



Statement to the Royal Commission into Institutional Responses to Child Sexual Abuse

Specific Issues where a response has been requested

A. The Northern Territory Children's Commissioner (the Commissioner) has a number of functions that relate to this issue. Under section 10(1)(a) of the *Children's Commissioner Act 2013* (NT) (the Act) I deal with complaints relating to services provided to vulnerable children by service providers. Pursuant to section 21 of the Act a complaint can cover two grounds:

- that either the service provider (responsible service provider) failed to provide services (required services) as would reasonably be expected; or
- those services failed to meet the standard that would be reasonably expected to be provided to a child as a vulnerable child.

The term 'required services' is defined in section 21(2) of the Act and can include any services relating to the care and wellbeing of the child. The meanings of 'service provider' and 'vulnerable child' are contained in sections 6 and 7 of the Act. By way of summary a 'service provider' is an NT Government instrumentality (including an Agency such as the Department of Children and Families (DCF)) or a body or person who has an arrangement with such an instrumentality. A 'vulnerable child' includes, amongst other things, a child who has had any level of involvement with the child protection system.

With respect to the issue of sexual abuse or exploitation, the Commissioner is not authorised to conduct an investigation aimed at establishing whether or not such abuse or exploitation has occurred as that is the role of DCF or the police – on receipt of a complaint I can look at the adequacy of the response of these agencies.



The Commissioner can also conduct investigations into the standard or adequacy of services on his/her 'own initiative', that is, in the absence of a formal complaint. In such instances, the matters being investigated still need to meet the criteria in place for complaints.

Pursuant to section 10(1)(f) of the Act, I also monitor the ways in which DCF deals with alleged incidents of harm or exploitation (including sexual abuse) of children in the CEO's care. This is quite different to my complaints mechanism and focuses on systemic approaches to this issue. This includes the provision by DCF of program statistics to allow for the monitoring of processes and outcomes.

Pursuant to section 84C(b) of the *Care and Protection of Children Act* (NT) (the CAPCA) the CEO of DCF must also provide the Commissioner with a report relating to an abuse-in-care investigation where a child has suffered harm or exploitation. These provisions were introduced into the Legislative Assembly as part of the recent child protection reforms by the NT Government. They commenced on 1 January 2014.

The Commissioner is also authorised to conduct Inquiries into the care and wellbeing of vulnerable children, either on his/her own initiative or at the request of the Minister. It is conceivable that such an Inquiry could be undertaken into the handling of sexual abuse allegations and/or into the measures put in place to prevent abuse in care.

- B. My office either conducts itself or attends a number of engagement activities each year with children in out of home care and those who have recently left the care system (but can still be eligible for services). The purpose of these activities is to meet the children in care and to provide an opportunity for those children to hear about their rights, including the ability to complain to the Commissioner's office about services provided to them whilst they are in care. Usually such events are organised in conjunction with other advocacy organisations such as the CREATE Foundation. I also meet with foster care organisations, the carers themselves and the children in their care.

I am not authorised to conduct routine inspections of out of home care placements including residential care facilities, however, my staff members and I have arranged with DCF to visit most of these facilities throughout the NT including those located in Darwin, Palmerston, Katherine and Alice Springs. The Commissioner's office also comes into contact with these children during the course of investigations it conducts relating to the Commissioner's complaints function.

- C. Section 47 of the Act creates an offence for anyone who discloses information obtained during the exercise of a power or performance of function under the Act.



There are however, a number of exemptions that exist under section 47(2) of the Act which include circumstances where a disclosure is required in the performance of a function. The Commissioner or his/her delegates can also disclose information to other parties if it is for the purposes of conducting an investigation relating to the care and wellbeing of a child under a law of the Territory or Commonwealth, for example, in the course of a child protection investigation. Under mandatory reporting obligations, the Commissioner refers to the DCF or police, matters that appear to involve harm to or the exploitation of children.

The Commissioner has a MOU in place with the NT Ombudsman's office to facilitate the exchange of relevant information where there is an apparently shared interest in a matter. The goals are to establish which office will assume formal responsibility for the investigation of a matter and to avoid the unnecessary duplication of investigations.

D. Prevention of abuse in institutions

- i. Over the last five years our office has reported on the number of unregistered carers in the out of home care system. This was of particular concern around 2008-09 when it was discovered that there was a high number of placements with unregistered carers. Over the last four years there has been a marked decrease in the number of placements with unregistered carers. On 30 June 2013 only 2% of all placements had unregistered carers.¹ The requirements for approval of registered carers are provided in the *Care and Protection of Children (Placement Arrangement) Regulations (NT)*. These include the obtaining of a working-with-children clearance (Ochre Card). DCF has further policy requirements regarding screening checks prior to placement. Even though the number of unregistered carers has dropped in recent times there is no direct evidence regarding the efficacy of DCF's screening processes.
- ii. It is my understanding that as part of DCF's screening processes for out of home care placements, an adult residing in the home of a registered carer who is not the primary carer, is also subject to an Australia-wide police check and must also receive a working-with-children clearance. We are aware of instances where this has become problematic, particularly in remote communities where there may be a larger number of people residing in one residence or groups travelling from one community to another.

¹ Office of the Children's Commissioner 2013. Annual Report 2012-2013, Children's Commissioner Northern Territory. Office of the Children's Commissioner, Northern Territory Government, Darwin, p.62.



- iii. In the NT, the Aboriginal Child Placement Principle (ACPP) is defined under section 12(3) of the CAPCA. The ACPP establishes a priority hierarchy when placing an Aboriginal child into out of home care. Placement must first be considered with a member of the child's extended family, then with an Aboriginal person from that child's community. If neither is possible, another Aboriginal person can be considered, and lastly a non-Aboriginal person who is sensitive to the child's cultural needs. The NT has the lowest placement rate of Aboriginal children with Aboriginal carers in Australia although this rate has been rising significantly over the past two reporting years. At 30 June 2013, that percentage stood at 31 per cent.² The reasons for this low percentage are complex and include the limited number of available Aboriginal carers for a relatively large number of vulnerable children and the challenging living circumstances of many Aboriginal people which impacts on their capacity to provide care.
- iv. Given chronic difficulties around the recruitment of caseworkers and kinship carers in rural and remote areas along with the practical challenges for communication and the provision of supervision, the implementation of policy in these areas remains problematic. The BOI observed that the standard of care being provided to Aboriginal children in kinship care, was markedly lower than that provided for other children in the care system. This observation was based on data relating to the registration and supervision of care providers, the monitoring of placements, and the adequacy of housing.

E. See response to A.

F.

- i. With respect to the scope of reporting to external agencies, under mandatory reporting provisions everyone in the NT is required to report any suspicions of harm or the exploitation of children to DCF or a police officer. The Act provides for the Commissioner to investigate any complaints about services to vulnerable children which could include the ways that DCF or the police have responded to such allegations. The Ombudsman is authorised to investigate any complaints about administrative actions by DCF or the police, but not where these entail services to children. As noted in A, DCF provides the Commissioner with reports of substantiated harm or exploitation of children in care.

My office has previously advocated for a community visitor program model to be implemented in the out of home care system and this was also a specific recommendation (rec.141) of the Board of Inquiry into the Child Protection System in the Northern Territory 2010 (the BOI). Such a program would

² I.D, p.64.



provide for regular visits to children in residential care and, possibly, foster care settings. It would provide for contacts with independent, caring adults who are in a position to listen to the children, and where necessary, to advocate on their behalf. As previously discussed, my office does have the ability to receive complaints from these children although most complaints are received through advocates, as is the case in other jurisdictions. As evidenced by the Queensland community visitor program, such initiatives help to address the traditional reluctance of children to make formal complaints about their circumstances and can help with the identification and resolution of issues before they become formal complaints.

- ii. The role of oversight agencies is covered above
- iii. In relation to periodic contact and oversight, DCF policy provides for caseworkers to have face to face contact with children in care at least once every month. A coronial inquest also recommended that these face to face contacts should occur at least once every two months.³ The Commissioner tracks the compliance of DCF with this requirement and publishes the outcomes in his annual report. Over the last two reporting years, the percentage of caseworkers who have visited children in the two month period before the assessment (30 June each year) has decreased from 87% to 69%.⁴ However, the most recent review of this type, which has not been released publicly, indicates that the level has gone back up but not to the levels experienced in 2011-12 (86%).
- iv. Information exchange. Please see the responses to C and F(i).

³ *Inquest into the Death of Deborah Leanne Melville-Lothian* (2010) NTMC 007 at para 270.

⁴ Office of the Children's Commissioner 2013. Annual Report 2012-2013, Children's Commissioner Northern Territory. Office of the Children's Commissioner, Northern Territory Government, Darwin, p.81, Figure 20.



General Comments

The following are comments on child protection services in the NT related to child sexual assault.

- There has been a marked drop-off in the number of children who are substantiated as having been sexually exploited in the NT. In 2008-09 there were 101 substantiations for sexual exploitation – in 2012-13 there were only 18.⁵
- In 2008-09, there were ten notifications for every substantiation of sexual exploitation. In 2012-13, there were 33 notifications for every substantiation.⁶
- In 2008-09, 10 per cent of all substantiations pertained to sexual exploitation; in 2012-13 this figure had dropped to 1 per cent.⁷ The relevant national percentage is around 12 per cent.⁸ It is unclear why the number of substantiations for sexual exploitation in the NT has dropped so sharply. The number of notifications has also declined, but not to a significant extent.
- Given a number of allegations pertaining to the safety and quality of out of home care programs that were contained in two internal DCF reports, the BOI (rec. 33) in 2010 specifically called for DCF to undertake a 'comprehensive review' into residential care services to include matters raised about staff recruitment and supervision and the overall quality of program management.
- As with other jurisdictions, concerns have been raised about the widespread use of temporary Agency personnel in residential care settings who may not be subject to the same level of safety screening, training and supervision as permanent employees.



Howard Bath
Children's Commissioner
17 September 2014



Signature of Witness

AMY STEWART
Printed Name

⁵ Specific data request from the Department of the Children and Families, Northern Territory Government, September 2013.

⁶ Office of the Children's Commissioner 2013. Annual Report 2012-2013, Children's Commissioner Northern Territory. Office of the Children's Commissioner, Northern Territory Government, Darwin, p.53, Figure 9.

⁷ I.D, p.52, Figure 8.

⁸ Australian Institute of Health and Welfare 2013. Child protection Australia: 2011-12. Child Welfare series no. 55. Cat. no. CWS 43. Canberra: AIHW, p.59. Table A5.

