



FROM THE PERMANENT REPRESENTATIVE

AUSTRALIAN PERMANENT MISSION
GENEVA

6 October 2016

Ms Natacha Foucard
Officer-in-Charge
Special Procedures Branch
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
Palais Des Nations
1211 Geneva 10
Switzerland

Dear Ms Foucard

Joint Communication from the Special Rapporteur on the rights of Indigenous peoples and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in relation to the Don Dale Youth Detention Centre, Northern Territory

I refer to the communication [AUS6/2016] concerning allegations of torture and other ill-treatment and prolonged solitary confinement of juvenile detainees in the Northern Territory's Youth Detention Centres and in particular, the Don Dale Youth Detention Centre, which accompanied your letter dated 5 August 2016.

As requested, the Australian Foreign Minister, the Hon Julie Bishop MP, has been advised of the communication.

Australia takes its obligations under international human rights law seriously and is a longstanding party to the International Covenant on Civil and Political Rights (the ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (the CERD), the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (the CAT) and the Convention on the Rights of the Child (the CRC). Australia acknowledges that its obligations extend to all parts of federal States, including the Northern Territory, without limitation or exception.

Australia has also supported the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) since 3 April 2009. The Declaration provides impetus for the Australian Government and Aboriginal and Torres Strait Islander peoples to work together in trust and good faith to advance human rights.

The Australian Government notes that its attention has been directed to the Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), the United Nations General Assembly Resolution on the Body of Principles for the Protection of All Person under Any Form of Detention or Imprisonment and the Basic Principles on the Use of Force

and Firearms by Law Enforcement Officials. The Australian Government agrees that these documents contain important principles which can be used by States to guide them in their implementation of their human rights obligations.

In addition, the Australian Government also has regard to other important documents including the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and Preventing Suicide in Jails and Prisons produced by the World Health Organisation and the International Association for Suicide Preventions, which are of particular relevance to detainees who are suicidal or are at risk of self-harm.

As noted in the correspondence, the Australian Government established the Royal Commission into the child protection and youth detention systems of the Northern Territory on 28 July 2016. The Royal Commission was established to enable the swift inquiry into the treatment of children and young persons detained in youth detention facilities administered by the Government of the Northern Territory, in particular, the Don Dale Youth Detention Centre. The Royal Commission was established in response to the screening on television on 25 July 2016 of footage of the treatment of a number of juveniles in youth detention facilities. The Royal Commission is being conducted jointly with the Northern Territory Government which issued an Appointment of Board of Inquiry under the Northern Territory *Inquiries Act 1945* on 3 August 2016 to inquire into the same matters, or any matters related to those matters, as under the Royal Commission Letters Patent. These actions by both the Australian Government and the Northern Territory Government reflect the seriousness of the matters raised in that reporting and their commitment to ensuring the best possible treatment of juvenile detainees in Northern Territory detention facilities.

The Northern Territory *Youth Justice Act 2005* (the Youth Justice Act) is the primary legislation which governs the Northern Territory youth justice system. It sets out the powers, obligations and processes to be used in relation to the apprehension and remand of youth offenders, the use of diversionary programs, the establishment and proceedings of the Youth Justice Court, the disposition of matters by the courts, sentencing and the appeal process. It also provides for the establishment of youth detention centres, a scheme of official visitors who can visit these centres and inquire into the treatment and behaviour of, and the conditions for, detainees and for the provision of medical treatment for detainees. Detainees are also assessed, treated and cared for in accordance with the Northern Territory *Mental Health and Related Services Act 2004*. The Northern Territory *Youth Justice Regulations 2005* also contain specific health-care provisions, including for those detainees at risk of self-harm.

The Northern Territory has established a number of mechanisms which enable independent oversight and investigation of youth detention centres, including the Ombudsman of the Northern Territory, the Children's Commissioner and the Anti-Discrimination Commissioner. Further, the Youth Justice Act permits the Minister for Territory Families to enter and inspect detention centres and requires the Minister to appoint three Official Visitors. These Official Visitors are required to inspect each detention centre once every month and report their findings to the Minister.

Details and results of investigations carried out in relation to the allegations in the Northern Territory's Youth Detention Centres, and in particular, the Don Dale Youth Detention Centre (addressing question 2)

The footage which was screened on television in 2016 primarily relates to incidents that occurred in 2014. Since that time, there have been two independent reports that considered the treatment of juveniles in the Don Dale Youth Detention Centre.

The first report, the *Review of the Northern Territory Youth Detention System Report* (January 2015) (the Vita Report), was conducted by Mr Michael Vita, from the State of New South Wales' Juvenile Justice. Mr Vita has extensive experience in juvenile justice and has managed both juvenile and adult detention facilities. The Vita Report was commissioned by the Northern Territory Minister for Correctional Services and the Commissioner of the Northern Territory Department of Corrective Services in late 2014 following concerns raised by the then Children's Commissioner, Dr Howard Bath, in relation to incidents that occurred at the former Don Dale Youth Detention Centre between 2010 and 2014 – including the use of tear gas on six detainees on 21 August 2014.

During the review, the former Don Dale Youth Detention Centre, which was commissioned in 1991, was closed in September 2014. At this time detainees were relocated to the interim Holtze Youth Detention Centre (Holtze YDC), which is located on the recently built Darwin Correctional Precinct site, and a detention centre in Alice Springs adjacent to the Alice Springs Correctional Centre (Alice Springs YDC). However, due to a series of serious incidents, including extensive malicious damage at the Holtze facility, detainees were moved to the former Berrimah Correctional Centre on 23 December 2014 in order to ensure the safety of staff, detainees and the local community. This is where the current Don Dale Youth Detention Centre is located following significant upgrades of the facility.

The Terms of Reference for the Vita Report were to review:

1. the structure, management and operating practices of youth detention – including procedures and practices for the classification and management of detainees, security practices and protocols, immediate challenges facing the delivery of youth detention services at the Holtze YDC and the Alice Springs YDC and with the transition from the Holtze YD to the Darwin YDC which is located next to the Berrimah Prison
2. the pattern of contributing factors and issues surrounding significant incidents in youth detention since December 2009
3. the ability of youth detention to contribute to the Northern Territory Department of Correctional Services Strategic Intent Plan and its key milestones
4. the ability and likelihood of the Northern Territory Youth Justice Framework to address system youth detention issues, and
5. to make recommendations about the Government's recent proposal to use the existing Berrimah Correctional Centre as a youth detention centre.

The Vita Report was released on 18 February 2015 which was the same month that the Northern Territory Government received the report. The report made 16 recommendations (attached below), all of which were accepted by the Northern Territory Government. Of these, fifteen recommendations have been fully implemented. Since August 2015, all Youth Justice Officers now undertake an eight week training course supported by on-the-job training, including components of cultural awareness, case management and mediation and negotiation. The implementation of these recommendations has led to:

- a greater focus on case management to assist detainees reintegrate into the community at the end of their detention
- the expansion of offender programs
- maintenance of the *Seek Education or Employment not Detention (SEED) Program*
- the introduction of an effective and objective classification system for detainees

- improvements in relation to behavioural management
- formalisation of a new incentive scheme linked to case management and classification processes, and
- the provision of appropriate equipment for personal protection of staff in order to minimise the use of equipment such as ‘spit hoods’ and the adoption of a multi-disciplinary team approach to decision-making.

The Youth Detention Reform Advisory Group has overseen the implementation of responses to the recommendations and worked to ensure that the intended objectives and outcomes of the recommendations have been met. It is comprised by Government and non-Government representatives, including the Central Australian Aboriginal Legal Aid Service, the North Australian Aboriginal Justice Agency and the Northern Territory Legal Aid Commission.

The second report, the *Own Initiative Investigation Report – Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre* (August 2015) (the Gwynne Report), was conducted by the Northern Territory’s Children’s Commissioner, Ms Colleen Gwynne. This investigation was initiated by Ms Gwynne’s predecessor in the position, Dr Howard Bath. Such investigations can be undertaken by the Children’s Commissioner under subsection 43(2) of the Northern Territory *Children’s Commission Act 2013*. This inquiry also considered events that occurred at the Behaviour Management Unit (the BMU) of the Don Dale Youth Detention Centre between 4 August 2014 and 21 August 2014.

This inquiry focussed on seven issues of concern:

1. The decisions and actions taken by Correctional Services staff at Don Dale in relation to the young persons confined within the BMU on 21 August 2014
2. The period of time the young persons were confined within the BMU and the purpose of this confinement
3. The ability young persons in Don Dale had to make a complaint to the Children’s Commissioner
4. The access the young persons had to external service providers when confined within the BMU
5. The procedures in place to ensure the adequacy of the emotional and psychological welfare of young persons in the BMU
6. The access (by telephone and in person) young persons contained within the BMU had to family members, and
7. The supervision and monitoring provided to the young persons while they were contained within the BMU.

The Gwynne Report was provided to the Minister for Correctional Services in August 2015. This Report had the benefit of the earlier Vita Report and its recommendations are similar to those of that Report. The Commissioner for Correctional Services worked with the Children’s Commissioner on the implementation of these recommendations (attached below).

There have also been a number of Northern Territory Police investigations, the laying of criminal charges and criminal and civil proceedings relating to these investigations. The Northern Territory *Criminal Code Act 1983* contains a number of assault-related and child

endangerment criminal offences. Allegations of criminal conduct are investigated by police. Where there is evidence to support the allegations, charges may be laid. Matters are prosecuted by an independent statutory prosecutions agency, the Office of the Director of Public Prosecutions. An accused will be tried before an independent judiciary with minimum guarantees in criminal proceedings provided, consistent with a fair trial.

The Vita Report notes that following alleged assaults against detainees in 2010 and 2011, one officer was charged, tried and found not guilty of assault. However the officer's casual contract was not renewed. Another officer was charged, tried and found not guilty on two separate occasions in relation to an incident. In that case, the prosecution appealed this finding but the appeal was dismissed by the Northern Territory Supreme Court.

In March 2016, the Northern Territory Department of Correctional Services engaged Mr Hamburger AM, the former Director General of Corrections in Queensland, together with a review team, to undertake a 'root and branch' review of that Department – including in relation to the services delivered in correctional or detention facilities and those delivered to persons who are supervised or monitored in the community, both juveniles and adults. The Hamburger Report has been delivered and is with the Northern Territory Government for its consideration.

In addition, the Northern Territory Government has commissioned a Review into Indigenous Incarceration Matters in the Northern Territory which is being undertaken by notable Aboriginal academics, Ms Marcia Langton and Ms Josephine Cashman, and Mr Aaron Corn.

Details of the investigation and available results carried out by the Royal Commission into the child protection and youth detention systems of the Northern Territory established in July 2016 by the Prime Minister (addressing question 3)

The Royal Commission is due to report by 31 March 2017. As the first directions hearing for the Royal Commission only occurred on 6 September 2016, the Australian Government is not currently in a position to respond to this question. The final report of the Royal Commission is expected to be made public once it is tabled in Parliament. It is anticipated that this will occur during 2017. When this happens, the Australian Government can provide the Special Rapporteurs with a copy of this report and any responses provided to this report by the Australian Government and the Northern Territory Government.

The Australian Government provides the following information about Royal Commissions. A Royal Commission is a special investigation into important matters of public concern and is established when the Governor-General (acting on the advice of the Executive Council) issues Letters Patent under the Commonwealth *Royal Commissions Act 1902*.

The Letters Patent set out the terms of reference for the inquiry. The Terms of Reference for this Royal Commission are annexed at the end of the Australian Government's response. The Royal Commission has been specifically asked to examine:

- failings in the child protection and youth detention systems of the Government of the Northern Territory since the commencement of the Northern Territory Youth Justice Act
- the effectiveness of any oversight mechanisms and safeguards to ensure the treatment of detainees was appropriate

- cultural, management and/or structural issues that may exist within the Northern Territory youth detention facilities
- whether the treatment of detainees at youth detention facilities breached laws or the detainees' human rights as enacted in domestic laws, and
- whether more should have been done by the Government of the Northern Territory to take appropriate measures to prevent the reoccurrence of inappropriate treatment at youth detention facilities.

The Royal Commission is also expected to 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 including the identification of early intervention options and pathways for children at risk of engaging in anti-social behaviour.

Although its enquiry is limited to the Northern Territory, many of the recommendations and findings of this Royal Commission are expected to be of use to other jurisdictions when they are considering how their juvenile detention systems can be improved.

The Letters Patent appoint the Royal Commissioner or Royal Commissioners. Justice Brian Martin AO QC was appointed on 28 July 2016. However, he then resigned on 1 August 2016. In resigning, Justice Martin said the Royal Commission is extraordinarily important and had to have the full confidence of all of the community. Two new Royal Commissioners were announced on 1 August 2016, the Hon Margaret White AO, a former Supreme Court Judge in the State of Queensland, and Mr Mick Gooda, the former Aboriginal and Torres Strait Islander Social Justice Commissioner in the Australian Human Rights Commission.

The Royal Commission is independent from Government and is responsible for determining its own processes. On this basis, it can investigate any matter that falls within its Terms of Reference. Royal Commissions conduct hearings and have special coercive powers to summon witnesses and take evidence, including through the use of search warrants and the arrest of witnesses who fail to appear. It is a criminal offence to fail to attend a hearing, to bribe witnesses, to fail to produce documents or to destroy documents or to give false evidence. Penalties may include a fine and/or a period of imprisonment. A statement or disclosure made by a person in the course of giving evidence before a Royal Commission, or a document or other thing produced to a Royal Commission under a summons are not admissible in evidence against a natural person in criminal or civil proceedings (except in proceedings for an offence against the Royal Commission Act).

The Royal Commission will keep records of information it receives, which will inform its work. Such information may be made public, uploaded to the website or included in the Royal Commission's final report. Information may also be provided to the Royal Commission in confidence or in an anonymous manner. While a Royal Commission cannot charge or convict someone of a criminal offence and cannot award compensation, it can communicate information provided to it to a range of bodies including law enforcement bodies for consideration.

The Royal Commission has established a website: childdetentionnt.royalcommission.gov.au, a postal and email address and be contacted via telephone. Further information about the manner in which the Royal Commission is to be conducted can be found on this website.

To date, public statements of the Royal Commission have indicated that it will hold three weeks of public hearings and conduct relevant site visits and community engagement from 11 to 27 October 2016.¹ Public hearings will be held from 11 to 13 October 2016. The Royal Commission has advised that these hearings will focus on calling evidence from the authors of previous reports and inquiries into matters relevant to the Royal Commission's terms of reference and from some subject matter experts in fields relevant to the Royal Commission's inquiry.²

At the formal opening on 6 September 2016, Commissioner Gooda stated that 'engagement of all parts of the Northern Territory community, the Aboriginal and non Aboriginal communities' will be critical to the outcomes of the Royal Commission. He advised that two senior Aboriginal people have been engaged to ensuring that the Aboriginal community is 'aware [of] the work of the Royal Commission and, importantly, that those people, particularly young persons, feel safe and secure if and when they tell us their stories'.³

Information on measures taken in response (addressing question 4)

As noted above, the Northern Territory Government has already undertaken a number of measures in response to these incidents including the commissioning of two independent reviews and the implementation of recommendations arising from these reviews. There have also been a number of criminal proceedings brought in courts in the Northern Territory.

The Northern Territory Government had an election shortly after the media reporting. Following that election, the Government changed. However, prior to this, in addition to the measures already taken, the former Government took additional immediate steps which included:

- the Chief Minister of the Northern Territory directly assumed responsibility for corrections and directed the police to investigate allegations of criminal misconduct
- work was undertaken to appoint an Inspector-General for Corrections to review current youth detention facilities, policies and processes
- the use of hoods on children in detention was ceased, and
- a special taskforce within the Northern Territory Police Force was established to investigate allegations of violence against youths held in youth detention centres across the Northern Territory.

The Royal Commission and the Board of Inquiry will issue a Final Report which is currently due to be provided to the Australian Government and the Northern Territory Government on 31 March 2017. That Report is expected to contain a range of recommendations for consideration by Government. It is probable that further measures will be taken in response to the recommendations made by the Royal Commission and the Board of Inquiry in relation to the treatment of children and young persons detained in youth detention facilities administered by the Government of the Northern Territory once the Report has been considered.

¹ Royal Commission, <https://childdetentionnt.royalcommission.gov.au/Pages/default.aspx>.

² Ibid.

³ Commissioner Gooda, <https://childdetentionnt.royalcommission.gov.au/Hearings-Transcripts/Documents/Directions-Hearing-Commissioner-Mick-Gooda-Opening-Remarks.pdf>.

Although unrelated to these allegations, in Australia's response to its recommendations following its appearance at the Universal Periodic Review in November 2015, the Australian Government noted its support for the principles of the Optional Protocol to the CAT and committed to actively considering ratification, including consulting with States and Territories.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Quinn', with a long horizontal flourish extending to the right.

John Quinn
Ambassador and Permanent Representative to the United Nations, Geneva

Annex 1: Recommendations of the Vita Report

1. All new initial and refresher training, including staff development should include components of:
 - case management;
 - mediation and negotiation;
 - use of force;
 - adolescent behaviour;
 - symptoms of foetal alcohol;
 - ADHD and general mental health;
 - pro-social modelling;
 - emergency management; and
 - cultural awareness.
2. The introduction, training in, and consistent use of an appropriate assessment tool such as the Youth Level Service of Inventory (YLSI) that would be earmarked to drive the case management process and form the beginning of the goals necessary for the detainee to work on as part of his/her reintegration back into the community.
3. Remodel the case management process so that youth workers have a direct role via being key workers and thus not be relegated to a pure custodial role. This may require review of the youth worker Position Description.
4. To develop in accordance with the Youth Justice Framework a clear philosophy that will drive the mission and vision of youth detention into the future.
5. Begin instituting an immediate review of a central operational procedures manual for both detention centres in Darwin and Alice Springs.
6. Continue to develop and implement Standard Operating Procedures at the Berrimah YDC.
7. Introduce an effective and objective classification system that involves decision-making in a multi-disciplinary team approach.
8. Introduce a consistent and structured methodology in relation to behavioural management including the preparation and implementation of Behaviour Management Plans.
9. Introduce a formal incentive scheme that is structured and applied fairly and links in with the case management and classification processes.
10. Make available to all detention centre staff appropriate equipment for their personal protection in reacting to immediate emergency situations requiring use of force.
11. Introduce a staffing model that reverses the current ratios of casual and temporary staff to permanent status.
12. Introduce at least two evidence-based and meaningful offence focused programs.
13. Introduce a culture of a multi-disciplinary team approach in all decision-making processes.
14. That youths currently housed in the interim Holtze facility be transferred to Berrimah YDC as soon as practical.
15. Aranda House in Alice Springs should not be reopened after the operational transition to the Berrimah site has been completed.
16. The Seek Education or Employment not Detention (SEED) Program is actively continued and expanded in youth detention.

Annex 2: Recommendations of the Gwynne Report

1. Correctional Services develop and deliver a suitable training package to ensure that all staff have an adequate skill-set to work within the current youth justice environment. Records of the completion of such training should be recorded for each staff member and attached to their personnel file. Mandatory regular refresher training should be undertaken at industry-accepted periods⁴⁵. The training should include:
 - Crisis de-escalation / negotiation / mediation training specific to young persons in medium to high risk environments;
 - The proper use of PART (including competence certification if appropriate), with regular refresher courses for staff;
 - and the regular review of all restraint / use of force reports;
 - Critical incident management to ensure compliance with the Youth Justice Act;
 - The proper use of all personal protection equipment available for use by staff;
 - Knowledge and competence to safely manage the young persons in their care, to assess and respond to depression and other emotional stresses in order to effectively assess the potential of self-harm, and to positively engage with the detainees; and
 - Consideration of a memorandum of understanding between NT Police and Correctional Services in relation to the training of staff in use of force tactics, negotiation and mediation, etc.
 - Any other training recommendations contained in the Vita report.
2. In relation to its employment process, Correctional Services should consider psychometric testing in order to provide an objective measurement of job applicants' skills, knowledge, abilities, attitudes, personality traits and education against the core requirements of the roles.
3. Correctional Services urgently conduct a job evaluation of all positions associated within the Youth Detention Centres so that they accurately reflect the responsibilities and requirements of the roles.
4. Correctional Services conduct a review of operational practices, and where necessary it should implement changes to policies and procedures to ensure compliance with the requirements of the Youth Justice Act and Regulations. To ensure the rights of the young person under the UN *Convention of the Rights of the Child*, the review should include consideration of:
 - The preparation, content and implementation of individual management plans under a management regime to ensure a consistent and structured multi-disciplinary methodology is applied;
 - The operational practices surrounding the use of isolation and containment;
 - The implementation of a policy that includes the completion of full and accurate observation sheets every 15 minutes for any young person confined to their cell for any reason;
 - The relevant recommendations contained in the Vita report.
5. Correctional Services develop and implement policies and procedures that comply with the requirements of the *Youth Justice Act* and Regulations. The policies should ensure the rights of the young person as specified under the UN *Convention of the Rights of the Child*. In particular, the policies should address:

- Critical incident management, including negotiation strategies, cordon and containment, appropriate use of force, structured roles and responsibilities of staff, debriefing and reporting;
 - The use of chemical agents/dogs to gain compliance or to resolve potentially serious violent incidents in a Youth Detention Centre context;
 - Maintaining accountable electronic and hardcopy records of all management regime documents developed and implemented for all young people;
 - The rights and obligations of young persons upon admission to a Youth Detention Centre, including specific information about their right to access the Office of the Children's Commissioner and the method of making contact or/a complaint;
 - Any obligations on Correctional Services staff to make a complaint on behalf of a young person who wants to make contact or lodge a complaint with the Children's Commissioner (but due to the behaviour of the young person they are precluded from direct telephone access for safety and security reasons); and
 - Ensuring that the Children's Commissioner telephone number is listed in such a way that the young persons' complaints or discussions with this Office are confidential. It is suggested that such calls should be categorised as 'legal-in-confidence' and therefore the attendant protocols for legal calls should be applied.
6. The use of a spit hood/mask is a particular concern which has the potential to be inhumane and cause harm to young persons. While the hood was placed on the young persons by staff from the adult prison, it is recommended that Correctional Services develop a policy that includes:
- The appropriate use of the spit hood and any authorisations required;
 - The length of time a spit hood may be used;
 - Any alternatives to the use of spit hoods;
 - The requirement for accurate recording of the justification for the use of the spit hood and the time it was applied to the young person; and
 - Adherence to applicable legislation and conventions.
7. The information collated in this investigation highlighted a lack of suitable programs being delivered to young persons to address their physical and mental well-being whilst in the care of Correctional Services. It is understood that a psychologist has been recently employed by Correctional Services and this should go some way to address this issue. Further, a policy on the use of an appropriate assessment tool such as the Youth Level Service of Inventory (YLSI) would assist to drive the case management process and form the beginning of the goals necessary for the young person to work on as part of his/her reintegration back into the community.

Annex 3: Royal Commission Terms of Reference



ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Margaret Jean White AO; and

Michael Lloyd Gooda

GREETING

WE do, by Our Letters Patent issued in Our name by Our Administrator of the Government of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you, to inquire into the following matters:

- (a) failings in the child protection and youth detention systems of the Government of the Northern Territory during the period since the commencement of the *Youth Justice Act* of the Northern Territory (the *relevant period*);
- (b) the treatment, during the relevant period, of children and young persons detained at youth detention facilities administered by the Government of the Northern Territory (the *relevant facilities*), including the Don Dale Youth Detention Centre in Darwin;
- (c) whether any such treatment during the relevant period may:
 - (i) amount to a breach of a law of the Commonwealth; or
 - (ii) amount to a breach of a law in force in the Northern Territory; or
 - (iii) amount to a breach of a duty of care, or any other legal duty, owed by the Government of the Northern Territory to a person detained at any of the relevant facilities; or

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- (iv) be inconsistent with, or contrary to, a human right or freedom that:
 - (A) is embodied in a law of the Commonwealth or of the Northern Territory; and
 - (B) is recognised or declared by an international instrument; or
- (v) amount to a breach of a rule, policy, procedure, standard or management practice that applied to any or all of the relevant facilities;
- (d) both:
 - (i) what oversight mechanisms and safeguards (if any) were in place during the relevant period at the relevant facilities to ensure that the treatment of children and young persons detained is appropriate; and
 - (ii) whether those oversight mechanisms and safeguards have failed, or are failing, to prevent inappropriate treatment, and if so, why;
- (e) whether, during the relevant period, there were deficiencies in the organisational culture, structure or management in, or in relation to, any or all of the relevant facilities;
- (f) whether, during the relevant period, more should have been done by the Government of the Northern Territory to take appropriate measures to prevent the recurrence of inappropriate treatment of children and young persons detained at the relevant facilities and, in particular, to act on the recommendations of past reports and reviews, including:
 - (i) the Review of the Northern Territory Youth Detention System Report, of January 2015; and
 - (ii) the Report of the Office of the Children's Commissioner of the Northern Territory about services at Don Dale Youth Detention Centre, of August 2015;

- (g) what measures should be adopted by the Government of the Northern Territory, or enacted by the Legislative Assembly of the Northern Territory, to prevent inappropriate treatment of children and young persons detained at the relevant facilities, including:
 - (i) law reform; and
 - (ii) reform of administrative practices; and
 - (iii) reform of oversight measures and safeguards; and
 - (iv) reform of management practices, education, training and suitability of officers; and
 - (v) any other relevant matters;
- (h) what improvements could be made to the child protection system of the Northern Territory, including the identification of early intervention options and pathways for children at risk of engaging in anti-social behaviour;
 - (i) the access, during the relevant period, by children and young persons detained at the relevant facilities, to appropriate medical care, including psychiatric care;
 - (j) any matter reasonably incidental to a matter mentioned in paragraphs (a) to (i).

AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to consider the following matters, and We authorise you to take (or refrain from taking) any action that you consider appropriate arising out of your consideration:

- (k) the need to establish mechanisms to facilitate the timely communication of information, or the furnishing of evidence, documents or things, in accordance with section 6P of the *Royal Commissions Act 1902* or any other relevant law, including, for example, for the purpose of enabling the timely investigation and prosecution of offences;
- (l) the need to ensure that evidence that may be received by you that identifies particular individuals as having been subject to inappropriate treatment is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries;
- (m) the need to establish appropriate arrangements in relation to current and previous inquiries, in Australia and elsewhere, for evidence and information to be shared with you in ways consistent with relevant obligations so that the work of those inquiries, including, with any necessary consents, the testimony of witnesses, can be taken into account by you in a way that avoids unnecessary duplication, improves efficiency and avoids unnecessary trauma to witnesses.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate.

AND We appoint you, the Honourable Margaret Jean White AO, to be the Chair of the Commission.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902*.

AND We declare that you are authorised to conduct your inquiry into any matter under these Our Letters Patent in combination with any inquiry into the same matter, or a matter related to that matter, that you are directed or authorised to conduct by any Commission, or under any order or appointment, made by the Government or a Minister of the Northern Territory.

AND We declare that in these Our Letters Patent:

child means a person under the age of 18 years, and **children** has a corresponding meaning.

AND We:

- (n) require you to begin your inquiry as soon as practicable; and
- (o) require you to make your inquiry as expeditiously as possible; and
- (p) require you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 31 March 2017.

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS the Honourable Paul de Jersey AC QC,
Administrator of the Government of the Commonwealth of
Australia.

Dated 2016

Administrator

By His Excellency's Command

Attorney-General