

Northern Territory Statement to the Royal Commission Into Institutional Responses to Child Sexual Abuse

This statement responds to the matters raised in Annexure A of Justice Peter McClellan AM's correspondence to the former Northern Territory Chief Minister, the Hon Adam Giles MLA, dated 6 July 2016 (**Attachment A**) with respect to the action taken, or proposed to be taken, by the Northern Territory Government in response to the work of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

Working with Children Checks Report – released on 17 August 2015

1. The consideration the Northern Territory Government has given to the Royal Commission's Report on Working with Children Checks

The former Department of Children and Families (now Territory Families) has led the establishment of a Northern Territory Government inter-agency working group involving Northern Territory Police, Department of the Chief Minister and Department of Treasury and Finance to examine the broad ranging strategic and operational issues associated with delivery of the Northern Territory's Working With Children Clearance (Ochre Card) Scheme and to inform a Northern Territory Government position in response to the Report.

The working group determined that the recommendations in the Report could be analysed against the following five categories to determine the potential for implementation in the Northern Territory:

- item already implemented;
- improvement in this area is already planned;
- item supported in-principle but there are no current plans to undertake improvement in this area;
- implementation is not supported; and
- possible to support in-principle but any progress is tied to Commonwealth and or national agreement and action.

An initial analysis of the Report has been undertaken and action against each recommendation and sub recommendation assessed for feasibility and priority.

There are no recommendations considered categorically unsupportable. Some recommendations are already embedded in the current operation of the Ochre Card scheme (for example components of recommendations 10, 12, 14, 16, 20, 21, 23 and 28). However the majority of recommendations are assessed as either being possible to implement subject to legislative or policy amendment (5, 6, 9, 11, 14, 17, 20, 24, 25, 27, 28, 29, 31, 32, 33, 34, 35 and 36) or able to be supported in-principle subject to Commonwealth action and or national collaboration in order to progress (1, 2, 3, 4, 7, 8, 13, 15, 18, 19, 22).

The development of a Northern Territory Government position has not been formalised while inter-jurisdictional discussions continue to explore the viability of an agreed national agenda. The Northern Territory is participating in dialogue through both the Children and Families Secretaries Group and the jurisdictional screening agencies' National Operators Forum. Achieving national harmonisation will require a clear governance framework to adequately deal with the multiple parties/interests involved and to reach consensus on a body of work to take forward.

2. **The steps, if any, the Northern Territory Government has taken in relation to the recommendations concerning:**
 - a. **General matters (recommendations 1-4), and**
 - b. **Standards (recommendations 5-36)**

The Northern Territory considers that the relevant general matters contained in recommendations 1 and 4 require jurisdictional collaboration and agreement in order to progress. Recommendations 2 and 3 are not for the action of the Northern Territory.

At an operational level, the Northern Territory has expressed a willingness to work with other jurisdictions on the further development of standards and definitions.

The Northern Territory is supportive of the proposal by the National Operators Forum to explore the development of a national register of barred individuals as a transitional measure towards greater national harmony.

Redress and Civil Litigation Report – released on 14 September 2015

3. **The consideration the Northern Territory Government has given to the Royal Commission's *Report on Redress and Civil Litigation*?**

The Northern Territory Government provided a written submission to the Royal Commission's *Consultation Paper on Redress and Civil Litigation* in March 2015. The Northern Territory Government's written submission is at **Attachment B**.

The paragraphs below identify the Northern Territory Government's consideration of the Royal Commission's Report on Redress and Civil Litigation.

4. **The steps, if any, the Northern Territory Government has taken in relation to the recommendations concerning:**
 - a) **redress scheme structure (recommendations 26 to 33); and**
 - b) **redress scheme funding (recommendations 34 to 39).**

The Northern Territory Government's consideration of the Royal Commission's redress recommendations is being progressed multilaterally with the Commonwealth and other states and territories through the Council of Australian Governments (COAG) and the Law Crime and Community Safety Council.

The Commonwealth Attorney-General, Senator the Hon George Brandis QC, announced on 29 January 2016 that the Commonwealth Government would lead the development of a national approach to redress for victims of institutional child sexual abuse. Since that time, no multilateral agreement has been reached.

At the April 2016 COAG meeting, COAG agreed that the Commonwealth Government would engage with all jurisdictions on next steps, including advice on each other's current situation and requirements, and update COAG at its next meeting (COAG meeting communique, 1 April 2016).

The Northern Territory Government has participated in multilateral discussions as to the details of that national redress scheme.

Importantly, however, the Northern Territory's submission articulated support for a single Commonwealth-administered and funded redress scheme, and that liability for alleged historical institutional child sexual abuse prior to self-government in 1978 rests exclusively with the Commonwealth.

The Northern Territory maintains its position that it was administered by the Commonwealth between 1911 and 30 June 1978. At all times during that period it remained part of the Crown in right of the Commonwealth with no separate judicial personality. The Commonwealth was responsible during that period for the affairs of the Northern Territory, including child welfare and institutional-based care matters.

On 4 November 2016, the Commonwealth Minister for Social Services, the Hon Christian Porter MP, announced that the Commonwealth Government would lead a national redress scheme, with states, territories and institutions, including churches, to opt into the scheme. The Commonwealth announced that the scheme would commence in early 2018.

The Northern Territory supports, in-principle, a national scheme and is actively participating in discussions with the Commonwealth and other jurisdictions on key design elements of the proposed scheme and the implications for the Northern Territory, in particular funder of last resort arrangements, criteria for opting into the scheme and determining joint liabilities.

5. The steps, if any, the Northern Territory Government and/or Northern Territory Government-run institutions have taken in relation to the recommendations concerning:

- a) direct personal response (recommendations 5 to 8); and**
- b) interim arrangements (recommendations 76 to 84).**

Nil Response.

6. The steps, if any, the Northern Territory Government has taken in relation to the recommendations concerning:

- a) limitation periods (recommendations 85 to 88);**
- b) duty of institutions (recommendations 89 to 93); and**
- c) identifying a proper defendant (recommendations 94 and 95).**

The Northern Territory Government supports, in-principle, the Royal Commission's proposed civil litigation reforms.

The Northern Territory Government proposes to amend to the Northern Territory's *Limitation Act* to remove any limitation period which applies to child abuse, where the person was a minor, irrespective of whether the abuse was alleged to have been suffered in an institution

These amendments will generally follow those enacted in New South Wales and Victoria and will have retrospective effect. These amendments are likely to be introduced in mid-2017.

In 2017, the Northern Territory Government will develop options in relation to the Royal Commission's other civil litigation reform recommendations regarding duties of care and liability of institutions, legislation to identify the 'proper defendant' for litigation, and model litigant principles.

The Northern Territory nonetheless considers that these other options would ideally be developed in conjunction with other jurisdictions to achieve some consistency (notwithstanding little consistency in tort law nationally). That could occur under the auspices of the Law Crime and Community Safety Council of the Council of Australian Governments.

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7. The steps, if any, the Northern Territory Government and/or Northern Territory Government-run institutions have taken in relation to the recommendations concerning model litigant approaches (recommendations 96 to 99).

In 2017, the Northern Territory Government will develop options in consultation with the non-government sector and other jurisdictions in relation to the Royal Commission's other civil litigation reform recommendations, including model litigant principles.

The Northern Territory, its agencies and employees and all lawyers acting for the Territory (including law firms providing legal service to the Northern Territory Government pursuant to the Northern Territory Legal Services List), must behave as a model litigant in handling all claims and litigation. The Solicitor for the Northern Territory has a model litigant policy, refer to **Attachment C**.

The Northern Territory will review this policy when developing options with respect to the other civil litigation reforms, other than amendments to the *Limitations Act*.

Case Studies

8. The steps, if any, the Northern Territory Government has taken in response to evidence given in the Royal Commission's public hearings and the findings of case study reports (where published), including concerning State institutions:

a) Case Study 7: Parramatta Girls and Hay Institution

Nil response.

b) Case Study 17: Retta Dixon Home

On 19 August 2015, the Royal Commission's Report into the Retta Dixon Home hearings was tabled in the Commonwealth Parliament and released to the public.

The Report identified 3 systemic issues that arose from the public hearing:

1. whether there is a need to establish better oversight of the processes of the Office of the Director of Public Prosecutions (ODPP);
2. the availability of a redress scheme and the range of redress offered, and
3. the appropriate criminal justice procedures for the trial of multiple offences.

The two issues for the consideration of the ODPP are:

1. Whether there is a need to establish a process of oversight of the processes of the ODPP; and
2. The appropriate criminal justice procedures for the trial of multiple offences.

The Northern Territory ODPP took part in discussions regarding a possible oversight of their processes at the Royal Commission Round Table meeting on Criminal Justice Issues in Sydney in April 2016. The Department of the Attorney-General and Justice's Audit services have agreed to conduct an audit and review of the policy and process for the discontinuance of prosecution proceedings on behalf of the ODPP. This will assist in ensuring that the guidelines and policies for

decision-making and requirements for consultation with victims and police are being complied with. The appropriate criminal justice procedures for the trial of multiple offences were also the subject of discussion at the Royal Commission Round Table meeting on Criminal Justice Issues.

It should be noted that the *Criminal Code Amendment (Presumption of Joint Trials) Act 2014 (NT)* commenced on 1 July 2014, and adopted provisions similar to Victoria to the effect that the starting point for a court in considering an application for separate trials should be that it is presumed they should be heard together. It is noted that Act commenced some time before the Royal Commission's report on Retta Dixon.

Finally, it is understood that the Northern Territory Crimes Victims Services Unit has received a number of applications for assistance under the *Victims of Crime Assistance Act* from survivors of the Retta Dixon Home.

c) Case Study 19: Bethcar Children's Home

Nil response.

d) Case Study 24: Out-of-home care

Territory Families (formerly the Department of Children and Families) in partnership with the Australian Childhood Foundation continues to work towards the implementation of a therapeutic model of residential care. This project includes the development and design of a residential care approach that is trauma informed and contextualised to the Northern Territory environment. Consultation concluded in late 2015 and a draft model was delivered in the first half of 2016. The model will guide and equip Departmental staff to understand trauma and stabilise, support and manage children and young people in residential care settings to improve their outcomes. Territory Families is currently planning the implementation of the model, and implementation is expected to commence within the 2016-17 financial year.

Territory Families continues to operate the training, assessment and policy responses outlined in its submission and in anticipation of the outcomes and findings of the Out of Home Care case study and the Royal Commission into Child Protection and Youth Justice in the Northern Territory, is considering additional program responses that will provide children in care the opportunity to raise issues, increase oversight of the out-of-home care system and provide carers and staff with additional training to identify and respond to concerning sexual behaviours.

General

9. Any other action taken in response to the work of the Royal Commission about which the Northern Territory Government wishes to advise the Royal Commission.

The Northern Territory Department of the Attorney-General and Justice has been progressing reforms to its sexual offences in the context of reforming the *Criminal Code* as a result of adopting Chapter 2 of the Model Criminal Code in the *Criminal Code Amendment (Criminal Responsibility Reform) Act (No. 2) 2005*.

The Department of the Attorney-General and Justice released a draft *Criminal Code Amendment (Sexual Offences) Bill 2014* for consultation in late 2014. Amongst other things, that draft Bill would have introduced an offence similar to the offence of 'maintaining a sexual relationship with a child' in section 229B of the Queensland Criminal Code. The Bill was not finalised during the terms of the previous Government.

Since that time, the Royal Commission has held Criminal Justice Roundtables in April 2016 and released a Consultation Paper on Criminal Justice issues in September 2016 and a model Bill to amend evidence laws designed to allow for greater admissibility of tendency and coincidence evidence on 25 November 2016. The Northern Territory particularly looks forward to the Royal Commission's Report on Criminal Justice Issues.