

24 October 2016

By email: ChildDetentionNT@royalcommission.gov.au

Dear Commissioners

ROYAL COMMISSION INTO THE PROTECTION AND DETENTION SYSTEMS OF CHILDREN IN
THE NORTHERN TERRITORY

We wish to make the following submission to the Royal Commission into the Protection and Detention Systems of Children in the Northern Territory. We are:

- A public health physician with over 20 years' experience in Australian justice health, with career experience with the World Health Organization and the European Committee for the Prevention of Torture and the Western Australian Custodial Inspectorate (ML); and
- A senior Research Fellow at the National Centre for Epidemiology and Population Health at The Australian National University, where my work is on health-related research projects with a particular focus on the relationship between criminal justice and justice, and Director of Research and Knowledge Exchange at the Lowitja Institute for Aboriginal and Torres Strait Islander Health Research (JG).

Our area of expertise is limited to the Youth Detention System. We offer no commentary on the Child Protection System. In that regard, we address particular Terms of Reference – Numbers 1, 3, 4, 5, 7 and 8 – rather than all.

Term of Reference No. 1

Failings in the child protection and youth detention systems of the Government of the Northern Territory during the period since the commencement of the Northern Territory Youth Justice Act 2005 (the relevant period).

ML has had two formal contacts with the Northern Territory Youth Justice system. This in addition to at least two visits to health facilities at the Berrimah Correctional Centre. The first contact was as part of a review team lead by Professor Richard Harding, then Inspector for the Western Australian custodial system. (Harding R, Levy M, Podmore J. Review of Primary Health Care, Mental Health, Disability and Related Services for Prisoners and Juvenile Detainees in the Northern Territory Prison Health Service, 2007.)

The second contact was a desk-top review of records, culminating in the Expert Report Concerning the Standard of Care of Mr "MM". Northern Territory Health and Community Services Complaints Commission. (February 2015).

We respectfully advise the Commissioners to acquaint themselves with the two abovementioned documents.

Term of Reference No. 3

Whether the treatment of detainees breached laws or the detainees' human rights

In preparing the report on Mr "MM", ML became aware of the inappropriate use of incarceration as a means of ensuring public safety in the face of a severely brain damaged individual. The lack of appropriate community services meant that custodial officers were asked to deal directly with a severely disruptive individual, who in turn had been committed to a punitive, and not a therapeutic, facility.

Term of Reference No. 4

The effectiveness of any oversight mechanisms and safeguards to ensure the treatment of detainees was appropriate

There is effectively no oversight mechanism to safeguard the appropriate treatment of detainees. In fact, Western Australia remains the only Australian jurisdiction with an enduring inspectorate of custodial services. The Western Australian Inspectorate has conducted a number of important reviews of that jurisdictions seriously deficient juvenile justice system, the latest being a review of Banksia Hill in 2013. (Direct review into an incident at Banksia Bill Detention Centre on 20 January 2013)

http://www.oics.wa.gov.au/reports/banksia-hill-inquiry-post-incident-management-review-paper/?doing_wp_cron=1475295103.4279229640960693359375

In March 2004, the Australian Parliament's Joint Standing Committee on Treaties (JSCOT) tabled its report entitled Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Please see:

[http://www.parliament.wa.gov.au/publications/tables/papers.nsf/displaypaper/3910509a6dfcc5270ceb6cce48257bc000172cf8/\\$file/509.pdf](http://www.parliament.wa.gov.au/publications/tables/papers.nsf/displaypaper/3910509a6dfcc5270ceb6cce48257bc000172cf8/$file/509.pdf).

The JSCOT has recommended the adoption of the Optional Protocol to the Convention Against Torture. The Australian Medical Association has strongly supported the adoption of OPCAT, with a view to instituting credible oversight of the health services offered to Australian deprived of their liberty, including young persons in juvenile detention. Please see:

http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jsct/opcat/report.htm

We respectfully suggest that the Royal Commissioners recommend the immediate ratification by the Federal Parliament of OPCAT, and that Model Legislation prepared by the Australian Capital Territory Legislative Assembly be brought to the next Council of Australian Governments (COAG). Further national adoption should have a recommended time-frame, and the National Preventative Mechanism be identified and adequately resourced, by 2019 at the latest.

Term of Reference No. 5

Cultural and management issues that may exist within the Northern Territory youth detention system

We offer no comments on this term of reference other than those included in the aforementioned 2007 report.

Term of Reference Nos 7 & 8

Whether more should have been done by the Government of the Northern Territory to take appropriate measures to prevent the reoccurrence of inappropriate treatment.

The greatest safeguard to inappropriate treatment is to utilise juvenile detention as a measure of last resort.

Identification of early intervention options and pathways for children at risk of engaging in anti-social behaviour.

The greatest safeguard to inappropriate treatment is to utilise juvenile detention as a measure of last resort. An innovative policy idea that is gaining traction is Justice Reinvestment (JR), an idea that originally came from the United States. Evidence shows that it costs approximately \$200,000 per year to maintain a juvenile in custody. JR is a criminal justice policy approach that diverts a portion of the funds spent on imprisonment to the local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested in programs and services that address the underlying causes of crime in these communities. For change to occur, health services, social services and justice services must work collaboratively with improved information sharing and shared management plans. Providing response, community-based health and social services attuned to the needs of those who are vulnerable to imprisonment represents a highly preferable allocation of resources. Achieving successful outcomes depends largely on increased interdisciplinary collaboration and greater availability of safe, well-designed and resources community-based options within health and social services in urban, regional and remote settings – and most notably in the context of the current enquiry, in the Northern Territory.

JR is based on the evidence that a large number of offenders come from a relatively small number of disadvantaged communities. Demographic mapping in the US has identified ‘million-dollar’ blocks where literally millions of dollars are being spent imprisoning people from certain neighbourhoods. In monetary terms, a minimum of just five juveniles receiving Justice Reinvestment resources for one year rather than being incarcerated equates with the ‘million-dollar block’ concept.

JR has not been implemented as policy in Australia – consequently no Australian evidence is available, though some preliminary work is being undertaken in several regional locations including Bourke and Cowra in NSW, Ceduna in South Australia, Katherine in the Northern Territory and the Australian Capital Territory. The ‘art and science’ of implementation of JR, either large or small scale, requires high levels of skills, knowledge and understanding of community development, as well as the complex issues surrounding Australia’s socio-political history, particularly the experiences of Indigenous Australians in the context of the criminal justice system. Please see: <https://www.mja.com.au/journal/2016/204/5/good-kid-mad-system-role-health-reforming-justice-vulnerable-communities>

We are chief investigators in a research project that has explored with research theory and methodology of JR with the community in Cowra NSW. The research is currently in the translation phase with discussions taking place between key community members as represented by the Cowra Aboriginal Land Council, the Cowra Shire Council and the Cowra Information and Neighbourhood Centre; local State member for Cootamundra, the Hon Katrina Hodgkinson, and her NSW parliamentary colleagues; and JG in anticipation of a trial being implemented. Please see:

<https://www.thesaturdaypaper.com.au/news/law-crime/2016/10/22/justice-reinvestment-trial-cowra/14770548003883>

We respectfully suggest that the Royal Commission recommend that JR be implemented as a policy option in the Northern Territory.

The Royal Commission will also make recommendations about legal, cultural, administrative and management reforms to prevent inappropriate treatment of children and young persons in detention, and what improvements can be made to the child protection system

This term of reference offers the greatest opportunity to propose a new approach to juvenile detention, not just in the Northern Territory, but throughout Australia. We identify as the single most important failure of the youth justice system is that it is anchored in the criminal justice administrative domain. To address the deficits and disadvantages faced by youth in contact with the criminal justice system, the redress mechanisms need to be dually education and human services. A youth detention system cannot be a prison for young people, rather a social capital agency for persons under the age of 18 years in dire education and social service needs.

While this should also be the aspiration of the adult detention systems, we acknowledge that this is beyond the scope of the Royal Commission. To a large degree, this transition has been effectively achieved in the Australian Capital Territory. Please see:

http://www.communityservices.act.gov.au/ocyfs/the_blueprint_for_youth_justice_in_the_act

Thank you for the opportunity to provide a submission to the Royal Commission. We look forward to learning of your recommendations. Please let us know if there is any further information we may be able to provide.

Yours sincerely

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