

# National Justice Project

19 May 2017

PO Box 4215  
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Email: ChildDetentionNT@royalcommission.gov.au

Dear Sir/Madam,

The National Justice Project (NJP) is preparing a submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, particularly regarding the case of CII [REDACTED] Anna (name changed to protect privacy). Anna's case study highlights several failings in the child protection and youth detention system. It is demonstrative of the communication breakdown that often occurs between youth detention facilities and the families of detainees, as well as the inadequacy of such facilities to deal with particularly young children, and the lack of therapeutic and rehabilitation mechanisms in place to facilitate eventual reunification of children with their families.

We are writing to inform your office of our intention to make a written submission, and to request your consideration of our appearance before the Commission. We have provided you with a summary of our instructions and our preliminary views on appropriate recommendations. We would be most grateful for an indication of whether we may be of assistance to your Commission in any capacity further than a written submission, and for any guidance on how to facilitate such participation.

## Anna's Story

Anna is an Aboriginal girl from CII [REDACTED] who has been raised by her grandmother, Jane (name changed to protect privacy). Anna first entered the care of the Northern Territory Department of Children and Families in early CII [REDACTED], when she was taken to a CII [REDACTED] Hospital while staying with another family.

We are instructed by Jane that the decision to put Anna in the care of the Department of Children and Families was made without consulting her, or any other members of Anna's family. If substantiated, this is indicative of both a serious breach of the duty of care owed to Anna's family, and a failure to consider Anna's best interests.

Her family members report that Anna has not been able to continue her education while in the care of the Department of Children and Families. This is corroborated by her psychological report and our conversations with a journalist who has taken an interest in Anna's case. When Anna returned to CII [REDACTED] to live with Jane in CII [REDACTED], she returned to school, where her family and primary school teacher reports that she experienced no serious problems.

On CII [REDACTED], police detectives arrived at Anna's primary school to investigate a property offence. Anna was arrested and handcuffed, and escorted to a police paddy wagon. We are instructed, by

both Jane and Anna's great aunt, that the arrest occurred in view of students and teachers. Jane was only informed about Anna being arrested through a teacher's assistant from the school.

Responding to media reports of the unnecessarily heavy-handed police action, a [CII] statement provided as follows:

*The Officers, aware of her past history of similar behaviour, became concerned that she was likely to harm herself or others, and restrained her accordingly. This was done in accordance with NT Police normal operational procedures. Children are only ever restrained as a last option, and only ever to ensure their safety and the safety of those around them...*

*...the Officers concerned demonstrated a high level of empathy and concern for the girl's welfare. This was underscored by the presence of a female officer who held the child's arm to provide comfort and reassurance as she was escorted to the Police vehicle, prior to the journey to the Police station.*

This statement is contrary to reports from Jane and other witnesses. Resorting to arresting an [CII] girl, handcuffing her and detaining her at the police station for over 8 hours does not demonstrate a high level of empathy and concern for Anna's welfare. Anna was charged with [CII]. The Police statement on the incident confirms that Anna was held in the police station for over 8 hours. She spent the night at a motel under the supervision of a Welfare Officer, before being transported to [CII] the following morning.

Since Anna's arrival at [CII] in [CII], she has repeatedly run away. When found, she has been taken to Don Dale until the court has ordered she return to [CII]. Jane asserts that she has not been kept updated about Anna's whereabouts by [CII], and is kept out of the loop about her upcoming court dates and treatment at [CII] and Don Dale. This has been corroborated by Anna's great aunt, and the journalist researching Anna's case. Media reports describe that on one occasion [CII], Anna was missing for three weeks before police issued a plea for information about her disappearance. When Anna was returned to Don Dale after she escaped from [CII] [CII], she reportedly [CII] in what appeared to be a self-harm attempt.

We are advised that Jane wants Anna to be able to continue her education, as well as be granted psychological support and assessment, in conjunction with community support, and preferably return to live with family. If Anna is not able to live with her, she would like her placed in a foster home where she can be in a safe and stable environment.

### Failings of the Child Protection System

In our submission, Anna's case study may be useful to address some of the failings of the child protection and youth detention system, in particular:

1. The removal of children from their families and communities;
2. The experience of children and their families whilst children are in out-of-home care;
3. The lack of agency and facilitation of self-determination afforded to Indigenous families and communities; and
4. The systemic failures of the existing child protection framework that require reform, and reallocation of resources.

Anna's experience should spur on reform of NT policies regarding child removals, and treatment of children and young people in youth detention facilities.

### Preliminary Recommendations

We set out below our preliminary recommendations regarding measures to improve laws, policies, and practices that will be expanded upon in our final submission:

- Instituting a system of mandated family group conferencing regarding at-risk children, creating an obligation on behalf of FACS to consult with the broader family network before a decision to remove an Indigenous child is made, and that such a decision be held as a last resort, rather than an immediate reaction;
- Remedying broader structural problems concerning the lack of Indigenous self-determination and agency regarding the welfare of Indigenous children;
- Redirecting resource allocation toward the Indigenous community to facilitate communities and support extended family networks looking after children independently, as a means of remedying the overrepresentation of Indigenous children in the child protection system;
- Changes to policy and procedure for the removal of Indigenous children, firstly to maintaining privacy of children and families, and secondly, to involve police as a last resort, instead utilising social workers/FACS officers when removing a child from their home or school; and
- Ending juvenile detention altogether, except in specific cases where there is a particular risk of a child being violent or harmful toward themselves or others, and redirecting focus toward therapeutic and rehabilitation services, occurring at the community and family level.

Participation in the Commission process

We are of the view that our client may be able to assist the Commission through other avenues in addition to a written submission.

We request the Commission's consideration of calling Jane, or granting her leave to appear, as a witness at a hearing of the Royal Commission, or requesting our attendance at an interview with the Royal Commission.

We look forward to hearing from the Commission regarding their interest in examining Anna's case study, and the paths of inquiry arising from it.

We will enter our submission for the Commission by June 15.

We look forward to hearing from your office by May 28.

Yours sincerely

Privacy



**George Newhouse**

Principal Legal Officer

National Justice Project