IN THE ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE AT DARWIN

CASE STUDY 17 RETTA DIXON HOME

SUBMISSION ON BEHALF OF THE NORTHERN TERRITORY OF AUSTRALIA AS TO LEGISLATIVE HISTORY

1. On 1 October 2014, the Commission directed that the Commonwealth and the Northern Territory provide written submissions to the Royal Commission, and to each person or entity with leave to appear, concerning the legislative history of the duties and responsibilities in respect of the welfare of children who were either declared to be wards or were under the guardianship or otherwise committed to the care of the government, both generally in the Northern Territory and specifically in relation to children in the Retta Dixon Home.

Submissions by the Commonwealth

2. The Northern Territory has been provided with a final draft of the Commonwealth's submissions.

3. The Northern Territory concurs with and adopts the submissions of the Commonwealth.

Additional submissions by the Northern Territory

4. The Northern Territory makes the following additional submissions concerning the position obtaining at self-government in relation to the Retta Dixon Home.

5. The Child Welfare Ordinance 1958 commenced on 2 February 1959. The following observations may be made in relation to the relevant operation of that legislation.

- It established Children's Courts constituted by magistrates, and introduced a regime by which a child could only be declared "a destitute, neglected, incorrigible or uncontrollable child" by order of those Courts (ss 21-23, 31-36).

- Upon such a declaration being made, the Children's Court could order a child so declared to be committed to the care of the Director of Child Welfare; committed to the care of another person; sent to an institution and detained or otherwise dealt there until the child attained the age of 18 years or during such shorter period as the Court thought fit; or released on probation (s 36).
• An "institution" was defined to mean a mission station, reformatory, orphanage, school, home or other establishment either approved by the Administrator in accordance with the 1958 legislation or established by the Commonwealth as an institution for the purposes of the 1958 legislation.

• If it is assumed that there were children resident in the Retta Dixon Home upon the commencement of the legislation on 2 February 1959 who then became "State children" within the meaning of the 1958 legislation, all such transitional placements must necessarily have ceased no later than 1 February 1977 (being 18 years from the commencement of the 1958 legislation). See paragraph (c) of the definition of "State child" in s 5; Commonwealth Submissions, pars 34-36.

• There is no evidence that Retta Dixon Home was ever declared to be an "institution" or established as an "institution" in accordance with or for the purposes of the 1958 legislation (see definition of "institution" in s 5). So far as the Territory can discern, there is no evidence that the Children's Court ordered a child be committed to the Retta Dixon Home at any time prior to 1 July 1978.

• There is no evidence that there was any child resident in the Retta Dixon Home as at 1 July 1978 pursuant to an order of the Children's Court.

• There is no evidence that the newly established body politic exercised any degree of management, control or administration in respect of the Retta Dixon Home from 1 July 1978, or that it had any institutional relationship with the Retta Dixon Home.

6. The Social Welfare Ordinance 1964 commenced operation on 15 September 1964. The following observations may be made in relation to the relevant operation of that legislation.

• The better view is that upon commencement of the 1964 legislation and the consequent repeal of the Welfare Ordinance 1953, any declarations of wardship ceased to have effect (Commonwealth Submissions, par 28).

• Following the commencement of the 1964 legislation, the Child Welfare Ordinance 1958 provided the only mechanism by which both Aboriginal and non-Aboriginal children could be committed to the care of the Director of Child Welfare or sent to an institution (see Commonwealth Submissions, par 29). There was no provision for the declaration of "wards" or "State children" under the 1964 legislation (cf Commonwealth submissions, par 34).

• It necessarily follows that there was no child resident in the Retta Dixon Home as at 1 July 1978 under the 1964 legislation.

7. It would be consistent with the following contextual factors that there were no children resident in the Retta Dixon Home as at 1 July 1978 who had been
committed to that institution either by the Children's Court or under the authority of the Director of Child Welfare or the Director of Social Welfare.

- In 1973, the Commonwealth abandoned the policy of assimilation in favour of a “self-management” policy. That led to the decline in the subsidisation of missions as institutions for the care of Aboriginal children and a move to a foster care model (see National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. Sydney, April 1997, Human Rights and Equal Opportunity Commission, Ch 9). That would be consistent with the fact that AKT, for example, was fostered out to the family of her best friend in about 1976 (see Statement of AKT dated 30 June 2014).

- By the time of self-government on 1 July 1978, the institutional care model was regarded as “outdated and inappropriate” (see National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. Sydney, April 1997, Human Rights and Equal Opportunity Commission, Ch 9).

- The general experience has been that court-based child welfare regimes were more inclined to place children where possible with relatives or other appropriate persons rather than institutions, and to make orders for commitment for shorter periods rather than until the child attained the age of 18 years.

Dated: 27 October 2014

per: Sarah Milligan
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