, 159.

Justice's submission to the Royal Commission, especially the section on Parkville College in Victoria.³⁹³ This Submission discusses the establishment of the Parkville College, which is based at three custodial centres in Victoria and incorporates culturally appropriate, trauma informed practices and establishes safeguards for young people in detention. The model also reflects the overrepresentation of Indigenous people in detention, by offering cultural connection and an education program. A similar model could be implemented in the NT.

Case study 30³⁹⁴

Parkville College in Victoria appears to have made a remarkable transformation since the 2010 Ombudsman's Report that documented squalid living conditions, frequent assaults by staff and other young people, poorly trained youth detention staff, poor food quality, and almost non-existent education.

Four years later, facilities and buildings are clean and secure. Food is made on-site. Security is improved and staff are properly trained. Assaults amongst young people declined significantly.

Most significantly, education has been revolutionised. It has a dynamic school principal and staff, and they offer both in custody and transition schooling all year round. High achieving and motivated teachers are specifically recruited to the centre, and the school uses a trauma informed approach and has a strong focus on the use inclusive practices. Students are told that they will not be excluded from education. Students understand that education is a basic human right. Volatile incidents in the school have been drastically reduced.

Similar to the Northern Territory, most have not regularly attended school and have extremely limited literacy and numeracy skills. Parkville College received formal accreditation in 2013 as a school offering classes from year 2 to VCE. Previously young people received less than eight hours of education a week. Now the school runs all year, six days a week. Young people who were previously written off are progressing through multiple year levels and are also taught life skills, and how to hold down a job.

The other best practice feature is the use of risk based searches as opposed to routine strip searches, which is particularly relevant for young Aboriginal women. This change in policy happened as a way to drastically reduce the number of strip searches, so that young people are only searched when there is a reasonable belief that they are concealing contraband. Currently women are stripped on a routine basis (i.e. every time there is a contact visit, court attendance etc.).

RECOMMENDATIONS:

123. That children in detention receive access to education that is culturally appropriate, and can utilise the assistance of interpreters where necessary.

124. Territory Families should ensure that young people in detention are not restricted

³⁹³ Centre for Innovative Justice. (2016). Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, p. 7-11. Retrieved from: <http://mams.rmit.edu.au/ovsmzmhmnerl1.pdf>.

³⁹⁴ Central Australian Aboriginal Legal Aid Service., Northern Territory Legal Aid Commission., & North Australian Aboriginal Justice Agency, above n 280, 5.

from participating in cultural practices, such as speaking their own Aboriginal languages.

- 125. We recommend NTDCS addresses issues related to a young person's access to education while they are in detention and ensures this access is preserved even when a young person is deemed to have behaved offensively.**

6.16.7 Culturally appropriate youth prison programs

NAAJA and CAALAS have both advocated for culturally relevant and appropriate programs in both the Top End and Central Australian region.³⁹⁵ APO NT supports the implementation of such programs for young Aboriginal people in detention and submits that local Aboriginal organisations should be adequately funded to assist in the provision of these programs.

Amnesty International's *'There is always a Brighter Future'* highlights that Aboriginal people must design and lead programs, referencing General comment 11 of the Committee on the Rights of the Child:

States parties should seek to support, in consultation with Indigenous peoples, the development of community based policies, programmes and services which consider the needs and culture of Indigenous children, their families and communities. States should provide adequate resources to juvenile justice systems, including those developed and implemented by Indigenous people.³⁹⁶

The commission has consistently heard evidence about the lack of cultural activities and programs available for young people in detention. The Commission has also heard evidence emphasising the value of these programs and also an extensive list of programs that are offered elsewhere. Therefore, APO NT believes that there is a clear evidence base to support culturally sensitive therapeutic programs, that take account of Aboriginal lifestyles, values, aspirations, family and differing needs and that also encourage reconnection, community life, restoration and community resilience.³⁹⁷ Cultural connection with Elders, culture and community is pivotal to addressing the emotional and wellbeing needs of Aboriginal youth in detention.

RECOMMENDATIONS:

- 126. Cultural information should be obtained from young people (to the extent that is**

³⁹⁵ Ibid, 3.

³⁹⁶ Amnesty International, *A Brighter Tomorrow*, above n 12.

³⁹⁷ Dudgeon, P. Walker, R. Scrine, C. Shepherd, C. Calma, T. and Ring, I. (2014). *Effective strategies to strengthen mental health and wellbeing of Aboriginal and Torres Strait Islander people*. Issues paper 12, Closing the Gap Clearinghouse. Retrieved from: http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Our_publications/2014/ctgc_ip12.pdf.

culturally permissible), during intake, so that details of the young person's culture, family, language and status within the community are known and can be considered during planning and decision-making for that young person.

127. That NTDCS review their rehabilitation programs and work towards greater responsivity whereby programs are tailored to meet the needs of young people in detention in the Northern Territory. We consider this will require the greater involvement of Aboriginal people, both in terms of program design and facilitation.
128. We recommend the Northern Territory Government establishes a fund similar to the NAAJA Throughcare Program, that services in the Top End and Central Australia can apply to in order to support a disadvantaged young person's interests in engaging in activities such as sport, training and education.
129. Programs and services for young people in detention should be designed and implemented to strengthen ties and understanding of culture. The NT Government should fund a wide range of culture-strengthening programs for youth in detention, whether on remand or serving a sentence.

6.16.8 Substandard Infrastructure

APO NT directs the Royal Commission to the Joint Submission from CAALAS, NAAJA and the NTLAC on the Review of Youth Detention in the Northern Territory, November 2014³⁹⁸.

Youth detention facilities in the Northern Territory are inappropriate, substandard, and in some areas, breach Australian and international juvenile justice standards. APO NT supports Keith Hamburger's recommendation that the current Don Dale Youth Detention Centre is totally unacceptable accommodation for young people in detention.³⁹⁹

APO NT suggests that the need for new infrastructure for youth detention facilities provides an opportunity to move to de-institutionalising the design of youth detention facilities as much as possible to best serve the goal of safety and rehabilitation.

RECOMMENDATION:

130. That there be a focus on de-institutionalising the design of youth detention facilities as much as possible to best serve the goal of safety and rehabilitation.

³⁹⁸ Central Australian Aboriginal Legal Aid Service., Northern Territory Legal Aid Commission., & North Australian Aboriginal Justice Agency, above n 280, 5-6.

³⁹⁹ Hamburger, above n 282, 159, Recommendation 66.

6.16.9 Healthcare within youth detention

Without the support and advocacy of NAAJA's throughcare and CAALAS' lawyers, several of their clients would not have received or obtained necessary medical intervention. For example, in 2014 the NAAJA Throughcare team identified that a client who had been in custody for two years had issues with his vision. We organised testing and treatment for him on the basis NTDCS and Territory Families told us they did not have the resources. That same year we assisted another young detainee obtain medical treatment for an ear issue – the young person required intervention by staff at Royal Darwin Hospital that we are confident would not have been accessed without our advocacy. Consistent with the well-publicised prevalence of hearing issues among Aboriginal people, we have assisted other clients in detention with hearing issues that would have otherwise gone unidentified and therefore untreated. Research and professional commentary draws a clear link between hearing issues in young people and their contact with the criminal justice system.

For further information see the Joint Submission from CAALAS, NAAJA and the NTLAC on the Review of Youth Detention in the Northern Territory, November 2014⁴⁰⁰ and APO NT's Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into Foetal Alcohol Spectrum Disorder.⁴⁰¹

RECOMMENDATIONS:

- 131. We recommend NTDCS and Territory Families drastically improve the health screening of young people in their care through services coordinated through local ACCHSs, and train their staff to better recognise and respond to medical issues, particularly in relation to hearing and sight.**
- 132. We recommend NTDCS and Territory Families be properly resourced to adequately deal with health issues in a timely manner.**

6.16.10 Absence of therapeutic programs, pro-social activities

APO NT directs the Royal Commission to the Joint Submission from CAALAS, NAAJA and the NTLAC on the Review of Youth Detention in the Northern Territory, November 2014⁴⁰²

A fundamental shift is needed in youth detention. A proactive, problem-solving approach is

⁴⁰⁰ Central Australian Aboriginal Legal Aid Service., Northern Territory Legal Aid Commission., & North Australian Aboriginal Justice Agency, above n 280, 12-13.

⁴⁰¹ Aboriginal Peak Organisations NT. (2014). *Submission to the Australian House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into Foetal Alcohol Spectrum Disorder*, 19-21. Retrieved from: <http://www.naaaja.org.au/wp-content/uploads/2014/05/APO-NT-Foetal-Alcohol-Spectrum.pdf>.

⁴⁰² Central Australian Aboriginal Legal Aid Service., Northern Territory Legal Aid Commission., & North Australian Aboriginal Justice Agency, above n 280, 9-12.

required to identify the health, social and education issues a young person faces so that an holistic response can be developed.

The development and promotion of healthy behaviour and social norms amongst young people are critical in reducing the over-representation of Aboriginal young people in the justice system. Aspects of the criminal justice system itself serve to discourage positive social engagement for young people in the Northern Territory.⁴⁰³

There are significant concerns that when young people in detention modify behaviour it is being achieved through deterrence due to fear of isolation, rather than the development of positive and pro-social conduct and behavioural management which will improve the young person's behaviour and life-skills post release.

RECOMMENDATIONS:

- 133. That all staff within NT Detention Centres are provided Therapeutic Crisis Intervention Training to better equip them to understand and utilise behavioural management techniques and encourage detainees' learning and development through crises.**
- 134. That a therapeutic, evidence-based approach to behaviour management be adopted in all detention centres in the Northern Territory, supported by ongoing staff training.**
- 135. That multi-disciplinary case management of detainees commences from admission, and targets the specific needs of each young person – it is especially important that culturally-strengthening, therapeutic and child centred programs and services be identified for Aboriginal young people in detention and for a period following release to ensure successful reintegration into community.**

6.16.11 Transfers to adult prison

CAALAS alongside other services in Central Australia, such as NT Legal Aid Commission, has expressed ongoing concern at the practice of transferring young people in detention in Alice Springs to Darwin. Young people from Central Australia, often do not have extended families in the Top End. As such, they are significantly disadvantaged if they are transferred to a detention centre far away from their communities and support networks. This practice is inconsistent with the principle of preserving and strengthening family relationships as required by s4 (h), of the Youth Justice Act. Alienation from family and community is not

⁴⁰³ Central Australian Aboriginal Legal Aid Service, *Submission to the Review of the NT Youth Justice System*, above n 137, 36.

conducive to rehabilitation.

Further, the transfer of a young person from Darwin to Alice Springs disadvantages that young person in relation to assessments that may be necessary to plan bail proposals and non-custodial outcomes. There can be difficulties for a lawyer in progressing a matter and taking instructions where face to face contact is not possible.

Concerns have also been raised as to the method of transfer, which have often involved young people being transported on a commercial flight and walked through the Alice Springs airport in handcuffs.

In transferring youth to the adult prison, the NT Government did not follow s151 of the *Youth Justice Act*, which requires that the Superintendent of a youth detention centre must:

- a) promote programs to assist and organise activities of detainees to enhance their wellbeing; and
- b) encourage the social development and improvement of the welfare of detainees; and
- c) maintain order and ensure the safe custody and protection of all persons who are within the precincts of the detention centre, whether as detainees or otherwise; and
- d) be responsible for the maintenance and efficient conduct of the detention centre; and
- e) Supervise the health of detainees, including the provision of medical treatment and, where necessary, authorise the removal of a detainee to a hospital for medical treatment.

In a court matter on 7 January 2015, her Honour Ms Armitage SM made comment that the current environment at the Berrimah Youth Detention Centre is one where there are limited programs, no therapeutic interventions and the approach is principally one of containment, rather than giving sufficient weight to rehabilitation.⁴⁰⁴ Her Honour said this is very concerning.

RECOMMENDATIONS:

- 136. That an appropriate facility be built in Central Australia to avoid the need for young people to be transferred due to overcrowding and infrastructure issues.**
- 137. That any decision-making in relation to potential transfers must involve the young person, their family and their lawyer and that no young person is transferred against their will.**

⁴⁰⁴ Aboriginal Peak Organisations NT. (2015, June 3). 'Hard-line approach is failing our kids, and the community' [Media Release]. Retrieved from: <http://www.amsant.org.au/apont/wp-content/uploads/2015/01/20150603-APO-NT-MR-Hard-line-approach-is-failing-our-kids-and-the-community.pdf>

- 138. That a greater range of programs are made available in Alice Springs, so that young people do not have to choose between remaining in Alice Springs and accessing programs in the Top End.**

6.17 Territory Families

Many of the young detainees the NAAJA Throughcare team has worked with have been in the care of Territory Families. It is our overwhelming experience that Territory Families do not provide these young people with adequate care and support. A significant part of Throughcare's role is to assist a young person when they are preparing to leave detention and develop their post-release plan. The Throughcare team at NAAJA are conscious that, as the Northern Territory's statutory child care and protection agency, Territory Families ought to be taking the lead role in ensuring the young person has adequate plans upon release. However, on numerous occasions, this is not happening.

Territory Families is sometimes unable to tell Throughcare who a young detainee's Case Manager is despite them being in the care of the Department. The Throughcare team also note that a young person's allocated Case Manager often changes, making it difficult to establish rapport, trust and continuity.

Youth detainees in the care of the Department are often visited by a Territory Families Youth Worker rather than their Case Managers, thereby preventing the young person from meaningful engagement with their Case Manager and participation in decision-making processes that affect them.

Planning and coordination leading up to a young person's release from detention tends to be poor. The Throughcare Youth Workers and the young people concerned are given limited opportunity to work collaboratively with Territory Families to develop a post-release plan. Where case conference meetings do occur at Don Dale, one Youth Worker reports that the young person concerned is not invited to attend. In NAAJA's view, young people are far more likely to understand and accept a post-release plan when they have been given an opportunity to participate in its development. However, the Throughcare team believe that Territory Families currently operate from a disempowering framework in which the views of young people are not taken into account and decisions are imposed on them.

NAAJA Youth Workers regularly encounter situations where a young person's views regarding, for example, their accommodation or education are not taken into account or meaningfully discussed with them. It is also the Throughcare team's experience that Territory Families often do not advise young people leaving detention of their accommodation arrangements until the day of release. Being released from detention is already a stressful

situation for a lot of young people. Not knowing where they will be staying or who will be caring for them compounds their anxiety.

From NAAJA's perspective, there appears to be a practice within Territory Families to postpone developing a young person's post-release plan until they are within a short time of their release dates. Indeed, NAAJA is aware of several clients denied parole because Territory Families have not been able to provide the Parole Board with adequate or suitable post-release plans. NAAJA is also aware of a case in which Territory Families asked the court to keep a young person in detention due to the lack of a post-release plan after the custodial component of a suspended sentence had ended, despite having months to work something out during the pre-release phase.

The lack of care and support provided to young people in detention mirrors the attention paid to them post-release. A Throughcare Youth Worker is often required to drive a post-release plan and advocate for the provision of therapeutic, educational and pro-social service provision.

Case Study 31

A young Aboriginal person in the care of the department released from Don Dale in August 2016, reports seeing his Case Manager on only a few occasions since leaving detention.

During that time, his Youth Worker at an Aboriginal Legal Services has assisted him with the reporting requirements of his court order, shopping, access to education and training, the securing of his driver's licence, meeting his appointments with his doctor, attending Centrelink, liaising with a potential employer and obtaining his TFN. She also engaged him in conversation about drug and alcohol use, healthy relationships and the Royal Commission. Territory Families placed this young person in Safe Pathways accommodation following his release from Don Dale.

Upon his arrival at the home there was no mattress on his bed, louvers were missing from his bedroom windows, there was no flyscreens and the lights and the air conditioning unit were not working. The living room contained one couch with no cushions and exposed springs. While the young person's Parole and Probation Officer endorsed a move to a new address, Territory Families did not actively engage him about the accommodation until after he had moved out. In addition, NAAJA's Youth Workers often had to engage in strenuous advocacy with Territory Families to access basic support and service provision, for example for funds to pay for training, sporting equipment and even glasses.

Like their counterparts at NTDCS, Territory Families can employ punitive responses to offending behaviour, or even just minor infractions. As noted above, Territory Families worked collaboratively with NTDCS staff to report a young person to the police for spitting at Youth Justice Officer's while in detention. However, the approach extends to young people back in the community.

We also know of clients being reported to the police by Territory Families for minor breaches of bail, parole and probation orders, for example by breaking a curfew by 30 minutes or because they thought they smelt of marijuana.

Throughcare's view is that these responses do not reflect good parenting practices and duplicate the rigidity of a custodial setting. Good child protection practices should aim to prevent young people from entering the criminal justice system and teach them the life skills necessary to function in socially responsible ways. However, it would appear to the Throughcare team that Territory Families' reliance on the criminal justice system at the expense of good parenting practices results in children spending time in custody – an environment a significant body of research tells us is seriously detrimental to a young person's personal development and social prospects.

There is limited emphasis on family consultation and/or reunification. Throughcare's observations suggest that Territory Families is very quick to seek care and protection orders that extend to a young person's 18th birthday without taking meaningful steps to work with a family to address the outstanding issues and work towards reunification. Working with families appears to be ad hoc and unstructured, with no clear plans in place which communicate clearly to family members or Territory Families staff expectations and action points. In our experience, there is limited consultation with families or even the young person about the development and implementation of care plans. While Territory Families has on occasion told us they are responsible for the care and protection of young people in their care and are therefore not legally obliged to consult with family members, we consider this approach to represent extremely poor practice. In our view, approaches that encourage participation, self-determination and accountability are much more likely to engender social change. We also suspect Territory Families 'encourage' families to make positive changes by threatening them with delayed or even cancelled reunification planning. In our view, a much more effective approach would be strengths-based in nature and would support families to address issues through appropriate and culturally-relevant service provision.

Territory Families do not provide adequate support to young people in their care after they turn 18. Whilst care and protection orders end when a young person turns 18, we consider Territory Families should still be obliged to provide a level of assistance and support. Obviously, 18 years old is a very young age for someone to go it alone, especially given the dysfunction and disadvantage they have experienced as children and young people. As in other jurisdictions in Australia and internationally, young people leaving care should be provided with support to help them with their transitional needs and ensure social risks are identified and addressed. We acknowledge some support is available to young people leaving the care of the department through Anglicare's 'Moving On' program, but consider a more robust case management service is needed which includes accommodation and support

workers to assist with life skills development, training and education, etc.

In relation to accommodation specifically, recent experience suggests Territory Families relies on transitional accommodation options with services such as Anglicare or the YMCA when developing a young persons' exit plan. We do not consider this adequate, particularly as the youth we work with are generally not ready to live independently at the age of 18. We also note Anglicare and the YMCA are sometimes hesitant to accept young people as they are not technically homeless at the time Territory Families are making their referrals. Other issues we are aware of include Territory Families putting pressure on a young person to move back in with family, and moving a young person out of a care home facility in which she had developed positive relationships with care staff and into a hotel room on her 18th birthday.

Territory Families do not investigate and address the care and protection issues of young people not yet in their care while they are in detention. We are aware of at least one case where Territory Families declined to investigate a detainee's care and protection needs until the day of his release because he was deemed to be in the care of NTDCS and was therefore 'safe'. We are concerned this approach to investigations negates a planned and well-considered intervention and promotes a crisis driven response. In the example noted, it also meant the young person concerned was refused early release on parole. Quite understandably the Parole Board were concerned issues regarding the young person's care and protection issues had not been addressed.

RECOMMENDATIONS:

139. We recommend that the NT Government:

- a) significantly overhauls Territory Families with a view to creating cultural change within the department. We recommend Territory Families be encouraged to take a more inclusive, consultative and strengths-based approach to its care and protection interventions;**
- b) develop an Aboriginal Employment and Advancement Strategy to ensure Aboriginal thinking and methodologies significantly permeate institutional cultural change;**
- c) adequately fund Territory Families to be able to employ more staff with relevant qualifications and experience to guide and improve current practices.**

140. We recommend that Territory Families:

- a) maintain a significant focus on the care and protection issues of a young person in their care, even when they are in detention;**
- b) investigate care and protection issues and concerns associated with**

young people in detention well in advance of a release date, non-parole periods and post release planning to ensure appropriate and well considered parole applications, care plans can be developed and implemented.

- c) ensure that Case Managers maintain regular face to face contact with their allocated young person while they are in detention and take the lead role in consultation with that young person and, where appropriate, their families, in the development of their care plans and post-release plans.
- d) It is recommended a strengths-based approach be taken whereby the young person's goals and perspectives are discussed and meaningfully taken into account.
- e) resource holistic care plans and provide financial support regarding pro-social, vocational and educational endeavours;
- f) preference foster placements rather than residential care homes where out of home care is necessary;
- g) place greater emphasis and expedite processes to identify, resource and support kinship placements; and
- h) take a criminal justice response to offending behaviours sparingly and as a last resort;
- i) restrict the pursuance of orders placing a young person in their care until the age of 18 and take a participatory approach with young people and their families regarding the development and implementation of reunification planning and both support and adequately resource families to address the challenges and issues underpinning concerns of a care and protection nature;
- j) be resourced to support young people in their care beyond the age of 18. While we accept Territory Families will no longer have statutory care and protection obligations, young people leaving care should be provided with support to help them with their transitional needs and ensure social risks are identified and addressed. This should include supported accommodation and case management service provision;
- k) ensure arrangements relating to a young person in detention's post-release plans extend beyond their 18th birthdays, particularly in circumstances where they are potentially being release early on parole; and
- l) take a collaborative approach to supporting young people in their care and work with other services involved.

141. We recommend kinship carers receive support to manage challenging behaviours in a trauma-informed, therapeutic approach which supports a young person's

personal and social development.

142. We recommend foster carers receive training and supervision in order to provide a nurturing environment in which challenging behaviours are responded to in a trauma-informed, therapeutic approach which supports a young person's personal and social development.
143. We recommend that, where placing a young person in a residential care home is unavoidable, care homes be staffed with appropriately trained and experienced carers well placed to respond to challenging behaviours in a trauma-informed, therapeutic approach which supports a young person's personal and social development.
144. We recommend residential care home staff and foster carers receive training about deescalating young people when they are in heightened states.
145. We recommend Territory Families meaningfully engages in a joint case management approach when developing post-release plans with young people in detention and when supporting them post-release, thus meeting jointly with interested parties including the young person and their family members on a regular basis.

6.18 Justice Reinvestment

The evidence shows that incarceration in itself is not an effective deterrent to criminal behaviour because it does not address the underlying economic, social, psychological and physiological factors that increase the risk of offending behaviour.⁴⁰⁵

APO NT embraces a justice reinvestment approach which re-directs and reinvests money spent on prisons or other detention facilities to community-based initiatives and early intervention programs which aim to address the underlying causes of crime.⁴⁰⁶ NAAJA has previously expressed its support for this kind of strategy in addressing the over-incarceration of Aboriginal people in its submission to the Senate Legal and Constitutional Affairs Committee⁴⁰⁷.

⁴⁰⁵ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing*, above n 170.

⁴⁰⁶ Gooda, M. (2010). *Juvenile Justice Strategy: A Better Way*, Paper presented at the Sydney Mechanics School of Arts by the Australian Human Rights Commission Aboriginal and Torres Strait Islander Social Justice Commissioner.

⁴⁰⁷ North Australian Aboriginal Justice Agency. (2013). *Submission to Senate Inquiry into the Value of a Justice Reinvestment Approach*.

Furthermore, APO NT supports and reinforces the vital work done by NAAJA as a member of the 'Making Justice Work' coalition of legal and other organisations. Attached is a copy of the Making Justice Work Principles and an opinion piece written in August 2012 for the Committee's information.

Most importantly, APO NT emphasises that for justice reinvestment to be effective, it must embrace the culturally specific needs of Aboriginal people in the local context in which it is implemented. In light of this we provide some reflections on the experiences.

APO NT refers the Royal Commission to the research commissioned by NAAJA and NTCOSS, and conducted by Fiona Allison, on the need and appropriateness of Justice Reinvestment in Katherine. This research was designed to gauge the level of interest amongst stakeholders and the Aboriginal community for justice reinvestment in the Katherine and extracted data, both qualitative and quantitative, to identify the nature of offending in Katherine and its impact, as well as social and systemic drivers for that offending.

The drivers that were identified included; lack of employment opportunities, poor education outcomes, unsafe family environments, high level of substance abuse, mental health issues and disability amongst young offenders, as well as boredom and a lack of connection. Focus was specifically directed at people aged 10-17 and 18-25.

Importantly, the paper identifies a number of gaps in services and proposed numerous solutions. Unfortunately, Ms Allison encountered resistance from the Department of Corrections and NT Police to providing data to assist in the quantitative analysis of offending for people in those age brackets in the Katherine region, and their subsequent levels of incarceration. This remains a gap which will need to be overcome, hopefully through the involvement and support of the Government in this project. Importantly, the report identified significant support for the concept within the community, including the judiciary and police.

Since the production of the report, a number of NGOs and representatives in the community have come together, to progress the project by forming a steering committee. They have adopted a collective impact approach and are looking to the Maranguka Justice Reinvestment Project in Bourke as a successful model for a community driven justice reinvestment project. Further data analysis to record baselines from which to assess the success of any measures implemented is imperative.

Much work also needs to be done to continue to engage different members of the community and service providers, with the hope of establishing an Aboriginal council and backbone organisation who can drive the project. The project is without funding, and is relying on the in-kind support offered by Red Cross and the community members and NGOs like NAAJA who form part of the steering community. The group has identified the need to employ a project

coordinator to better engage the community and pursue funding to achieve the initial objectives, but currently do not have funding for this position.

Katherine is an excellent venue for a justice reinvestment trial with its small size, close knit community, and the prominence of Aboriginal-run community organisations willing to be involved. The number of youth matters before the court in Katherine has doubled in past two years, and community angst at the increase in property crime is palpable. Clearly the current approach of the government to youth justice is failing and a fresh approach is warranted.

RECOMMENDATION:

- 146. APO NT calls on governments to move away from their reliance on prisons, and to instead invest in long-term solutions which includes, health, social, culturally appropriate and education services.**

CHAPTER 7: Role of the Australian Government in addressing the overrepresentation of Indigenous children in the youth justice system

7.1 Justice Targets

The Closing the Gap Strategy, initiated in 2007, is the primary means through which COAG seeks to address Aboriginal and Torres Strait Islander disadvantage. At present, the strategy includes a range of targets grouped into building blocks around early childhood, schooling, healing, economic participation, healthy homes, safe communities and governance and leadership.

The over-representation of Aboriginal and Torres Strait Islander people in prison and as victims of crime falls primarily under the 'Safe Communities' building block of the strategy. However, at present, no Closing the Gap target directly addresses the Safe Communities building block.

Whilst some states and territories have taken positive action to set jurisdictional targets, there exists a clear gap in co-ordinated federal targets which reflects a failure to acknowledge the root causes of imprisonment and violence rates, including social determinants such as poverty and socio-economic disadvantage that uniquely affect Aboriginal and Torres Strait Islander people nationally.⁴⁰⁸

Federal targets in relation to the Safe Communities building block would provide an important national accountability mechanism and drive co-ordinated action to address Aboriginal and Torres Strait Islander disadvantage.

RECOMMENDATIONS:

- 147.** That the Australian Government insert justice targets into the Closing the Gap Strategy as a matter of priority. In particular, that the Government:
- a) incorporates targets to reduce the high rates of Aboriginal and Torres Strait Islander people in contact with the criminal justice system into the Closing the Gap agenda and
 - b) implement Justice Reinvestment strategies in line with the above targets.
- 148.** That the Australian Government work with the Northern Territory Government to

⁴⁰⁸ Also mentioned in National Aboriginal and Torres Strait Islander Legal Service. (2015). *Access to Legal Assistance Services Submission*, 23. Retrieved from: <http://www.natsils.org.au/portals/natsils/NATSILS%20Submission,%20Access%20to%20Legal%20Assistance%20Services.pdf>.

ensure the Juvenile Justice National Minimum Data Set data is being received from the NT.

7.2 Legal services funding – ATSILS and Family Violence Prevention Legal Services

The ATSILS are primarily funded through the Indigenous Legal Assistance Program (ILAP) administered by the Commonwealth Attorney-General's Department.

The Productivity Commission has recognised that Aboriginal and Torres Strait Islander people face vast unmet need.⁴⁰⁹ The Commission has highlighted that a lack of adequate funding for civil and family law services is a major issue that leads to increased contact with child protection systems and experiences of violence. The Productivity Commission also found that the “inevitable consequence of...unmet legal needs [has] further cement[ed] the longstanding over-representation of Indigenous Australians in the criminal justice system”.

Regular threatened and actual funding cuts, such as the Government's ongoing savings measure from the 2013 Mid-Year Economic and Fiscal Outlook (MYEFO) means ATSILS are continuing to face funding cuts which inhibits long-term planning to meet the legal needs of Aboriginal and Torres Strait Islander people.⁴¹⁰ The Government must adequately fund the ATSILS to provide holistic legal services to Aboriginal and Torres Strait Islander peoples. Equitable investment in the ATSILS not only addresses the fundamental principle of equity before the law, it also makes good economic sense.

RECOMMENDATIONS:

That the Australian government:

149. Permanently reverse planned funding cuts to the Aboriginal and Torres Strait Islander Legal Services.
150. Adequately and sustainably fund Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services to:
 - a) meet existing demand for services, including culturally safe and specialist

⁴⁰⁹ Australian Government Productivity Commission. (2014). *Productivity Commission Inquiry Report Volume Two: Childcare and Early Childhood Learning*. 73, 784. Retrieved from: <http://www.pc.gov.au/inquiries/completed/childcare/report/childcare-volume2.pdf>.

⁴¹⁰ Attorney General's Department, Government of Australia. (2016). *Portfolio Budget Statements 2016-17*, Budget Related Paper No 1.2, 20. Retrieved from: <https://www.ag.gov.au/Publications/Budgets/Budget2016-17/Documents/Portfolio-budget-statements/Attorney-Generals-portfolio-2016-17-PBS-full-report.pdf>. The Central Australian Aboriginal Legal Aid Service has no funding certainty beyond 31 December 2017. The other ATSILS are on five-year funding agreements, which commenced 2015-16. See National Aboriginal and Torres Strait Islander Legal Services (personal communication, April 12, 2017).

- prevention and early intervention programs
 - b) address unmet legal need regardless of geographic location
 - c) develop models of holistic support and case management.
- 151.** Implement the Productivity Commission's Recommendation from its Access to Justice Arrangements Inquiry Report to provide an additional \$120 million of Commonwealth funding to the Legal Assistance Sector, which includes an amount of at least \$24.3 million (20.26% of \$120 million) p.a. to the ATSILS to provide critical civil and family law services, meet rising costs, engage early intervention models, and continue to provide quality legal services in the face of overwhelming increases in demand.
- 152.** The Australian Government to develop a funding mechanism, in consultation with NATSILS, that recognises increasing legal needs, strength-based funding models of Aboriginal and Torres Strait Islander community controlled organisations and the additional complexity of providing services to Aboriginal and Torres Strait Islander peoples which necessarily incurs additional costs. This funding model should be implemented for subsequent budgets. While the exact amount of funding needed should be determined by a robust funding model based on legal need and disadvantage. Further, additional funding should be in line with the Productivity Commission's recommendations that the quantum of additional funding required to meet unmet legal need is in the vicinity of \$200 million, and that Indigenous specific services (ATSILS and Family Violence Prevention Legal Services (FVPLS)) should have priority funding.
- 153.** Provide annual increases of 3% to ATSILS funding to cover the necessary and ongoing costs of delivering services, which will allow ATSILS to pay adequate increases in staff remuneration and take into account market forces and significant fluctuations of prices in the sector.

7.3 Optional Protocol to the Convention against Torture

The Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) ⁴¹¹provides for the prevention of torture and other cruel, inhuman or degrading treatment or punishment by requiring engagement with independent inspections and other forms of monitoring by the United Nations Subcommittee on Prevention of Torture (SPT) and the implementation of a National Preventative Mechanism (NPM). There are serious and well-documented human rights concerns regarding the

⁴¹¹ United Nations. (2006). *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*. Retrieved from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>.

conditions within detention facilities around Australia. These can be prevented by establishing effective mechanisms that seek to prevent torture and cruel, inhuman or degrading treatment or punishment.

Implementing effective oversight mechanisms is of particular concern at present given the over-representation of Aboriginal and Torres Strait Islander young people in detention.

Concerns have been further heightened by interim findings of the Royal Commission into the Protection and Detention of Children in the Northern Territory⁴¹² that have exposed a lack of adherence to minimum human rights standards as well as the regular occurrence of inappropriate and unlawful practices, unacceptable standards of conduct and inappropriate methods of dealing with detainees.

RECOMMENDATION:

154. That the Australian Government:

- a) Implement the Optional Protocol to the Convention Against Torture (OPCAT) into domestic law and establish National Preventative Mechanisms ⁴¹³
- b) Withdraw its reservations to article 10(2) and (3) of the ICCPR, and article 37(c) of the Convention on the Rights of the Child (UNCRC); and
- c) Ensure that youth are not placed in adult prisons as required by the UNCRC.

⁴¹² Royal Commission into the Protection and Detention of Children in the Northern Territory. (2017). *Interim Report*. Retrieved from: <https://childdetentionnt.royalcommission.gov.au/about-us/Documents/RCNT-Interim-report.pdf>.

⁴¹³ Also mentioned in National Aboriginal and Torres Strait Islander Legal Services, (2012). *Letter to Joint Standing Committee on Treaties*, 30 March 2012.

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