

Aboriginal Peak Organisations Northern Territory

An alliance of the CLC, NLC, CAALAS, NAAJA and AMSANT

Principles and Priorities for Implementation of the Royal Commission Recommendations

This paper sets out APONT's position at a strategic level in relation to the recommendations of the Royal Commission into the Protection and Detention of Children in the NT. APONT welcomes the comprehensive analysis of the child protection and youth justice systems and the detailed recommendations.

APONT supports in principle the recommendations of the Royal Commission.

APO NT proposes that the principles and priorities for implementation positively inform the Northern Territory (NT) Government's full response which is due to be released in March 2018. APO NT urges the NT Government and the Federal Government to implement the recommendations fully and in collaboration with Aboriginal people and communities, young people and families and Aboriginal controlled organisations with appropriate input from relevant mainstream organisations. Consistent with the principle of wholesale reform of the youth justice and child protection systems, APONT seeks integration across the separate recommendations for each sector and unification under a single Act.

Principles

The implementation of the recommendations of the Royal Commission should be Aboriginal led and driven by best practice principles addressing the appropriateness, equity, efficiency and effectiveness of reform, including:

- 1) An appropriately resourced new single Act to give effect to wholesale reform and integration of youth justice and child protection to achieve excellent outcomes for children and young people
- 2) Aboriginal-led and trauma informed solutions which are child and family focused and culturally strengthening.
- 3) Poverty and intergenerational trauma are key determinants of children entering the child protection and youth justice systems.
- 4) A public health model to be adopted for child development, youth justice and child protection.
- 5) The Aboriginal community controlled sector has a leading role in service delivery, particularly in prevention, and early intervention.
- 6) Services must be available equitably Territory-wide to meet the needs of young people and communities.
- 7) The Commonwealth and NT governments must work cooperatively to address the recommendations and accept and fulfil their respective funding responsibilities. The interests of young people in the NT would be best progressed through a bi-partisan commitment in relation to the resourcing and implementation of recommendations.

- 8) Children and young people should not lose their rights to Medicare whilst in youth detention.
- 9) The child protection and youth justice systems must ensure every opportunity is given to young people to maintain their connection to family, community, culture, language and country.
- 10) Detention should be a genuine measure of last resort, only for the shortest possible period of time, and only for those young people who have committed serious violent offences.

Co-Design and accountability - Partnership to Reform Child Protection and Youth Justice

APO NT notes the establishment of the Reform Management Office (RMO) to coordinate whole of government responses to the Royal Commission's recommendations and that the RMO will be responsible for monitoring and reporting on implementation progress. It is critical that there is active participation from Aboriginal controlled organisations in this process to provide rigour, oversight and transparency to bring about reform.

As part of the RMO's activities, APO NT seeks the formalisation by the NT Government of the existing Partnership to Reform Child Protection and Youth Justice to form a time limited overarching committee to lead the wholesale reform of the child protection and youth justice systems and oversee the prioritisation, monitoring and implementation of the entire suite of recommendations, directives and operational changes including the co-design of responses, service models and initiatives.

Consistent with the principle of Aboriginal led and culturally appropriate solutions; APONT seeks a majority Aboriginal membership for this committee while acknowledging that Government may wish to include a small number of other relevant organisations.

Features of the Committee must include:

- Commitment by all members to participation including a regular schedule of monthly meetings.
- Transparency and full information – starting with access to the existing suite of Territory Families directives, manuals, policies and handbooks for child protection and youth justice.
- A commitment to genuine co-design including closing the consultation loop on final positions to be put to government (acknowledging that final decisions lie with Government).
- Protocols for data and information sharing, particularly ahead of public announcements.
- A formal terms of reference incorporating the following points:
 - Membership to include appropriate senior Northern Territory government representatives, representatives of appropriate Aboriginal peak organisations and, if necessary, other NGOs.
 - Majority of members are from Aboriginal controlled organisations.
 - Solutions and implementation is Aboriginal led.
 - The Committee will
 - Develop jointly a detailed plan for implementation of RC recommendations
 - Agree priorities for action
 - Oversee the progress against the plan
 - Contribute to strategic policy issues and policy development
 - Receive and review co-design work from working groups – see below.
 - Sign-off on products and programs (noting Government has the final decision)

Consistent with Recommendation 1.1 of the Royal Commission and the concept of partnership reflected in Recommendations 7.1 to 7.3, the Committee will be complemented by a series of specific purpose collaborations and working groups to develop aspects of the reformed systems and address related recommendations. The initial working groups should address:

- 1) Engagement strategy with communities and organisations
- 2) Development and implementation of a tripartite body as recommended by the Royal Commission including its relationship with the existing tripartite NT Aboriginal Health Forum
- 3) Prevention and universal services including the recommended regional Family Centres and place based approaches
- 4) A new Children's Commission
- 5) Comprehensive culturally appropriate assessment and Family Group Conferencing
- 6) Changing the approach - models and pathways for children at risk or needing care and protection
- 7) Justice response to offending by youth
- 8) Specialist Children's Court
- 9) Redesigning detention
- 10) Developing the new single Act and interim legislative amendments - the Legislative Amendment Advisory Committee (LAAC).
- 11) Sexual abuse and sexual health of children and young people.

APO NT notes that the operation and structure of the existing Legislation Amendment Advisory Committee provides a possible model for the working groups approach.

Urgent Priorities- Immediate Actions

APO NT supports a timely approach to progressing the Royal Commission recommendations. Given the complexity of the recommendations and the systems involved, the scheduling of implementation will need to be developed as part of the project plan of the overarching committee. There are, however, a number of recommendations and actions that should be undertaken immediately.

- An urgent priority not covered in the Royal Commission, but supported by APONT, is the urgent review of all cases of children on long-term placement orders starting with Alice Springs, Katherine, Tennant Creek and Darwin (as most children on long-term placement orders are in regional centres) and then extending out to remote regions. The aim is to review the need for long-term care, current risks to the child and options for supporting capacity of family and/or providing kinship care. This review should be resourced by the Northern Territory Government and jointly conducted at the local/regional level by Territory Families, representatives from Aboriginal health services and representatives from Aboriginal services.
- Urgent priorities from the Royal Commission recommendations are listed below. While not necessarily the most critical actions, these actions are able to be implemented quickly and would have an immediate impact on the wellbeing of children and young people. They are:
 - Closure of the HSU at Don Dale
 - Children's and youth matters to be heard in closed court
 - Changes to staffing rosters in detention including appropriate gender mix of staff
 - Urgently review and implement appropriate police practices consistent with the Royal Commission recommendations

- Implement the range of recommendations regarding detention centre practices, structures and rules such as improving access to family visits
- Expand throughcare services so that all children in the youth justice system, including those on remand, have access to throughcare
- Ensure that new bail accommodation facilities and support programs are operational as quickly as possible.
- Immediately legislate to increase the age of criminal responsibility to 12 years.
- Urgent legislative reforms as recommended by the Royal Commission the offence of breach of bail. A list of priority legislative reforms supported by APONT is at Attachment A.
- Longer term actions on which work must commence immediately in order to achieve wholesale reform in a reasonable timeframe, including:
 - Co-design and consultation process for a new single act
 - Develop the details and legislation for a new Children’s Commission
 - Commence the development of a comprehensive, holistic assessment tool, incorporating screening for trauma exposure, to identify the needs and risks of each child entering youth justice or child protection
 - Co-design of the family centres and place based approaches
 - Review the operations of the Youth Justice Court and develop the recommended specialist Children’s Court.

ATTACHMENT A

APO NT's position on priority legislative amendments arising from the Royal Commission's recommendations

December 2017

Youth justice

1. Amend s 38(1) of the *Criminal Code Act* to increase the age of criminal responsibility to 12 years (recommendation 27.1)
2. Amend s 83 of the *Youth Justice Act* so that young people under the age of 14 cannot be ordered to serve a period of time in detention unless the young person has been convicted of a serious and violent crime against the person, presents a serious risk to the community and the sentence is approved by the proposed President of the Children's Court (recommendation 27.1)
3. Exclude children and young people from the operation of s 37B of the *Bail Act* (offence to breach bail) (recommendation 25.19, part 4)
4. Amend the *Youth Justice Act* and *Police Administration Act* so that young people may be held in custody without charge for no longer than four hours (recommendation 25.3)

Detention

- Recommendations 13.4 – 13.6: use of force and restraint
- Recommendation 13.7: strip searches
- Recommendation 14.1: isolation
- Recommendation 21.2: retention of CCTV footage
- Recommendation 22.2: assistance to make complaints in detention

Police

- Recommendation 25.6: young person must not be interviewed by police until they have sought and obtained legal advice or after exercising their right to silence [link to implementation of custody notification scheme currently in development]

Diversion

- Recommendation 25.10: remove the restriction on police consideration of diversion in section 39(3)(c)
- Recommendation 25.11: expand eligibility for diversion by removing the exclusions for certain traffic offences under the *Traffic Act*

APO NT supports the work of the Legislative Amendment Advisory Committee to date on legislative amendments to facilitate greater access to diversion.

Bail

- Recommendation 25.19: amendments to the *Bail Act* (noting that NAAJA supports the recommendation in principle, but has some reservations about certain proposed legislative provisions and suggests this recommendation in particular should be subject to further consultation and discussion)

Courts

- Recommendation 25.25: proceedings under the *Youth Justice Act* should be heard in closed court

Care and protection

APO NT supports in principle all recommendations for legislative reform relating to care and protection.

Given there are comparatively few legislative amendments and the nature of the proposed amendments is relatively straightforward and likely to be uncontroversial, consideration should be given to progressing all proposed amendments to the *Care and Protection of Children Act* and Regulations as part of the initial tranche of legislative reform. All the proposed immediate legislative amendments are consistent with broader wholesale reform and will contribute to the development of a single Act.

The key priorities are:

- Recommendation 33.7: amend the *Northern Territory Civil and Administrative Tribunal Act* so that the Tribunal has jurisdiction to review decisions made by TF about foster and kinship carers or applicants seeking to become carers. (Noting consequential amendments may also be required to the *Care and Protection Act* to give effect to this provision).
- Recommendation 34.2: amend section 129 of the *Care and Protection of Children Act* to provide that the court must not make a protection order unless it has considered, and rejected as being contrary to the best interests of the child, an order allowing the child to remain in the care of their parent.
- Recommendation 34.3: amend section 130 of the *Care and Protection of Children Act* as section 130(1)(cc) to the following effect: 'In making the decision, the Court must consider if all reasonable steps have been taken by the government agency to provide the services that are necessary in addressing any risks of harm to the child'
- Recommendations 34.7 – 34.10: relating to mediation and family group conferencing.