

# Aboriginal Peak Organisations Northern Territory

An alliance of the CLC, NLC, CAALAS, NAAJA and AMSANT

## NT Royal Commission Response Background Paper

### 3.5 A new Children's Commission for the Northern Territory

#### Why do we need a revamped Children's Commission?

Evidence before the Royal Commission starkly demonstrates the inadequacy of existing oversight mechanisms in the youth justice and child protection systems. Currently, the powers of the Children's Commissioner are not robust enough to safeguard the rights of young people in detention and out of home care. Nor is the Children's Commissioner empowered or adequately resourced to play a more proactive role in advocating for the rights and wellbeing of children in the Northern Territory, including focussing on prevention and early intervention.

The current Children's Commissioner is a strong advocate for children within her existing mandate. However, the functions of the Children's Commissioner need to be expanded and enhanced. There must be additional mechanisms embedded in legislation to ensure greater scrutiny of practices in youth detention and out of home care so that the abuses children have been subjected to do not occur again. This will require additional resources.

#### What might a new Children's Commission look like?

Functions of a new Children's Commission should include:

- Initiating own motion investigations
- Investigating complaints from young people
- Inspecting and reporting on places where young people are detained or housed, including detention centres and out of home care facilities
- Ensuring quality of services to vulnerable children – child protection, early intervention, policing, courts, youth justice services/programs
- Child advocate role
- Community visitor program
- Monitoring government responses to the Royal Commission's recommendations.

Under this model, the Children's Commission would be a central point for monitoring child welfare in the Northern Territory and a stronger advocate for promoting the safety, wellbeing and best interests of children.

### Child advocate role

A team of child advocates should be established in the Children's Commission to advocate on behalf of children in care and/or places where young people are detained. Child advocates play an important role in promoting participation of vulnerable children and consideration of their views and best interests in all processes and decisions involving them. Child advocates should have extensive information gathering powers so they can access information from agencies involved in making decisions about children. They should also have powers to enter facilities where children are detained or reside without notice, and unrestricted access to children and staff.

### Community visitor program

A community visitor program should be part of the Children's Commission's functions and must, for the Northern Territory, involve Aboriginal community visitors to support and monitor all children in care and/or detention. The importance of this role is the informal nature of the contact, allowing for complaints to be made without being dependent upon children initiating that process. This approach will help identify young people who are victims or at risk of becoming victims of abuse, and identify systemic and procedural issues.

## Why do we need an Aboriginal Children's Commissioner?

Given the proposed expansion of the Children's Commissioner's role, an additional Children's Commissioner will be required to properly discharge its functions.

An Indigenous identified Commissioner's position should be created under legislation to be a Co-Commissioner under the Act. In the Northern Territory context, such a position is crucial given that Aboriginal young people make up 45% of the population aged 10-17 years,<sup>i</sup> and are significantly overrepresented in both the youth justice and child protection systems.<sup>ii</sup>

As the experience in Victoria has shown, having an Aboriginal Children's Commissioner enhances the effectiveness of its important monitoring functions.<sup>iii</sup> It makes complaints more likely, it provides an Aboriginal-centric view at a high level, support for the Aboriginal community controlled sector and ability to engage with the Aboriginal community more generally.<sup>iv</sup> Being an Aboriginal person who shares the cultural understanding and social experience of the Aboriginal community is a quality that a non-Indigenous person cannot provide in this role. This will provide appropriate focus and expertise to issues affecting Aboriginal children and young people, and create a platform for providing advice to Government agencies about the development of culturally relevant and strengthening policies, practices and services.<sup>v</sup>

## Aboriginal perspective

The intention of creating this position is not to duplicate efforts or delegate all responsibility for matters involving Aboriginal children to the Aboriginal Children’s Commissioner. The welfare of Aboriginal children and young people should be a priority for both Commissioners. However, there should be delineation of responsibility between the two Commissioners, which will need to be subject to consultation.

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<sup>i</sup> Australian Institute of Health and Welfare, ‘Northern Territory: youth justice supervisions in 2015-16’ (Youth Justice fact sheet no 77, Australian Institute of Health and Welfare) 2.

<sup>ii</sup> On an average day in 2015-16, Aboriginal young people made up 96% of the detention population: see Australian Institute of Health and Welfare, ‘Northern Territory: youth justice supervisions in 2015-16’ (Youth Justice fact sheet no 77, Australian Institute of Health and Welfare) 2. 89.1% of children in out of home care in the Northern Territory are Aboriginal: see SCRGSP (Steering Committee for the Review of Government Service Provision) 2016, *Report on Government Services 2016*, vol. F, *Community services*, Chapter IS: Child Protection Services - Tables ISA. 23 and ISA.24, (pp. 1309-1331), Productivity Commission, Canberra, Table ISA.24.

<sup>iii</sup> Oral evidence of Larissa Behrendt to the Royal Commission into the Protection and Detention of Children in the Northern Territory, 29 May 2017, 4006:30-38; Exhibit 459.000, Statement of John Burton to the Royal Commission into the Protection and Detention of Children in the Northern Territory, 22 May 2017, [17].

<sup>iv</sup> Exhibit 558.000, Statement of Andrew Jackomos to the Royal Commission into the Protection and Detention of Children in the Northern Territory, 13 June 2017, [21]-[22].

<sup>v</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2015*, 161.