



CAALAS Submissions on the Care and Protection of Children

to the Royal Commission into the Protection
and Detention of Children in the NT

July 2017

CONTENTS

TOPIC	PAGE
Introduction and Scope of the Submission	1
1. Child Protection Systems	9
(a) The function and purpose of a child protection system	9
(b) Modern developments in approaches to child protection	13
(c) The nature and scope of child protection issues in the NT, the over- representation of Aboriginal children and young people in care, and specific factors in the NT affecting the child protection system	13
(d) The appropriateness of current approaches to child protection in the NT	17
2. The NT Child Protection System	20
(a) Child Protection policy and services	20
(b) Structure, management and decision making	20
(c) Funding and operations	20
(d) Staffing and workforce issues	21
(e) Notification issues	24
(f) Intake processes	24
(g) Investigation processes	25
3. Early Intervention	27
(a) The link between early intervention and child protection	27
(b) Models or approaches for effective early intervention	29
(c) The appropriateness and shortcomings of approaches to early intervention in the NT, particularly for Aboriginal communities	29
(d) Gaps in current approaches to early intervention, including the design and delivery of services	30
(e) The extent and value of the early Intervention programs available in the NT	32
(f) Funding and funding sources for early intervention programs, including Commonwealth Government, NT Government, and other sources	32
(g) The delivery, availability, oversight and evaluation of early intervention programs	32
4. Out of Home Care	33
5. Re-unification and leaving care	42
(a) Reunification with Families	42
(b) Leaving care	53
6. The Legal Process	55
(a) Issues with respect to the current legislation	55
(b) Issues in relation to current legal processes, including mediation	56
(c) The selection and use of specific orders	58
(d) Delay in the legal process	59
(e) Legal representation for children and families	59
(f) The role of Territory Families	60
(g) The availability of expert reports	60
7. Cross-over issues	62
8. Aboriginal Community Issues	64

9.	Reform Options	67
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*"Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future. These dimensions of our crisis tell plainly the structural nature of our problem. This is the torment of our powerlessness."*¹

- Uluru Statement From the Heart, May 2017

Introduction and Scope of the Submission

The Central Australian Aboriginal Legal Aid Service Ltd (**CAALAS**) prepared this submission in response to an invitation from the Royal Commission into the Protection and Detention of Children in the Northern Territory (the **Commission**).

This submission is specific to the care and protection aspect of the Commission's inquiry, and addresses a number of different areas as set out by the Commission. Prior to submitting this care and protection submission, CAALAS has provided submissions on the topics of youth detention, and pre and post detention.

CAALAS prepared this care and protection submission with limited resources and in a short timeframe, whilst also progressing and finalising other aspects of our engagement with the Royal Commission. We have not responded to every topic identified in the call for submissions, due to capacity.² Some of the topics identified were vast, and could have been explored in greater detail had time and resources permitted. Notwithstanding this, we hope that the submissions provided are of assistance to the Commission.

CAALAS' submissions are guided by the experiences of our clients, and the frontline staff who have assisted them in navigating the care and protection system. CAALAS undertakes legal casework representing parents and family members in care and protection matters. Part of this work involves providing a duty lawyer service on a Wednesday at the Alice Springs Local Court where the care and protection list is heard. In addition to acting for family members who are parties to care and protection proceedings, many of CAALAS' young criminal law clients are also in the care of the Department. Accordingly, our experience and observations concerning the care and protection system are informed by our contact with both affected family members and children who are themselves the subject of orders.

During the ten year scope of the Commission's terms of reference, there have been various changes to the name of the Northern Territory Government (**NTG**) department responsible for the care and protection of children. Such titles include the Office of Children and Families, the Department of Children and Families, and the current Territory Families (**TF**). In our submission we have sought to use the current terminology of TF when referring to the department with responsibility for the care and protection of children, understanding that the observations or concerns being described may have been associated with one of TF's previous incarnations.

In our submissions CAALAS has endeavoured to avoid duplication of content, however we note that some reforms are relevant across a range of areas. Given the breadth of care and protection topics identified by the Commission and the tendency of topics to interconnect, there is overlap between recommendations in some instances.

¹ Uluru Statement from the Heart, May 2017, accessed at https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart_0.PDF

² Please note that as CAALAS has not had capacity to respond to every topic listed by the RCPDCNT in the care and protection submissions issues paper, the numerical order of topics in our CAALAS submission differs from the numbering of topics in the RCPDCNT issues paper. In our submission headings, we have used wording that is consistent with that from the RCPDCNT issues paper so that there is clarity as to which section of the issues paper each given topic relates to.

About CAALAS

Founded in 1973 as the first Aboriginal organisation in Alice Springs, CAALAS provides high quality, culturally appropriate legal advice and representation to Aboriginal people and Torres Strait Islander (**ATSI**) people living in Central Australia and the Barkly in the areas of criminal, civil, family and welfare rights law. CAALAS' area of service delivery is vast, encompassing the southern region of the Northern Territory and reaching as far north as Elliott. The organisation also advocates for the rights of Aboriginal people and improved social justice outcomes, and provides community legal education.

CAALAS employs 9 Aboriginal Liaison Support Officers (**ALSOs**), two of whom currently speak local languages. ALSOs provide cultural brokerage with the knowledge of the local and remote communities, family groups and language.

Separate to our legal casework, CAALAS also hosts the Youth Justice Advocacy Project (**YJAP**) and the Kungas Stopping Violence Program. The YJAP coordinator provides support to young people and their families throughout the young person's interaction with the youth justice system, advocating for diversionary outcomes, putting the young person in contact with the necessary supports and providing proposals for bail and other non-custodial outcomes. The Kungas Stopping Violence Program is an innovative program that supports women in custody for violent offences, seeking to reduce rates of recidivism by providing holistic case management and training both in the custodial setting and post-release.

Summary of recommendations

Topic 1: Child protection Systems

- 1.** That the function and purpose of a child protection system must be conceptualised more broadly than purely providing a tertiary, statutory response.
- 2.** That a review be conducted in relation to children in out of home care who experience disability, to determine whether the child protection, or disability arm of government is the most appropriate agency to assist.
- 3.** That Territory Families should capture in its annual reporting specific data in relation to the number of ATSI children in out of home care, and the number that are placed in accordance with the Aboriginal Child Placement Principle.
- 4.** That specific reporting regarding compliance with the Aboriginal Child Placement Principle should occur, to increase accountability of government and motivate progress in this regard.
- 5.** That the federal and state/territory levels of government endorse and adopt the target and sub-targets set out in the Family Matters Roadmap.
- 6.** That this commitment from both levels of government must also be bipartisan, to avoid the adverse impact and prejudiced outcomes that can flow from sudden policy changes that arise from a change of government.
- 7.** That capacity and commitment must be built across the range of government departments with whom vulnerable families and children are interacting, to effect a whole of government early intervention response to reduce the number of Aboriginal children in the care and protection system.
- 8.** That as part of the drafting of a single legislative framework for care and protection and youth justice, consideration be given to including principles and legislative aims that are consistent with the Family Matters campaign, to raise the benchmark in relation to child

protection service provision for Aboriginal children and families and what this sets out to achieve.

- 9.** That intergenerational trauma be recognised as a causal factor in family violence.
- 10.** Healing and violence prevention programs must be adequately resourced by Governments.
- 11.** The needs of children should feature prominently in violence reduction strategies to reduce intergenerational violence.
- 12.** The Government must provide ongoing 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.
- 13.** That the Government provide 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.
- 14.** 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.
- 15.** That a Domestic Violence Court be established in Alice Springs. The success of such a court will hinge on the appropriate resourcing of key parties in that forum, including legal services that are assisting victims and defendants.

Topic 2: The NT Child Protection System

- 16.** That a statutory body be created, to oversee service delivery in relation to care and protection. As part of this consultation, the possibility of a single statutory body to oversee both youth justice and care and protection should be considered. In making this recommendation, we echo the requisite characteristics for this model that were set out on at 1.8 of our Youth Detention submissions, and also refer to Recommendations 2 and 3 of those submissions.
- 17.** That resources are urgently injected to lower the client/caseworker ratio and to increase the capacity of TF caseworkers to meet the needs of families they are working with.
- 18.** That TF actively work towards increasing the number of ATSI staff within the child protection system, and provide relevant training to applicants to overcome barriers in relation to formal tertiary qualifications.
- 19.** That TF develop an Aboriginal Employment Strategy, and conduct an active recruitment drive to increase the numbers of Aboriginal staff in that Department.
- 20.** That TF staff receiving better training, especially in the areas of cultural awareness, the Aboriginal Child Placement Principle, interpreter use, and unconscious bias.
- 21.** That the Northern Territory Government develop and implement a detailed practice guidance and training program for child protection practitioners on full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle, with reference to the aims and elements of the Principle as described in by SNAICC and reflected in the Third Action Plan for the National Framework for Protecting Australia's Children 2009-2020.

22. That the NTG commits to engaging with Aboriginal communities and organisations with a view to developing a culturally appropriate assessment framework to guide child protection approaches and decision making in the NT. This framework should include a culturally appropriate risk assessment tool.

23. That TF employ Aboriginal language speakers to act as interpreters at their local offices.

Topic 3: Early Intervention

24. That Territory Families move from a 'crisis approach' to policy intervention and embrace early intervention and prevention strategies that are community owned, initiated and based on local knowledge.

25. That the federal government invest 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.

26. That the Commonwealth government address poverty, homelessness and overcrowding by investing in remote communities. An adequate standard of living is the basis for reducing incidents of neglect.

27. Family meetings must be arranged by Territory Families at the earliest possible stage, to avoid instances of children being removed where there are other care options within their family.

28. That all levels of government commit to long term continuity of funding in the early intervention sector.

Topic 4: Out of Home Care

29. That Territory Families work with Aboriginal Community Controlled organisations to develop an Aboriginal led and managed Child Protection and Out-of-Home Care Service in the Northern Territory.

30. That the position of Commissioner for Aboriginal Children and Young People is established in the Northern Territory with a broad scope of inquiry concerning Aboriginal and Torres Strait Islander children.

31. That the federal government develop and implement 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. Such a strategy should include the allocation of federal supports and resources to family and community strengthening initiatives in the Northern Territory.

32. That the Northern Territory government commit to ensuring greater emphasis is placed on the Aboriginal Child Placement Principle and set indicators by which to measure compliance with this principle.

33. That child advocates be appointed who have an ongoing role for each child in care such as those employed by the Public Guardian in Queensland.

34. 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 and application for protection orders has been made.

- 35.** That Aboriginal family group conferencing be re-established as a matter of urgency so that decision making can be informed by family members and kinship care options are identified if needed as early as possible.
- 36.** That Aboriginal community visitors are appointed to monitor and support children in all out-of-home care placements.
- 37.** That the Northern Territory government increase training for Territory Families staff on the aboriginal kinship system and develop culturally appropriate assessment tools that do not rely on the use of genograms.
- 38.** That the Northern Territory government implement a protocol for Territory Families, privately run residential care providers and NT Police to reduce offending and criminalisation of children in residential care. This protocol could be modelled on the NSW Joint Protocol to divert young people in residential services from unnecessary contact with the criminal justice system. It would contain 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.
- 39.** That the NTPFES and DPP establish guidelines for the decision to prosecute in residential care and such decision are done by specialist youth prosecutors.
- 40.** Legislative amendment to allow for children, young people or parents to seek an independent review of a placement and/or contact decision at the Northern Territory Civil and Administrative Tribunal. The kinds of decisions which should be open to review include decisions in relation to access, approval of kinship carers, placement and care plans.

Topic 5: Re-unification and leaving care

- 41.** The NTG should focus substantial resources on providing services to address factors which might lead to the removal of a child from their family with a view to preventing that eventuality.
- 42.** The NTG should commit to full compliance with all elements of the Aboriginal Child Placement Principle.
- 43.** Territory Families should provide greater assistance and a more holistic approach, linking in with other government and non-government service providers, to support Aboriginal families in meeting the necessary milestones or goals to achieve reunification, particularly where the child protection concerns justifying removal relate to poverty, trauma, alcohol and other substance abuse, and domestic violence.
- 44.** Territory Families should pay special attention to ensure that families from remote communities are assisted to remain connected with a child in care, including regular contact in a meaningful and culturally appropriate setting.
- 45.** Territory Families should be promoting access to language and a child's participation in the use of language to the fullest degree possible.
- 46.** The preparation and implementation of a thorough individualised care plan, including a cultural care plan, should assume much greater significance in efforts to reunify each child in care with their family.
- 47.** A right for children (where appropriate) and their parents to participate in care planning should be enshrined in legislation, particularly to ensure that they are provided an opportunity to participate in care plan meetings and the creation and implementation of care plans.

- 48.** The NTG should fund independent care plan meeting convenors. In the case of Aboriginal families, funding should be applied for the appointment of an Aboriginal convenor or co-convenor to assist in communication and provide guidance in relation to cultural considerations.
- 49.** The NTG should make funds available for legal representatives to support and advocate on behalf of children (where appropriate) and parents at care plan meetings, particularly whilst an application for a child protection order is on foot.
- 50.** A family group conferencing model throughout the decision-making processes involved in the child protection system, and particularly in relation to achieving reunification, should be rolled out across the Territory.
- 51.** Considerable resources should be applied to roll out special reunification campaigns across the Territory to safely return children to their families and communities, with a particular focus on Central Australia.
- 52.** Long-term care orders until the child reaches the age of 18 should be used sparingly. They should not be the subject of a default or automatic application. Notwithstanding the imposition of such an order, the work of Territory Families should not stop or slow down in relation to seeking to achieve reunification and particularly to continue exploring kin options so that a child may be returned to their family or community environment as soon as possible.
- 53.** Targets should be set to achieve the goals of reunification, particularly in relation to addressing the disgraceful overrepresentation of Aboriginal families affected by the removal of children.
- 54.** Every child in care should have a meaningful opportunity to be heard about their wishes and be involved in decision-making related to them leaving care.
- 55.** Leaving care planning should occur well in advance of the anticipated departure from care.
- 56.** The fundamental aspect of being able to access safe and secure housing upon leaving care is a matter for urgent attention.
- 57.** The NTG should adopt the implementation of a "personal adviser" model to assist children leaving care, applying a through-care philosophy to the model.

Topic 6: The Legal Process

- 58.** That the legal process of the Local Court hearing family matters be significantly re-designed to achieve greater participation in court matters by families, young people and their communities.
- 59.** That child advocates be appointed who have an ongoing role for each child in care such as those employed by the Public Guardian in Queensland.
- 60.** 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 and application for protection orders has been made.
- 61.** Legislative amendment to allow for children, young people or parents to seek an independent review of a placement and/or contact decision at the Northern Territory Civil and Administrative Tribunal. The kinds of decisions which should be open to review include decisions in relation to access, approval of kinship carers, placement and care plans.

- 62.** That Territory Families ensure they are referring parents and family members to seek legal assistance as soon as possible once it is determined that an application needs to be listed.
- 63.** That Territory Families commit to working more productively with legal representatives. Currently in ASP a lawyer cannot communicate directly with the relevant case worker on behalf of their client. This is obstructive and unproductive, and does not lend itself to a timely or lower-level resolution of issues.
- 64.** That the Courts be adequately funded to commission expert reports to assist in the determination of issues in contention such as the capacity of a parent or proposed carer.

Topic 7: Cross-over issues

- 65.** Territory Families staff responsible for the care and protection of children should not assume that children in detention are having their general care needs met.
- 66.** Territory Families staff responsible for the care and protection of children should regularly make contact with and closely monitor the conditions of a child's detention to ensure that the duty of care owed to the child in the custodial environment is met and to ensure their wellbeing in custody.
- 67.** In relation to a child in the care of the CEO, Territory Families should take special steps to ensure the earliest possible release of that child from detention. This is likely to involve ensuring appropriate through-care service provision is in place and providing information in a timely manner for the purpose of use in criminal proceedings on bail or sentence.
- 68.** Territory Families and oversight bodies such as the Children's Commissioner should closely monitor the actions of Territory Families staff members in relation to ensuring that children do not remain in detention beyond the minimum necessary period on account of alternative accommodation arrangements not being made available by TF.

Topic 8: Aboriginal Community Issues

- 69.** That an Aboriginal Child Care Agency (ACCA) be established in the NT. The identity of the ACCA must be community controlled, and it must have adequate funding to provide the necessary support to children and families.
- 70.** The funding of an ACCA and other Aboriginal community organisations working in child protection must provide for early intervention and prevention programs, and resourcing for advocacy, support, training and education to enable culturally safe and trauma-informed care to be provided to children in the out of home care system.
- 71.** Responsibility and authority for Out of Home Care should be transferred to the ACCA within an agreed timeframe.

Topic 9: Reform Options

- 72.** As outlined in other topics of this submissions and our submissions on Youth Detention, that a Commissioner for Aboriginal Children and Young People be established in the NT.
- 73.** That the governing legislation is amended to clearly set out the responsibility of TF to explain to children in out of home their legal rights and entitlements.

- 74.** That an alternative dispute resolution process be established as the initial pre-action requirement (similar to the s60I pre-action procedure under the Family Law Act), administered by an organisation outside of government. In the case of Aboriginal families an Aboriginal individual/organisation would be appointed to assist the family at commencement of the pre-action procedure.
- 75.** That legislation be amended to require the referral of child protection matters to legal representatives at the commencement of intervention involving Aboriginal families (where the family consents to such referral), irrespective of the nature of the intervention. The onus should not be placed on vulnerable Aboriginal people to seek out legal representation.
- 76.** That legislation be amended to mandate the appointment of a separate legal representative to advocate for the child's best interests, in contested matters.
- 77.** That legislation be amended to enable this separate child legal representative to commission a psychologist independent of TF, to conduct an assessment of the family.
- 78.** That the NTG identify and review the remote regional areas where there are high levels of child protection intervention, to ensure that services (such as housing, family support, social and emotional support) are available in those areas demonstrating the greatest need.

Care Planning

- 79.** Legislation to ensure that children (where appropriate), young people and parents are provided the opportunity to participate in care plan meetings.
- 80.** Funding of independent care plan meeting conveners. In the case of Aboriginal families, funding for an Aboriginal convener or co-convener to assist communication and provide guidance in respect to cultural considerations. The conveners should be funded and administered outside of Territory Families.
- 81.** Funding of legal representatives to support children (where appropriate), young people and parents at care plan meetings, particularly whilst an application for a child protection order is on foot.
- 82.** Legislative amendment that requires the inclusion of clear, realistic and measurable milestones or goals for families to work towards.
- 83.** Territory Families should provide greater assistance and a more holistic approach to supporting Aboriginal families in meeting the milestones or goals, particularly where the child protection concerns relate to poverty, trauma, alcohol/substance abuse, and domestic violence.

Placement and Contact Decisions

- 84.** Pending transition of Out of Home Care to the NGO sector, legislative amendment in relation to placement and contact decisions affecting Aboriginal children, prescribing the involvement of an independent Aboriginal person or organisation. That person or organisation should be funded and administered outside of Territory Families.
- 85.** In respect to contact decisions, legislation that establishes similar principles to those of the 'equal or substantial and significant time' under the *Family Law Act (1975)*.
- 86.** Legislation and funding to provide for contact to occur in a culturally appropriate environment and in a manner that allows Aboriginal families to interact naturally.

- 87. Legislation and funding to provide for an Aboriginal person to undertake supervision of contact, where supervision is deemed in the best interests of the child or young person.
- 88. Legislation that provides a mechanism for children, young people and parents to seek an independent review of a placement and/or contact decision at Northern Territory Civil and Administrative Tribunal.
- 89. Legal representation should be resourced so that it is available to both children and parents in order for them to effectively exercise this right. An example of this can be found at s247 and Schedule 2 of the Child Protection Act 1999 (QLD)

1. Child Protection Systems

(a) The function and purpose of a child protection system

- 1.1 At present, the care and protection system in the Northern Territory is far beyond crisis point. The number of Aboriginal children in out of home care in the NT has grown steadily in recent years, from 147 children in 2000, 450 in 2001, and 1067 in 2015.³ The status quo is clearly not working, and a major rethinking of the system is needed. CAALAS is of the view that the function and purpose of a child protection system should be conceptualised more broadly than purely providing a tertiary, statutory response. Whilst this tertiary response may be the primary focus of departmental responses to child protection, there is an urgent need for this response to be complemented by a parallel commitment in favour of diverting Aboriginal children and families away from the care and protection system. Early intervention will reduce the number of Aboriginal children in care. Increased compliance with the Aboriginal Child Placement Principle is essential for those children who are in need of care. An effective, meaningful response to care and protection must consider all of these objectives.
- 1.1 CAALAS observes that work in the field of child protection is demanding, undervalued and poorly resourced, and appreciates that frontline caseworkers are often under a myriad of pressures. In this context, it is understandable that in recent years the focus of government responses to care and protection have been statutory, tertiary responses. However in our view, TF has an important role to play more broadly in relation to early intervention and reducing the disproportionate number of Aboriginal children in the care and protection system.
- 1.2 In CAALAS' view, there is a need for a more positive overarching aim to drive government and non-government responses to child protection. We speak about the value of specific targets to drive improved outcomes for Aboriginal children and families, below. In relation to Aboriginal children, CAALAS submits that the goal of the Family Matters campaign encapsulates what should underpin service provision in the child protection sector: "to ensure that all Aboriginal and Torres Strait islander children and young people grow up safe and cared for in family, community and culture."⁴ CAALAS submits that the legislation governing the care and protection of children in the Northern Territory should reflect this goal in its principles, aims and objectives.
- 1.3 We note that Recommendation 1 in the CAALAS Youth Detention submissions related to the creation of a single, regulatory framework covering both care and protection and youth justice matters. We submit that as part of the drafting of this single Act,

³ Exhibit 510.000 at [53] (Statement of Professor Sven Silburn)

⁴ Family Matters Roadmap, p5, accessed at <http://www.familymatters.org.au/wp-content/uploads/2016/11/TheFamilyMattersRoadmap.pdf>

consideration should be given to including principles and aims that are consistent with the Family Matters campaign, that raise the benchmark in relation to child protection service provision for Aboriginal children and families and what this sets out to achieve.

The relationship between the child protection system, early intervention and prevention

- 1.4 Through its contact with vulnerable children and families, TF is well positioned to facilitate referrals for therapeutic assistance where support is needed. CAALAS has observed situations whereby the circumstances of families and children who come to the attention of TF are such that formal intervention by the Department may not be warranted. However whilst the situation may not reach the threshold for formal involvement by the Department, this does not always mean that all is well with that family. If early indicators are not addressed, there is a risk that these issues may spiral into serious protective concerns that will warrant intervention from TF down the track. In these circumstances, CAALAS submits that TF should make referrals for that family to receive the appropriate support from community organisations so that this spiral can be avoided.
- 1.5 CAALAS was concerned to hear evidence from the Alice Springs community organisations panel in relation to the low numbers of referrals by TF to various early intervention and family support programs.⁵ Speaking about the Intensive Family Preservation Service provided by Tangentyere Council, Mr Andrew Walder agreed with Commissioner White that the lack of referrals from TF was a 'curious thing'.⁶ As to the reason for this lack of referrals, Mr Walder raised the possibility that the caseloads of TF caseworkers were so high that staff did not have time to make referrals, and alternatively that the narrow eligibility criteria for the program may have been a barrier.⁷
- 1.6 Ms Liza Balmer, Acting CEO of the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (**NPY**) Women's Council, also gave evidence about the therapeutic supports for children and families available through NPY and the lack of referrals received by TF. In her evidence before the Commission, Ms Liza Balmer made observations as to the difficulties that TF has, as a single agency, in dealing with both early prevention and child protection. These difficulties were primarily described as resourcing issues. Ms Balmer stated that "the Department's capacity to deal with their statutory responsibility is already over maximised and to be able to then diversify into early intervention and prevention, I think, is in contrast with the tertiary end of the work."⁸ Mr Balmer expressed doubt as to whether TF could be expected to provide both an early intervention/response and a tertiary response, as where resources are stretched all inevitably go towards the tertiary, statutory response.⁹
- 1.7 In CAALAS' view, the most appropriate organisations to actually deliver early intervention and preventative supports to Aboriginal children and families are Aboriginal community controlled organisations. However, this does not mean that early intervention and prevention should be characterised as being outside the role of TF. Whilst TF may not be the agency delivering the service, there is still a valuable role to be played in terms of channelling families in need of support towards the services that can assist.
- 1.8 Of course, the responsibility to refer families in need to appropriate services should not rest only with TF. A pro-active cross sector response is needed, from both government and non-government agencies to enable the opportunity of 'soft entry points' to be properly availed. In his evidence before the Commission, Professor Oberklaid spoke about

⁵ See for example, exhibit 458.001 at [11] (Statement of Ms Liza Balmer)

⁶ T4036 (Mr McAvoy XN of Ms Ah Chee, Mr Walder and Ms Balmer)

⁷ T4036 (Mr McAvoy XN of Ms Ah Chee, Mr Walder and Ms Balmer)

⁸ T4036 (Mr McAvoy XN of Ms Ah Chee, Mr Walder and Ms Balmer)

⁹ Exhibit 458.001 at [38] (Statement of Ms Liza Balmer)

the way in which barriers to accessing services can be addressed through utilising normalised points of contact as a platform for making referrals where needed:

But all children, theoretically, go to community nurses. They get immunised. They go to GPs. They go to preschool. They go to child care. They go to school. So these are soft entry points. These are non-stigmatising services that parents use readily because they're part and parcel of the fabric of Australian life. If we can use those soft entry points appropriately to identify those sorts of issues and problems and then make an informed referral to secondary and tertiary services, that's then the best way to make sure that families get the services that they need.¹⁰

- 1.9 CAALAS submits that capacity and commitment must be built in other government departments with whom vulnerable families and children are interacting, to effect a whole of government early intervention response to reduce the number of Aboriginal children in the care and protection system.

The role of the child protection system in promoting and achieving better outcomes for Aboriginal children and their families

- 1.10 In CAALAS' view, the care and protection system would more effectively meet the needs of Aboriginal children if targets relevant to care and protection were set. Such targets should include reducing the number of Aboriginal children in out of home care, and reducing the number of Aboriginal children placed with non Aboriginal carers. Given the shared role of Commonwealth and state and territory governments in relation to the wellbeing of children, these targets must be supported by both levels of government.

- 1.11 CAALAS agrees with the principle that the work of a child protection system must be driven by what is in the best interests of the child but is concerned that this is sometimes interpreted very narrowly by the Department, in a manner that does not appropriately recognise the correlation between a child's best interests and connection to culture. An Aboriginal child's connection to family and culture will be integral and determinative to the wellbeing of that child.

- 1.12 Some evidence before the Commission suggests that an understanding of the connection between these concepts has not always been demonstrated in the approaches and decisions of TF, and that reducing the number of Aboriginal children in out of home care and the number of Aboriginal children with non Aboriginal carers has not been viewed as falling within the purview of TF. This includes the evidence of former Minister for Children and Families Mr Elferink, who stated that during his time as Minister there was no strategy to reduce the number of Aboriginal children in non-kinship placements, but that "I always inserted that it should be about the best outcomes for the child. If that happened to be in a non-kinship environment, then so be it."¹¹ When asked specifically whether he set targets whilst Minister to reduce the number of Aboriginal children in non-kinship care placements, Mr Elferink responded that he didn't, explaining:

Because a target system would require a result. I would prefer – and I think the correct policy position is, that if you have a child that is in need of care, then that child is given the support that is required. To set a target would be to be artificially either over or underinflate that position, and I think that would be bad public policy.¹²

- 1.13 Give the breadth of evidence demonstrating how integral cultural and family connections are to the wellbeing of Aboriginal children, CAALAS does not understand how it would be possible to 'over inflate' the importance of the Aboriginal Child Placement Principle. CAALAS supports the child protection targets and sub-targets set out in the Family Matters Roadmap, led by SNAICC. The primary target set out in this roadmap is to

¹⁰ T4020.13 (Mr Dighton XN of F. Oberklaid)

¹¹ T5208.14 (Mr Callaghan XN of J. Elferink)

¹² T5207 (Dr Dwyer XXN of J. Elferink)

eliminate the over-representation of Aboriginal and Torres Strait Islander children in out of home care by 2040. The sub-targets of the Family Matters campaign are as follows:

For Aboriginal and Torres Strait Islander children to enjoy equal access to early intervention and prevention services as non-Indigenous children by 2020

For Aboriginal and Torres Strait Islander children in out of home care to enjoy equal rates of reunification with their parents or family as non-Indigenous children by 2025

To eliminate the over representation in rates of notification of child abuse or neglect of Aboriginal and Torres Strait Islander children by 2030

To eliminate the over representation of Aboriginal and Torres Strait Islander children to a substantiation of child abuse or neglect by 2035

*To eliminate the over representation of Aboriginal and Torres Strait Islander children subject to an order of removal into out of home care by 2035*¹³

- 1.14 The targets call "on governments and non-government organisations to respond to the pressing call to work with Aboriginal and Torres Strait Islander communities to arrest these negative trajectories and eliminate over-representation in out of home care within a generation."¹⁴
- 1.15 In her evidence before the Commission, Ms Roslyn Baxter of the Department of Social Services agreed that the targets of the Family Matters campaign were certainly "a worthwhile aim", but expressed reluctance about the possibility of such a target being included in the National Framework for Protecting Australia's Children 2009 – 2020.¹⁵ CAALAS is concerned by the reluctance of Government to commit to targets aimed at eliminating the disproportionate contact experienced by Aboriginal children with the child protection system and achieving better outcomes for those children that do have child protection involvement. Specific targets would provide meaningful goals to underpin child protection frontline service delivery, whilst also promoting progress of these pressing issues by providing a benchmark for performance to be measured. Targets would increase government accountability to Aboriginal families and children, and specifically increase accountability in relation to matters such as compliance with the Aboriginal Child Placement Principle.
- 1.16 A commitment by Government to firm targets relating to Aboriginal children and the child protection system also has the potential to build trust amongst Aboriginal communities, demonstrating that the Government is genuine about wanting to address this ongoing injustice. CAALAS recommends that the federal and state/territory levels of government endorse and adopt the target and sub-targets set out in the Family Matters Roadmap.
- 1.17 This commitment from both levels of government must also be bipartisan. The Commission has heard evidence about the adverse impact and prejudiced outcomes that can flow from sudden, jarring policy changes can that arise from a change of government, including in the evidence of the former Minister Mr Kon Vatskalis:

It's a Territory community problem, it's not a political problem and unless we have got a commitment by all parties we are going to work together to sort this out nothing is going to fix because our cycle is four years and playing games and a change of government another

¹³ Family Matters Roadmap, p5 accessed at <http://www.familymatters.org.au/wpcontent/uploads/2016/11/TheFamilyMattersRoadmap.pdf>

¹⁴ Ibid, p3

¹⁵ T5035.36 (Dr Dwyer XXN of R. Baxter)

*four years, and people come and go, it's not going to be fixed. It has to be a joint approach to fix this problem.*¹⁶

(b) Modern developments in approaches to child protection

- 1.18 The Commission has received extensive material in relation to alternative modern approaches to child protection. It is clear that Australia has a lot of catching up to do with respect to the innovative and modern developments in child protection that are being implemented overseas. CAALAS does not have capacity to address each and every example of modern, best practice approaches to child protection at present, but seeks to briefly emphasize our support for the approaches outlined in the December 2015 Expert Panel Final Report – Investing in NZ's Children and their Families.¹⁷

(c) The nature and scope of child protection issues in the NT, the over-representation of Aboriginal children and young people in care, and specific factors in the NT affecting the child protection system

- 1.19 In CAALAS' view, a discussion about the nature and scope of child protection issues in the NT is synonymous with a discussion of the over-representation of Aboriginal children and young people in care. The nature and scope of child protection issues must be considered in this context. The Commission has received clear and concerning evidence about the extremely disproportionate number of Aboriginal children in out of home care. It is noted that these statistics primarily come from annual reports of the Office of the Children's Commissioner in the NT, due to Territory Families (**TF**) and its departmental predecessors not publishing data relating to these disproportionate numbers or compliance with the Aboriginal Child Placement Principle in its annual reports. As at 30 June 2016, there were 1,020 children and young people in out of home care in the NT; 86% of whom were Aboriginal.¹⁸
- 1.20 Not only does the NT have the highest rate of children and young people interacting with child protection services out of any Australian state or Territory,¹⁹ it also has the lowest rate for placing Aboriginal children with family, kin or Aboriginal carers. As at 30 June 2016, such placements only constituted 36.2%.²⁰ This is an extremely concerning combination of facts.
- 1.21 In CAALAS' observations and experience, there are a range of factors contributing to this unacceptable level of representation.

Poverty

- 1.22 CAALAS emphasizes that a consideration of care and protection issues in the NT must be positioned within the context of the extreme and entrenched levels of socio-economic disadvantage that continue to be experienced within Aboriginal communities. CAALAS agrees with the observations of SNAICC that:

In the Northern Territory, extreme levels of poverty and social inequity remain unaddressed and are driving child protection systems engagement and, in many cases, the subsequent engagement of children with the youth justice system. For the Northern Territory's Aboriginal

¹⁶ T4248.16 (Mr Morrissey XN of K. Vatskalis)

¹⁷ Expert Panel Final Report – Investing in NZ's Children and their Families, December 2015, accessed at www.msdc.govt.nz/about-msdc-and-our-work/work-programmes/investing-in-children/

¹⁸ Office of the Children's Commissioner Northern Territory, Annual Report 2015-2016, Northern Territory Government, Darwin, 2016, p64

¹⁹ In its Interim Report, the Royal Commission into the Protection and Detention of Children in the NT reported the rate of children in the NT receiving child protection services as 91.5 per 1000, compared with 28.6 per 1000 nationally; at p10

²⁰ Steering Committee for the Review of Government Service Provision (2017). Table 16A.23 'Volume F: Community Services' in Report on Government Services 2017. Canberra, ACT: Productivity Commission.

and Torres Strait Islander peoples, experiences of disadvantage are significantly connected to the intergenerational impacts of colonisation and discriminatory government policy, including the forced removal of children from their families.²¹

1.23 In her evidence before the Commission, Ms Fejo-King advocated for a distinction of protective concerns that arise due to poverty, and those that may arise from more deliberate and malicious conduct. Ms Fejo-King acknowledged that:

There's no doubt at all, and there never has been, that there are children who need to be removed from their families for their own safety, but in many instances what we see in the Northern Territory is absolute poverty, and there's a difference between absolute poverty, which is often equated to neglect, as opposed to actual life-threatening situations for that child as a result of their – the people that they're living with in an unsafe place.²²

1.24 In CAALAS' view, a justice reinvestment approach to address the entrenched socio-economic disadvantage experienced by Aboriginal communities is desperately needed. We are confident that a reduction in the poverty experienced within Aboriginal communities will result in a tangible reduction in the numbers of Aboriginal children coming into contact with the child protection system.

Housing

1.25 In the NT, housing inequality plays a significant role in prompting contact between child protection and Aboriginal families. Aboriginal communities continue to experience high levels of overcrowding and homelessness in the NT. Findings from the Australian Housing and Urban Research Institute research project 'The structural drivers of homelessness in Australia 2001–11' were stark:

- Nationally, one in 20 Indigenous Australians are without a home. This rate is 14 times greater than the non-Indigenous population
- 75% of Indigenous homeless people live in severely overcrowded dwellings - more than double the figure for non-Indigenous people
- 70% of Indigenous people without a home are found in remote or very remote regions
- More than half the Indigenous people without a home are found in the Northern Territory
- The rate of homelessness in the NT is 15 times the national average
- Nationally, the top five regions for homelessness have not changed since 2001. They are found in remote and very remote areas of the NT ²³

1.26 The Commission has heard evidence about the well-established link between housing issues and ill health.²⁴ Specifically, the Commission has heard that tackling health issues such as scabies and infections rests upon addressing overcrowding in remote communities.²⁵ A lack of stable housing will have far reaching implications for children and families. The Commission heard evidence about the way in which homelessness can

²¹ SNAICC Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, February 2017; at p1

²² T4666.17 (Mr Dighton XN of C. Fejo-King)

²³ Australian Housing and Urban Research Institute research project The structural drivers of homelessness in Australia 2001–11, accessed at <https://www.ahuri.edu.au/research/final-reports/238>

²⁴ See for example, T4024.10 (Mr Woodroffe XXN of F. Oberklaid)

²⁵ Ibid.

lead to care and protection involvement with a family. Speaking in relation to a particular client, an Alice Springs youth worker gave evidence that:

One of the big issues is housing, is a massive issue. So at that particular time in 2006, housing was a huge issue, her mum and her aunty couldn't access public housing at that time. So we were really relying on the support of external agencies to provide emergency accommodation. But that's just an interim support. We need – had there been long-term accommodation placement – house, I should say, I think things would have been very different. It would have taken away that transient – was very transient in her youth.²⁶

- 1.27 In her evidence to the Commission, CAALAS Aboriginal Legal Support Officer Ms Maxine Carlton commented:

I have observed that Welfare does not support keeping children with their parents or families. Issues with people's houses are often cited by Welfare as a reason it is unsuitable for the child to stay in the house. If the house is a barrier, Welfare should help the family by writing a letter of support to Housing saying that fixing the house is a priority.²⁷

- 1.28 For a more detailed discussion on the connection between housing and the care and protection system, CAALAS directs the Commission to the preliminary submission of Aboriginal Peak Organisations of the NT (**APO NT**), the Human Rights Law Centre (**HRLC**) and Danila Dilba, dated 4 November 2016. This submission deals specifically with the issue of housing, and CAALAS endorses its contents and the recommendations therein.

Where disability becomes a child protection issue

- 1.29 CAALAS is concerned that children with disabilities are at a higher risk of being taken into out of home care due to medical and other support needs, rather than a child protection issue. In CAALAS' view, many of these children would be more appropriately assisted through the disability sector of government, rather than the child protection system. In the 2010 Board of Inquiry Report, it was estimated that 13% of children in out of home care were experiencing a disability, including physical, intellectual or both. However, some experts have expressed concern about the accuracy of this data, suggesting the NT is more likely to be aligned with other states in which 40% of children in out of home care are estimated to be experiencing some form of disability.²⁸

- 1.30 This issue has been explored in evidence before the Commission, including in the Growing them Stronger, Together Report²⁹ and in the evidence of Dr Howard Bath, former NT Children's Commissioner. Speaking about children removed from family for this reason, Dr Bath confirmed that often these children were placed away from remote communities and that there were minimal attempts by TF to maintain contact between the child and their family and community.³⁰ Dr Bath stated:

Well, I certainly think that these children shouldn't be in considered in – you know, in a child protection system, when they don't need that sort of protection. In fact some people – memories are coming back, some witnesses to the commissions pointed out that they had to actually – how can I say – threaten to leave their child to try and get a service, because they could only get a service if they were neglectful of the child. Do you understand what I'm getting at? In other words, that's where the services would come from if it was deemed that the child needed to be protected by the State. So most certainly there was a need for – you

²⁶ Closed court transcript 1 June 2017, 5.41 (Mr McAvoy XN of REDACTED)

²⁷ Exhibit 671.000 at [11] (Statement of Maxine Carlton)

²⁸ T4221 (Ms Graham XXN H. Bath)

²⁹ Exhibit 013.001 at p367 and 368 (Board of Inquiry Report)

³⁰ T4221 (Ms Graham XXN H. Bath)

*know, a more proactive look at these families and these children and primarily I think you're looking at the Department responsible for disability services to be providing for that need.*³¹

- 1.31 Dr Bath confirmed his view that more could, and should, have been done to support families where there was a child with a disability to help them to deliver the care and so that the child could remain connected to family and their community.³² This issue was also explored in the evidence of Ms Maxine Carlton, who commented that:

*Lots of children are in care simply because they have disabilities or mental health issues, and Welfare has taken the view that the families cannot meet the needs of the children. That is not a good enough reason for a protection order. Families should be supported to meet the needs of these children, with the local nurses and other service providers who are already based in community.*³³

- 1.32 CAALAS submits that a review must be conducted in relation to children in out of home care who experience disability, to determine whether the child protection or disability arm of government is the most appropriate agency to assist.

Domestic and family violence

- 1.33 Aboriginal communities across Australia experience unacceptable and disproportionate rates of domestic and family violence. Family violence is one of the main drivers of involvement in the care and protection and youth justice systems in the Northern Territory.³⁴ On this topic, CAALAS seeks to draw the Commission's attention to the 2014 submission by the Aboriginal Peak Organisations of the Northern Territory to the Northern Territory Government's new Domestic and Family Violence Strategy³⁵ and the Senate Finance and Public Administration References Committee Inquiry into Domestic Violence in Australia, and the recommendations therein.

- 1.34 CAALAS endorses the recommendations made to this Commission on the topic of family violence by the Aboriginal Peak Organisations of the NT, that:

Intergenerational trauma be recognised as a causal factor in family violence.

Healing and violence prevention programs must be adequately resourced by Governments.

The needs of children should feature prominently in violence reduction strategies to reduce intergenerational violence.

The Government must provide ongoing 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.

That the Government provide 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.

APO NT recommends 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

³¹ T4221 (Ms Graham XXN H. Bath)

³² T4222 (Ms Graham XXN H. Bath)

³³ Exhibit 671.001 at [12] (Statement of Maxine Carlton)

³⁴ Aboriginal Peak Organisations (NT) submission to the Senate Finance and Public Administration References Committee Inquiry into Domestic violence in Australia (August 2014)

³⁵ Accessed at <http://www.amsant.org.au/apont/wp-content/uploads/2015/02/141102-APO-NT-Submission-Domestic-and-Family-Violence-Northern-Territory-Government.pdf>

Aboriginal child's exposure to family violence whilst also ensuring that they are placed with a family member rather than a stranger.

- 1.35 In addition to these recommendations, CAALAS also supports the urgent establishment of a Domestic Violence Court in Alice Springs. We note that the success of such a court will hinge on the appropriate resourcing of key parties in that forum, including legal services that are assisting victims and defendants.

(d) **The appropriateness of current approaches to child protection in the NT**

- 1.36 The unacceptable statistics in relation to the high rates of Aboriginal children in out of home care and poor compliance with the Aboriginal Child Placement Principal for those children, indicate that the current approaches to child protection are in need of reform.

- 1.37 CAALAS has observed a history of government policy in the NT whereby the driving factors behind the high level of contact between Aboriginal communities and child protection have not been appropriately recognised. This has been demonstrated in the commentary of senior NTG representatives such as former Minister for Children and Families Mr Elferink, whose public comments included things such as:

What I've made very clear is that a large slice of a cause of this is passive welfare which underwrites some parents. But all too often too many parents ... (are) making choices to not look after their kids... How hard is it to ask a parent to make sure a kid goes to bed on time? How hard is it to ask that you can afford to feed your children?³⁶

- 1.38 Such comments display great ignorance regarding the bleak daily realities of families in the care and protection system, and are incredibly damaging in terms of existing distrust within the Aboriginal community relating to the child protection system.

- 1.39 The current NTG has significant work ahead of it to undo the damage of these offensive, demonising comments. Part of this involves publicly acknowledging how unacceptable the current state of affairs is with regard to rates of Aboriginal children in care in the NT. In his evidence before the Commission, TF CEO Mr Ken Davies confirmed that the increasing numbers of Aboriginal children in out of home care show a 'devastating trend', and that TF is committed to reducing the number of Aboriginal children in out of home care.³⁷ CAALAS is concerned that these views and commitments may not be consistently shared amongst TF staff. CAALAS was extremely concerned by the evidence of the current TF Executive Director of Out of Home Care Ms Marnie Couch, on this point:

Are you prepared to acknowledge that it is an entirely unacceptable state of affairs that nine out of 10 children in out-of-home care are Aboriginal children?---I will answer that as best I can in saying I – I, like others, would like to see no children in care, Aboriginal or non-Aboriginal. That would be my preference.³⁸

- 1.40 In hearing this evidence, a CAALAS staff member made the observation that such commentary would be akin to distilling the US "Black Lives Matter" campaign to one of "All Lives Matter." Genuine progress in relation to the ongoing disproportionate removal of Aboriginal children in the NT, and the poor outcomes that ensue, will not be achieved if TF takes a generic approach to its work.

- 1.41 CAALAS was also deeply concerned by further evidence from Ms Couch that suggested a serious lack of understanding of the ongoing impact and weight of government policies

³⁶ 'Northern Territory leads the country in reports of child abuse and neglect', NT News, 15 May 2015, accessed at <http://www.ntnews.com.au/news/northern-territory/northern-territory-leads-the-country-in-reports-of-child-abuse-and-neglect/news-story/c5c0f621987211c61943841c943bedfd>

³⁷ T5240 (Dr Dwyer XXN of K. Davies)

³⁸ T4193.41 (MS Graham XXN of M. Couch)

such as the Stolen Generation, which continues to be the lens through which many Aboriginal people experience the current care and protection system:

*Without entering into a judgment about that, you are well aware of that perception on behalf of many in the Aboriginal community, aren't you?---I would like to say I'm not well aware of that perception by many in the Aboriginal community. I am aware there is a lot of rhetoric and literature and research to say that. I'm just clarifying that is not the message that I have received from Aboriginal community members, but I'm very aware of the literature around it.*³⁹

- 1.42 A recognition of the historical context of the Stolen Generation and the long and powerful memories that persist in Aboriginal communities is essential to sensitive and effective care and protection service delivery to Aboriginal people in the NT. This must be understood by staff operating at all levels of TF.

Findings the Commission ought to make

- 1.43 That significant numbers of children have ended up in out of home following contact with the care and protection system, due to circumstances that could have been addressed through disability support services.
- 1.44 That recognition of the historical context of the Stolen Generation and the long and powerful memories that persist in Aboriginal communities is essential to sensitive and effective care and protection service delivery to Aboriginal people in the NT.
- 1.45 That a significant proportion of substantiated care and protection notifications regarding Aboriginal families arise from poverty-related neglect. A reduction in the poverty experienced within Aboriginal communities will result in a tangible reduction in the numbers of Aboriginal children coming into contact with the child protection system.
- 1.46 That vulnerable Aboriginal children and families in the NT have been disadvantaged due to the politicising of care and protection issues, which has led to interrupted and inconsistent service provision following changes of government.
- 1.47 The care and protection system would more effectively meet the needs of Aboriginal children if targets relevant to care and protection were set. Such targets should include reducing the number of Aboriginal children in out of home care, and reducing the number of Aboriginal children placed with non Aboriginal carers.
- 1.48 The most appropriate organisations to deliver early intervention and preventative supports to Aboriginal children and families are Aboriginal community controlled organisations.

Recommendations

1. That the function and purpose of a child protection system must be conceptualised more broadly than purely providing a tertiary, statutory response.
2. That a review be conducted in relation to children in out of home care who experience disability, to determine whether the child protection, or disability arm of government is the most appropriate agency to assist.
3. That Territory Families should capture in its annual reporting specific data in relation to the number of ATSI children in out of home care, and the number that are placed in accordance with the Aboriginal Child Placement Principle.

³⁹ T4164.43 (Mr Morrissey XN of M. Couch)

4. That specific reporting regarding compliance with the Aboriginal Child Placement Principle should occur, to increase accountability of government and motivate progress in this regard.
5. That the federal and state/territory levels of government endorse and adopt the target and sub-targets set out in the Family Matters Roadmap.
6. That this commitment from both levels of government must also be bipartisan, to avoid the adverse impact and prejudiced outcomes that can flow from sudden policy changes that arise from a change of government.
7. That capacity and commitment must be built across the range of government departments with whom vulnerable families and children are interacting, to effect a whole of government early intervention response to reduce the number of Aboriginal children in the care and protection system.
8. That as part of the drafting of a single legislative framework for care and protection and youth justice, consideration be given to including principles and legislative aims that are consistent with the Family Matters campaign, to raise the benchmark in relation to child protection service provision for Aboriginal children and families and what this sets out to achieve.
9. Intergenerational trauma be recognised as a causal factor in family violence.
10. Healing and violence prevention programs must be adequately resourced by Governments.
11. The needs of children should feature prominently in violence reduction strategies to reduce intergenerational violence.
12. The Government must provide ongoing 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.
13. That the Government provide 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.
14. 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.
15. That a Domestic Violence Court be established in Alice Springs. The success of such a court will hinge on the appropriate resourcing of key parties in that forum, including legal services that are assisting victims and defendants.

2. The NT Child Protection System

(a) Child Protection policy and services; and

(b) Structure, management and decision making

2.1 Child protection service delivery is currently situated within the Territory Families department of the NTG. CAALAS refers to Recommendations 2 and 3 from our submissions on Youth Detention in relation to the creation of a statutory body to oversee the provision of youth justice services in the NT. In a similar vein, CAALAS recommends that consideration and consultation also occur regarding the creation of a statutory body to oversee service delivery in relation to care and protection. As part of this consultation, the possibility of a single statutory body to oversee both youth justice and care and protection should be considered.

2.2 In making this recommendation, we echo the requisite characteristics for this model that were set out on at 1.8 of our Youth Detention submissions. Specifically, we highlight that the organisational structure of the statutory body must empower Aboriginal people to shape the solution to the overrepresentation of Aboriginal children in the child protection system, provide for senior Aboriginal-identified roles, and facilitate the involvement of respected Elders and community members in decision making processes to address contributing factors to this overrepresentation. This statutory authority would then partner with Aboriginal organisations and communities to deliver care and protection services.

2.3 CAALAS understands that NAAJA is currently refining briefing material in relation to the possible structure and mechanics of this statutory authority (or statutory authorities, if separate care and protection and youth justice bodies are deemed preferable). CAALAS supports the exploration of these models, and in light of the persistently poor outcomes being experienced by Aboriginal children and families within the current system, is firmly of the view that this kind of re-conceptualisation of the care and protection system is desperately needed. The status-quo has continued to fail Aboriginal children and families for too long.

2.4 Parallel to the creation of a statutory authority, CAALAS also strongly advocates for the transition of Out of Home Care to the community sector, specifically Aboriginal Child Care Agencies. We have expanded on this in topics 9 and 10 of this submission.

(c) Funding and operations

2.5 CAALAS is concerned by the evidence from multiple witnesses before the Commission concerning the chronic underfunding of TF.⁴⁰ Under resourcing in this area compromises the ability of the NTG satisfy its statutory duty in relation to vulnerable children in the NT. Speaking about the additional resources injected in the child protection from 2007 when he was Minister, Mr Vatskalis commented "\$130 million was a drop in the ocean. We needed five times more money to actually address all the issues."⁴¹ In CAALAS' submission, the social cost of not resourcing appropriate care and protection services is immeasurable.

2.6 Where services are funded, in CAALAS' observation service delivery and outcomes are often compromised by short term funding cycles. The following characterisation from the Board of Inquiry resonates with CAALAS:

Short term funding agreements and service strategies which are not locally driven, together with competitive tendering, have led to a situation where services may be competing for

⁴⁰ See for example, T4247.27 (Mr Morrissey XN of K. Vatskalis)

⁴¹ T4247.27 (Mr Morrissey XN of K. Vatskalis)

*clients rather than coordinating their activities and providing holistic support for families that's driven by family needs and goals. Children and families are likely to either be overwhelmed or fall through the gaps of a fragmented system.*⁴²

- 2.7 The Commission has heard that funding cuts, and short term funding cycles can be the product of a change of government and that this factionalised approach does not serve the interests of vulnerable children and families. For this reason, a bipartisan approach is essential, so that initiatives and services do not lose momentum or become severed. When asked about how to overcome this challenge, former Minister for the Office of Children and Families Ms Robyn Lambley agreed about the prejudicial impact such turnover has on vulnerable children, but expressed scepticism as to whether care and protection could be approached in an a-political manner:

*Well, you're right. A Parliament should guarantee financial sustainability to child protection. But it is managed within a political environment, and you can't take the politics out of it. No matter how hideous and obscene that is, it is – politics does come into play.*⁴³

- 2.8 The need for a bi-partisan approach is essential to meeting the complex needs of vulnerable children. CAALAS recommends that this Commission highlight the value and importance of an a-political approach being taken to care and protection issues.

(d) **Staffing and workforce issues**

Caseloads

- 2.9 CAALAS has been concerned by the evidence before the Commission in relation to the significant and unsustainable workloads shouldered by TF caseworkers and high level members of Government. In her evidence before the Commission, former Minister Ms Robyn Lambley estimated that due to her broad range of portfolios and competing responsibilities, approximately 20% of her time would have been allocated to Children and Families.⁴⁴ In CAALAS' submission, this amount of Ministerial time is inadequate in the face of the challenges and complexities that come with the care and protection of children. The Commission also heard evidence that the caseloads of frontline TF caseworkers were often approaching 40 cases per caseworker.⁴⁵ When this reality was put to a panel of Alice Springs organisations with extensive experience providing frontline therapeutic support services, serious concerns were expressed:

*I mean, it's unfathomable how they manage that to any great outcome, and I think what ends up happening is that either children are left with unsubstantiated or uninvestigated cases, particularly in remote communities where it's even harder to do that because it's further to travel, and you may get there and the people you are wanting to speak to aren't there, and so it can take a long time. They get overshadowed by investigating cases that are within their immediate reach, so within Alice Springs. But I think it also means that the investigation is often very haphazard and the assessment is too quick, and hence may be the cause of so many children ending up in out-of-home care.*⁴⁶

- 2.10 Providing a point of comparison, Ms Ah Chee confirmed that the caseload for the Congress Targeted Family Support program was 10 families, and 6 families for the Intensive Family Support Program.⁴⁷ Ms Ah Chee spoke of the level of trauma experienced within these

⁴² Exhibit 013.001 at p26 (Board of Inquiry Report)

⁴³ T4637.23 (Mr Morrissey XN of R. Lambley)

⁴⁴ T4631.44 (Mr Morrissey XN of R. Lambley)

⁴⁵ T4036 (Mr McAvoy XN of Ms Ah Chee, Mr Walder and Ms Balmer)

⁴⁶ T4036 (Mr McAvoy XN of Ms Ah Chee, Mr Walder and Ms Balmer)

⁴⁷ T4036 (Mr McAvoy XN of Ms Ah Chee, Mr Walder and Ms Balmer)

families, the need for intensive support, and stated that a caseload of 40 was "unbelievable" and simply could not work.⁴⁸

- 2.11 The issue of workload is closely connected to staff turn over. In his evidence to the Commission, Mr Andrew Walder commented that new workers at TF were effectively set up to fail due to the unsustainably high caseloads they were expected to manage, and that such working conditions could only lead to a quantitative, rather than qualitative, work with families.⁴⁹
- 2.12 CAALAS recommend that resources are urgently injected to lower the client/caseworker ratio and to increase the capacity of caseworkers to meet the intensive needs of families they are working with.

The need for more Aboriginal staff

- 2.13 CAALAS strongly advocates for greater numbers of Aboriginal staff within the care and protection system. An increased presence of Aboriginal staff will contribute to a more culturally appropriate approach, reduce barriers for Aboriginal families and children engaging with the system, and build trust within the Aboriginal community. In her statement to the Commission, CAALAS Aboriginal Legal Support Officer Kristy Bloomfield spoke about the importance of the employment of local Aboriginal people, including knowledge of local employees as to communities and connections in Alice Springs and the impact this has on outcomes, engagement and understanding of families:

When local Aboriginal people are the case workers, the families in and around Alice Springs have a better understanding of how to engage with TF. I have also found that local Aboriginal workers are more likely to seek out kinship care options. This maintains connection to country and family for the child.⁵⁰

- 2.14 In relation to increasing the Aboriginal workforce within the child protection system, one barrier that the Commission has heard about in evidence is the requirement for formal qualifications. CAALAS submits that this can be overcome by the NTG providing relevant training to applicants for these roles. The Commission has received evidence in support of this strategy,⁵¹ including from Ms Maxine Carlton who advocated for the Government to have "a long term commitment to training Indigenous people into these roles. They should receive proper training so that the person has a qualification at the end of that training."⁵²
- 2.15 CAALAS recommends that TF develop an Aboriginal Employment Strategy, and conduct an active recruitment drive to increase the numbers of Aboriginal staff in that Department.

Turnover of TF staff

- 2.16 CAALAS is concerned about the impact that TF staff turnover has on outcomes for vulnerable children, and their ability to engage with therapeutic supports being provided. In her evidence before the Commission, vulnerable witness CK spoke about the difficulties presented by the turnover of caseworkers:

I had many caseworkers from FACS. Sometimes a new caseworker would turn up to see me in my placement or in the police cells before the FACS boss even told me I had a new one. I did not like it when they changed so much. It is better for young people to have the same

⁴⁸ Ibid

⁴⁹ T4038.15 (Mr McAvoy XN of Ms Ah Chee, Mr Walder and Ms Balmer)

⁵⁰ Exhibit 670.001 at [23], [24] (Statement of Kristy Bloomfield)

⁵¹ T4261.11 (Mr Woodroffe XXN of K. Vatskalis)

⁵² Exhibit 671.001 at [22] (Statement of Maxine Carlton)

case worker for as long as possible. It is also good to know before hand who your new case worker is going to be.⁵³

- 2.17 Speaking from a professional perspective, Ms Tracey Hancock gave evidence that staff turnover has a big impact on young clients, and that this inconsistency is a barrier to the young person forming a relationship of trust with that new worker, and subsequent ones.⁵⁴ Counsel for CK raised this issue with the former Minister Mr Vatskalis, who suggested that the high transiency and turnover of professionals in the NT could be addressed through building the capacity of a local workforce:

*Train people locally, local people and you will arrest this transiency, because the local people will stay here. And also if local people are aware of the problem, they are aware of the problem, they are more likely to stay here to address the problem than someone who comes to for two years experience, three – to the Territory and then go back down south and in their CV, "I work as a child protection in the Northern Territory." If we're going to resolve the local issues, we have to train local people to address the local issues and that's the best way to do it.*⁵⁵

- 2.18 In addition to building capacity to establish a local workforce, CAALAS submits that more sustainable caseloads and greater amounts of professional support and development amongst TF caseworkers would be a positive step towards addressing this issue of staff turnover.

Training of child protection workers

- 2.19 CAALAS is concerned that TF caseworkers, whose approaches and decisions can have an enormous impact on the children and families with whom they are working, may not always receive an adequate level of training. Evidence before the Commission has confirmed a need for better or additional training of TF caseworkers across a range of areas.
- 2.20 The Commission has heard that TF caseworkers are sometimes lacking in cultural competency. It has been noted that staff are often quickly recruited to fill vacancies in crucial frontline positions, and that these staff are sometimes from interstate and overseas. Concern has been expressed that staff who are unfamiliar with the local setting "do not understand the families and dynamics in the area... they also don't push for kinship care because they don't understand the importance of it."⁵⁶ Numerous other witnesses highlighted the need for greater cultural awareness training that is specific to the region in which the staff are working, and delivered by Aboriginal people.⁵⁷ CAALAS is concerned to hear that the current online training module of cultural awareness training offered to TF staff is not Territory specific, but based on resources from NSW. In designing cultural awareness training it is essential that this is appropriate and specific to the region and client base with whom staff will be working.
- 2.21 Cultural awareness training must also include training about the importance of using interpreters. The Commission has received extensive evidence about the shortcomings in this regard, and has heard concerns from a number of witnesses that interpreters are not being used as frequently as they should be.⁵⁸ CAALAS recommends that TF takes advantage of the training that is offered by the Aboriginal Interpreter Service. CAALAS agrees with the AIS that the issue of using an interpreter should be canvassed

⁵³ Exhibit 478.000 at [15] (Statement of CK)

⁵⁴ T4523 (Ms Rodger XN T. Hancock)

⁵⁵ T4263 (Ms Roussos XN of Mr Vatskalis)

⁵⁶ Exhibit 671.001 at [15] (Statement of Maxine Carlton)

⁵⁷ T4523 (Ms Rodger XN T. Hancock)

⁵⁸ See for example, Exhibit 671.001 at [24] (Statement of Maxine Carlton)

sensitively.⁵⁹ There are a number of barriers that may cause a client to be unsure about using an interpreter, including not knowing what an interpreter does, having had a negative experience with an interpreter in the past, privacy concerns, concern that they may have to cover the cost of an interpreter, and feelings of shame or offense that their English language skills aren't 'good enough.'⁶⁰

2.22 Specific training to increase understanding and implementation of the Aboriginal Child Placement Principle is also essential. CAALAS endorses the recommendation of SNAICC that the Northern Territory Government develop and implement a detailed practice guidance and training program for child protection practitioners on full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle, with reference to the aims and elements of the Principle as described in by SNAICC and reflected in the Third Action Plan for the National Framework for Protecting Australia's Children 2009-2020.⁶¹

2.23 In CAALAS' view, another area that warrants specific training is that of unconscious bias. CAALAS is concerned about the prejudicial impact of unconscious bias on assessments and decisions that are made in relation to Aboriginal children and families by TF staff. The Commission heard powerful evidence from Professor Behrendt on this point:

I think we see a lot of it in terms of judgments that are made about the way in which Aboriginal parenting is done, and I think we also see almost a – if you look at the statistics that you – that you have there in the Northern Territory around how many notifications lead to removal that, actually, there's probably a general perception that is part of a broader narrative within the media that Aboriginal parents aren't concerned parents. We've seen, certainly, instances where that has been portrayed. We've seen also, I guess, in terms of an unconscious bias, that there's – there is almost – seems to be a focus on what parents aren't doing under this Eurocentric gaze rather than looking at a strengths-based approach and looking at what the benefits are that Aboriginal families, Aboriginal carers give their children and the many benefits of keeping Aboriginal children in their community. That doesn't seem to be valued much at all, and I think that that is often an unconscious bias...⁶²

2.24 When asked about the utility of unconscious bias training of TF staff, current executive director of Out of Home Care Ms Marnie Couch confirmed her support for this, indicating that TF caseworkers with social work backgrounds may have been provided with this kind of training whilst obtaining their social work degrees.⁶³ CAALAS submits that this training should be provided to all TF staff, given that those staff will be working with a predominantly Aboriginal client base. CAALAS further submits that this training be specially designed for application in the care and protection setting.

(e) **Notification issues;**

(f) **Intake processes; and**

⁵⁹ CAALAS recommends that TF staff be made aware of the approach suggested by the AIS: "Before we start talking, I want to ask you about what language we should use today. Maybe we can talk in English, or maybe it's better if we talk in your language. I don't speak your language, so if we think it's better to talk in your language I will ask an interpreter to help me."

⁶⁰ Information accessed at <https://nt.gov.au/community/interpreting-and-translating-services/aboriginal-interpreter-service/when-to-use-an-aboriginal-interpreter/ask-if-they-want-an-interpreter>

⁶¹ SNAICC Submission to RCPDCNT, p8

⁶² T4002 (Mr McAvoy XN L. Behrendt)

⁶³ T4195.15 (Ms Graham XXN of M. Couch)

(g) **Investigation processes**

The need for a culturally appropriate assessment framework

- 2.25 CAALAS is concerned that Aboriginal families are being prejudiced in their dealings with the care and protection system due to the Eurocentric gaze that is often applied by TF. This prejudice can occur at various stages of a family's interaction with TF, including at the points of investigation and intake. CAALAS submits that this issue could be addressed by the development and adoption of a culturally appropriate assessment framework, that looks at strengths, needs and risks and acknowledges culture as a protective factor. Given the primary users of the care and protection system in the NT are Aboriginal children and families, it is imperative that the care and protection framework reflects Aboriginal perspectives of wellbeing and fosters responsive practices. Assessment and decision making processes should be informed by the diversity of Aboriginal parenting styles and Aboriginal perspectives, and in particular, what Aboriginal people perceive as a 'risk of harm'. Accordingly, investigation and assessment decision makers should have a high level of Aboriginal cultural competency.
- 2.26 The Commission has heard evidence regarding the Tuituia Assessment Framework that was implemented by the NZ Department for Vulnerable Children,⁶⁴ including evidence from CEO of Danila Dilba Ms Olga Havnen about the value of this approach:

These particular tools I think are a good example of a more informed way of thinking about how you conduct assessments, particularly of vulnerable children and families, taking a genuine account of cultural considerations. But more importantly, it's a mechanism to give much greater voice and say to, in this case to Maori families, the iwi, the band, the tribe, the group which is very much along the lines of all the things that I guess many of the Aboriginal people giving evidence to this Royal Commission over the last week or so have been strongly asking for. So what people – Aboriginal people say at a local and regional level is that we have existing mechanisms there of people with senior authority, the right kinship groups, people who actually know what would be in the best interests of that child, and that I think we would be well advised to take account of these kinds of tools and adapt them for use and implementation here in the Northern Territory. I think it would go a long way to addressing the current deficiencies that we see and have heard about over the last couple of weeks.⁶⁵

- 2.27 In CAALAS' view, there is much to be taken from the Tuituia framework. We note however, that whilst initiatives from other jurisdictions may be considered and reflected upon, these models should not be transplanted for direct application in the NT setting. Rather, they can provide useful food for thought in relation to a re-thinking of the system. CAALAS recommends that the NTG commits to engaging with Aboriginal communities and organisers with a view to developing a culturally appropriate assessment framework to guide child protection approaches and decision making in the NT. This framework should include a culturally appropriate risk assessment tool.

Lack of interpreter use

- 2.28 CAALAS is concerned that TF does not use interpreters as frequently as needed when engaging with Aboriginal children and families. Interpreters must be made available to assist families who may wish to make a notification, and for those who are responding to an investigation by TF. In CAALAS' view, the failure to use interpreters during the investigation stage creates a risk of TF making assessments and decisions about vulnerable children with incomplete or possibly incorrect information. Aside from the legitimacy of decisions regarding children, the trauma of families who may experience the removal of a child will be heightened if the child is removed in circumstances where an interpreter has not been used and the family does not understand what has happened and why. The Commission has heard frequent concerns in this regard, from numerous

⁶⁴ Exhibit 549 (Tuituia Assessment Framework Implemented by the New Zealand Department for Vulnerable Children)

⁶⁵ T4764.12 (Mr Callaghan XN of O. Havnen)

witnesses. As one of the witnesses expressing such concern, Ms Maxine Carlton, CAALAS ALSO, recommended to the Commission that:

Ideally, Welfare should employ interpreters full time so that an Indigenous person can attend Welfare offices any time and be able to speak with an Indigenous person in language. Interpreters should also be present at all meetings with Welfare. For indigenous people, it can be very hard to hear that Welfare thinks that there are problems with how the child is being cared for or their house. Interpreters play an important role in communicating this information in a culturally appropriate way and helping people to receive the information in a supported way.⁶⁶

- 2.29 The importance of using interpreters to assist Aboriginal clients do not speak English or who may speak limited English as a second or third language, cannot be overstated. Increased means of accessing an interpreter, including through an on-call interpreter service for some Aboriginal languages, have been developed by the Aboriginal Interpreter Service to provide a more responsive service and reduce instances where an interpreter may not be available.

Findings the Commission ought to make

- 2.30 That under resourcing in the area of care and protection has compromised the ability of the NTG satisfy its statutory duty in relation to vulnerable children in the NT.
- 2.31 That a factionalised approach to care and protection does not serve the interests of vulnerable children and families. A bi-partisan approach to care and protection is essential.
- 2.32 That the high caseload expected of TF caseworkers is unsustainable, and leads to compromised service delivery for vulnerable children and families.
- 2.33 That staff turnover amongst TF caseworkers has an adverse impact on young clients. This inconsistency is a barrier to the young person forming a relationship of trust with that new worker, and subsequent ones.
- 2.34 That TF caseworkers, whose approaches and decisions can have an enormous impact on the children and families with whom they are working, may not always receive an adequate level of training to support them in their roles.
- 2.35 That unconscious bias has a prejudicial impact on assessments and decisions that are made in relation to Aboriginal children and families by TF staff.
- 2.36 That Aboriginal families are being prejudiced in their dealings with the care and protection system due to the Eurocentric gaze that is often applied by TF.
- 2.37 That TF staff do not use Aboriginal interpreters as often as needed.
- 2.38 That the failure to use interpreters during the investigation stage creates a risk of TF making assessments and decisions about vulnerable children with incomplete or possibly incorrect information.

Recommendations

- 16.** That a statutory body be created, to oversee service delivery in relation to care and protection. As part of this consultation, the possibility of a single statutory body to oversee both youth justice and care and protection should be considered. In making this recommendation, we echo the requisite characteristics for this model that were set out on

⁶⁶ Exhibit 671.001 at [24] (Statement of Maxine Carlton)

at 1.8 of our Youth Detention submissions, and also refer to Recommendations 2 and 3 of those submissions.

17. That resources are urgently injected to lower the client/caseworker ratio and to increase the capacity of TF caseworkers to meet the needs of families they are working with.
18. That TF actively work towards increasing the number of ATSI staff within the child protection system, and provide relevant training to applicants to overcome barriers in relation to formal tertiary qualifications.
19. That TF develop an Aboriginal Employment Strategy, and conduct an active recruitment drive to increase the numbers of Aboriginal staff in that Department.
20. That TF staff receiving better training, especially in the areas of cultural awareness, the Aboriginal Child Placement Principle, interpreter use, and unconscious bias.
21. That the Northern Territory Government develop and implement a detailed practice guidance and training program for child protection practitioners on full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle, with reference to the aims and elements of the Principle as described in by SNAICC and reflected in the Third Action Plan for the National Framework for Protecting Australia's Children 2009-2020.
22. That the NTG commits to engaging with Aboriginal communities and organisations with a view to developing a culturally appropriate assessment framework to guide child protection approaches and decision making in the NT. This framework should include a culturally appropriate risk assessment tool.
23. That TF employ Aboriginal language speakers to act as interpreters at their local offices.

3. **Early Intervention**

(a) **The link between early intervention and child protection**

- 3.1 CAALAS submits that there is general consensus that the sorts of physical and emotional conditions that every child needs to thrive and fulfil their potential are readily identifiable. Conversely, as Dr Oberklaid observed, this means that "we know the sorts of conditions ...that pose a risk to optimal development".⁶⁷ Risks identified are poverty, unemployment, low self-esteem, poor parenting modelling, and the presence of family violence. These risks are commonly associated with disadvantage.
- 3.2 To mitigate these known risks Dr Oberklaid goes on to identify the supports that, if available, can enable families to meet the developmental needs of their children. He speaks about health and wellbeing of the mother during pregnancy, and of the mother and child during the early months and years of childhood, including the importance of access to appropriate nutrition, medical services and supports to minimise the stress of those early months and years following pregnancy. Dr Oberklaid also identifies the importance of providing parents with access to information⁶⁸.
- 3.3 Despite the understanding that the presence of these particular risk factors within a community or family increase the likelihood of children being exposed to harm, and ultimately require intervention to protect children and young people, CAALAS is concerned that the Northern Territory Government has consistently implemented policy committed to dealing with these issues only after harm has manifested.

⁶⁷ T4017 (Mr Dighton XN of F. Oberklaid)

⁶⁸ T4017 (Mr Dighton XN of F. Oberklaid)

- 3.4 This is against a background of knowledge that over half of the substantiated notifications made to Territory families in the year 2014/2015 that concerned an aboriginal child was a notification of neglect,⁶⁹ and that issues disproportionately affecting Aboriginal children such as communities such as overcrowding affect health outcomes for Aboriginal kids. Many of these risk factors can be addressed prior to harm manifesting, however early intervention or harm prevention has not been a focus for territory care and protection policy.
- 3.5 Instead, the focus on tertiary responses follows an observed national trend where government focuses child protection resources at the crisis point. That is the point in time where dysfunction and neglect are entrenched, and where options other than removal are limited. This policy approach has contributed to the significant numbers of Aboriginal children in the care of the department of TF and CAALAS submits to the significant numbers of Aboriginal children in youth detention.
- 3.6 In his evidence, Professor Silburn referred to data from a Department of Attorney-General and Justice report by Joe Yick, that looked at the association between criminal behaviour and experience of maltreatment as a child, commenting that as in every other jurisdiction in the world, there was known to be a strong association between childhood child protection issues and youth offending.⁷⁰
- 3.7 A legal practitioner in Katherine, working across both Care and Protection and Youth Justice observed that reports prepared on Youth Offenders that include information about their early childhood and current care circumstances observes that:
- In many cases the youth's current life situation makes it apparent that the youth would have benefitted from outside support at those early stages (even in circumstances where the evidence was not sufficient to justify a protection order).*
- Families need to be supported at an early stage, before neglect, mistreatment and family dysfunction is so entrenched that removing a child is the only option.⁷¹*
- 3.8 This view is echoed by the best practice approaches to early intervention where the prevailing view is 'the earlier the better'. Issues and risk factors must be identified as early as possible, as the longer we wait, the less likely it is then to have a positive effect.⁷²
- 3.9 CAALAS is of the view that issues associated with poverty and high epidemic levels of family violence in communities must be addressed as a matter of urgent priority.
- 3.10 Following the release of Growing Them Strong Together report, political will, while initially in favour of the reports reconditions of collaborative approaches to reduce the number of young people in the departments care, waived under budgetary and resource constraints.
- 3.11 However, the balance of evidence before the Commission is clear. To meaningfully address the unacceptable numbers of aboriginal young people in out of home care, TF needs to move from a 'crisis approach' to policy intervention and embrace early intervention and prevention strategies that are community owned, initiated and based on local knowledge. A whole of government approach to health and wellbeing is required. This will require long-term investment and the understanding that the solution must be generational and cannot be achieved within the term of a single government.⁷³

⁶⁹ T4389 (Mr McAvoy XN of F.R Silburn)

⁷⁰ T4394 (Mr McAvoy XN Professor Silburn)

⁷¹ Exhibit 673.001 at [12] – [13] (Statement of Thomasin Opie)

⁷² T4022 (Ms Graham XN of F. Oberklaid)

⁷³ T4017 (Mr Dighton XN of F. Oberklaid)

(b) **Models or approaches for effective early intervention**

- 3.12 Sustainable and effective solutions for early intervention and harm reduction require engagement between Territory Families with parents, families and, with communities. CAALAS strongly believes that there is a role within early intervention strategies for Aboriginal communities themselves, through avenues such as communication with elders and representative justice groups as well as community controlled Aboriginal organisations. In making this point, we refer back to our earlier recommendations about the establishment of statutory bodies to oversee and coordinate service provision in relation to care and protection and youth justice, and the integral role that must be played by Aboriginal community leaders in this process.
- 3.13 In her evidence before the Commission, Professor Behrendt stated that "Fly in fly out services employed by the intervention undermined the authority and place of community controlled services, it undervalued the expertise of community and those organisations in the region..."
- 3.14 CAALAS has the view that this undervaluing of the expertise the community itself is present within Territory Families, and that this has prevented cooperative respectful working relationships between Communities and Territory Families. CAALAS believes that the inclusion of senior members of community to address child welfare concerns would assist Territory Families to gather information, and improve their ability to engage and deliver services and would vastly improve the effectiveness of early intervention.
- 3.15 Unfortunately, currently Territory Families does not engage with community groups. When speaking about the role Kuriji, the group of Warlipiri elders from and around Lajamanu who represent the community, could have in working with the department, Mr Jerry Jangala told the Commission that "*Welfare should come and speak to Kurdiji first, if they're not happy with that little one, they've got to give us name, give it to Kurdiji first and Kurdiji then to bring all the family together.*"⁷⁴
- 3.16 This type of early intervention, would result in assessments about a child's safety and wellbeing being culturally informed and co-operative. It would bring considerations identified by the Tuituia assessment framework implemented by the New Zealand department for vulnerable children⁷⁵ which is designed to ensure the department accesses information about the child from appropriate people in the community so that they can genuinely include cultural considerations in their assessments.
- 3.17 CAALAS submits that co-operative engagement with local communities would also assist the department to identify supports that exist within community for families who are at risk. It would also allow them to include considerations of cultural safety in intervention.
- 3.18 The horizontal coordination between government and community would also increase engagement by families and uptake of service to address systemic issues of poverty and dysfunction by assisting families in the fundamentals of living before the family is in crisis. This, we know will minimise the risk of a child later being removed by TF.⁷⁶

(c) **The appropriateness and shortcomings of approaches to early intervention in the NT, particularly for Aboriginal communities; and**

⁷⁴ T4550 (McAvoy XN Jangala)

⁷⁵ Exhibit 549 (Tuituia Assessment Framework Implemented by the New Zealand Department for Vulnerable Children)

⁷⁶ Exhibit 538.000 at [29 (Statement of Dr Fejo-King)

(d) **Gaps in current approaches to early intervention, including the design and delivery of services**

- 3.19 CAALAS considers that there is a significant lack of programs aimed at early intervention in and around Alice Springs, particularly in remote Aboriginal communities but also in Alice Springs Town Camps.
- 3.20 It is observed that where programs exist their effectiveness is limited by the 'top down approach' with which they have been developed. There is a lack of community specific responses developed in consideration of community circumstances. Where programs are successful, there is community ownership and control. An example of this was the suite of support services run by Tangentyere Council Aboriginal Corporation.
- 3.21 A major concern for CAALAS however is the lack of continuity in program delivery, unfortunately again services run by the Tangentyere council Aboriginal Corporation are an example of this. Mr Andrew Walder, the manager of the access to education division of Tangentyere Council explained to the Commission:
- "The Ketyeye Program commenced in October 2005 as part of the wider Safe Families program with a focus on improving parenting knowledge and skills and overall family wellbeing by addressing some of the gaps in service delivery to vulnerable families. Ketyeye provided parenting education, information and support to parents, and worked with families with children aged 0-18 who are considered vulnerable and/or in crisis. Ketyeye was funded by the Department of Territory Families.... and was defunded June 2016.... At the time, it was defunded the Ketyeye program was working with 43 families..."⁷⁷*
- 3.22 In further evidence before the commission Mr Walder explained that defunding was a result of the withdrawal of funds by Territory Families: "What happened in June 2016 was both that service, Ketyeye Program, and the Targeted Family Support Service of Congress were defunded by Territory Families and what that has meant, is a huge gap in the services that families are able to access in Alice Springs."⁷⁸
- 3.23 Similar difficulties have been faced by the Central Australia Aboriginal Congress, who while facing similar funding cuts from Territory Families were able to continue their targeted family support service in a limited capacity on commonwealth funding.⁷⁹
- 3.24 CAALAS notes that short term funding cycles can bring numerous challenges, including difficulty in staff retention due to employment uncertainty. Funding applications are also very onerous, and due to organisations already being extremely stretched can often direct human resources away from the frontline response.
- 3.25 CAALAS believes there is an obligation for all levels of government to commit to long term continuity of funding in the early intervention sector.
- 3.26 Youth specific interventions and supports, such as drop in centres, and after hours youth activities are also necessary in this space. Given young peoples' transience between communities in the centre and town camps and regional centres there must be a flexibility in delivery that allows access to services and the sharing of information within the geographical regions, that in the central context may include across jurisdictional lines in South Australia, Western Australia and Queensland.
- 3.27 CAALAS firmly supports the use of aboriginal controlled organisations delivering early intervention services. Issues of mistrust of the department can be overcome with the use of Aboriginal controlled services that have already established relationships in community,

⁷⁷ Exhibit 457.000 at [12]-[13] (Statement of Andrew Walder)

⁷⁸ T4034 (Mr McAvoy XN Walder)

⁷⁹ Exhibit 456.000 at [7]-[14] (Statement of Donna Ah Chee)

already have a reputation that gives confidence and have experience working with these families.

- 3.28 This would reduce the cultural clash that occurs between families and TF, which is particularly prominent in remote communities. The Commission has heard evidence about this cultural disconnect, including evidence relating to a lack consultation with local representative groups of elders. This amounts to a lack of respect for important cultural structures within Aboriginal communities. Mr Andrew Dowardi of the Law and Justice group of Maningrida spoke about his experiences with this lack of understanding of Territory Families workers in the following exchange:

MR McAVOY: You think that they understand the – the – your law? Your Aboriginal Law

MR DOWARDI: Supposed to be learning Aboriginal law first before coming – entering the community.

MR McAVOY: And do they do that, do you think?

MR DOWARDI: They don't do that. They just fly in, looking at the children, no respect and even the elders, they don't come and let us know, the Bunuwarra people.

MR McAVOY: Have you tried to talk to welfare officers?

MR DOWARDI: We've tried many times. We see them going past, they should come and see us.

MR McAVOY: Do they listen when you talk to them?

MR DOWARDI: No. They never talk to us yet. In my time – lifetime, they never talk to me yet.⁸⁰

- 3.29 In the statement provided to the Commission the Bunawarra observed that:

There is no trust between child protection services and the Maningrida community. We feel the lack of trust is the most significant barrier to the provision of effective child services in our community. The child protection services disempower us as elders and decision makers. We are the ones who should be making decisions here. Child protection doesn't respect the protection system that has traditionally and culturally been in place for many years. The laws and policies about child protection come from Darwin. We think that the failure to value our culture and experience results in a lack of genuine cultural awareness and respect of local knowledge.⁸¹

- 3.30 CAALAS supports the implementation of the recommendations of the Growing Them Strong Together inquiry that advises a new whole of Government strategic commitment to redesigning the current child protection is required.

- 3.31 As observed by Professor Oberklaid:

We really do need to go in and solve these sorts of issues, or address these issues, one community at a time. And that is identifying who the stakeholders are, who the community leaders are, getting them around the table, looking at what local data they have about demographics, and child – and the outcomes, mapping the resources and services that are there. So, we build a profile of each community and then work with that community to say, "What do you think your community needs to improve child and family outcomes?" ... So, the community owns the whole process, the community owns the outcomes. And that's our best chance of sustainability. And, ... once a community has a plan they're ...resourced

⁸⁰ T4553 (Mr McAvoy XN of Mr Dowardi)

⁸¹ Exhibit 526 at [4]-[5] (Bunuwarra group statement)

*appropriately to deliver on that plan, and then we're helping with evidence We hold them accountable for that plan.*⁸²

3.32 The Commission heard evidence on behalf of the NPY Women's Council that "to effectively deliver early intervention and prevention services, they must be outsourced. This should be with the NGO sector and in Aboriginal communities, with Aboriginal community controlled organisations."⁸³ CAALAS agrees with this position and submits that the Commission endorse this recommendation.

(e) **The extent and value of the early Intervention programs available in the NT; and**

(f) **Funding and funding sources for early intervention programs, including Commonwealth Government, NT Government, and other sources**

3.33 CAALAS is deeply concerned by the significant lack of early intervention programs in the NT. CAALAS submits that a national comprehensive strategy to redress the causes of neglect and improve child safety and well-being is required.

3.34 There must be a targeted strategy to increase proportional investment into prevention and early intervention services.

3.35 Commonwealth funding to address poverty, homelessness and overcrowding must be invested into remote communities. An adequate standard of living is the basis for reducing incidents of neglect.

3.36 It is clear that the expertise of aboriginal controlled services must be used in the process of indigenous advancement. Local government funding as well as federal funding needs to be promised. It is essential that there be long-term policy and funding certainty. The Commission has heard that such stability is essential to building effective strategic partnerships that properly include Aboriginal community and NGO sectors, and that fragmentation in service delivery has prejudiced the interests of children and families. It is critical that a more cohesive and coordinated approach is taken.⁸⁴

(g) **The delivery, availability, oversight and evaluation of early intervention programs**

3.37 As stated above, CAALAS believes early intervention programs should be delivered locally, they must be available to all families. Supports must include mechanisms to prevent families becoming at risk and child being subjected to harm by focusing on the achievement of development benchmarks around health, education and housing.

3.38 Indicators of community dysfunction need to be reduced, that will result in risk factors identified as barriers to children thriving being reduced which will in turn, ultimately lead to a reduction in the numbers of aboriginal kids in out of home care.

3.39 To evaluate early intervention programs government must evaluate the level of risk reduction, with an understanding and acceptance that this will be gradual and likely generational.

⁸² T4019 (Mr Dighton XN of F.Oberklaid)

⁸³ T4037 (Mr McAvoy XN L. Balmer)

⁸⁴ T4395 (Mr McAvoy XN Silbourne)

Recommendations

24. That Territory Families move from a 'crisis approach' to policy intervention and embrace early intervention and prevention strategies that are community owned, initiated and based on local knowledge.
25. That the federal government invest 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.
26. That the Commonwealth government address poverty, homelessness and overcrowding by investing in remote communities. An adequate standard of living is the basis for reducing incidents of neglect.
27. Family meetings must be arranged by Territory Families at the earliest possible stage, to avoid instances of children being removed where there are other care options within their family.
28. That all levels of government commit to long term continuity of funding in the early intervention sector.

4. Out of Home Care

- 4.1 The Commission has received evidence that the number of young people in out-of-home care in the Northern Territory increased from 700 in 2011-12 to 1020 in 2015-16. CAALAS has serious concerns with the alarming rate at which young people are entering out-of-home care. It is particularly concerning that 89 percent of those young people are Aboriginal.
- 4.2 The over-representation of Aboriginal children and young people in out-of-home care requires engagement with Aboriginal communities and Aboriginal community controlled organisations. In this regard, CAALAS submits that Aboriginal children and young people in out of home care in the NT should be cared for by Aboriginal carers, supported by Aboriginal caseworkers and in culturally appropriate settings managed by Aboriginal community controlled organisations. As the Commission has noted in its interim report, to be effective and sustainable, policies, legislation and programs should have those affected by them involved in their development and implementation.
- 4.3 CAALAS supports a proposal by APO NT for a comprehensive medium to long-term strategy for the establishment of Aboriginal led and managed child protection and out-of-home care services in the Northern Territory.⁸⁵

Decision making relating to the placement of children

- 4.4 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, the Commission has heard evidence that mediation is extremely under utilised. The Commission has also heard that when used, mediation is often in the best interests of the child, leads to agreements without the need for contested hearings, allows families to have more meaningful

⁸⁵ APO NT, Letter to Minister for Territory Families - Development of a Comprehensive Strategy to Establish Aboriginal run Out-of-Home Care Services in the Northern Territory, 31 October 2016

engagement with Territory Families and addresses the inherent power imbalance that exists between respondent parents and Territory Families.⁸⁶

- 4.5 CAALAS welcomes the indication from the CEO of Territory Families Ken Davies that the historical practice of Territory Families, to not use mediation or to oppose mediation applications by parties, should be undone. CAALAS draws the Commission's attention to the following evidence from Mr Davies:

'these are some of the practices we have got to undo and we have got to get our workforce and our very capable people, who are doing their best in what always is going to be a challenging set of circumstances, we have got to give them permission to come forward with those sort of solutions. And I think, Commissioner, that will be helped as well by an Aboriginal voice in that context.

MR CALLAGHAN: You really do have to undo that one, don't you?---Yes.

MR CALLAGHAN: I mean, there's no sort of litigation anywhere in the world that doesn't benefit from mediation?---Yes.¹⁸⁷

- 4.6 In addition to increased use of mediation, CAALAS supports a Family Group Conferencing model as a mechanism to identify, locate and support kinship carers. The Commission has heard evidence from vulnerable witnesses CT and CS on how they were not included in discussions about the placement of their granddaughter:

They should have a meeting. A family meeting. Family meeting. They just took her away. Meeting should be saying no. Not to take my granddaughter away. They took her away without permission. That's kidnapping. That's kidnapping. That's Kidnapping. They just took her away from us. It could be to make family meeting. I say no not to take her away from us. Family. I was waiting for her that it was she was still in the hospital. They know there's a baby and they know the baby was like family. They should come look for us and we at [redacted] at the time.⁸⁸

- 4.7 The Commission has also heard evidence from the managing lawyer for the Northern Territory government child protection team, that when Family Group conferencing was funded and operating in Alice Springs, it was successful and cost effective.⁸⁹ While CAALAS sees a distinct benefit in the appointment of an independent convenor, as is the case for mediation, it is submitted that Family Group conferencing is also an important mechanism that should be adequately funded and utilised where appropriate.

Issues with Placements

- 4.8 The Commission has heard evidence that a proportion of young people in out-of-home care are 'self placing'. While this is not a formal definition, it means the young person has an approved placement but is choosing not to stay in that approved placement and instead place themselves with someone else, generally their family.⁹⁰ This suggests that decisions around placements are often being made by the child themselves. The Commission heard the following evidence from vulnerable witness CJ on his leaving of approved placements to return either to his family or friends.

Every house they have put me in, I have run from. I think it was something like 15 different houses. I think I have run, because it's just human nature. You don't just get taken away

⁸⁶ Exhibit 674.001 at [15] (Statement of Ben Mason Statement)

⁸⁷ T5415.35 (Callaghan XN of K. Davies).

⁸⁸ Personal Story of CS and CT, Care and Protection public hearings, Alice Springs

⁸⁹ Legal Processes Meeting T8.15 (G. Brown).

⁹⁰ T4150.15 (Morrissey XXn, M. Couch)

*from your family out of the blue and expect to adapt. It's just human. It's the normal way to want to be with family.*⁹¹

4.9 He also noted:

*When I was younger with welfare, it seemed like they didn't let me see my dad or mum. But, I'd see them anyway. I'd take off and go see them. It was pretty crap not having that opportunity to see family, but I gave myself that opportunity.*⁹²

4.10 That young people are making these decisions themselves to leave their approved placements suggests that the initial decision making process in relation to placement was flawed. It also suggests that Territory Families are not listening to the child and responding to their needs appropriately. In our view, there is need for an advocate role for young people who are already in care, and whose matters are not before the Court. CAALAS has experience with young people expressing a desire for an independent legal representative to advocate for them in relation to either their ongoing placement or the terms of their orders. The Commission has heard evidence that no service is funded in Alice Springs to provide this role.⁹³ If young people who are self placing had access to a lawyer/advocate once orders had been finalised, this could be a way of avoiding this disconnect between what is on the Territory Families paperwork and what is actually occurring in practice.

The Application of the Aboriginal Child Placement Principle

4.11 CAALAS submits that the Aboriginal Child Placement Principle (**ACPP**) is not being complied with in the Northern Territory. In 2015, only 34.7% of children in the Northern Territory were placed in care in accordance with the ACPP, a principle embedded in legislation across all jurisdictions to reflect the importance of connection to family and culture. This is far lower, than the national average of 65.6%.⁹⁴ Even more distressing is the data concerning placement with relatives or kin; being that only 3.3% of children were placed with relatives or kin, compared with a national average of 48.8%. 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.⁹⁵ Counsel Assisting Peter Callaghan SC described the Northern Territory's compliance with the ACPP in the following terms:

*This Commission has heard evidence about the Northern Territory's compliance with that principle, which might be amongst the worst in the country.*⁹⁶

4.12 In CAALAS' view, correlations can be drawn between this current state of affairs and the practical effects of assimilation policies from the 1950's. Given the high population of Aboriginal people in the NT, compliance with the ACPP should be the best in the country. The Commission has heard of the aims and core elements of the ACPP as outlined by the Secretariat of National Aboriginal and Islander Child Care (**SNAICC**).⁹⁷ CAALAS has frequently observed that the various elements of the ACPP are not complied with. CAALAS is particularly concerned with the following issues:

⁹¹ Exhibit 474.000 at [20]-[21] (Statement of CJ)

⁹² Ibid, [27]

⁹³ Exhibit 674.001 at [19] (Statement of Ben Mason)

⁹⁴ SCRGSP (Steering Committee for the Review of Government Service Provision) 2016, Report on Government Services 2016, vol. F, Community services, Chapter 15: Child Protection Services - Tables 15A. 23 and 15A.24, (pp. 1309-1331), Productivity Commission, Canberra, Table 15A.24.

⁹⁵ SCRGSP (Steering Committee for the Review of Government Service Provision) 2016, Report on Government Services 2016, vol. F, Community services, Chapter 15: Child Protection Services - Tables 15A. 23 and 15A.24, (pp. 1309-1331), Productivity Commission, Canberra, Table 15A.23.

⁹⁶ T5026.20 (Callaghan XN of R. Baxter)

⁹⁷ Exhibit 599.000

1. Placing an aboriginal child with a non-Aboriginal family is not being used as an option of last resort;
 2. If not placed with their family, children are not always placed within close geographic proximity to their family;
 3. When placed in out-of-home care, Aboriginal children are not always supported to maintain connection to their family, community and culture;
 4. Aboriginal children and their family are not always included in child protection decisions relating to them
- 4.13 It is submitted that these are unacceptable breaches of the ACPP and CAALAS is of the view that in order to address compliance, the Northern Territory government needs to urgently set an indicator to measure compliance with the ACPP and set hard targets to reduce Aboriginal representation in out-of-home care.

Kinship Care

- 4.14 CAALAS submits that kinship care is a key factor in ensuring compliance with the ACPP; however the Commission has heard a significant amount of evidence suggesting that kinship care is undervalued, misunderstood and underused in the Northern Territory. The Commission has heard evidence relating to the low number of Aboriginal children being placed with family or kin, following care and protection intervention. The Commission has heard that Territory Families do not use kinship care enough⁹⁸ and that in the Northern Territory at 30 Jun 2012, only 135 of the 573 Aboriginal children in care had been placed with family or kin.⁹⁹ There is further evidence that few kinship carers are recruited, assessed and retained.¹⁰⁰ CAALAS submits that this system wide failure to place Aboriginal children in kinship care arrangements is a clear breach of the ACPP and there are unacceptable reasons for why so few children are being placed with family or kin.
- 4.15 A major concern for CAALAS is what appears to be an attitude within Territory Families of not prioritising kinship care arrangements and not taking appropriate steps to facilitate kinship arrangements. As stated by CAALAS Aboriginal Liaison Support Officer, Maxine Carlton:

I have been concerned about the care and protection practices of Territory Families (previously DCF or FACS and which I and my clients refer to as Welfare) for some time. In my experience, Welfare is very quick to remove children from their families. Furthermore, they do not prioritise placing children with kinship carers if the child needs to be removed.¹⁰¹

- 4.16 This failure to prioritise kinship care manifests in a number of ways. In particular, the Commission has heard evidence that Territory Families do not appear to make proper or adequate enquiries with families before removing children and placing them with non-Indigenous carers. Former CAALAS Family Lawyer Ben Mason provided evidence that he observed the following issues:
1. Territory Families having little interest in investigating potential kinship care options once litigation commences;¹⁰²

⁹⁸ Exhibit 523.000 at [27] (Statement of Tracy Hancock)

⁹⁹ Exhibit 453.000 at [20] (statement of Larissa Behrendt).

¹⁰⁰ Exhibit 520.000 at [69] (Statement of Colleen Gwynne)

¹⁰¹ Exhibit 671.001 at [6] (Statement of Maxine Carlton)

¹⁰² Exhibit 674.001 at [25] (Statement of Ben Mason)

2. Inadequate efforts by Territory Families to contact potential kinship carers and a tendency to prematurely abandon investigations into potential kinship carers, for example after two failed attempts to locate family in community.¹⁰³
 3. Inappropriate refusal of potential kinship carers, for example due to the proposed carer's housing conditions or because they do not have a fixed phone number.¹⁰⁴
- 4.17 In CAALAS's experience, the circumstances of Aboriginal people are not taken into account or given adequate consideration when efforts are being made to arrange kinship placements. For example refusing to place a child in a kinship arrangement because the potential carer only has one bathroom or doesn't have a mobile phone number is not considering the disadvantage that many Aboriginal people face, particularly those in remote communities. If Territory Families identify potential barriers such as these, better efforts should be made to find solutions for that potential carer.
- 4.18 In relation to housing, Territory Families have expressly refuted the contention that housing issues can contribute to their refusal of a potential kinship carer. Territory Families, Acting Executive Director for out-of-home care stated that:
- From my – the best of my recollection, we actually do not, for want of a better expression again, reject many applications due to the housing situation. And where there are housing situations that may be an impediment then the carer assessor and case management will work to try and resolve them, but they are not a large portion of our kinship care assessments.*¹⁰⁵
- 4.19 It is not the experience of CAALAS that Territory Families will try to resolve these housing issues. For example, CAALAS has assisted a client with their assessment as a kinship carer, in relation to a child who had been removed and placed with non-Indigenous foster carers. The main barrier that was identified in relation to the client's kinship assessment was that her Territory Housing property was too small. The client submitted an application for a transfer to a larger property, however required a letter of support from Territory Families to substantiate the reason that a larger home was needed. The client made numerous requests to Territory Families for the support letter to be provided, and CAALAS also contacted Territory Families directly on the client's behalf to request the letter. Despite numerous requests from the client and CAALAS, there were still unacceptable delays regarding progress with the support letter. This delay prejudiced the client in her kinship assessment process, and the child who remained in out of home care with non-indigenous carers in the meantime.
- 4.20 CAALAS welcomes indications from TF and the current NTG that this siloed approach will not continue however in our experience there is a need for these sentiments to be better reflected in practice.
- 4.21 It is concerning that Territory Families appear to lose interest in kinship care options once litigation commences. The Commission has heard that once a child is removed from their family or community, this is often when the gravity of Territory Families concerns will become clear to the family.¹⁰⁶ In our submission, it is counter productive to cease discussions or show little interest in kinship care arrangements at the time when family may be the most interested or galvanised into action.
- 4.22 The Commission has heard that it has also been the experience of some working with the care and protection system that Territory Families staff assessing kinship carers can be prejudicial towards certain families based on the actions of one or two members within

¹⁰³ Ibid, [26]

¹⁰⁴ Exhibit 674.001 at [23], [26] (Statement of Ben Mason)

¹⁰⁵ T4169.10 (M. Couch).

¹⁰⁶ Exhibit 674.001 at [25] (Statement of Ben Mason)

that family. For example, if some members of the family have had their children taken away, the family are deemed "bad seeds" and options for kinship care are not explored.¹⁰⁷

- 4.23 In addition to inadequate enquiries and procedures undertaken by Territory Families, a more fundamental problem is that the aboriginal kinship system is not properly understood and not explained to caseworkers and support services who engage with Aboriginal families. This may result in Territory Families not pushing for kinship care.¹⁰⁸ The Commission has heard evidence from Dr. Fejo-King that the current practices of Territory Families in assessing kinship for Aboriginal families are inappropriate. As stated by Dr Fejo-King:

The use of genograms by child protection agencies, including Territory Families, is inappropriate when dealing with Aboriginal children and families. It does not reflect the Aboriginal family kinship system and disregards important members of a child's extended family and cultural relationships. Such agencies should instead be using kinship mapping, whereby the understanding and documenting of the child's family is done by reference to skin groups, totems, mission relationships and ceremonial links of reciprocity¹⁰⁹

- 4.24 All too often, CAALAS has experienced family members being overlooked as potential kinship carers or inadequate steps taken to contact more extended family members as potential kinship carers. This should be viewed in light of the evidence provided by vulnerable witness CJ that despite being placed with approximately 15 different carers during his time in care, he was not aware of any efforts made to contact extended family members, other than his grandmother, to establish potential kinship care options.¹¹⁰
- 4.25 Delay in making kinship arrangements is also a significant issue. The Commission has heard that caseworkers are often overworked and are unable to fully consider kinship care options.¹¹¹ CAALAS has been approached by clients who are extremely frustrated about the lack of responsiveness of the Territory Families, when they are actively putting themselves forward as potential kinship carers. Delays in kinship care assessments are not in the best interests of children and prejudice family members who are seeking to have children placed in their care. That is because the longer the process takes, the more attached children become to their foster carers making it more difficult to move them to other long term carers.

Contact with Family & Culture

- 4.26 The Commission has heard numerous personal stories of the pain that Aboriginal families experience in their separation from their loved ones due to their own limited means or Territory Families inability to arrange access visitation. The Acting Executive Director of out-of-home care gave evidence that maintaining contact with family, community and culture is a 'paramount' concern for Territory Families.¹¹² CAALAS submits that this sentiment is not what is occurring in practice.
- 4.27 The Commission has heard that when a child is placed in out-of-home care, visits between that child and their family can be irregular and infrequent, significantly affecting that child's relationship with their family and their ability to maintain their culture.¹¹³ CAALAS submits that Territory Families are regularly in contravention of the ACPP by placing children significant geographical distances from their family, community and culture.

¹⁰⁷ Exhibit 523.000 at [27] (Statement of Tracy Hancock)

¹⁰⁸ Exhibit 670.001 at [15] (Statement Kristy Bloomfield)

¹⁰⁹ Exhibit 538.000 at [15]

¹¹⁰ P9 Closed court transcript on 31/5/17 at [5] (Mr McAvoy XN of CJ)

¹¹¹ Exhibit 523.000 at [30] (Statement of Tracy Hancock)

¹¹² T4193.5 (Woodroffe XXN of M. Couch)

¹¹³ Exhibit 671.001 (Statement of Maxine Carlton)

These decisions appear to be made based on convenience to the carers, rather than with any real consideration of the ACPP. CAALAS has assisted clients from remote communities whose children have been placed in Alice Springs, Tennant Creek or interstate making it extremely difficult for them to maintain contact.¹¹⁴

- 4.28 The Commission has heard evidence of the barriers that many families in remote communities face when it comes to access. For example, the Commission has heard that families may not be able to simply phone or visit Territory Families to arrange access, there are language barriers and often legal processes to follow that require the assistance of a lawyer.¹¹⁵ As a result, families are often very reliant on Territory Families to ensure access.
- 4.29 The quality of visits is also a serious concern for CAALAS. We are aware of situations where a father has had to have his access visits with his young son on the front lawn of the Territory Families office in Alice Springs, which is on one of the busiest streets in Alice Springs. The Commission has heard numerous examples of poor quality contact, including parents who were given one hour per week to spend with their eight children in care.¹¹⁶ A lack of understanding of how to connect young Aboriginal children with their culture is also an issue. As noted by Dr Fejo-King, there is a general lack of understanding amongst Territory Families when it comes to connecting Aboriginal children with cultural activities, she notes in her evidence before the Commission:

*Cultural activities which involve no more than walks in the bush or an activity at NAIDOC Week do not assist Aboriginal children to learn about kinship and aboriginal culture and can result in their alienation from their own culture. These activities are superficial and only amount to a fun outing rather than engaging children with their community, land and culture.*¹¹⁷

- 4.30 It appears there is no commitment to best practice in deciding on the frequency and type of access and little consideration on the impact that disconnection with family and culture might have on the child.
- 4.31 It is submitted that the ensuing disconnect often then 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 out-of-home care placement then becomes the default position and for reasons of 'stability' there is a less prioritisation of reunification of the child with his or her family or community.

Residential care

- 4.32 A significant problem raised during the Commission is the intersection of the criminal justice system and young people in residential care homes. CAALAS has experience with young people in residential care being charged with criminal offences arising out of relatively minor incidents. The criminalisation of behaviour of young people in residential care that may not be criminal if it occurred in the family home is not uncommon and CAALAS has provided evidence to the Commission to this effect.¹¹⁸ The Commission has heard of a particularly extreme example of this problem where a young person was charged with property damage for squirting tomato sauce on furniture.¹¹⁹ There have also been instances of youths charged with trivial offences of damages to doors, breaking furniture or throwing of foodstuffs resulting in arrests, transportation to watch houses, charging and prosecutions for which the majority are subsequently withdrawn. The

¹¹⁴ Exhibit 674.001 (Statement of Ben Mason)

¹¹⁵ Exhibit 671.001 at [15] (Statement of Maxine Carlton)

¹¹⁶ Legal Processes meeting T19.20 (Ms Opie)

¹¹⁷ Exhibit 538.000 at [24] (Statement Dr Fejo-King)

¹¹⁸ Exhibit 354.000 at [24] (Statement of Anna Gill)

¹¹⁹ T3683.25 (Dr Dwyer XXN of I. Lea).

Commission has heard evidence from the Deputy CEO of Territory Families that there is over policing in this regard and a lack of certainty amongst staff as to when to call police and what for.¹²⁰ CAALAS has observed an inconsistent approach amongst privately run residential care homes of procedures to deal with behavioural issues and a zero tolerance approach in all instances of contacting police and for the youth to be charged.

- 4.33 CAALAS submits that a protocol for Territory Families, privately run residential care providers and NT Police be implemented to reduce offending and criminalisation of children in care. CAALAS draws the 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.¹²¹ 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.

Complaints, monitoring and accountability of care providers

- 4.34 The Commission has heard evidence that children in out-of-home care are provided with information on the Charter of Rights for Children and that, in residential care, there are weekly house meetings where the young person is invited to talk about their concerns.¹²² In CAALAS's submission, these avenues are inadequate. The Commission has heard from vulnerable witnesses that they were not actually aware of any complaints mechanism available to them,¹²³ and CAALAS has concerns with a complaint process that has no involvement of any independent authority.
- 4.35 On this issue, Territory Families have acknowledged that some form of independent auditing is healthy.¹²⁴ In this regard, CAALAS supports the establishment of a Commissioner for Aboriginal Children and Young People and directs the Commission to topic 9 of this submission.
- 4.36 It is also submitted that an independent child advocate would be an additional avenue for a young person in care to be able to express their complaints.

Effectiveness of external oversight

- 4.37 CAALAS submits that Territory Families has been chronically under-resourced and lacking in internal mechanisms to ensure consistency, transparency and accountability. For this reason, CAALAS submits that more effective external oversight mechanisms are required. CAALAS supports the establishment of an independent organisation that monitors and upholds the rights of children and young people in out of home care and ensure the CEO's compliance with the Charter of Children's rights.
- 4.38 Rigorous oversight would also 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. The Commission has heard evidence of the lack of legal representation afforded to young people in the Northern Territory once an order is made and that young

¹²⁰ T509.45 (Boulten XXN of J. Kerr)

¹²¹ See New South Wales Government, Joint Protocol to reduce the contact of young people in residential out-of-home care with the criminal justice system, 2016.

¹²² T4192.5 (Woodroffe XXN of M. Couch).

¹²³ See for example, closed court transcript P13.5, 2 June 2017

¹²⁴ T4192.25 (Woodroffe XXN of M. Couch).

people often have grievances or concerns about their ongoing out-of home placement or terms of their orders.¹²⁵

- 4.39 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.¹²⁶
- 4.40 Significantly, child advocates are given extensive powers with 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.¹²⁷ The role of child advocates is unique in Australia in that they can intervene and provide advocacy and assistance to children in OOHHC whenever necessary.¹²⁸
- 4.41 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. CAALAS supports the implementation of this mechanism for children, young people and parents to seek an independent review of a placement and/or contact decision at NT Civil and Administrative Tribunal. The kinds of decisions which should be open to review include decisions in relation to access, approval of kinship carers, placement and care plans etc. The Commission has heard evidence from the Legal Processes meeting of the benefits of such a review process.¹²⁹

Recommendations

- 29.** That Territory Families work with Aboriginal Community Controlled organisations to develop an Aboriginal led and managed Child Protection and Out-of-Home Care Service in the Northern Territory.
- 30.** That the position of Commissioner for Aboriginal Children and Young People is established in the Northern Territory with a broad scope of inquiry concerning Aboriginal and Torres Strait Islander children.
- 31.** That the federal government develop and implement 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. Such a strategy should include the allocation of federal supports and resources to family and community strengthening initiatives in the Northern Territory.
- 32.** That the Northern Territory government commit to ensuring greater emphasis is placed on the Aboriginal Child Placement Principle and set indicators by which to measure compliance with this principle.
- 33.** That child advocates be appointed who have an ongoing role for each child in care such as those employed by the Public Guardian in Queensland.

¹²⁵ Exhibit 674.001 at [19] (Statement of Ben Mason)

¹²⁶ *Public Guardian Act 2014* (Qld), s 13.

¹²⁷ *Public Guardian Act 2014* (Qld), s 84 and s 87.

¹²⁸ See Office of the Public Guardian, *Annual Report 2014-2015*.

¹²⁹ Legal Processes meeting T19.20 (Ms Opie)

34. 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 and application for protection orders has been made.
35. That Aboriginal family group conferencing be re-established as a matter of urgency so that decision making can be informed by family members and kinship care options are identified if needed as early as possible.
36. That Aboriginal community visitors are appointed to monitor and support children in all out-of-home care placements.
37. That the Northern Territory government increase training for Territory Families staff on the aboriginal kinship system and develop culturally appropriate assessment tools that do not rely on the use of genograms.
38. That the Northern Territory government implement a protocol for Territory Families, privately run residential care providers and NT Police to reduce offending and criminalisation of children in residential care. This protocol could be modelled on the NSW Joint Protocol to divert young people in residential services from unnecessary contact with the criminal justice system. It would contain 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.
39. That the NTPFES and DPP establish guidelines for the decision to prosecute in residential care and such decision are done by specialist youth prosecutors.
40. Legislative amendment to allow for children, young people or parents to seek an independent review of a placement and/or contact decision at the Northern Territory Civil and Administrative Tribunal. The kinds of decisions which should be open to review include decisions in relation to access, approval of kinship carers, placement and care plans.

5. **Reunification and leaving care**

(a) **Reunification with Families**

- 5.1 Underpinning CAALAS's policy position is the notion that considerable government effort, across a range of departments and services, and funding to Aboriginal community-controlled organisations, should be directed to keeping families together, avoiding the prospect of separation and the need to work towards reunification. The failure to apply sufficient resources to early intervention and services designed to prevent family risk factors from developing to the point of removal of a child has inevitably caused a growing number of children who fall to be reunified with their families. CAALAS advocates strongly for a focus on preventative steps being taken to address factors which might lead to the removal of a child, rather than deferring that action to after the fact of removal through a reunification plan. Furthermore, if there were full compliance from the outset with all elements of the Aboriginal Child Placement Principle, then Aboriginal children would more often remain on country, with family and kin and connected to their communities and culture.
- 5.2 Once a child has been removed, Territory Families should provide greater assistance and a more holistic approach, linking in with other government and non-government service providers, to support Aboriginal families in meeting the necessary milestones or goals to achieve reunification, particularly where the child protection concerns justifying removal relate to poverty, trauma, alcohol and other substance abuse, and domestic violence.

5.3 The personal stories and accounts from vulnerable witnesses before the Commission - children in care, their relatives and kin - have highlighted the destructive effects of the separation of families and the difficulties in connecting family members together again after a separation. For example, CO's personal story reflects the tragedy of dislocation of once-close family figures in his story of the removal of his grandson into care outside the community and his return at the age of 18. CO's story emphasises the loss of language: his grandson returning only with English; the loss of cultural connections: to ceremony, hunting and relationships; and a general unfamiliarity upon his grandson's return to community: not wanting to taste traditional foods, getting sick, needing to be taught how to eat and taste and "eat all the animals we eat in our languages. It's very hard to understand. He's not really understanding." CO also describes the fear experienced by his grandson returning to the unfamiliar territory of his home community after so many years away.

5.4 Grandparents CS and CT told of the removal of their granddaughter at birth without their knowledge or consultation and her placement in care outside of the Territory whilst they continue to care for the child's older siblings who are thriving on community. The promises of reunification over years remain empty ones.

Case worker told us clean the house inside and outside. Clean it and keep one room clean for the kid. So we clean it inside, outside and then we was waiting. One day they gonna bring her. But nothing happened... I paint the rooms and put all the photos on the wall. Waiting so it was true...

[Now...] They say to return her back when she's 18. How is she going to know when we die? Where the families are? We want to get her back while she's still young so she can know who her family is.¹³⁰

5.5 The evidence of departmental staff and bureaucrats to the effect that reunification is pursued to its fullest belies the experience of so many Aboriginal children and families. A consistent theme of the evidence received by the Commission was a stark disjunct between the real-life experiences of Aboriginal children and their communities, on the one hand, and the picture portrayed by government witnesses, on the other. Government witnesses struggled to distinguish between the aspirations of the department and individual workers, and the reality of outcomes for Aboriginal children and families; they appeared to attempt to present the aspirational view of their work as if it were the reality.¹³¹ This inability to acknowledge or accept reality, this blinkered view of the system, at various levels of the public service, suggests that significant cultural change is required within Territory Families if successful outcomes are to be achieved for Aboriginal people. The 'aspirational' portrayal by government witnesses should not be elided with reality nor accepted as if it reflected the experiences of people caught up in the system. The child protection system in the Northern Territory has not been resourced well enough for the aspirations of its workers to come into fruition.

Maintaining connections to family, culture and community in OOHC is critical to reunification

5.6 A critical element of the Aboriginal Child Placement Principle (**ACPP**) is that "Aboriginal and Torres Strait Islander children in out-of-home care are supported to maintain connection to their family, community and culture, especially children placed with non-indigenous carers."¹³²

5.7 The goal of reunification with family is entirely undermined by failures to maintain connections between a child in out-of-home-care and their family, culture and home

¹³⁰ Personal Story of CS and CT, Care and Protection public hearings, Alice Springs

¹³¹ See for example, T4743-4745 (Ms Graham's XXN of P. B. Fletcher); and T4840.40-4841.19 (Mr Morrissey's XN of M. Couch).

¹³² The fifth element of the ACPP as set out in SNAICC's "Aboriginal and Torres Strait Islander Child Placement Principle: Aims and Core Elements" (Exh 599.000 tendered on 26/6/17).

community. CAALAS is concerned that many Aboriginal children are removed from their families and placed with carers in circumstances where connections to family, culture and home communities are not maintained; moreover where Territory Families does not support children and families to maintain those connections.

- 5.8 The Commission has received evidence about how a lack of family access during a period of removal compromises the chance of a successful reunification or restoration to family or kin, and about the barriers to access particularly for families from remote communities. Ms Liza Balmer, acting chief executive officer of the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council, gave evidence as follows:

"For people, for families from remote communities, where children end up in care in the regional centres, access is very, very difficult because the onus is on them to be able to get to those regional centres, to find their own transport, to find their own accommodation, so to find the financial means to have that access. Again, it gets even trickier when we are talking about crossing borders, where the parent may live in one jurisdiction and the child is in care in another jurisdiction. An example that we had this year was a mother, after consistently contacting many departments and many different caseworkers, finally got an access visit with her son after two years for one hour."¹³³

- 5.9 It is the experience of CAALAS, in representing parents and grandparents of children removed by Territory Families, that a major source of complaint is a lack of access to children in care and the obstacles posed by TF in relation to access and visits. As Ben Mason, former CAALAS lawyer stated:

"Access to children in care was a significant portion of the complaints and frustrations my clients had with TF. I regularly heard clients express anger over cancelled contact appointments due to caseworkers stating transport was not available. There were also a significant amount of complaints that they would make multiple attempts to contact a child's caseworker by telephone or attending the offices of TF to organise for contact but would receive no reply or follow up or be told there was a change of caseworker.

I have observed that children from remote communities who were taken into care were often placed in Alice Springs or Tennant Creek. These placements, in addition to usually not being kinship placements, made it difficult for parents and family to maintain regular contact with a child in care... I can recall less than 10 instances where a child was placed with kinship carers in their home community in the four years I worked at CAALAS. As a result of these (predominantly foster carer) placements in Alice Springs and Tennant Creek there was often significant financial stress to respondents to continue regular travel to have contact with their child in care. Seldom would TF acknowledge this financial stress and provide any form of financial support to respondents. The limited contact of parents with a child in care would often be cited later by TF as evidence that an extension of an order was required and why reunification could not occur.

In my experience the placement of children in Alice Springs or Tennant Creek adversely affects the opportunity for the child to maintain their cultural connection and the likelihood of reunification. It would appear that the failed contact resulted in further extension of protection orders which then resulted in the child, or carers, becoming more attached to the placement which results in it becoming more difficult for the child to be reunited with their family."¹³⁴

- 5.10 Ms Kristy Bloomfield, a Arrente/Alywarra woman and Aboriginal Legal Support Officer with CAALAS who has worked within Aboriginal Legal Services for 17 years, also speaks of the barriers to access visits with children, particularly for Aboriginal people from remote communities:

I have found that clients have contacted CAALAS stating that they can't see their kids because the carers have got something on, or it's the kids sleep time. I understand that routines are important, but some parents are from communities and don't have the money to

¹³³ T4050.1-9 (Ms Graham's XXN of L. Balmer).

¹³⁴ Exhibit 674.001 at [28]-[30] (Statement of Ben Mason).

*book accommodation to wait for the foster parents to be available. TF should coordinate visits more, but also need to understand that parents wanting to visit are often dependent on someone else giving them a ride into town. On most occasions, the parents are unable to set up appointments because they won't know until very soon before they are due to travel. They cannot make appointments days or weeks in advance because they have no way of knowing whether they can keep that appointment.*¹³⁵

- 5.11 These observations and concerns are mirrored by Ms Maxine Carlton, also a long-standing employee of CAALAS. Ms Carlton captures the essence of the problem when she states:

*When a child is in care, visits between the child and their family are irregular and infrequent. This significantly impacts the child's relationship with their family and their culture. If the child is very young, they can forget their family members and Welfare will then not return the child to the family.*¹³⁶

- 5.12 Whilst acknowledging the difficulties that the vast geography of the Territory poses for government coordination of services, CAALAS is of the view that much more ought to be done to ensure that families from remote communities are assisted to remain connected throughout the process of a child being removed.

- 5.13 CAALAS is troubled by the approach of TF in Central Australia to the location of access visits. As Dr Larissa Behrendt stated, "the conditions in which DoCS supervises contact visits are very restrictive. So the ability for connections to be built between families and children – parents, grandparents, and children – is also impeded while they're in the system."¹³⁷ This has the effect of undermining the reunification goal.

- 5.14 Ms Balmer gave emphatic evidence that "absolutely" much more needs to be done by Territory Families to facilitate family access, particularly for families from remote communities, continuing:

*Reunification is the ultimate goal, and reunification won't happen if that attachment and that bond between the parents isn't maintained. ... [if] reunification is not possible, then at the very least regular access should be available.*¹³⁸

- 5.15 CAALAS shares this view that much more needs to be done to promote the ongoing contact between children in care and their families with a view to achieving successful reunification and building stronger bonds and relationships.

- 5.16 A particularly harsh breakdown in these connections to country, family and community is seen in the loss of ability to communicate with in language through lack of exposure to language, language-speaking family members and the dominant use of English in care placements. That Territory Families should prohibit the use of languages other than English when relatives are speaking with their children in care is outrageous. The personal story of CS and CT reveals how damaging that practice is:

Interviewer: And what have Welfare said to you about how you should be communicating to your granddaughter who got taken away?

*Translator: To speak English only. ... Upset my tummy. I felt sick they told me to that. Didn't feel right.*¹³⁹

- 5.17 Dr Christine Fejo-King, an Aboriginal consultant and Larrakia woman, spoke to the kind of harm that this scenario can do to a child and the relationship to their family and

¹³⁵ Exhibit 670.001 at [20] (Statement of Kristy Bloomfield).

¹³⁶ Exhibit 671.001 (Statement of Maxine Carlton)

¹³⁷ T4005.32-34 (Ms Graham's XXN of L. Behrendt).

¹³⁸ T4050.15-18 (Mr McAvoy SC's XN of L. Balmer).

¹³⁹ Personal Story of CS and CT, Care and Protection public hearings, Alice Springs

community. Dr Fejo-King said "I don't think you can even measure the damage that's done... [when] English [is] the dominant... it forces... a space between you and your ancestors and your land and all of that. There's nothing that can replace language."¹⁴⁰

5.18 Territory Families should be promoting access to language and a child's participation in the use of language to the fullest degree possible.

5.19 The story of grandparents CS and CT also provides a powerful comparator as between grandchildren in their care accessing cultural activities and their youngest granddaughter who was removed and has never been to her home community nor participated in cultural activities on country.

... What she's missing out on, like, going out bush, going ceremony, dancing, and looking for bush tucker; all that. And most important one is like family funerals, that she is missing out on, which she should be attending as well. ... They speak both languages, one Warlpiri (redacted), and Pitjantjatjara (redacted), which is really good.

... My dreaming is like a caterpillar, and we paint that. My dad's dreaming is goanna dreaming.

... Old ladies, they take them, girls to do dancing; ceremony dancing in the bush. They take them kids to dance ceremony out in the bush. And the little one missing out on ceremony dancing. Take these two kids outing all the time. Take kids out all the time for goanna, gerbil, kangaroo. Bush tucker, or hunt for onions, turkey, every bush tucker. Teach the little ones to get bush tucker. And you travel from the community. From Warlpiri side of the community you travel to Pitjantjatjara side of the community. Funeral as well you go to both sides of the community.¹⁴¹

5.20 Particularly in the context of the gross over-representation of Aboriginal children in the cohort of children in out-of-home care in the Northern Territory, CAALAS strongly advocates for an approach whereby the preparation and implementation of a thorough individualised cultural care plan assumes much greater significance. Furthermore, children and their families must be front-and-centre in the preparation of the content of the plan.

5.21 The Commission has received evidence which demonstrates many failings by Territory Families in this regard: 'cookie cutter' or 'cut-and-paste' care plans which are effectively meaningless according to the individual needs of children and their families; a huge proportion of children without a care plan relevant to their current circumstances; a lack of participation by children and their families in the drafting of the care plans.

5.22 Evidence from Ms Colleen Gwynne, Children's Commissioner addressed this issue:

You have a concern about the content of cultural care plans or the aspect of a care plan that addresses or seeks to address the cultural needs of a child in care. Is it your experience that there is a cookie cutter approach to the content of those cultural care plans?--- ... we have seen examples of that. It's not across the board, but there are examples where ... there's either insufficient information, the information is identical to that ... in another child's care plan. I think maybe there is a tendency to cut and paste similar comments or information into other care plans.

Unless there's an individualised approach to the cultural needs of an Aboriginal child, any content of a cultural care plan is essentially meaningless. Do you agree?---It's definitely got to be individualised and there's got to be the cultural competency by those people that are assessing and providing their details in that care plan.¹⁴²

¹⁴⁰ T4677.30-38 (Ms Graham's XXN of C. Fejo-King).

¹⁴¹ Personal Story of CS and CT, Care and Protection public hearings, Alice Springs

¹⁴² T4500.16-29 (Ms Graham's XXN of C. Gwynne).

- 5.23 Mr Ben Mason, former CAALAS solicitor pointed to a number of failings in the approach to care plans by TF as follows:

In my experience care plans are often created and reviewed without meaningful participation and input from a child's parent or family member. The plans often lack substance that pertain to the child and can often resemble a standard form with standard content and supports that do not appear to be specifically adjusted for a child's individual needs and circumstances. Often the plans for reunification are vague and do not clearly state how actions and goals completed by respondents correlate to TF welfare concerns being addressed.

In my experience, the care plans primarily seek to assign responsibilities to various parties whilst the child is in the care of TF and do not address how a child's care plan will increase the likelihood of a successful reunification during the period of the protection order.

It has been my observations that respondents are not consulted in the production of care plans. Parents are often unfamiliar with the documents and their relevance. The care plans will often cite that a parent must complete a parenting, domestic violence, or a drug rehabilitation course and nothing further. It was not uncommon for a respondent to develop a belief that once the respondent completed a course and/or abstain from alcohol use, reunification would occur. Care plans seldom acknowledged or provided a progressive plan for increasing the level of contact between the child and the parent during a protection order. This lack of recognition of reunification prior to the completion of a short-term protection order often leads to confusion and uncertain as to why a child remained in care.¹⁴³

- 5.24 The frustration and sense of alienation in the personal story of AH, a former child in care, in being excluded from the process of creating a care plan resonates. AH said "they just do whatever they think is best for you. Whatever they think. Not asking you what you think or trying to talk to you to narrow it down or anything like that."¹⁴⁴ CAALAS is of the view that children should always be given a proper opportunity to participate in decisions that affect them and particularly that children and their families should be supported to play an active role in the preparation and implementation of their care plans and cultural care plans.
- 5.25 CAALAS considers that a right for children (where appropriate) and their parents to participate in care planning should be enshrined in legislation, particularly to ensure that they are provided an opportunity to participate in care plan meetings and the creation and implementation of care plans.
- 5.26 CAALAS also advocates for the funding of independent care plan meeting convenors. In the case of Aboriginal families, funding should be applied for the appointment of an Aboriginal convenor or co-convenor to assist in communication and provide guidance in relation to cultural considerations. These convenors ought to be funded and administered externally to Territory Families. Furthermore, funding should be made available for legal representatives to support children (where appropriate) and parents at care plan meetings, particularly whilst an application for a child protection order is on foot.

Delay in reunification

- 5.27 A major barrier to successful reunification of families is delay. CAALAS is concerned that too many cases involve the kind of delay that frustrates the viability of reunification and leads to a scenario where reunification may no longer be in the best interests of the child. The adverse effects of delay are exacerbated by a failure to promote and facilitate contact with family, kin and a child's community during their period of removal.
- 5.28 As the Commission heard from Ms Liza Balmer, in response to a question about how the delay in an assessment for a kinship carer impacts on the prospects of a child being ultimately reunified or restored to their family or kin:

¹⁴³ Exhibit 674.001 at [31]-[33] (Statement of Ben Mason).

¹⁴⁴ Personal Story of AH, Care and Protection public hearings, Alice Springs

So the longer a child stays in a foster care arrangement, a non- Aboriginal foster care arrangement, the longer or the more time they have to form an attachment with that family, providing that placement lasts, and often they don't. They often have multiple placements. But if they do have a stable placement that lasts a number of years, there becomes a critical point when it's maybe not in their best interests to upset that placement because of the attachment to that family and the stability that's within that family. It is always possible to find other ways to reunify children or to ensure that they at least have maximum contact with their family. But more often than not we see that once children have been in a placement for a number of years, the answer is to say, well, that's it, we will leave it now because the child's happy there.¹⁴⁵

- 5.29 Mr Andrew Walder, the access to education division manager at Tangentyere Council agreed with Ms Balmer, adding:

I think that's also true of the reunification with parents. It's often the situation with parents will change over time, obviously. But it's very difficult because of the permanency planning around placements that Liza was talking about for the Department to then have the reflexive ability to revisit those reunification and kinship care placements.¹⁴⁶

- 5.30 In questioning of Ms Kirsten Schinkel, a social worker employed within Territory Families and an acting team leader, the following exchanges reveal an awareness of the need to act quickly if a successful reunification is to be achieved.

Mr MORRISSEY SC: ... the research does seem to indicate that reunification works best within the first 50 days of the child being placed in out-of-home care. Is that your understanding as well? ...

Ms SCHINKEL: My understanding is the sooner a child is reunified well, the sooner we can do it, the higher chance of success. However, I haven't heard of 50 days.¹⁴⁷

- 5.31 And yet, again the reality does not bear out the action required for a successful outcome for Aboriginal children and families. As Ms Schinkel went on to confirm, only a small number of children are reunified with their families within first six months to two years and it is common for an extension to be obtained for the child to remain in out-of-home-care whilst the case remains with the reunification team to continue working towards that goal of reunification.¹⁴⁸

- 5.32 An example from Alice Springs demonstrates that a concerted effort can result in successful outcomes for children and their families: whereby over four months at the end of 2011, 52 children (the vast majority of which were Aboriginal) from Alice Springs were reunited with their families, which meant 27 families were reunified during that period. Ms Claire Gardiner-Barnes gave evidence of how this was as a result of a special campaign to focus on children in out-of-home care in Alice Springs and prioritise their reunification with families. The work involved connecting with kinship carers and broader support for families: the external support that is required outside the family unit to make the reunification a success. The approach involved more staffing resources, greater engagement throughout Aboriginal communities to promote kinship care arrangements, the involvement of Aboriginal community-controlled organisations to assist and the use of family group conferencing.¹⁴⁹

- 5.33 CAALAS strongly supports the use of a family group conferencing model throughout the decision-making processes involved in the child protection system, particularly in relation to achieving reunification. CAALAS further supports the dedication of considerable

¹⁴⁵ T4049.21-31 (Ms Graham's XX of L. Balmer).

¹⁴⁶ T4049.35-39 (Ms Graham's XXN of A. Walder).

¹⁴⁷ T4096.15-21 (Mr Morrissey SC's XN of K. Schinkel).

¹⁴⁸ TT4101.44-4105.5 (Commissioner Gooda's XN of K. Schinkel).

¹⁴⁹ T4718.29-4719.30 (Ms Graham's XXN of C. Gardiner-Barnes).

resources to roll out special reunification campaigns across the Territory to safely return children to their families and communities, with a particular focus on Central Australia where there is a huge proportion of children on care orders until the age of 18 (see further below).

Care and protection orders until the age of 18

- 5.34 A major concern for CAALAS is the over-use of care and protection orders which are in place until the child reaches the age of 18. Again, CAALAS is concerned by parallels that could be drawn between this trend and retrograde assimilation policies. Evidence from a number of witnesses points to a trend of increasing use of these long-term orders. Mr Ben Mason, who worked in Alice Springs between 2012 and 2016, expressed his "serious concerns when TF began seeking long term protection orders as a matter of policy in late 2015 or thereabouts."
- 5.35 Currently, there appears to be a large proportion of children in care subject to these long-term orders. For example, in the first quarter of 2017, 636 of a total of 1093 children in care (or approximately 58%), were in care until the age of 18.¹⁵⁰ In Central Australia, as at April 2017, 204 children of 260 (or approximately 78%) on a care and protection order were in care until the age of 18. It appears therefore that children in Central Australia are disproportionately affected by the imposition of care orders until the age of 18.
- 5.36 There are a number of concerns that arise in relation to the prevalence of these type of orders, chief among them that a long-term order effectively takes reunification with parents off the table and also halts consideration of kinship options for a child. Mr John Burton of SNAICC gave evidence about the dangers of permanent orders, the importance of stability for children and properly characterising that notion as follows:

And the concerns around the permanent orders also relate to a suggestion that there won't be a focus on reunification and restoration?---That's right. So there is a concern, as a system increasingly takes its eyes and its efforts towards putting children into permanent arrangements, that there may be less attention given to the kind of resources and supports that need to go into addressing the needs for a family. So that they are able to retake care of their children or, alternatively, putting efforts into finding other people within a child's kinship or community environment who may be able to take on care as opposed to the child - the carer that the child is originally placed with.¹⁵¹

...

And there's the related concern in relation to permanent care orders in the Northern Territory becoming somewhat of the norm?---That's right. I mean there's a strong movement across the country in terms of increasing the use of permanent care. And while SNAICC strongly supports the need for stability for children in out-of-home care, we also advocate that that notion needs to be based on a much broader concept than just a legal order for permanency of care. It needs to consider relational stability, cultural stability, the range of connections that are important to a child's identity and wellbeing.¹⁵²

- 5.37 Dr Larissa Behrendt also gave evidence that there has been a trend to move from 12-month orders to more automatic orders where children are put into care until 18. Dr Behrendt commented that this adversely affects the chance of reunification because it "gives parents very little incentive to address the issues that might have been leading them to have intervention with DoCS in the first place" and they're not provided "with any support, in terms of how children can be restored to their parents or reunified within broader family units."¹⁵³ TF also has less of an incentive to arrange ongoing family contact;

¹⁵⁰ Exhibit 518 at 4 (Territory Families Monthly Performance Report, April 2017).

¹⁵¹ T4056.41-4057.2 (Ms Rodger's XN of J. Burton).

¹⁵² T4056.17-24 (Ms Rodger's XN of J. Burton).

¹⁵³ T4004.43-4005.2 (Mr McAvoy SC's XN of L. Behrendt).

and less of an incentive to assist parents and other Aboriginal carers to restore a child to their family environment.¹⁵⁴

5.38 Mr Mason expressed his concerns in the following terms:

*At the time it appeared to be a sudden change in policy at TF, to seek long term protection orders, and did not appear to be a best interest decision for the individual child. My particular concern was that the long term protection orders appeared to have been sought with no regard as to whether the child was in a kinship placement or more likely to be placed in a kinship placement on account of the long term order being made.*¹⁵⁵

5.39 CAALAS advocates for the cautious use of long-term orders. They should not be the subject of a default or automatic application upon the lapse of a short-term temporary order. Notwithstanding the imposition of such an order, the work of TF should not stop or slow down in relation to seeking to achieve reunification and particularly to continue exploring kin options so that a child may be returned to their family or community environment as soon as possible.

Measuring success

5.40 There appears to be a general lack of data collection, measuring and reporting of the progress of reunification of families across the system.¹⁵⁶ This is explicable due to an aversion to setting targets, because then there would be an expectation that they were met; or, alternatively targets are seen as unnecessary because the goal is "about reunifying every single child".¹⁵⁷

5.41 The attitude that targets ought not be set lest there would be an expectation of meeting them was revealed expressly in the evidence of former Minister for Children and Families, Mr John Elferink when questioned about the overrepresentation of Aboriginal children in out-of-home care, and particularly targets to reduce Aboriginal children in non-kinship placements:

So while you were the relevant Minister, did you set targets to reduce the number of Aboriginal children in non-kinship care placements?---No, I didn't.

Why not?---Because a target system would require a result. I would prefer – and I think the correct policy position is, that if you have a child that is in need of care, then that child is given the support that is required. To set a target would be to be artificially either over or underinflate that position, and I think that that would be bad public policy.

Mr Elferink, doesn't a target give you something by you can measure whether or not the Government strategies are successful?---Once again, it depends on how you define targets. You have objective targets and subjective targets. They are reflected in various public policy documents, but if you're talking about numbers I think that would be bad public policy.

...

*Was it part of your strategy to reduce the number of Aboriginal children in non-kinship placements?---No.*¹⁵⁸

5.42 CAALAS considers this mentality (of not setting targets because there would be an expectation of meeting them) to be irresponsible. It reveals a lack of priority to reunify Aboriginal children with their families and a general lack of will to especially address the

¹⁵⁴ T4005.17-34 (Ms Graham's XXN of L. Behrendt).

¹⁵⁵ Exh 674.001 at [27] (Statement of Ben Mason).

¹⁵⁶ T4104-4105 (Mr Morrissey SC and Commissioner Gooda's XN of K. Schinkel).

¹⁵⁷ T4105.22-24 (Mr Morrissey SC's XN of K. Schinkel). See also evidence of Marnie Couch in relation to preferring no child to be in care.

¹⁵⁸ T5207.6-38 (Dr Dwyer's XXN of J. Elferink).

over-representation of Aboriginal children living away from their families and communities.

- 5.43 CAALAS is of the view that unless targets are set for the achievement of goals in relation to reunifying Aboriginal children with their families, then governments are less able to be held to account internally and externally by the public and stakeholders. The setting of targets is critical to ensure that the on-the-ground work of government and the strategies employed to achieve successful outcomes for children and families are working and the disgraceful disproportionate effect of care and protection intervention on Aboriginal children and families is turned back.
- 5.44 Whilst it appears that monthly data is collected across the Territory in relation to children having a current care plan, that data is not so detailed as to collect the situation in relation to children having individualised and meaningful care plans and particularly cultural care plans; nor in relation to the participation of Aboriginal children and families in care planning.
- 5.45 There is a tension in the collection of data, whereby staff may produce a sub-standard outcome, such as a copy-and-paste care plan, for the purpose of ostensibly complying with the requirement that each child have such a plan, improving the compliance statistics but not the real-world outcomes for the child and their family. The following evidence from Mr Peter Fletcher, of the Katherine TF office, demonstrates the issue:

MS GRAHAM: The care plans that do exist, that are current care plans, that is care plans relevant to the current circumstances of a child and their family, I suggest to you that there's a real issue with the quality of those care plans being very poor. Would you agree with that? - -- Absolutely. In fact, in the current – since around about December 2016 there has been a concerted effort to increase the quality of care plans. We have come from a period of – a real drive for administrative compliance to try and make reports like this one look better. However, you get care plans that don't necessarily mean much to a child or to their parents. So, since that time, we've really been trying to make sure that the case managers writing their care plans – that it's not a desktop activity, that they've been out to their relevant communities, they've spoken with the child, they've spoken with the parents, they've got a really good understanding of what their needs are, what the strengths are in the family and yes, the family have contributing to that care plan. Now, that has taken a lot of work. It's still going on now, and therefore there hasn't been as much administrative compliance, but in my opinion the quality of the care plans is – has increased significantly for the Katherine office.¹⁵⁹

- 5.46 Whilst acknowledging that tension, CAALAS advocates for meaningful measuring and monitoring of progress towards the goal of reunification, including in relation to the existence of and implementation of individualised cultural care plans, participation of children and parents in decision-making processes, family access, placements with kin and timeframes from removal to reunification.

Findings

- 5.47 The failure to apply sufficient resources to early intervention and services designed to prevent family risk factors from developing to the point of removal of a child has inevitably caused a growing number of children who fall to be reunified with their families.
- 5.48 The evidence of departmental staff and bureaucrats to the effect that reunification is pursued to its fullest is rejected. Government witnesses struggled to distinguish between the aspirations of the department and individual workers, and the reality of outcomes for Aboriginal children and families. The 'aspirational' portrayal by government witnesses should not be accepted as if it reflected the experiences of people caught up in the system. The child protection system in the Northern Territory has not been resourced well enough for the aspirations of its workers to come into fruition.

¹⁵⁹

T4744.31-46 (Ms Graham's XXN of P. B. Fletcher).

- 5.49 The goal of reunification with family is entirely undermined by failures to maintain connections between a child in out-of-home-care and their family, culture and home community.
- 5.50 Many Aboriginal children are removed from their families and placed with carers in circumstances where connections to family, culture and home communities are not maintained; moreover where Territory Families does not support children and families to maintain those connections.
- 5.51 There are considerable barriers for Aboriginal people, particularly from remote communities in maintaining contact between children in care and their families. When a child is in care, visits between the child and their family are irregular and infrequent. Territory Families takes inadequate steps to ensure that these families can maintain regular contact in a meaningful and culturally appropriate setting.
- 5.52 Territory Families has prohibited the use of Aboriginal languages when relatives are speaking with a child in care. This is an outrageous and damaging practice.
- 5.53 Territory Families has generated 'cookie cutter' or 'cut-and-paste' care plans which are effectively meaningless according to the individual needs of children and their families.
- 5.54 A huge proportion of children are at various times without a care plan relevant to their current circumstances.
- 5.55 Territory Families regularly fails to ensure the participation of children and their families in care planning.
- 5.56 A major barrier to successful reunification of families is delay. Too many cases involve the kind of delay that frustrates the viability of reunification and leads to a scenario where reunification may no longer be in the best interests of the child.
- 5.57 There has been an increased use and over-use of care and protection orders which are in place until the child reaches the age of 18. A long-term order shifts the focus away from reunification and addressing the needs for a family to retake care of their children; or to identify kinship carers who can care for a child in their community.
- 5.58 There is a general lack of data collection, measuring and reporting of the progress of reunification of families across the system.

Recommendations

- 41.** The NTG should focus substantial resources on providing services to address factors which might lead to the removal of a child from their family with a view to preventing that eventuality.
- 42.** The NTG should commit to full compliance with all elements of the Aboriginal Child Placement Principle.
- 43.** Territory Families should provide greater assistance and a more holistic approach, linking in with other government and non-government service providers, to support Aboriginal families in meeting the necessary milestones or goals to achieve reunification, particularly where the child protection concerns justifying removal relate to poverty, trauma, alcohol and other substance abuse, and domestic violence.
- 44.** Territory Families should pay special attention to ensure that families from remote communities are assisted to remain connected with a child in care, including regular contact in a meaningful and culturally appropriate setting.

45. Territory Families should be promoting access to language and a child's participation in the use of language to the fullest degree possible.
46. The preparation and implementation of a thorough individualised care plan, including a cultural care plan, should assume much greater significance in efforts to reunify each child in care with their family.
47. A right for children (where appropriate) and their parents to participate in care planning should be enshrined in legislation, particularly to ensure that they are provided an opportunity to participate in care plan meetings and the creation and implementation of care plans.
48. The NTG should fund independent care plan meeting convenors. In the case of Aboriginal families, funding should be applied for the appointment of an Aboriginal convenor or co-convenor to assist in communication and provide guidance in relation to cultural considerations.
49. The NTG should make funds available for legal representatives to support and advocate on behalf of children (where appropriate) and parents at care plan meetings, particularly whilst an application for a child protection order is on foot.
50. A family group conferencing model throughout the decision-making processes involved in the child protection system, and particularly in relation to achieving reunification, should be rolled out across the Territory.
51. Considerable resources should be applied to roll out special reunification campaigns across the Territory to safely return children to their families and communities, with a particular focus on Central Australia.
52. Long-term care orders until the child reaches the age of 18 should be used sparingly. They should not be the subject of a default or automatic application. Notwithstanding the imposition of such an order, the work of Territory Families should not stop or slow down in relation to seeking to achieve reunification and particularly to continue exploring kin options so that a child may be returned to their family or community environment as soon as possible.
53. Targets should be set to achieve the goals of reunification, particularly in relation to addressing the disgraceful overrepresentation of Aboriginal families affected by the removal of children.

(b) **Leaving care**

Planning and decision-making

- 5.59 The Commission has heard evidence from a range of sources about the failure of TF to appropriately plan for a child's departure from government care, and a failure to include children in the decision-making processes involved at that critical transitional time. As with all matters that affect a child's experience, it is fundamental that TF give each child a meaningful opportunity to be heard about their wishes and to be involved in decision-making.
- 5.60 CAALAS is concerned that a lack of planning leading up to a child leaving care creates a risk of homelessness and tends to exacerbate other vulnerabilities experienced by young people in relation to their health, education, training and employment. Particularly in relation to the risk of homelessness, the Commission has received much evidence about the crisis in housing availability for people living in Central Australia and across the Territory, major problems with overcrowding, and the limited beds available for young people through accommodation services such as ASYASS. This fundamental aspect of

being able to access safe and secure shelter upon leaving care is a matter for urgent attention.

Service availability by Territory Families and non-government organisations

- 5.61 CAALAS supports the implementation of a system akin to that operating in the United Kingdom, whereby a mentor or "personal adviser" is assigned to each child to assist them on leaving care. Under that model, the local council charged with responsibility for the child must give the child a personal adviser "who stays in touch with you once you've left care". The council must carry out an assessment to find out what advice and support a child leaving care needs and then prepare a plan to make sure the child receives this advice and support.¹⁶⁰ CAALAS supports the implementation of a through-care model to children leaving care, which does not require children to opt-in to access the support, but rather proactively engages with young people to promote their best interests and development. CAALAS is of the view that such a personal adviser role ought also extend to providing advocacy support to young people when engaging with government agencies or other service providers.
- 5.62 A substantial investment in supporting children leaving care is particularly justified by the fact that those young people are likely to be high users of other government services such as in the health sector, housing and Centrelink, particularly if not well-supported upon leaving care.

Findings

- 5.63 Territory Families has regularly failed to appropriately plan for a child's departure from care.
- 5.64 Territory Families has regularly failed to include children in the decision-making processes involved during the critical transitional period when a child is approaching 18 and thereafter.
- 5.65 A lack of planning leading up to a child leaving care creates a risk of homelessness and tends to exacerbate other vulnerabilities experienced by young people in relation to their health, education, training and employment.

Recommendations

- 54.** Every child in care should have a meaningful opportunity to be heard about their wishes and be involved in decision-making related to them leaving care.
- 55.** Leaving care planning should occur well in advance of the anticipated departure from care.
- 56.** The fundamental aspect of being able to access safe and secure housing upon leaving care is a matter for urgent attention.
- 57.** The NTG should adopt the implementation of a "personal adviser" model to assist children leaving care, applying a through-care philosophy to the model.

¹⁶⁰ Exhibit 574.000 - Leaving foster or local authority care – UK Government (Tendered on 23/6/2017).

6. The Legal Process

(a) Issues with respect to the current legislation

6.1 CAALAS is of the view that there are significant difficulties with the current statutory framework that governs the safety and wellbeing of young people in the Northern Territory.

6.2 CAALAS broadly shares the opinion expressed by Ms Olga Havnen, CEO of the Danila Dilba Health Service in that:

...if we're going to make this fundamental shift about improving the outcomes for Aboriginal children and families in the Northern Territory then I think we have to have much greater weight and capacity to genuinely ensure that those ways of working happen in practice at every level and at every step along the way, whether it's in the youth justice system or whether it's in the child protection system. And to my way of thinking is that what we've got at the moment is a completely inappropriate and outdated set of legislation, you know, ineffective implementation of policies, procedures and programs and so on, that the system as a whole needs a complete overhaul.¹⁶¹

6.3 CAALAS has significant concerns about the failure of the current Care and Protection of Children Act (**the Act**) to provide any mechanism to ensure compliance or allow for external monitoring of compliance with legislative responsibilities, particularly those ascribed to the Department as the statutory parent for young people in their care.

6.4 An example of non compliance brought to the attention of the Commission during the hearing of evidence was in respect of 'care plans'. Section 70 of the Act required the department to ensure young people in their care have a care plan. Section 74 proscribes the intervals at which a care plan must be reviewed.

6.5 The Commission has repeatedly heard that young people did not know about their care plans¹⁶², that parents were denied access to their children's care plans¹⁶³, that carers had no role in their preparation¹⁶⁴, and that on review it was obvious that plans were "a cut and paste" of another child's plan¹⁶⁵.

6.6 The Commission received evidence that at 31 March 2017, 28.9 per cent of young people under the care of the Department did not have a current care plan¹⁶⁶. The Commission also heard that the April 2017 monthly performance report indicated that in the Big Rivers region¹⁶⁷, of the 159 children in out-of-home care in, 155 of whom were Aboriginal, that 57.4 of those children had no current care plan¹⁶⁸.

6.7 There was no evidence proffered by the Department as to what recourse was taken on the identification of that failure to meet minimum statutory requirements prescribed by law, instead, during evidence, representatives of the Department appeared to obfuscate around the issue of non compliance with sections 70 and 74 of the Act¹⁶⁹. As observed by Dr Fejo-King, "You must be accountable to the legislation. And if you're not, why aren't

¹⁶¹ T4762 (Mr Callaghan XN of O. Havnen)

¹⁶² P15 of closed court transcript, 2 June 2017 (CL and CM)

¹⁶³ Ibid

¹⁶⁴ T4937 (Mr McAvoy XN Owen)

¹⁶⁵ T4534 (Dr Dywer XXN T. Hancock)

¹⁶⁶ Exhibit 518; See also TR 4895 (Mr Callahan XN B. Thompson)

¹⁶⁷ Katherine and surrounding areas

¹⁶⁸ T4744 (Ms Graham XXN P. Fletcher)

¹⁶⁹ See T4893 – 4896 (Mr Callaghan XN of B. Thompson)

you doing that? And the Department must be held accountable for not fulfilling the legislative responsibilities".¹⁷⁰

- 6.8 CAALAS would like to see Territory Families, as their name suggests, work for and with territory families in a cooperative, respectful and culturally informed way. To achieve this CAALAS is of the view that the act itself must be clear, with each section reflecting the Part 1.3 "*Principles underlying this Act*". Reiteration throughout the legislation would create a positive change through the whole of the Department's statutory framework, and would assist in promoting that ethos through the policies, practice guidelines and day to day operations of the Department.
- 6.9 Specific difficulties exist within Part 2.3 of the Act which deals specifically with "the Court's Powers for children". Powers included in the Act which are not in reality available as a result of departmental policy or practice include significantly mediation, which is dealt with below, but also shared parental responsibility and long term orders in the vicinity of between 3-5 years.
- 6.10 The current Act does not sufficiently protect young people, it does not sufficiently protect the rights of young people their families and communities to be included in decisions made about the young person. There are insufficient protections to ensure the cultural wellbeing of young people are considered in determining the best interests of the child. There is no power for the Court to order mandatory minimum contact visits with parents or families, or visit community.
- 6.11 As observed by Ms Martin, the former managing civil lawyer at NAAJA, the Aboriginal Child Placement Principle must be more than a section:

*It needs to inform every single aspect of the Department's dealings, in terms of employment of Aboriginal staff, training of existing staff, use of interpreters, understanding of children's best interests, including cultural rights, and including Aboriginal organisations and supporting Aboriginal community organisations to be able to assist the Department or collaborate with the Department.*¹⁷¹

- 6.12 CAALAS is strongly of the view that a legislative framework that is genuine and robust in its commitment to, and embedding of, the Aboriginal Child Placement Principle has the potential to be the first bastion to ensuring the reduction of the number of Aboriginal young people in Care.

(b) **Issues in relation to current legal processes, including mediation**

- 6.13 The current legislative framework in Child protection in the Northern Territory does not provide any appropriate mechanisms for the regulation or funding of a mediation processes.
- 6.14 Former CAALAS family Lawyer Ben Mason states that between November 2012 and November 2016 to his knowledge, the department did not ever seek mediation pursuant to s49 of the Act. He further notes that:

*..however on no less than four (4) occasions did CAALAS seek court-ordered mediation pursuant to s127 of the Act. I am aware of only one occasion where TF did not oppose our application. TF would often state that they opposed our application ...on grounds that they did not believe the matter could be resolved ...or that they believed mediation was not in the Child's best interest; however, on nearly every occasion mediation lead to an agreement...*¹⁷²

¹⁷⁰ T4677 (Ms Graham XXN C. Fejo-King)

¹⁷¹ T27 Legal Process Meeting (Mr Callaghan XN P. Martin)

¹⁷² Exhibit 674.001 [12] – [13] (Statement of Ben Mason)

- 6.15 In 2015 a Local Court practice direction was introduced across the Family Matters Jurisdiction which required that parties meet for a "case conference" as part of the pre trial process. However, the experience of practitioners, as expressed in the legal processes meeting, are that these case conferences are not ordinarily places where negotiation can or does genuinely occur. The evidence before the Commission supports that this is the experience across Darwin, Katherine and Alice Springs.
- 6.16 Ms Hay of NTLAC in Darwin made the following observation as to the difference between a case conference and mediation:
- ...a chance for all of the parties and all of their lawyers, and the support people, if they're involved...to meet and largely do what mediation does, in that we discuss the issues, we try and reach a resolution, and if one can't be reached, we try and narrow the issues in dispute....However, in our view, that's not the same thing as mediation that's chaired by an independent person.¹⁷³*
- 6.17 Ms Bell of NAAJA Katherine stated:
- I likewise have found the department to be quite fixed in their positions with respect to applications, and in the case conferencing process... the negotiation part of them has tended to be very brief, and they have largely been more directed towards, 'Well, let's nut out our statement of issues to put before the court because we know we are not going to agree on this'¹⁷⁴*
- 6.18 CAALAS is concerned that the lack of consent from the Department to Court ordered mediation and involvement of an independent mediator is partly due to the structure of the Department. Particularly, the role of the investigative case worker in determining the appropriate order, providing instructions to the Solicitor for the Northern Territory (**SFNT**), and acting as the applicant whilst simultaneously attempting to work with the young person and family. This creates an immediate tension between families and the case worker, who outside of court still communicate regarding access and visitation and general information sharing around the and can result in limited access to children and information about children to families and communities during the legal process.
- 6.19 It is submitted that this issue is compounded by SFNT who take the view that they are acting on instruction of the department. There is then a reliance on the views and instructions of the case manager and /or their team leader to both instruct SFNT during any case conference and then appear in court to present evidence as to why the application should be made. CAALAS is of the view that this creates a conflict where the case manager, who has determined their view of the matter and proceeded to make that application to the Court, is expected to engage in mediation with families.
- 6.20 It is submitted that the lack of independent oversight (from an independent legal service – similar to that provided by the Director of Public Prosecutions) and the conflation of roles of TF case workers creates a situation where mediation or settlement negotiations during case conferences are highly unlikely to occur.
- 6.21 The relationships between families and the Department are further strained by historical difficulties with communication by lawyers to caseworkers to access information about children during pre trial phases. At one point there was a prohibition on contact between lawyers to case workers. This creates difficulties, as it leaves families unsupported in their interactions with TF, this is particularly so within the context of Care and Protection in the Northern Territory where support workers often come from within legal services.
- 6.22 CAALAS is of the view that the approach to the care and protection legal process, including Court appearances and the conduct of trials should be consistent with a

¹⁷³ T7 Legal Process Meeting (Mr Callaghan XN A. Hay)

¹⁷⁴ T8 Legal Process Matters (B. Bell)

specialist therapeutic jurisdiction. CAALAS submits that ultimately given the paramount consideration of the child's best interests that this is how matters should be approached.

- 6.23 To achieve this an appropriate Court space, with appropriate interviewing and holding facilities (with the capacity to genuinely include participation of parents who are in custody) would be required, as would a specialist Judge familiar and trained in Child development and trauma informed practice.
- 6.24 Parties to an application, including the child subject to the order should have a right to representation, a right to access interpreters trained in the legal concepts and word-to-word training language of the jurisdiction.¹⁷⁵
- 6.25 Parties should also have supported access to appropriate support services to ensure their participation in and understanding of the process. Significant family members who have valuable insight to offer should be encouraged to participate in the legal process, not obstructed by TF. Unfortunately CAALAS has experienced obstructive attitudes from TF in Alice Springs in this regard. A recent example related to a 14 year old girl whose newborn baby was the subject of a protection order application by TF. The grandmother of the 14 year old, who is also her guardian, was prevented from entering the court room on numerous court dates, until she attended to procedural and administrative requirements in relation to being formally added as a party to proceedings. CAALAS submits that these obstructive attitudes are unacceptable and amount to a deliberate exacerbation of existing barriers that Aboriginal people experience in engaging with the care and protection system.

(c) **The selection and use of specific orders**

- 6.26 CAALAS has noted an increase in applications for long term protection orders to the age of 18 years. Mr Mason observed

TF began seeking long term protection orders as a matter of policy in late 2015. Long term protection orders until the child turns 18 years old started to become the automatic order sought by TF once a short term order had lapsed. At the time it appeared to be a sudden change in policy at TF...and did not appear to be a best interest decision for the individual child¹⁷⁶

- 6.27 A similar change was also observed in Katherine, with lawyers observing that

anecdotal evidence suggests that the Department in Katherine has recently increased the number of applications for long term orders. It is not clear the basis for this change. Such a shift has implications not only for families but also for legal services and for the Court.¹⁷⁷

- 6.28 The current practice appears to be highly dependent on the views of individual caseworkers and trends within the Department. CAALAS strongly believes that the department must have transparent guidelines on determinations as to the length of an order. Long term orders are the most invasive exercise of the Courts power in this jurisdiction and must be used as a last resort. Similarly the department must be transparent in considerations used to determine the application is necessary, and there must be robust protections for children and families who are subject to long term orders such as ongoing advocacy and a review mechanism for decisions such as access and decisions regarding placement.

- 6.29 Transparency and administrative review would require legislative backing and access to information held by the department. CAALAS submits that the policies of TF should be publicly available, and mechanisms for administrative review must be included in the Act

¹⁷⁵ T9 Legal Process Matter (M. Carlton)

¹⁷⁶ Exhibit 674.001 at [27] (Statement of B. Mason)

¹⁷⁷ Exhibit 673.001 at [38] (Statement of T. Opie)

to allow young people and families to press for involvement in young peoples lives, even if they are subject to long term orders.

(d) **Delay in the legal process**

- 6.30 Contested legal proceedings in the Local Court in Alice Springs typically take six (6) months or longer to progress to hearing.¹⁷⁸ During this period of time, generally daily care and control of the child is given to TF during adjournment periods, and the child would be kept in a temporary placement with non kinship carers.
- 6.31 Delays can be further exacerbated with the difficulties associated with preparing response material with a remote living client, particularly where legal services are not funded to travel to the community, or only visit communities periodically.¹⁷⁹
- 6.32 During adjournment periods contact between the child, and family or community are determined by the department, generally the case worker. The temporary nature of the placements and uncertainly surrounding contact can be a source of significant frustration and stress for the family.
- 6.33 The stress of the situation can cause additional difficulties. During lengthy adjournments family positions can change, the process is very difficult and emotionally taxing. Where children are in a short-term care placement they may be away from community there is difficulty in ensuring that the children are supported during this time.

(e) **Legal representation for children and families**

- 6.34 The Commission has consistently heard that families and children do not understand why children have been removed and placed into out of home care.
- 6.35 CAALAS submits that understanding of the reason(s) for intervention, and having the ability to genuinely participate in the legal process, should be essential features of a child protection system.
- 6.36 It allows change to be considered which increased prospects for reunification between children and their families and community. It promotes self determination, and can reduce some of the anxiety, confusion and distress of families navigating removal and subsequent application.
- 6.37 An example of this distress and conditions can e seen in the statement of CK, a young person who was in care in the Northern Territory. At paragraph 14 CK states:

No one has ever explained to me why I was in FACS. I did not have a lawyer when I was dealing with FACS. In my experience I believe it is important for young kids to have a lawyer to help them with FACS. The lawyer can find out why FACS is involved and the lawyer can talk to them about what the kids want¹⁸⁰.

- 6.38 CAALAS is concerned that the level of client referral from the department to CAALAS has steadily decreased. In her statement Ms Bloomfield observed

During my time at CAALAS I have noticed that TF have stopped referring clients to lawyers such as CAALAS. We used to get clients come in and say that TF or welfare sent me here to see a lawyer about my kids being in care. They would present with their paperwork and knew

¹⁷⁸ Exhibit 674.001 at [10] (Statement of B. Mason)

¹⁷⁹ T10 Legal services forum (M. Scarbossa)

¹⁸⁰ Exhibit 478.000 (Statement of CK)

to come and see CAALAS about getting their kids back. In the last few years I have not heard or seen any clients come through who have been referred by TF¹⁸¹.

- 6.39 The Commission heard that this issue was also experienced in Darwin where the Civil practice manager at NAAJA Ms Martin spoke about having to advocate to receive early referrals from the department.
- 6.40 CAALAS is firmly of the view that early referral of families to legal services such as CAALAS is essential to assist families to navigate the protection system and to give them the best opportunity to understand and consider their options.
- 6.41 Community Legal education is also important to ensure communities understand what they can do to respond when children are removed and taken into out of home care. Aboriginal Legal Support Officers stated during sessions it became apparent that families whose children had been removed had no understanding of how to go about the process of getting their children back.¹⁸² This lack of knowledge about the system can also affect outcomes where potential kinship carers or those who may under the legislation be identified as parents or interested parties did not know that they can become involved in matters and be considered by the Court as alternative placement options or may apply for parental responsibility of the child.
- 6.42 The importance of legal representation is not limited to during court proceedings. CAALAS believes that parents, kinship carers and young people should have access to representation and advice throughout the period of a protection order. There should be the ability to seek administrative review of decisions of the department.
- 6.43 This sentiment, particularly in respect of advocacy for young people under care orders is also held by the Children's Commissioner Colleen Gwynne who would welcome legislation that would provide for a children's advocate function within the her office¹⁸³.
- 6.44 Similarly where families have children in the system they should have access to a lawyer to advocate on their behalf, to ensure the statutory requirements are being followed and that their rights are being met.

(f) The role of Territory Families

- 6.45 As discussed above TF instructs SFNT who appear in contested matters in the Family Matters Jurisdiction of the Local Court. CAALAS is of the view that there should be some separation and ability for independent oversight to ensure consistency with decisions around the length of orders or other decisions for example of supervision directions be considered by an independent legal adviser, similar to what occurs with police informants and the Director of Public Prosecutions in the Criminal Justice System, and the care and Protection system in Queensland following recent inquests.
- 6.46 CAALAS also submits that there must be transparency, in the appointment and payment of separate child representatives from by SFNT. When the same legal services branch that represents the Department in proceedings is engaged to act as a separate child representative and is paid by the Department, it creates a perception of bias that reduces credibility.

(g) The availability of expert reports

- 6.47 The ability to receive expert reports is extremely limited in Alice Springs. There are often time delays in sourcing appropriately qualified practitioners to prepare reports, and given

¹⁸¹ Exhibit 670.001 at [10] (Statement of Kristy Bloomfield)

¹⁸² Exhibit 670.001 at [11]-[12] (Statement of Kristy Bloomfield)

¹⁸³ T4495 (Dr Dwyer XXN C. Gwynne)

the size of the jurisdiction CAALAS has also experienced potential authors refusing to prepare reports for contested matters in the Family Matters Jurisdiction, because they are employed at least in part, or receive funding through TF.¹⁸⁴

- 6.48 CAALAS further submits that there is an inherent tension with reports being commissioned and paid for by the department. It creates a perceived bias, and given the usual costs of expert reports, case managers do not have authority to approve the commission of them¹⁸⁵, this approval process causes delay.
- 6.49 CAALAS is of the view that the Court itself should have a budget to commission expert reports to assist in the determination of issues in contention such as the capacity of a parent or proposed carer. This would increase the perception of impartiality of the authorship of those reports and would ensure that material put before the authors is accessible to all parties. Court ordered reports could also be tailored to specifically address issues which will most significantly assist it to determine matters before it.

Findings

- 6.50 The current legislative framework does not provide any mechanism to ensure compliance with the Act or allow for external monitoring of compliance with legislative responsibilities.
- 6.51 The current legislative framework does not sufficiently protect young people, and does not allow for young people their families and communities to be included in decisions made about them.
- 6.52 The current legislative framework does not provide any appropriate mechanisms for the regulation or funding of mediation processes.
- 6.53 Delay in legal proceedings is a systemic issue which has detrimental effects on children and their families and hinders efforts at reunification.
- 6.54 There is a significant lack of independent oversight of decisions of Territory Families.
- 6.55 Children and Families in the Northern Territory generally have a lack of access to legal representation, both before and after proceedings.
- 6.56 The lack of access to expert reports in Alice Springs and Central Australia does not allow decision makers to make fully informed decisions.
- 6.57 Long term protection orders are not being used as a measure of last resort.

Recommendations

- 58.** That the legal process of the Local Court hearing family matters be significantly re-designed to achieve greater participation in court matters by families, young people and their communities.
- 59.** That child advocates be appointed who have an ongoing role for each child in care such as those employed by the Public Guardian in Queensland.
- 60.** 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 and application for protection orders has been made.

¹⁸⁴ Exhibit 674.001 at [21] (Statement of B. Mason)

¹⁸⁵ T9 Legal Process Meeting (G. Brown)

61. Legislative amendment to allow for children, young people or parents to seek an independent review of a placement and/or contact decision at the Northern Territory Civil and Administrative Tribunal. The kinds of decisions which should be open to review include decisions in relation to access, approval of kinship carers, placement and care plans.
62. That Territory Families ensure they are referring parents and family members to seek legal assistance as soon as possible once it is determined that an application needs to be listed.
63. That Territory Families commit to working more productively with legal representatives. Currently in ASP a lawyer cannot communicate directly with the relevant case worker on behalf of their client. This is obstructive and unproductive, and does not lend itself to a timely or lower-level resolution of issues.
64. That the Courts be adequately funded to commission expert reports to assist in the determination of issues in contention such as the capacity of a parent or proposed carer.

7. Cross-over issues

- 7.1 CAALAS draws the Commission's attention to its submissions made in relation to the youth detention and pre-and-post detention which address a number of these topics. In those circumstances, CAALAS will make some further brief submissions on cross-over issues.

The role of TF and carers for children in care who enter detention

- 7.2 The significance and troubling nature of the evidence before the Commission in relation to the mistreatment of children and the failures to adhere to minimum standards of duty of care in detention centres in the Northern Territory over the past decade, is heightened when considered in combination with the evidence about the significant proportion of in detention who are subject to a care and protection order. One could reasonably expect that children would be doubly safe on account of the dual duty of care that exists whereby the government is responsible for the safety and wellbeing of a child on account of their custodial status and on account of the government being *in loco parentis*. However, the evidence before this Commission has revealed that children in detention, despite their increased vulnerability and the poor conditions of their detention, have been assumed by Territory Families (and predecessor departments) staff to be adequately cared for and not in need of attention. As Ms Bronwyn Thompson, the acting general manager of operations in Territory Families, stated:

What tends to happen is that when children who are in care end up in Don Dale, or any detention centre for that matter ... because their general care needs are being met at that stage ... for case managers ... it has tended to be a time when they have got on with other work with their high caseloads, and that's the thing that we have been trying to raise with them, the need for that continuity of the contact with the kids in care and to continue with the planning around their care planning.¹⁸⁶

- 7.3 CAALAS considers this approach to be an unacceptable abrogation of responsibility on the part of Territory Families. It is incumbent upon a government agency with parental responsibility for a child in detention to regularly monitor the circumstances of their detention and ensure their wellbeing. It is not acceptable and manifestly wrong for Territory Families' workers to assume that another government department is meeting that responsibility.

¹⁸⁶ T4857.22-28 (Mr Callaghan SC's XN of B. Thompson).

7.4 Ms Thompson ultimately acknowledged this fact.

When a child who's vulnerable in the community goes into detention, that often increases their vulnerability. Do you accept that?---I guess so, yes.

You would be familiar with the range of evidence that this Commission has heard about treatment of children in detention, including inappropriate clothing being provided, namely tracksuits in over 40 degrees heat in Alice Springs, insufficient shelter from the extreme climate in the Northern Territory, filthy living conditions, putrid smelling living conditions, children being deprived water, food, deprived basic hygiene products like deodorant, soap, physical abuse, sexual harassment of children, psychological abuse of children. You're familiar with all that evidence that has been given before the Commission?---Yes, I am.

Yesterday you gave some evidence – this is at T4857 – that when a child is in detention their general care needs are being met at that stage. For a case manager who – for case managers who have high caseloads, it has tended to be a time when they have got on with other work in their high caseloads. Do you remember giving that evidence?---I do remember giving that evidence.

And that was about case workers having engagement with children who are in detention who are also in the care of the CEO?---That's correct.

Can I suggest to you that it is wrong for case managers to assume that, when a child is in detention, their general care needs are being met?---I accept that.

And that is an aspect where there needs to be much greater emphasis played on the role that Territory Families needs to play on the child protection side of the agency to ensure the wellbeing of children in detention?---I accept that and, you know, I guess it's within the context that we do only have a very small number of children in the detention centres. So, for example, at the moment – as of yesterday there were seven. So I accept that it is important, but I'm trying to put a context around we have other issues that need to be dealt with as well.

7.5 The fact that only a small number of children in detention centres are also subject to care and protection orders does not excuse the approach of Territory Families to get on with other work instead of paying attention to the needs of those children and the duty owed to them. It rather emphasises the fact that meeting the expected standards of the duty of care and treatment of that cohort of children is not an insurmountable task and should be attended to without exception.

7.6 A particular aspect of the responsibility of Territory Families for a child who enters detention is to take appropriate steps to assist the child to achieve their release from detention, either on bail or with a favourable sentencing outcome. CAALAS maintains that there are ongoing issues with Territory Families taking inadequate steps to ensure that there are accommodation options for each child in care as an alternative to detention, either on bail or for sentencing purposes. CAALAS notes the evidence from Children's Commissioner Colleen Gwynne to the effect that this issue is a historic, not current, one.¹⁸⁷ The Commission should reject Ms Salli Cohen's claim that it has "never been our instruction or our decision" that a child simply must remain in detention while a suitable care placement is found; moreover the Commission ought to be circumspect about Ms Cohen's claim not to be aware of this ever occurring except for one case "where there was some ambiguity with the release date".¹⁸⁸

7.7 CAALAS has observed and continues to observe difficulties for children in detention who are also in care securing appropriate accommodation plans to ensure their earliest possible release. CAALAS is concerned that the Youth Court and lawyers acting for children in detention who are also in care are not equipped with information in a timely manner from Territory Families in order to protect the rights and interests of children and

¹⁸⁷ T4501.30-41 (Ms Graham's XXN of C. Gwynne).

¹⁸⁸ From T4187.14 (Mr Morrissey SC's XN of M. Couch).

for decision-making to occur in the best interests of the child, ultimately to ensure their earliest possible release.¹⁸⁹ CAALAS will continue to press for these issues to be carefully monitored by Territory Families and oversight bodies like the Children's Commissioner.

Findings

- 7.8 Territory Families have abrogated their responsibility to children in detention by inappropriately assuming that their general care needs are being met by the custodial authorities.
- 7.9 It is incumbent upon a government agency with parental responsibility for a child in detention to regularly monitor the circumstances of their detention and ensure their wellbeing.
- 7.10 There are ongoing concerns within legal service providers that Territory Families take inadequate steps to ensure that information is provided to allow children to exercise their rights and pursue their interests; and inadequate steps to ensure that there are accommodation options available for each child in care as an alternative to detention, ultimately undermining the possibility of their earliest release.

Recommendations

- 65.** Territory Families staff responsible for the care and protection of children should not assume that children in detention are having their general care needs met.
- 66.** Territory Families staff responsible for the care and protection of children should regularly make contact with and closely monitor the conditions of a child's detention to ensure that the duty of care owed to the child in the custodial environment is met and to ensure their wellbeing in custody.
- 67.** In relation to a child in the care of the CEO, Territory Families should take special steps to ensure the earliest possible release of that child from detention. This is likely to involve ensuring appropriate through-care service provision is in place and providing information in a timely manner for the purpose of use in criminal proceedings on bail or sentence.
- 68.** Territory Families and oversight bodies such as the Children's Commissioner should closely monitor the actions of Territory Families staff members in relation to ensuring that children do not remain in detention beyond the minimum necessary period on account of alternative accommodation arrangements not being made available by TF.

8. Aboriginal Community Issues

- 8.1 This theme has been explored consistently throughout CAALAS' submissions. In summary, Aboriginal communities and community organisations play a critically important role in family support and child protection. The Commission has heard that children are better off when they are raised in their own communities and families.¹⁹⁰ There should be greater involvement of Aboriginal people and community organisations in designing programs, service delivery and policy. The principle of self-determination is crucial to the child protection system. Aboriginal people should be involved in designing programs and organisations to operate in their community.¹⁹¹ Aboriginal communities have an important role to play in the child protection system, not only in relation to specific cases but by

¹⁸⁹ Exhibit 354.000 at [23] (Statement of Anna Gill). See also Exhibit 353.000 at [25]-[32] (Statement of Shahleena Musk).

¹⁹⁰ Exhibit 453.001 at [46] (Statement of Larissa Behrendt)

¹⁹¹ T3995.5-20 (Mr McAvoy XXN of L.Behrendt)

consulting with government departments about policy. The communities can also provide important information to decision makers.¹⁹²

- 8.2 There is extensive evidence before the Commission that by engaging Aboriginal organisations the outcomes of these programs will be improved.¹⁹³ There are a number of reasons for this. Aboriginal involvement ensures culturally appropriate outcomes; improves cultural understanding of non-Indigenous staff; builds community capacity; that regional issues and concerns are addressed by those who live there; utilises extensive community networks to work with multiple agencies; and enables the use of informal networks to increase participation.¹⁹⁴

The Importance of Kinship in Child Placement

- 8.3 As indicated previously, the kinship principle in child placement is crucial as it empowers the community in managing their affairs and the wellbeing of their children.¹⁹⁵ The Commission has received evidence from Dr Fejo-King regarding the Aboriginal kinship system and the potential it has for keeping children in community. Aboriginal kinship goes beyond relations through blood or marriage, and expands to include members based on skin name, totem, ceremonial participation and residence at institutions or missions.¹⁹⁶ By utilising a narrow western view of family many kinship options are not explored.¹⁹⁷ When investigating kinship options it is important to have community members involved. Case workers do not have the necessary knowledge and understanding to explore all options through kinship mapping. Community members have this knowledge and can inform the caseworkers of the people who are kin for each child.¹⁹⁸
- 8.4 CAALAS submits that the Aboriginal Child Placement Principle is not being complied with. Failure to investigate all kinship options because caseworkers don't understand the Aboriginal system of kinship is contributing to the low placement rates. The Aboriginal kinship system is complex and is different to a western idea of a family genogram or tree.¹⁹⁹ Given the complexities, the kinship system is rarely understood and not explained to caseworkers and support services who engage with the family.²⁰⁰

Role for an Aboriginal Peak Body or Aboriginal Child Care Agency

- 8.5 CAALAS's position is that it is important to establish an Aboriginal peak body or Aboriginal Child Care Agency (ACCA) for the Northern Territory. An Aboriginal peak body can assist in a number of ways. Aboriginal organisations are well placed to provide numerous services that are currently being supplied by non-Indigenous organisations.²⁰¹ An Aboriginal peak body can coordinate and provide support services to the smaller organisations it represents, and advocate on behalf of those services.²⁰² The peak body would assist with the wellbeing of Aboriginal children and families. It would work with

¹⁹² T3995.25-35 (Mr McAvoy XXN of L.Behrendt)

¹⁹³ Exhibit 453.001 at [50] (Statement of Larissa Behrendt)

¹⁹⁴ Exhibit 453.001 at [50] (Statement of Larissa Behrendt)

¹⁹⁵ T4148.20 (Mr Morrissey XXN of M.Couch)

¹⁹⁶ T4663.40-45 (Mr Dighton XXN of C.Fejo-King)

¹⁹⁷ T4664.5-10 (Mr Dighton XXN of C.Fejo-King)

¹⁹⁸ T4665.5-10 (Mr Dighton XXN of C.Fejo-King)

¹⁹⁹ Exhibit 538.000 at [13]-[17] (Statement Dr Christine Fejo -King)

²⁰⁰ Exhibit 538.000 at [16], [22] (Statement Dr Christine Fejo -King)

²⁰¹ T4757.5 (Mr Callaghan XXN of O. Havnen)

²⁰² See for example, T4209. 15-20 (Mr Morrissey XXN of H.I. Bath)

smaller organisations in recruiting, developing policies, procedures and guidelines for working with foster and kinship carers.²⁰³

- 8.6 Establishing a peak body will assist in finding ways to place Aboriginal child protection workers in urban and remote communities which result in better outcomes.²⁰⁴ Having people locally in communities who are from those communities will improve kinship options. These Aboriginal workers are better placed to assess these relationships than people externally in distant metropolitan areas.²⁰⁵

Increasing Aboriginal Community Engagement with Child Protection

- 8.7 CAALAS is of the view that there needs to be an increase in Aboriginal Community engagement with the child protection system. The commission has heard evidence that there is a wariness and distrust of government services in the Northern Territory. Many Aboriginal people, especially in remote communities, feel more comfortable working with NGOs and Aboriginal run services.²⁰⁶ Communities are also more likely to talk to people from within that community or skin group.²⁰⁷ Aboriginal community controlled organisations are the most suitable to identify and organise kinship placements for Aboriginal children.²⁰⁸ These organisations have a vital role to play in advocating and representing the interests of vulnerable Aboriginal children.

Findings the Commission ought to make

- 8.8 That the principle of self-determination is crucial to improving child protection outcomes for Aboriginal children and families.
- 8.9 That Aboriginal communities have a critical role to play in the child protection system in relation to individual cases and consulting with government departments about policy developments and approaches.
- 8.10 That the reliance of TF on westernised views of family has often resulted in the full range of kinship options not being explored for children.
- 8.11 That Aboriginal community controlled organisations are the most suitable to identify and organise kinship placements for Aboriginal children.

Recommendations

- 69.** That an Aboriginal Child Care Agency (ACCA) be established in the NT. The identity of the ACCA must be community controlled, and it must have adequate funding to provide the necessary support to children and families.
- 70.** The funding of an ACCA and other Aboriginal community organisations working in child protection must provide for early intervention and prevention programs, and resourcing for advocacy, support, training and education to enable culturally safe and trauma-informed care to be provided to children in the out of home care system.
- 71.** Responsibility and authority for Out of Home Care should be transferred to the ACCA within an agreed timeframe.

²⁰³ T4209. 15-20 (Mr Morrissey XXN of H.I.Bath)

²⁰⁴ T4250.5-20 (Mr Morrissey XXN of K. Vatskalis)

²⁰⁵ T4254.20-30 (Mr Morrissey XXN of K. Vatskalis)

²⁰⁶ T4206. 45 – T4207.5 (Mr Morrissey XXN of H.I. Bath)

²⁰⁷ T4262.15 (Mr Woodroffe XXN of K. Vatskalis)

²⁰⁸ T4539.40 (Ms Graham XXN of T Hancock)

9. Reform Options

- 9.1 As is clear from the recommendations set out throughout these submissions, CAALAS seeks a number of reforms to the child care and protection system to meet the needs of children and families in the Northern Territory. At the outset, and as outlined elsewhere, CAALAS's position is that there should be greater Aboriginal and community engagement in relation to child care and protection. Further to the recommendations already outlined, CAALAS submits the following.

Aboriginal Child Care Agency

- 9.2 As outlined in the previous topic, CAALAS submits that an Aboriginal Child Care Agency (ACCA) or peak body should be established. The ACCA needs to have community controlled identity and be adequately funded to provide support to the child and family. The funding to an ACCA and other aboriginal community organisations represented by a peak body needs to include programs for early intervention, and programs to reduce the number of children entering the child protection and out of home care system. There also should be funding allocated to increasing advocacy, support, training and education in order to provide culturally safe and trauma-informed care for children in the out of home care system. The ACCA should also have authority for the care and protection of children subject to protection orders. The involvement of Aboriginal organisations is important as community ownership of programs will lead to better engagement with them. There is evidence before the commission that Aboriginal involvement in policy, service and program design will improve outcomes.²⁰⁹

Aboriginal Children's Commissioner

- 9.3 CAALAS supports establishing a Commissioner for Aboriginal Children and Young People and has made submissions on this in previously.²¹⁰ CAALAS's position is that the Commissioner should be empowered to represent and advocate for the rights and interests of all Aboriginal children, not just those in the child protection and youth justice systems. The Commissioner's powers and functions need to be broad but clearly defined. The Commissioner must be an Aboriginal person, with a broad scope of inquiry to focus on Aboriginal children and the complex and nuanced needs of Aboriginal people and communities. Having an Aboriginal Children's Commissioner ensures both government delivery on outcomes for Aboriginal children and sector-wide delivery of outcomes for Aboriginal children.²¹¹
- 9.4 The position of Commissioner for Aboriginal Children and Young People would increase scrutiny in relation to the assistance and outcomes experienced by young people in the youth justice and care and protection systems, and potentially increase awareness as to ongoing issues and systemic failings that may be experienced through providing an alternative culturally appropriate and accessible complaints mechanism. CAALAS is of the view that the position of Commissioner for Aboriginal and Young People would encourage a specialist best practice approach to be taken when assisting vulnerable youths, and better ensure that the foundational, guiding principles of laws relating to young people are given practical and meaningful effect. CAALAS is of the view that this position should encompass oversight of government actions relation to children up to the age 18 and young people up to the age of 25.

²⁰⁹ See for example, Exhibit 453.001 at [50] (Statement of Larissa Behrendt)

²¹⁰ See *CAALAS Submissions on Youth Detention to the Royal Commission into the Protection and Detention of Children in the Northern Territory July 2017* at 1.23-4.

²¹¹ T211 (Mr McAvoy XXN of M. Bamblett)

Out of Home Care

- 9.5 CAALAS is of the view that Out of Home Care must be transitioned to the NGO sector. Aboriginal community organisations represented by an Aboriginal Child Care Agency or other peak body are best placed to provide the necessary culturally safe care that Aboriginal children in out of home care need.²¹² The Commission has heard evidence from Commissioner Jackomos that Aboriginal organisations are quicker at reuniting children with their families and more likely to place them with kin.²¹³

[L]ocal community organisations will know who are the Aboriginal people in the community. So they're more – so we're likely to have – we will have a greater compliance with Aboriginal child placement principle when the children are in our care. We know they'll go home earlier. We know that they'll have stronger contact. They'll have stronger connection to culture, to community, to family.²¹⁴

- 9.6 CAALAS also supports legislative requirements for Territory Families to explain to children and young people in out of home care their legal rights and entitlements. Legislation should also be enacted to establish an independent organisation that monitors and upholds the rights of children and young people in out of home care and ensure the CEO's compliance with the Charter of Children's rights. An independent review mechanism should also be established to appeal decisions regarding out of home care placements.²¹⁵

Other Proposed Reforms

- 9.7 Firstly, and critically, CAALAS submits that there must be a commitment and investment to long term targeted reforms.²¹⁶ There needs to be greater support to Aboriginal families in remote communities. This would improve the wellbeing of children in these communities and reduce the likelihood of contact with the youth justice system later.²¹⁷
- 9.8 Data collection needs to be improved so that there is reliable information regarding the child protection system in order to identify issues and whether any reforms or changes have had positive effects.²¹⁸
- 9.9 The Office of the Children's Commissioner should include a child advocate function to improve accountability and enable children to make complaints.²¹⁹ The child advocate should have powers to enter facilities where the child is held (such as residential facilities, detention centres, mental health centres) randomly to see what is happening. There is similar provision in the Queensland model under Public Guardianship Act.²²⁰

Recommendations

- 72.** As outlined in other topics of this submissions and our submissions on Youth Detention, that a Commissioner for Aboriginal Children and Young People be established in the NT.

²¹² T4870.30-40 (Mr McAvoy XXN of A.M. Jackomos)

²¹³ T4871.15-20 (Mr McAvoy XXN of A.M. Jackomos)

²¹⁴ T4871.15-20 (Mr McAvoy XXN of A.M. Jackomos)

²¹⁵ T4496.30-45 - T4497.5-20 (Dr Dwyer XXN of Colleen Gwynne)

²¹⁶ See for example, Exhibit 011.001 at [100(b)] (Statement of Dr Howard Bath); T4260.5 (Ms Graham XXN of K. Vatskalis)

²¹⁷ Exhibit 011.001 at [100(c)] (Statement of Dr Howard Bath)

²¹⁸ Exhibit 011.001 at [100(d)] (Statement of Dr Howard Bath)

²¹⁹ T4495.40 (Dr Dwyer XXN of Colleen Gwynne)

²²⁰ T4495.30-45 - T4496.5 (Dr Dwyer XXN of Colleen Gwynne)

Child Protection Legislation and processes

- 73.** That the governing legislation is amended to clearly set out the responsibility of TF to explain to children in out of home their legal rights and entitlements.
- 74.** That an alternative dispute resolution process be established as the initial pre-action requirement (similar to the s60I pre-action procedure under the Family Law Act), administered by an organisation outside of government. In the case of Aboriginal families an Aboriginal individual/organisation would be appointed to assist the family at commencement of the pre-action procedure.
- 75.** That legislation be amended to require the referral of child protection matters to legal representatives at the commencement of intervention involving Aboriginal families (where the family consents to such referral), irrespective of the nature of the intervention. The onus should not be placed on vulnerable Aboriginal people to seek out legal representation.
- 76.** That legislation be amended to mandate the appointment of a separate legal representative to advocate for the child's best interests, in contested matters.
- 77.** That legislation be amended to enable this separate child legal representative to commission a psychologist independent of TF, to conduct an assessment of the family.
- 78.** That the NTG identify and review the remote regional areas where there are high levels of child protection intervention, to ensure that services (such as housing, family support, social and emotional support) are available in those areas demonstrating the greatest need.

Care Planning

- 79.** Legislation to ensure that children (where appropriate), young people and parents are provided the opportunity to participate in care plan meetings.
- 80.** Funding of independent care plan meeting conveners. In the case of Aboriginal families, funding for an Aboriginal convener or co-convener to assist communication and provide guidance in respect to cultural considerations. The conveners should be funded and administered outside of Territory Families.
- 81.** Funding of legal representatives to support children (where appropriate), young people and parents at care plan meetings, particularly whilst an application for a child protection order is on foot.
- 82.** Legislative amendment that requires the inclusion of clear, realistic and measurable milestones or goals for families to work towards.
- 83.** Territory Families should provide greater assistance and a more holistic approach to supporting Aboriginal families in meeting the milestones or goals, particularly where the child protection concerns relate to poverty, trauma, alcohol/substance abuse, and domestic violence.

Placement and Contact Decisions

- 84.** Pending transition of Out of Home Care to the NGO sector, legislative amendment in relation to placement and contact decisions affecting Aboriginal children, prescribing the involvement of an independent Aboriginal person or organisation. That person or organisation should be funded and administered outside of Territory Families.
- 85.** In respect to contact decisions, legislation that establishes similar principles to those of the 'equal or substantial and significant time' under the *Family Law Act (1975)*.

- 86.** Legislation and funding to provide for contact to occur in a culturally appropriate environment and in a manner that allows Aboriginal families to interact naturally.
- 87.** Legislation and funding to provide for an Aboriginal person to undertake supervision of contact, where supervision is deemed in the best interests of the child or young person.
- 88.** Legislation that provides a mechanism for children, young people and parents to seek an independent review of a placement and/or contact decision at Northern Territory Civil and Administrative Tribunal.
- 89.** Legal representation should be resourced so that it is available to both children and parents in order for them to effectively exercise this right. An example of this can be found at s247 and Schedule 2 of the Child Protection Act 1999 (QLD)