

Ampe Akelyernemane Meke Mekarle “Little Children are Sacred”

*In our Law children are very sacred because they carry the
two spring wells of water from our country within them*



**Report of the Northern Territory Board of Inquiry into the
Protection of Aboriginal Children from Sexual Abuse**

2007

Title

The title "Ampe Akelyernemane Meke Mekarle" is derived from the Arrandic languages of the Central Desert Region of the Northern Territory. It is pronounced *Ump-ah Ah-kil-yurn-a-man Mu-kar-Mu-karl*.

Quote

The title quote *In our Law children are very sacred because they carry the two spring wells of water from our country within them* reflects the traditional Aboriginal law of the Yolngu people of Arnhem Land in the Northern Territory, and was provided by a senior Yolngu lawman.

Cover Design

The cover design was painted by Heather Laughton, an Eastern Arrente (Central Australia) woman. The core design came out of a workshop discussion at the Board of Inquiry's Alice Springs Regional Forum held on 7 March 2007.

The design represents the coming together of different people to help tackle the problem of child sexual abuse: mothers, children, grandmothers at a safe place, fathers and grandfathers at a safe place, and in the middle a resource centre with a mentor/ counsellor/educator and family members and other support people. The resource centre represents a place where people can come together to work out their problems as a family or as a community, and also to learn how the mainstream law system and Aboriginal law are both strong ways of protecting children.



NORTHERN TERRITORY GOVERNMENT

BOARD OF INQUIRY INTO THE PROTECTION OF ABORIGINAL CHILDREN FROM SEXUAL ABUSE

INQUIRY MEMBERS
Rex Wild QC
Patricia Anderson

EXECUTIVE OFFICER
Julie Nicholson

30 April 2007

The Hon Clare Martin MLA
Chief Minister of the Northern Territory
GPO Box 3146
DARWIN NT 0801

Dear Chief Minister

We are pleased to provide you with the Report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse.

Our appointment as the Board of Inquiry pursuant to the Northern Territory Inquiries Act was dated 8 August 2006.

The Inquiry has been conducted in accordance with the Terms of Reference as set out in the instrument of appointment.

We commend the Report to you and thank you for the opportunity of providing it. We sincerely hope our Report assists the Government to successfully tackle the most serious issue of Aboriginal child abuse in the Northern Territory.

Yours sincerely

REX WILD and PAT ANDERSON
INQUIRY CO-CHAIRS



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Instrument of Appointment and Board of Inquiry's Task

NORTHERN TERRITORY OF AUSTRALIA

Inquiries Act

APPOINTMENT OF BOARD OF INQUIRY

I, CLARE MAJELLA MARTIN, Chief Minister of the Northern Territory, exercise the following powers under the *Inquiries Act*:

- (a) appoint Rex Stephen Leslie Wild QC and Patricia Anderson to be a Board of Inquiry to inquire into and report to me on the matters involved in carrying out the Board of Inquiry's task as stated in the Schedule;
- (b) specify that either member may constitute a quorum of the Board; and
- (c) appoint both the members as Co-chairmen of the Board.

Dated 8 August 2006.

Clare Martin
Chief Minister

SCHEDULE

THE BOARD OF INQUIRY'S TASK

Examine the extent, nature and factors contributing to sexual abuse of Aboriginal children, with a particular focus on unreported incidents of such abuse.

Identify barriers and issues associated with the provision of effective responses to and protection against sexual abuse for Aboriginal children.

Consider practices, procedures and resources of NT Government agencies with direct responsibilities in this area (Family & Children Services and Police), and also consider how all tiers of government and non-government agencies might contribute to a more effective protection and response network.

Consider how the NT Government can help support communities to effectively prevent and tackle child sexual abuse.



Foreword

We were appointed as the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse on 8 August 2006. Initially, it was thought that we could report back on our findings by the end of the year. It soon became obvious this would not be possible and it was agreed with the Chief Minister that we would provide this report by the end of April 2007. We are pleased that we have been able to do so.

We submitted an interim report to the Chief Minister by way of letter dated 10 October 2006 in which we said:

1. *There is nothing new or extraordinary in the allegations of sexual abuse of Aboriginal children in the Northern Territory. What is new, perhaps, is the publicity given to them and the raising of awareness of the wider community of the issue.*
2. *Sexual abuse of children is not restricted to those of Aboriginal descent, nor committed only by those of Aboriginal descent, nor to just the Northern Territory. The phenomenon knows no racial, age or gender borders. It is a national and international problem.*
3. *The classic indicia of children likely to suffer neglect, abuse and/or sexual abuse are, unfortunately, particularly apparent in Aboriginal communities. Family dysfunctionality, as a catch-all phrase, reflects and encompasses problems of alcohol and drug abuse, poverty, housing shortages, unemployment and the like. All of these issues exist in many Aboriginal communities.*
4. *The problems are such that significant government inquiries have already been completed in Western Australia (Gordon Report 2002), Queensland (Protecting Children Inquiry 2004), Victoria (The Report into Sex Offences by the Victorian Law Reform Commission 2004) and New South Wales (Aboriginal Child Sexual Assault Taskforce 2006). In addition, the Federal Parliament, through Democrat Senator Andrew Bartlett, has resolved to develop a national child sexual assault strategy; and the Federal Government has recently announced the establishment of a national Indigenous child abuse task force consisting of representatives of all the State, Territory and Federal police forces and based in Alice Springs.*
5. *In the Northern Territory, government agencies have been aware of the allegations over a long period. They*

do what they can with the resources they have and the level of (or lack of) cooperation from communities. There are many inhibitions, however, in this area. Your first task for us addresses this issue by directing us to focus on unreported incidences of such abuse.

6. *It is noteworthy that the NSW Aboriginal Child Sexual Assault Taskforce 2006 referred to above did not embark on an investigation, as such, of the incidence of sexual abuse. The Attorney-General in that State relied upon a report that indicated 70% of all female Aboriginal prisoners in New South Wales jails had suffered from sexual abuse as children, as a sufficient catalyst to start the process.*
7. *In the Northern Territory, a significant research project has just been completed into sexual abuse in Aboriginal families and communities. This was a project funded by the Top End Women's Legal Service and had the support of government agencies. It dealt specifically with Groote Eylandt communities. The introduction to the overview contains the following:*

This project was not designed to prove that sexual abuse existed or was a problem in Aboriginal families and communities. As Aboriginal women, we know that it exists and that the problems that are created by sexual abuse will continue to have devastating impacts until we all take an active role in stopping the sexual assault and sexual abuse of our women and our children.

8. *We have been struck by the enormous number of agencies (both government and non-government) and community and other groups, which have an interest in, or responsibility for, this topic. They include those with legal, medical, social, cultural and structural viewpoints. We have started to tap into that experience and knowledge.*

9. *Of course, as we have already noted, it is a very important point and one which we have made during the course of many of our public discussions of the issues that the problems do not just relate to Aboriginal communities. The number of perpetrators is small and there are some communities, it must be thought, where there are no problems at all. Accepting this to be the case, it is hardly surprising that representatives of communities, and the men in particular, have been unhappy (to say the least) at the media coverage of the whole of the issue.*

Notwithstanding, there is, in our view, sufficient anecdotal and forensic and clinical information available to establish that there is a significant problem in Northern Territory communities in relation to sexual abuse of children. Indeed, it would be remarkable if there was not, given the similar and significant problems that exist elsewhere in Australia and abroad.

This has not been an easy Inquiry to conduct. The report has been difficult to write. This is a sad and emotional subject. More than one health professional has broken down in discussions with us, as have community people. The themes that emerge are not unusual. These themes are “the usual suspects” as far as Aboriginal people in the Northern Territory are concerned.

Unless a firm commitment to success is undertaken immediately, a further generation is likely to be lost. There are no quick fixes but we make some recommendations which can be implemented immediately and which are not “big ticket” items.

We have deliberately worked closely with the relevant Northern Territory Government departments, not only for their advice on the practicality of our recommendations, but also with a view to bypassing the usual and inevitable delays in implementation caused in sending off reports and recommendations for further analysis and advice. We understand that the recommendations contained in the report have the broad support of those departments, although financial implementation issues have been raised with us.

We make a special plea for prompt consideration and acceptance of the principal tenets of the report as a matter of extreme urgency. A failure to do so will see the loss of the considerable goodwill and awareness we

have been able to develop with Aboriginal people and other stakeholders during these last months. A disaster is looming for Aboriginal people in the Northern Territory unless steps are taken forthwith.

Our terms of reference required us to enquire into the protection of Aboriginal children from sexual abuse. We will, no doubt, receive some criticism for appearing to stray well beyond that limited brief. However, we quickly became aware – as all the inquiries before us and the experts in the field already knew - that the incidence of child sexual abuse, whether in Aboriginal or so-called mainstream communities, is often directly related to other breakdowns in society. Put simply, the cumulative effects of poor health, alcohol, drug abuse, gambling, pornography, unemployment, poor education and housing and general disempowerment lead inexorably to family and other violence and then on to sexual abuse of men and women and, finally, of children.

It will be impossible to set our communities on a strong path to recovery in terms of sexual abuse of children without dealing with all these basic services and social evils. Even then, the best that can be hoped for is improvement over a 15 year period - effectively, a generation or longer. It is our earnest hope that no Aboriginal child born from this year on will ever be the subject of sexual abuse. Our *commitment to success* should be aimed squarely at that target!

It is necessary that this process of recovery begin NOW. We are aware that COAG has commenced consideration at senior officer level of Indigenous Generational Reform (IGR) that will provide, if approved, a staged 20-year program. The first five years deal with 0-3 year-olds. It is to start in 2009! COAG has been *on the case* since at least 2000 when it adopted its Reconciliation Framework, which recognised *the unique status of Indigenous Australians and the need for recognition, respect and understanding in the wider community*. The goodwill that is evident is commendable, but it is now 2007.

The key indicators of Aboriginal disadvantage have been well documented in a formal sense but, in any event, are well-known throughout the country. We will have lost another nine years by 2009 in thinking and talking about and designing principles and models for service delivery. It's time for some brave action. We have an enormous amount of knowledge and experience about

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the problems. It should now be applied. There is no more time for us to wring our collective hands. Both Aboriginal and non-Aboriginal Australians have tended to despair about the difficulties instead of individually or collectively exercising some leadership. We are positively convinced that unless prompt and firm decisions are made and leadership shown at ALL levels of society, real disaster faces Australia within a generation.

Many of the sentiments expressed here will also be found in the report. Our first two recommendations to government encapsulate our findings and we anticipate them here:

1. That Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory Governments, and both governments immediately establish a collaborative partnership with a Memorandum of Understanding to specifically address the protection of Aboriginal children from sexual abuse. It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.
2. That while everybody has a responsibility for the protection of all children, the Northern Territory Government must provide strong leadership on this issue, and that this be expressed publicly as a determined commitment to place children's interests at the forefront in all policy and decision-making, particularly where a matter impacts on the physical and emotional wellbeing of children. Further, because of the special disadvantage to which the Aboriginal people of the Northern Territory are subject, particular regard needs to be given to the situation of Aboriginal children.

We commend the report not only to the government and the people of the Northern Territory but to the government and people of Australia. Our hope is that the nation will work together for the sake of all its children.



PAT ANDERSON

30 April 2007

Darwin, Northern Territory



REX WILD



Acknowledgements

From the outset of our undertaking, it was clear that time was of the essence. Although the Chief Minister extended the reporting timeframe from the original “end of the year” (2006) until 30 April 2007, it was necessary to comply with this time limit for two reasons.

Firstly, an expectation had been raised and the Northern Territory community was entitled to expect a prompt response to allegations then being made.

Secondly, because it became apparent immediately that a significant problem existed, the sooner it was confronted and some advice given to government, the better.

That we have been able to do so is almost entirely due to the efforts made by all members of the team that worked with us. Their short biographies appear below:

Julie Nicholson – Executive Officer

Julie has a Bachelor of Jurisprudence and more than 20 years NT Government experience in policy and administration. Her previous positions have included Research Officer to the NT Administrator, Executive Officer to the Legislative Assembly’s Legal and Constitutional Affairs Committee in respect of its Inquiry into the 1998 Statehood Referendum, Senior Ministerial Officer, and Director of the Cabinet Office in the Department of the Chief Minister.

Dr Adam Tomison – Director, Policy and Research

Adam is a psychologist who has been involved in combating family violence for more than 16 years. He is a well-known expert in the field of child abuse, the prevention of child abuse and other family violence, and the operation of child protection and family support systems. As a senior researcher at the Australian Institute of Family Studies from 1995 to 2004, Adam led the development of Australia’s National Child Protection Clearinghouse. Under his leadership, the Clearinghouse became a centre for excellence with a national and international reputation in the field of child abuse prevention and child protection.

Since 2004, Adam has undertaken a range of executive appointments with the Northern Territory

Government. As of September 2006, he has shared his work time equally between roles as Deputy Director (Reform) of the Family and Children’s Services in the Department of Health and Community Services, and Director of Policy and Research for the Inquiry.

Stewart O’Connell – Senior Policy Officer

Stewart is a Territory bred and educated lawyer who has worked extensively with and for Aboriginal people. He has substantial experience working in remote communities. Stewart is passionate about assisting Aboriginal people to formulate and implement their own solutions to developing a better quality of life and to taking more control of their destiny.

Barbara Kelly – Senior Research Officer

Barbara holds a Bachelor of Social Work (UNSW) and a Masters of Social Work (Monash). Barbara has extensive experience working in child protection in the areas of operations, management and policy. She has also been a lecturer in the Social Work degree course at CDU and, over the past 25 years, has lived and worked in a range of regional and remote NT communities.

Noelle Chandler – Administrative Assistant

Noelle has more than 25 years experience in executive information coordination and administrative areas within Northern Territory Government agencies.

Each of these people contributed greatly to the functioning of the Inquiry, enabling us to concentrate on consultations, meetings and reading submissions.

The community visits, and various meetings, were mainly conducted by Inquiry Members Pat Anderson and Rex Wild, in company with Barbara Kelly and Stewart O’Connell. Stewart visited many communities in advance and was able to establish contacts and arrange meetings. Meetings with women’s groups in various localities were generally conducted by Pat Anderson and Barbara Kelly and the men’s meetings by Rex Wild and Stewart O’Connell. From time to time, Julie Nicholson, Noelle Chandler and Dr Adam Tomison stood in. A great deal of sensitivity and professionalism was demonstrated by each of these officers.

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The Inquiry covered 35,000 kilometres by air and motor vehicle, with 45 community visits and more than 260 meetings conducted. All team members played a vital role in this activity, never shirking the issue. That we got to all planned locations without getting lost and with somewhere to stay, was a credit to Noelle Chandler, who carried out her secretarial and administrative role to perfection. She also managed to transform convoluted written and recorded instructions into meaningful transcript.

We must pay special tribute to Julie Nicholson who, in every way, was the perfect Executive Officer. Knowing her way in the public service, as she does, smoothed the path for us considerably. Julie facilitated a move from temporary premises to an independent, as it were, location. She accommodated our every reasonable whim and made sure we were supported at all times in what could have been an even more difficult assignment. She worked extraordinarily long hours. We were indeed fortunate to have her with us.

We should add that the preparation of the report has been a big undertaking in the time available, with the vast amount of material to be considered and the comparatively small team involved. We have been greatly aided by the work of each team member in analysing the material and drafting much of the report for our consideration. We cannot usefully single out individuals except to say they each made a great contribution to the final product, and they each worked long hours, particularly in the final stages of the Inquiry, to do so. We have very much appreciated their initiative and enthusiasm. Having said that, we take full responsibility for the contents of the report and its recommendations, which express our views on the issues.

We also thank and acknowledge the contribution made to our task by the Expert Reference Group. This consisted of the following personnel, each an expert in his or her own field and who each gave generously of their knowledge and provided encouragement and support:

Professor Paul Torzillo AM

Senior Respiratory Physician, Royal Prince Alfred Hospital. Dr. Torzillo has a 25 year interest and involvement in Aboriginal health and a fourteen year involvement with Nganampa Health Council.

Professor Dorothy Scott

Director, Australian Centre for Child Protection, University of South Australia.

Ms Barbara Cummings

Long term Indigenous social justice advocate. Current member of Danila Dilba Board. Founding Member of FORWAARD, Danila Dilba, Minbani, NAIDOC and Karu. Long-term Board member of Karu. Instigator of the Stolen Generations campaign.

Mr John Ah Kit

Adviser to the Jawoyn Association. Former Minister for Community Development and Minister Assisting the Chief Minister on Indigenous Affairs. Previously Executive Director, Jawoyn Association. Director, Northern Land Council and Executive Director, Katherine Kalano Association.

Ms Stephanie Bell

Director, Central Australian Aboriginal Congress. Chairperson of AMSANT. Chair of the NT Aboriginal Health Forum and of the NT Health Advisory Council.

Mr Charlie King

Chairperson of the NT Government's Family and Community Services Advisory Committee. Indigenous child protection advocate.

We had significant dealings with Northern Territory Government agencies and non-government agencies. They were all genuinely helpful and made substantial contributions to our investigations. We would like to record our appreciation to the many organisations and individuals that either made submissions or provided other valuable insights into the matters the subject of our enquiries.

Finally, we would like to thank the Aboriginal people of the Northern Territory who received us into their communities and shared with us the benefits of their wisdom, experience and knowledge and, in some cases, their sorrow.



Definitions and Acronyms

Definitions of some common terms

Child protection

Intervention to protect children from harm and exploitation, usually within the family, and services that assist the people involved in the care of at-risk children to reduce these risks.

Child wellbeing

Implies resilience, personal development, social confidence and secure cultural identity.

Early intervention

Can be defined as the attempt to influence children, parents and families who are vulnerable to developing child maltreatment or other social ills, in order to work to prevent the occurrence of the subsequent problems. However, while it may be beneficial across the lifespan from birth to adulthood, infancy (the “early years”) has become a main focus for intervention. Research has shown that investment at this time provides an ideal opportunity to enhance parental competencies and to reduce risks that may have implications for the lifelong developmental processes of both children and parents.

Family support

Services that assist families and communities to care for children and improve the functioning of the family unit. These services reduce the need for later child protection intervention and are based on the philosophy of building on strengths.

Family and Children’s Services Program (FACS)

The NT Government program presently responsible for family support, child protection and some child well being services. It is based within the Department of Health and Community Services.

Family and Community Services

Present ministerial portfolio within the NT Government. The portfolio includes Family and Children’s Services, Mental Health, Aged and Disability, and Alcohol and Other Drugs.

Top End

A term used to describe the northern part of the Territory.

Central Australia

A term used to describe the southern half of the Territory.

Acronyms used in this report

ABC	Australian Broadcasting Corporation
ABS	Australian Bureau of Statistics
ACC	Australian Crime Commission
ACE	Adult Community Education
ACSAT	Aboriginal Child Sexual Abuse Taskforce
ALJS	Aboriginal Law and Justice Strategy
AMSANT	Aboriginal Medical Services Alliance Northern Territory
AMS	Aboriginal Medical Service
APCA	Aboriginal Protective Custody Apprehensions
ARDS	Aboriginal Resource and Development Service
ASGC	Australian Standard Geographical Classification
CAT	Child Abuse Taskforce
CDC	Centre for Disease Control
CDEP	Community Development Employment Program
CDs	Census Collection Districts
CDU	Charles Darwin University
CERP	Council of Elders and Respected Persons
COAG	Council of Australian Governments
CHIP	Commonwealth Community Housing and Infrastructure Program
CSA	Child Sexual Abuse
CVAC	Crimes Victims Advisory Committee
DCM	Department of the Chief Minister
D&CS	Department of Community Services
DEET	Department of Employment, Education and Training
DHS	Department of Human Services
DHCS	Department of Health and Community Services

DIMIA	Department of Immigration, Multicultural and Indigenous Affairs (Australian Government)	NTPS	Northern Territory Public Sector
DMO	District Medical Officer	ODPP	Office of the Director of Public Prosecutions
DOJ	Department of Justice	OIPC	Office of Indigenous Policy Coordination (Australian Government)
DPP	Director of Public Prosecutions	PFES	Police, Fire and Emergency Services Department
DVIRC	Domestic Violence and Incest Resource Centre	PHC	Primary Health Care
FACS	Family and Children's Services	PROMIS	Police Real-time Online Management System
FaCSIA	Family, Community Services and Indigenous Affairs Department (Australian Government)	RFDS	Royal Flying Doctor Service
FORWAARD	Foundation of Rehabilitation with Aboriginal Alcohol related Difficulties	RRP	Raypirri Rom Project
GP	General Practitioner	SARC	Sexual Assault Referral Centre
HREOC	Human Rights and Equal Opportunity Commission	SART	Sexual Assault Response Team
IAD	Institute for Aboriginal Development	SCAG	Standing Committee of Attorney Generals
ICC	Indigenous Coordination Centre	SCAN	Suspected Child Abuse and Neglect Team
ICHO	Indigenous Community Housing Organisations	SDR	Standard Death Rate
IGR	Indigenous Generational Reform	SEIFA	Socio-Economic Indexes for Areas
IJIS	Integrated Justice Information System	SOTP	Sex Offender Treatment Program
IMR	Infant Mortality Rate	SRA	Shared Responsibility Agreement
JIRT	Joint Investigation Response Teams	STI	Sexually Transmitted Infection
KHL	Kids Helpline	TAFE	Technical & Further Education
LRCWA	Law Reform Commission of Western Australia	TRS	Territory Response Services
MCAPP	Maningrida Community Action Plan Project	UNCROC	United Nations Convention on the Rights of the Child
MCEETYA	Ministerial Council Education, Employment, Training and Youth Affairs	WAS	Witness Assistance Service
MCS	Major Crime Section		
NAIDOC	National Aboriginal and Torres Strait Islander day of Celebration		
NAPCAN	National Association for the Prevention of Child Abuse and Neglect		
NGO	Non-Government Organisation		
NITF	National Indigenous Violence and Child Abuse Task Force		
NSPCC	National Society for the Prevention of Cruelty to Children		
NSW	New South Wales		
NT	Northern Territory		
NTCS	NT Correctional Services		
NTDE	Northern Territory Department of Education (now DEET)		



Overview

This section takes the place of what is described today as an Executive Summary. It explains and introduces what there is to be seen, much of which is well known.

This has been a grim undertaking over the past eight months or so. We are determined that some action will follow our report; that governments will respond to the almost daily reporting on the disastrous state of the nation by worthy people from both Aboriginal and mainstream society.

The Inquiry has always accepted the assertion that sexual assault of children is not acceptable in Aboriginal culture, any more than it is in European or mainstream society. But there is a major difference between the two branches of society. A breakdown of Aboriginal culture has been noted by many commentators. A number of underlying causes are said to explain the present state of both town and remote communities. Excessive consumption of alcohol is variously described as the cause or result of poverty, unemployment, lack of education, boredom and overcrowded and inadequate housing. The use of other drugs and petrol sniffing can be added to these. Together, they lead to excessive violence. In the worst case scenario it leads to sexual abuse of children.

HG was born in a remote Barkly community in 1960. In 1972, he was twice anally raped by an older Aboriginal man. He didn't report it because of shame and embarrassment. He never told anyone about it until 2006 when he was seeking release from prison where he had been confined for many years as a dangerous sex offender. In 1980 and 1990, he had attempted to have sex with young girls. In 1993, he anally raped a 10-year-old girl and, in 1997, an eight-year-old boy (ZH). In 2004, ZH anally raped a five-year-old boy in the same community. That little boy complained: "ZH fucked me". Who will ensure that in years to come that little boy will not himself become an offender?

All Australians should know of the problems. Now is the time to do something about it.

Our report

The report that follows is written in conventional style. We set out our terms of reference then examine the process undertaken in dealing with the problems thrown up by those terms. We look at what the vast literature on

the topic says and what the statistics tell us, what the experience overseas has been and how this all relates to the Northern Territory. We justify and then record our recommendations. It is all there to be seen and studied.

Some of our readers might say, *we know all that; what's the use of yet another report?*¹ We would say: *Yes, but what has been done?* We know the problems, we know how to fix many of them and the likely monetary cost. (And we pause here to interpose the question: *What is the likely future cost of NOT now attempting to deal with the issues?*). We have an enormous amount of knowledge in this country (at various times we have been described as *the clever country* and *the lucky country* -by our own people, of course) and in the Territory. The money is available. The Australian Government budget surplus last year was billions and billions of dollars. What has been lacking is the political will. We have to stop marching on the spot and work with some real commitment to success to save Australia from an impending disaster. Strong words? Certainly, but they are justified. Just a lot of rhetoric? We don't think so.

Our appointment and terms of reference arose out of allegations of sexual abuse of Aboriginal children. Everything we have learned since convinces us that these are just symptoms of a breakdown of Aboriginal culture and society. There is, in our view, little point in an exercise of band-aiding individual and specific problems as each one achieves an appropriate degree of media and political hype. It has not worked in the past and will not work in the future. We are all left wringing our hands. Look at all that money! Where did it go? The answer is, of course, down the plughole.

1 *Another damned, thick square book! Always scribble, scribble, scribble! Eh, Mr Gibbon* – attributed to Prince William Henry, Duke of Gloucester, 1781 upon being presented with a volume of Edward Gibbon's monumental work, *The Decline and Fall of the Roman Empire*

What is required is a determined, coordinated effort to break the cycle and provide the necessary strength, power and appropriate support and services to local communities, so they can lead themselves out of the malaise: in a word, **empowerment!**

Are there simple fixes? Of course not! Our conservative estimate is that it will take at least 15 years (equivalent to an Aboriginal generation) to make some inroads into the crisis and then hopefully move on from there. Perhaps this is too optimistic (COAG has an as-yet un-commenced 20-year-long plan – to start, if agreed to, in 2009 . It has been talking about it, or something like it, since at least 2000!). The NT Government is also working on its own 20-Year Action Plan. When will it start?

However, we do make some recommendations that are capable of comparatively easy and prompt implementation. Again, they are obvious. We have been struck time and time again over these last six months, by how often the same obvious problems are exposed and the plain responses articulated. That is that everybody knows the problems and the solutions.

It's all been said before!

The Inquiry has been unable, within the time available, to read every report and every piece of paper highlighting the problem of alcohol consumption and other “worries” in Aboriginal communities. Late in our enquiries, our attention was drawn to the findings of the Northern Territory Coroner, Mr Greg Cavanagh SM in relation to what we will call the “The Tiwi Four”². This was an Inquest into the deaths of four young Aboriginal people at Nguui in late 1998. Three deaths were found to have resulted from suicides. In the course of the proceedings, Counsel assisting the Coroner, Colin McDonald QC, presented written submissions, which included the following:

- *At the outset it must be said that the public health and safety issues thrown up by this inquest are truly tragic in their proportion and have an urgency which the communities on the Tiwi Islands, the Tiwi Health Inquiry, Government and Government Agencies cannot ignore.*
- *That having been said, the issues are complex and there are no magic solutions and certainly no “quick fix” options which can deal immediately with the gravity of the underlying problems.*

- *The evidence in this inquest pointed to very serious underlying problems on the Tiwi Islands, which impact upon public health. The underlying problems need to be considered and proactive measures need to be taken as a matter of urgency. The underlying problems identified in this inquest are:*

- (a) alcohol abuse across the community*
- (b) marijuana abuse*
- (c) violence, especially domestic violence*
- (d) family breakdown*
- (e) a weakening of the traditional and cultural values in modern Australian society*
- (f) lack of employment, opportunity and other advantages enjoyed by many in non-Aboriginal Australia*
- (g) a clash of culture, occasioned by various means, which can lead to a sense of hopelessness and low self-esteem, especially among young men.*

Mr Cavanagh adopted those submissions in his findings and went on:

A very wise judge said in relation to Aboriginal youth in the Northern Territory:

“...in dealing with Aboriginal children one must not overlook the tremendous social problems they face. They are growing up in an environment of confusion. They see many of their people beset with the problems of alcohol; they sense conflict and dilemma when they find the strict but community-based cultural traditions of their people, their customs and philosophies set in competition with the more tempting short-term inducements of our society. In short the young Aboriginal is a child who requires tremendous care and attention, much thought, much consideration”³

These words are just as apt in 1999 in describing youth on the Tiwi Islands as they were in 1977 in describing the youth in and around Alice Springs.

And, dare we say it, in 2007 (30 years later) everywhere in the Territory.

² Findings in Inquest into four Tiwi Island persons, 24 November 1999 (publication of names suppressed)

³ *Jabaltjaril v Hammersley* (1977) 15 ALR 94 (NT) Muirhead J, at 98

The Vulnerability of Children

The vulnerability of children is a matter that should need little discussion. Children are well known to be more vulnerable during their early years. Societies have always recognised this and taken appropriate steps to protect children from harm and to provide safe havens for their upbringing and development.

It seems hardly necessary that there be any formal statement acknowledging the obvious. However, there are such statements. The need for children to be protected against all forms of exploitation because of their vulnerability and immaturity first appeared in the 1924 League of Nations Declaration of the Rights of the Child. The United Nations Universal Declaration of Human Rights, adopted in 1948, proclaims that childhood is entitled to special care and assistance. The United Nations Declaration of the Rights of the Child (1959) further promotes the need to extend particular care to the child.

The adoption of the United Nations Convention on the Rights of the Child in 1989 provides a clear statement of the rights of, and special treatment for, the child. The preamble of the Convention on the Rights of the Child reiterates the declaration by stating that the child, by reason of his or her physical and mental immaturity, needs special safeguards and care, including appropriate legal protection. The convention also states that in all actions concerning children, the best interests of the child shall be a primary consideration.

Australian society clearly subscribes to these principles, including of course, the Indigenous members of the community. It therefore seems somewhat remarkable that we would allow our children to be victimised and abused to the extent that this Inquiry has been informed.

We have undertaken this Inquiry, accepting that:

- every rational member of our society views the sexual abuse of children with horror
- this applies wherever and whenever it occurs
- every reasonable (and perhaps some unreasonable) means should be found to combat sexual abuse
- the tasks as laid out before us will be supported in principle by the whole Northern Territory community.

The sexual abuse of Aboriginal children

Child sexual abuse is not a new problem. The sexual exploitation of children – females and males – has occurred throughout history (Tower 1989), yet it was not until the 16th century that the first legislation was enacted (in England), which began the process of legally protecting children from sexual abuse. Boys were protected from forced sodomy and girls under the age of ten years from forcible rape.

In the Northern Territory, governments, health and welfare professionals and others have been aware of sexual abuse of children for some time. The available statistics for sexually transmitted infections (STIs) in children reflect the existence of sexual abuse, notwithstanding what is thought to be a low level of reported incidence. These figures also suggest that the STI problem and child sexual abuse is greater in Aboriginal than non-Aboriginal communities.

The violence and sexual abuse occurring in Northern Territory Aboriginal communities is, as we have said, a reflection of historical, present and continuing social dysfunction. This contention is supported by almost all those with whom the Inquiry has had contact. The origins of such dysfunction are not so clear. Did they commence in 1788 with colonisation (somewhat later in the Territory), and as one of the Inquiry's submissions has suggested, become exacerbated in 1978 with the establishment of the "(failed) political experiment of unicameral self government in the NT"?⁴

The Inquiry is, of course, concerned with the Northern Territory experience. It is not able to correct, or recommend corrections to, 200 years or 100 years of the disempowerment and institutional discrimination to which Aboriginal people have been subjected. Nor is the Inquiry able to right the political and social wrongs that have led to the dysfunction which now exists to a considerable degree in the NT. The best it can hope to achieve is to present meaningful proposals that the government might adopt so that Aboriginal communities themselves, with support, can effectively prevent sexual abuse of their children.

4 Dan Baschiera, Social Worker, in a private submission to the Inquiry.

Taking Responsibility

We resolved early that we would not *sit under every gum tree in the Territory*. Notwithstanding, we have at least figuratively (and sometimes actually) sat under more than a few. We have visited 45 communities, including the major townships, in the Territory. We have seen those communities and talked with their permanent members and those providing services. We believe we have engaged with an excellent cross-section and proportion of the Aboriginal population. We have a strong feeling for their views, problems and aspirations.

Some common words or concepts emerged in the course of our consultations. They were:

- Dialogue
- Empowerment
- Ownership
- Awareness
- Healing
- Reconciliation
- Strong family
- Culture
- Law.

A number of common themes have emerged in the discussions, in the 65 submissions we have received from departments, organisations, communities and individuals, and in the 260 or so meetings we have had with individuals, public servants and non-government organisations. The themes of the meetings are reflected throughout Part I of the report generally.

Those themes can be reduced to a number of key areas to which our recommendations are addressed. They are:

- Alcoholism
- Education
- Poverty
- Housing
- Health
- Substance abuse
- Gambling
- Pornography
- Unemployment
- Responses by government agencies
- Law and justice
- Rehabilitation of offenders.

Prevention

Vast resources are allocated to the crisis intervention response. It is difficult work for all of the service providers involved. We have thought it desirable to attack the problem from the other end – before it occurs. The object is to prevent the abuse from developing. The pragmatic view we take is that it will require at least a generation for any real benefits to be achieved. Aboriginal community members, despite their expressed abhorrence of sexual abuse of children and the traditional view of its non-acceptability, nevertheless find it difficult to accept responsibility for the bad behaviour of other members. Whether this is a natural reluctance to be a “dobber”, or suspicion of the authorities, is irrelevant (although we do discuss these reasons more fully later). There has to be a turnaround of overt attitude.

Education

All information gathered leads us to conclude that **education** is the key to solving (or at least, ameliorating) the incidence of child sexual assault in Aboriginal communities. By education, we not only mean that which occurs in schools, but that which occurs in its wider context, i.e. with communication and media. Education must start with the unborn child because we have found that many children are born to teenage mothers and young fathers. Education must clearly explain:

- the importance of education as a means in itself
- that sexual contact between adults and children is NOT normal
- what sexual abuse is
- that attending school is **compulsory**
- that in dealing with children, parents’ responsibilities are paramount i.e. that the parents must TAKE RESPONSIBILITY for their children:
 - attending school
 - being fed
 - wearing clean clothes
 - not wandering the streets unsupervised
 - learning traditional law and culture
 - obeying both Aboriginal and European law.

.....

These may all appear to be basic propositions, and they are. But the parents of Aboriginal children in many communities are failing to accept and exercise their responsibilities. The word, **abuse**, in communities, in relation to children, may be given its wider meaning of **neglect** in social work terms. The literature convinces us that neglect leads to physical and emotional abuse and then, as we have said, in worst case scenarios, to sexual abuse.

Of course, in conjunction with the need to provide education and persuade parents to take responsibility, it is necessary to provide communities with housing and other infrastructure, coordination of service support, employment and the means to overcome the disastrous scourge of alcoholism. Other social problems, such as substance abuse and gambling also need to be addressed. The disempowerment of Aboriginal men and women requires urgent attention.

The Scourge of Alcoholism

What can we say about alcoholism that has not already been said? It is not a diminishing problem. On the contrary, per capita annual alcohol consumption (converted into pure alcohol) has apparently increased in the six years from 2000-2001 to 2005-2006 from 14.3 litres to 17.3 litres. Territory-wide wholesale sales in the same period have gone from 2.3 to 3.0 million litres. Annual Northern Territory hospital separations for selected acute and chronic alcohol-related conditions have gone from 3490 to 6301. The number of people taken into protective custody annually over the same period has risen from 15,739 to 24,927. In the last year, that represents about 12% of the population and about 68 persons each day (accepting in each case that a large number of them would be repeat offenders).

Figures suggest that the percentage of Australians engaging in risky or high-risk drinking for long-term harm in 2004 was 9.9%. Of the Territory population, however, the figure was 17.1%. Given that a large percentage of the population (26%) is under the age of 15, this is very high at nearly twice the national average - and within a younger population! In 2005-2006, 71% of the total prison receptions were alcohol related (increased from 63% in 2000-2001). These figures are not Aboriginal specific but it would not be unfair or discriminatory to suggest that the vast majority of these numbers emanate from Aboriginal members of the population.

It is a sad indictment on our society that we have been unable to manage and control the intake of alcohol. It is absolutely clear that unless we as Territorians, with government leadership, take on and overcome the abuse of alcohol and the harm it causes to Aboriginal people, then the Aboriginal people and their cultures are likely to disappear within a generation or so.

The Territory is not alone

The NSW Attorney-General established the Aboriginal Child Sexual Assault Taskforce in July 2004 to examine the incidence of child sexual assault in Aboriginal communities, and to review the effectiveness of government service responses to this issue.⁵ The NSW Government's response to the taskforce report provides this short summary of some of the critical findings of the taskforce:

The report found that child sexual assault is endemic and intergenerational in some Aboriginal communities in NSW, is poorly understood, and is often affected by that particular community's dynamics, such as the community standing of the perpetrators, geographic location, and levels of substance abuse. The taskforce reported that Aboriginal communities perceive government and non-government responses to Aboriginal child sexual assault to be often ineffective, culturally inappropriate or inconsistent in their responsiveness, and were mistrustful of some government services due to historical and present day factors. (NSW Government 2007).

It could just as accurately have been written about the Northern Territory.

Scope of the Inquiry

Finally, it should be emphasised that the Inquiry has not spent its time investigating the extent and nature of all cases of alleged sexual abuse in the Territory. As has been the case with previous inquiries in Australian jurisdictions (e.g. NSW Aboriginal Child Sexual Assault Taskforce 2006; Gordon Inquiry 2002), the Inquiry accepts that sexual abuse of Aboriginal children is *common, widespread and grossly under-reported*.

⁵ There have been many reports in other States dealing with similar problems and a sample of these are referred to elsewhere in this Report.

.....

In its submission to the Inquiry, the Crimes Victims Advisory Committee (chaired by Mr Richard Wallace SM) noted:

No member of CVAC doubts that sexual abuse of Aboriginal children is common, widespread and grossly under-reported. None of us claims a precise grasp of the extent of abuse, but the working experiences of the committee members – whose backgrounds include police work, victims’ support, health services and legal practice in criminal law and crimes compensation – uniformly persuade us that abuse is rife.

This view mirrors that of most individuals and organisations with whom we have had contact and from whom we have had submissions. In the time available, the Inquiry has preferred to concentrate on what is perceived to be the real task - prevention of sexual abuse, rather than a historical cataloguing and statistical analysis of precise incidents.

Matters of Finance

The Inquiry is conscious of the limited financial strength of the Northern Territory. A small population with a vast area creates its own problems. With many small and remote communities, the financial ramifications for the Territory are exacerbated. Everyone prioritises. In individual households we must live within our means; so must governments and communities.

Boards of inquiries, commissions, reviews and the like make recommendations that almost invariably require expenditure of funds. They are often viewed as ambit claims. In undertaking this Inquiry, we have carefully considered the issue of finances. We have not costed recommendations individually but are aware that some would be expensive to implement. For instance, we are told that the provision of a home liaison officer for say 50 remote Territory schools would cost about \$7.5 million per year, and this is without the added cost of housing (if applicable) and, perhaps, a car (see recommendation 52(b)). Can we say that this is an essential component of our proposed general strategy? In the context of the competing priorities, probably not.

However, in terms of the national economy (and this is a national problem), the following recent comments of the Prime Minister are worthy of note –

- *Our \$1 trillion economy is, in real terms, more than 40% larger than what it was 10 years ago. Economic reform has seen the average standard of living in Australia rise to surpass all of the G-7 countries, with the exception of the United States.*
- *Our economy, my friends, is not a bunch of abstract statistics. It governs every Australian’s ability to handle the pressures of daily life and to give their children a better life. We have come a long way in 11 years, but we still have a distance to travel. Our goal is to build even greater prosperity and opportunity. We want Australia to be the best country in the world to live, to work, to start a business and most importantly of all, to raise a family.*
- *Building Australia’s prosperity does not work like that – the short term fix or the quick hit – it requires a long-term focus, a commitment to continued economic reform and a philosophy that supports and nurtures individual enterprise.*
- *Lifting education standards and building Australia’s skills base is another critical part of the COAG Reform Agenda. Through our Skills for the Future package last year, the Commonwealth Government initiated the largest single investment in this agenda - \$837 million over five years to raise the skills of Australia’s adult workforce. In April (2007), I hope the Commonwealth and the states can also agree on practical ways of supporting higher literacy and numeracy standards in our schools (Howard 2007).*

What we have attempted to do in this final part of this Overview is nominate a set of priorities through which matters would be managed. However, it must be said again that the problems that we – and anyone else who has investigated or even visited Aboriginal communities – have encountered are so fundamental that nothing short of a massive reform effort, coupled with a long-term injection of funds, can hope to turn them around.

In Australian Government terms, the money is clearly available. What is required is committed long-term funding. So the question we pose for the Northern Territory Government and Australian Government (the latter holding the bigger chequebook) is what will it take to make you, on behalf of the people of the Territory and Australia, realise the national shame and racial disorder existing in this lucky country and what will you do about it?

Conclusion

We are utterly convinced that education (that properly addresses the needs of the local community) provides the path to success. We have been dismayed at the miserable school attendance rates for Aboriginal children and the apparent complacency here (and elsewhere in Australia) with that situation.

We are further persuaded that unless alcoholism is conquered, there is little point in attending to any of the other worthwhile proposals in this report. It is a priority!

The recommendations proposed in this report do not spring from “rocket science”. They are basic concepts and proposals. Nothing is novel or unexpected. Commentators have been calling out for them with increasing vigour in recent weeks and months.

This leads to our first recommendations. The government must lead. There is an opportunity to start something which can have a hugely positive impact on the whole of Australia ⁶

A commitment to success

In traditional Aboriginal society (and this probably is consistent with all cultural groups in the world), old people and children were the most important members of the community - the old people for what they learned through their life and the children because they would carry on the law, the religion, the beliefs and the culture. The role and responsibility of all other members of the community was to look after the older people and the children.⁷

6 *Until one is committed, there is hesitancy, the chance to draw back, always ineffectiveness. Concerning all acts of initiative (and creation) there is one elementary truth, the ignorance of which kills countless ideas and splendid plans: That the moment one definitely commits oneself, then Providence moves too. All sorts of things occur to help one that would never otherwise have occurred. A whole stream of events issues from the decision, raising in one's favour all manner of unforeseen incidents and meetings and material assistance, which no man could have dreamed would have come his way. I have learned a deep respect for one of Goethe's couplets : "Whatever you can do, or dream you can, begin it. Boldness has genius, power and magic in it"* Quotation from **The Scottish Himalayan Expedition**, by W.H. Murray, Pub. J.M. Dent & Sons, Ltd., 1951

7 Tex Skuthorpe, Noonghaburra man from Goooodoo NSW, from the “Children are Sacred” community education poster, NAPCAN

Note: Cessation of the Inquiry

At the conclusion of this process, the Board of Inquiry will cease to exist. All records, including confidential papers and submissions, will be archived with special access caveats to protect the confidential nature of many of the documents. Further correspondence regarding the Inquiry may be directed to:

Department of the Chief Minister
Office of Indigenous Policy
GPO Box 4396
DARWIN NT 0801



Organisation of this Report

The Inquiry decided to frame its report as two complementary sections, so as to increase the report's accessibility.

Part I deals (in simple terms) with what the Inquiry has found through consultations and formal submissions. It incorporates the Inquiry's recommendations for action to address the issue of child sexual abuse in Aboriginal communities in the NT and, more broadly, the issue of child sexual abuse for all Territory children and young people.

Part II provides a detailed assessment of child sexual abuse and related issues – derived from published sources and literature reviews.

The Inquiry's recommendations have been informed by its community consultations, submissions received and forums held, and an assessment of the information which is presented as Part II of the report.⁸

⁸ The Harvard referencing system has been adopted for this Report (literature is cited in the body of the text with full citations provided in the References section)..Sentencing remarks, case notes and other remarks are provided as footnotes.



Recommendations

The aim of the following recommendations should be plain from the report. They are offered to the Chief Minister in the knowledge that the safety of children is everybody's business, not just that of government. Parents have responsibilities too.

In the first recommendation, we have specifically referred to the critical importance of governments committing to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities, whether these be in remote, regional or urban settings.

We have been conscious throughout our enquiries of the need for that consultation and for Aboriginal people to be involved. Mr Fred Chaney, in retiring from the National Native Title Tribunal, was asked why successive governments have failed so comprehensively to turn the story of Aboriginal deprivation around. He was being interviewed on the ABC's 7.30 Report on 19 April 2007 and replied:

- *And one of the things I think we should have learned by now is that you can't solve these things by centralised bureaucratic direction. You can only educate children in a school at the place where they live. You can only give people jobs or get people into employment person by person. And I think my own view now is that the lesson we've learned is that you need locally based action, local resourcing, local control to really make changes.*
- *But I think governments persist in thinking you can direct from Canberra, you can direct from Perth or Sydney or Melbourne, that you can have programs that run out into communities that aren't owned by those communities, that aren't locally controlled and managed, and I think surely that is a thing we should know doesn't work.*
- *So I am very much in favour of a model which I suppose builds local control in communities as the best of those Native Title agreements do, as has been done in the Argyle Diamond Mine Agreement, as is being done in Kununurra. Not central bureaucracies trying to run things in Aboriginal communities. That doesn't work.*
- *They're locked into systems which require central accounting, which require centralised rules and regulations. They're not locally tailored. The great*

thing about working with a mining company in an Aboriginal community is that the mining company has the flexibility to manage towards outcomes locally with that community.

- *The great thing about the education projects in which I'm involved is that we can manage locally for the outcomes that we want to achieve locally. Once you try and do it by remote control, through visiting ministers and visiting bureaucrats fly in, fly out – forget it.*

The thrust of our recommendations, which are designed to advise the Northern Territory Government on how it can help support communities to effectively prevent and tackle child sexual abuse, is for there to be consultation with, and ownership by the communities, of those solutions. The underlying dysfunctionality where child sexual abuse flourishes needs to be attacked, and the strength returned to Aboriginal people.

With that introduction, we set out in their entirety the recommendations which appear throughout the remainder of this part of the report.

In those chapters containing recommendations, the recommendations are generally set out at the end of the chapter. In some of the longer chapters, individual recommendations appear immediately following the relevant part of the discussion.

Leadership

1. That Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory Governments, and both governments immediately establish a collaborative partnership with a Memorandum of Understanding to specifically address the protection of Aboriginal children from sexual abuse. It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.
2. That while everybody has a responsibility for the protection of all children, the Northern Territory Government must provide strong leadership on the issue of child sexual abuse, and that this be expressed publicly as a determined commitment to place children's interests at the forefront in all policy and decision-making, particularly where a matter impacts on the physical and emotional well-being of children. Further, because of the special disadvantage to which the Aboriginal people of the Northern Territory are subject, particular regard needs to be given to the situation of Aboriginal children.
3. That the Northern Territory and Australian Governments develop long term funding programs that do not depend upon election cycles nor are limited by short-term outcomes or overly bureaucratic reporting conditions and strictures.

Government responses

4. That the government develop a Child Impact Analysis for all major policy and practice proposals across Government.
5. That the government develop a whole-of-government approach in respect of child sexual abuse. Protocols should be developed as a matter of urgency to enhance information sharing between agencies and the development of a coordinated approach in which all agencies acknowledge a responsibility for child protection. The approach might build on the work of the Strategic Management Group and Child Abuse Taskforce but needs to extend well beyond those initiatives.
6. That all Northern Territory Government agencies adopt policies, procedures or guidelines that promote

child safety (e.g. reporting child abuse, appropriate recruitment and selection practices of staff and volunteers who work with children, including screening processes wherever appropriate) and further that agencies ensure that compliance with such policies, procedures and guidelines relating to child safety are a requirement of all funding agreements they enter into with non-government organisations.

7. That a senior executive officer be designated in each Northern Territory Government agency which has any contact with or responsibility for children to coordinate that Department's response to ongoing child protection issues in conjunction with Family and Children's Services (FACS) and Police, and to facilitate interagency collaboration and communication on child protection and related issues. A suggested designation for such officers could be "Director of Child Safety", and this group of officers to report to the Deputy Chief Executive in the Department of the Chief Minister.
8. That employment screening be mandatory for all employed persons and volunteers working with children as described in the draft Care and Protection of Children Bill 2007.
9. That a position of Commissioner for Children and Young People be established, with duties and responsibilities as described in the draft Care and Protection of Children Bill 2007. The Inquiry further recommends that:
 - a. The Commissioner should have a broad role not limited to individual complaints handling with the power to conduct inquiries into any issues affecting children and young people in the Northern Territory, but with an emphasis on child protection and child abuse prevention
 - b. The Commissioner to have specific responsibility for the wellbeing of Aboriginal children.
10. That a child death review process as described in the draft Care and Protection of Children Bill 2007 be established. In addition, the Inquiry recommends that the Child Death Review and Prevention Committee's terms of reference be extended to also enable case specific reviews of serious child abuse cases (where the child has survived) for the purposes of improving policy and practice and to make recommendations to government as necessary. That the Committee be adequately resourced to perform these functions.

Family and Children's Services

11. That FACS maintain a role in responding to cases of extra familial sexual abuse, develops and evaluates therapeutic support plans for the child, family (and community, where necessary).
12. That FACS be a division in its own right within the Department of Health and Community Services with its own Assistant Secretary.
13. That there be further government investment (and continued real growth beyond the current child protection reform program) to enable significant planned reform of the statutory child protection system.
14. That a separate branch be established within FACS with a specific focus on the provision of parenting and family support services designed to prevent the occurrence of child abuse and neglect. This branch should also manage the professional and community education programs recommended by the Inquiry.
15. That the Department of Health and Community Services (DHCS) urgently implement the FACS Child Protection Reform Agenda and the 2006 FACS Child Protection Workforce Strategy. The Inquiry recognises these are key strategies to support the delivery of consistent, high quality and timely investigation and response services by FACS and a coordinated therapeutic interagency response to children and their families.
16. That FACS and Police undertake greater liaison with family or clan groups when conducting investigations, including the conduct of post-case debriefings, and utilising trained community brokers where appropriate.
17. That DHCS lead the development of enhanced information sharing between FACS, health (hospitals and health centres, including Aboriginal medical services) and community services (mental health, alcohol and other drugs, aged care and disability), Police and Education in support of more effective coordinated case management practices.
18. That FACS explore the possibility of providing confidential feedback on the progress and outcome of investigations to key service providers and notifiers, with a view to increasing communication and effective partnerships between FACS, Police and professional notifiers in particular.
19. That the number of child protection workers be increased and there be enhanced training and support for workers, including implementation of the following initiatives:
 - a. use of imaginative incentives to encourage staff recruitment and retention (and in particular the recruitment and retention of Aboriginal staff), given the national competition for skilled staff and the crisis in FACS staffing
 - b. enhanced FACS training programs, combined with more ongoing professional development, support and supervision
 - c. FACS staff must have access to cultural experts who can provide them with cultural advice generally and in relation to specific matters.
20. That there be more strategic, planned investment in local community workforces through:
 - a. more Aboriginal personnel (e.g. Aboriginal Community Workers, Aboriginal Community Resource Workers, Aboriginal Health Workers) to be trained and located in remote communities and towns for family support, community development and to act as local brokers. These positions to be provided with continuing and adequate professional support and mentoring, and to be integrated with health and family support programs delivered on a drive-in/drive-out or fly-in/fly-out basis as applicable
 - b. establishment and support for a network of community volunteers to work in communities to help make children safe - similar to the Strong Families program where community members are trained to assist in the prevention of domestic and family violence. It is noted that such a network of volunteers will require ongoing management, coordination and regular training.
21. That urgent action be taken to expand and upgrade the facilities occupied by Sexual Assault Referral Centres (SARC) in all locations, with an increase in staffing and capacity to respond to sexual assault cases across the Territory.

22. That SARC services across the Northern Territory be based on an integrated response model and that the effort to improve the coordination of hospital-based medical care to child sexual abuse victims continues including the development and adoption of a protocol for the management of victims of child sexual abuse (medical response) to ensure an appropriate standard of care.
23. That victim and community support programs be developed in remote Aboriginal communities as well as urban settings that:
- reduce the risk of a child subsequently acting out sexually
 - prevent re-victimisation and/or the likelihood of the child subsequently offending at a later time
 - provide case coordination for those children who require ongoing support.

Health – crisis intervention

24. That appropriate guidelines and training on the management of sexual health of children and young people be provided to government and non-government primary health care providers and relevant FACS staff on a regular basis.
25. That, in respect of mental health services, consideration be given to putting in place comprehensive child and adolescent mental health services with a focus on the provision of increased services for young people with a mental illness whose behaviour is indicative of significant trauma and distress resulting from their abuse.

Police, FACS, prosecutions and the victim

26. That FACS and Police work to better integrate the Child Abuse Taskforce (CAT) with other local joint Police/FACS responses, and further develop local coordinated, culturally appropriate multi-agency responses (such as the Peace at Home program) which can improve the statutory and therapeutic response for children, families and communities.

27. That the Child Abuse Taskforce be made permanent and provided with necessary additional funding for the existing seconded staff to ensure it is adequately resourced in terms of personnel, vehicles and other tangibles so as to recognise its importance. Consistent with this, CAT to be provided with further funding to include:
- a complement of specialist child interviewers (see also Recommendation 31)
 - a permanent Intelligence Officer
 - a specially-equipped 4WD for use on CAT operations.
28. That the Police actively recruit more Aboriginal police officers, Aboriginal Community Police Officers and Police Auxiliaries and to station more female officers in remote communities with a preference for Aboriginal female police officers.
29. That the Police conduct effective, meaningful and ongoing consultations with individual Aboriginal communities with a view to developing protocols for working with the community and supporting each community's own efforts at maintaining peace, law and order.
30. That, taking note of the Evidence of Children Amendment Bill currently before the NT Parliament, it is recommended the Department of Justice conduct a review of all legislation relating to court procedures for vulnerable witnesses and child victims of alleged sexual abuse following the first 12 months of operation of the new legislation. This review is to be conducted within a period of six months of that time and is to include consideration of the recommendations of the Commissioner of Police and Director of Public Prosecutions to the Inquiry.
31. That all Police receive ongoing training and education on child abuse including indicators, procedures for reporting, and support to persons affected by such abuse. Police and prosecutors involved in the investigation of alleged child sexual abuse to receive training similar to that recommended in the Asche Report (1999) and that no later than from 1 July 2008, child interviews in such cases be carried out only by those members or other authorised persons who have received training in the conduct of such interviews.

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32. That the Office of the Director of Public Prosecutions be provided with sufficient resources to allow a permanent Witness Assistance Service officer to be located in Katherine.
33. That, following the conclusion of a prosecution of an offence involving child sexual abuse, a full de-briefing take place in the relevant community dealing with all issues emerging during the complaint and prosecution process. The aim of this process would be to achieve, as far as possible, healing and reconciliation in the community. The CAT to be responsible for arranging such de-briefing in conjunction with a Witness Assistance Service officer and the local community justice group.
34. That the government invest in the recruitment and training of Aboriginal Interpreters – a proportion of whom must be trained and supported to enable them to work in the areas of child protection and criminal investigations of abuse.

Bail

35. That section 24 of the *Bail Act* be amended to include a new sub-section which provides that where an offence is alleged to be a sexual offence committed against a child, the court when determining bail, take into consideration the protection and welfare of the child having regard to:
- his or her age at all relevant times
 - the age of the alleged offender
 - the familial relationship between the child and the alleged offender
 - the present and proposed living accommodation of the child and the alleged offender
 - the need, as far as possible, to allow the child to remain in their existing residence and/or community
 - the emotional as well as physical wellbeing of the child
 - any other matter which to the court appears relevant

Offender rehabilitation

36. That the government provide more sex offender rehabilitation programs with adequate resourcing and in particular that:
- wherever possible the court should structure sentences for sex offenders to provide the opportunity for community-based rehabilitation
 - Correctional Services must provide ongoing sex offender rehabilitation programs in jail (irrespective of length of sentence) and for persons on remand, including culturally appropriate programs
 - supervision of parolees must be meaningful, and include:
 - attendance at an offender rehabilitation program
 - time back in their community
 - written reports from the parole officer to the sentencing Judge.
37. That the government provide community-based rehabilitation programs for those at risk of sex offending, convicted offenders whose offences are suitable for a community-based order and/or as part of probationary arrangements. These should be culturally appropriate and delivered with the involvement of the community.
38. That the government to provide youth-specific, culturally appropriate rehabilitation programs for juvenile sex offenders in detention, and for those on parole or subject to community-based orders.
39. That the government to commence meaningful dialogue as soon as possible with Aboriginal communities aimed at developing alternative models of sentencing that incorporate Aboriginal notions of justice and rely less on custodial sentences and more on restoring the wellbeing of victims, offenders, families and communities. Further, where these models can demonstrate probable positive outcomes within the relevant community that are suitable to the needs of victims, provide rehabilitation to offenders and promote harmony within the broader community, the government commit to the ongoing support of such programs and to legislative changes necessary to implement such programs. Any model which is developed may only be utilised with the consent of the victim.

Prevention is better than cure

40. That the Northern Territory Government work with the Australian Government in consultation with Aboriginal communities to:
 - a. develop a comprehensive long-term strategy to build a strong and equitable core service platform in Aboriginal communities, to address the underlying risk factors for child sexual abuse and to develop functional communities in which children are safe
 - b. through this strategy, address the delivery of core educational and Primary Health Care (PHC) services to Aboriginal people including home visitation and early years services (see chapter on Health).

Health – a role in prevention

41. That a maternal and child health home visitation service be established in urban and remote communities as soon as possible.
42. That there be an increased focus on pre-natal and maternity support leading into early childhood health development for the 0-5 year-old age group, to be supported collaboratively by health centres and health practitioners, as well as other agencies whose focus is on children and families.
43. That, in order to provide access to comprehensive quality primary health care, DHCS advocate for increased Australian Government funding and continue as a matter of priority the roll out of the Primary Health Care Access Program.
44. That PHC provider roles in protecting children from harm be strengthened by:
 - a. providing relevant protocols, tools, training and support, including the development of a multi-disciplinary training course for PHC providers: “Child Protection: principles and practice for PHC practitioners”
 - b. use of PHC centres as service “hubs” as part of the development of integrated health and welfare responses in remote communities.
45. That, as soon as possible, the government, in consultation with Aboriginal communities and

organisations, develop, implement and support programs and services that address the underlying effects of both recent and “intergenerational” trauma suffered in Aboriginal communities and enhance the general emotional and mental wellbeing of all members of those communities.

Family support services

46. That in order to prevent harm and reduce the trauma associated with abuse, it is vital there be significant investment in the development of family support (child and family welfare) infrastructure, including:
 - a. funding by both the Northern Territory and Australian Governments to create much needed family support infrastructure (services and programs) targeted to support vulnerable and/or maltreated Aboriginal children and their families in urban and remote settings. This must be a long-term investment - short term or pilot program funding should be avoided unless it is addressing very specific, time limited problems or situations
 - b. that efforts be made to support community-based non-government organisations to provide recovery and support services following child sexual abuse in Aboriginal communities across the Territory
 - c. that the Aboriginal Medical Service Alliance Northern Territory health services and other Aboriginal-controlled agencies be supported to establish family support programs for Aboriginal children and families in urban and remote settings
 - d. the establishment of multi-purpose family centres or “hubs” in remote communities and regional centres to provide an integrated holistic approach to working with families. These will be a focal point for the provision of a range of local and visiting programs and services including prevention programs, child and family services, specialist services (e.g. SARC) and public education programs. They will also be a focal point for reporting and action, strengthening and incorporating positive aspects of culture, to assist local workforce development and provide male and female workers “gender security”.
47. That, as soon as possible, the government in consultation with Aboriginal communities and

organisations, develop and support youth centres and programs in Aboriginal communities that are independently run, staffed by qualified male and female youth workers and adequately resourced to provide a wide range of services to Aboriginal youth.

48. That the government support community efforts to establish men's and women's groups (and centres) – where there is a focus on developing community education and community-led responses to child sexual abuse, family breakdown and other social issues.
49. That the government actively pursue the provision of new services, and better resource existing services, for the counselling, healing, education, treatment and short term crisis accommodation of Aboriginal men in regional town centres and remote communities.

Education

50. That, given that children and young people who chronically non-attend or are excluded from school are severely disadvantaged and that there is a correlation between school non-attendance and criminal activity, poverty, unemployment, homelessness, violence and sexual abuse, the government must as a matter of highest priority ensure:

1. the Department of Employment, Education and Training (DEET) implements the attendance strategies set out in the Education Chapter and any other strategies required to ensure all children of school age attend school on a daily basis, in accordance with DEET's responsibilities to provide compulsory education for all school-age children
2. every child aged 3 years by 1 February 2008 should attend, on or about that date, and continuously thereafter, a pre-school program
3. every child aged 5 years by 1 February 2008 should attend, on or about that date, a full-time transition program and, in this regard, DEET to re-visit recommendations No. 80-86 of the *Learning Lessons Report* (1999) and complete their implementation.

51. That by reference to the very considerable work already done as part of the *Learning Lessons Report* and by the Learning Lessons Implementation Steering Committee (2002-2005) and the review which

resulted in the *Indigenous Languages and Culture in Northern Territory Schools Report 2004-2005*, the Inquiry recommends DEET examines issues such as:

- a. pedagogy
- b. how best to deliver the same outcomes for Aboriginal students as other students
- c. flexibility in the timing of the school year
- d. smaller class sizes especially in lower grades
- e. remedial classes for students who have been out of school for some time
- f. separate classes for boys and girls aged 12 and above
- g. employment of Aboriginal and Islander Education Workers (AIEW) in all schools
- h. cross-cultural training for Aboriginal children on "dominant culture" and all children to be taught about Aboriginal people's history and culture.

52. That, with reference to the wealth of existing knowledge and reports such as *Learning Lessons* and *Indigenous Languages and Culture in Northern Territory Schools* coupled with the need to have good teachers, healthy and secure students and ownership of the educational system by the local communities, DEET:

- a. introduce a universal meals program for Aboriginal students (breakfast, morning tea, lunch and afternoon tea) with parents to contribute to the cost of providing meals and the community or volunteers to undertake food preparation
- b. appoint a full time home-school liaison officer for every school
- c. appoint 20 additional school counsellors to service those schools currently without such counsellors i.e. the major remote towns, the town camps in the regional centres, and one in each group school (i.e. those schools in remote areas which supply services to a number of smaller schools in the area)
- d. encourage the utilisation of schools after hours for purposes such as community centres, supervised homework rooms, community meeting rooms, adult education and training courses
- e. appoint an AIEW Coordinator to enhance the role and functioning of AIEW staff to recognise they are

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significant members of the school support team
e.g. review their role within the school community,
enhance recruitment and develop their capacity

- f. consider the introduction of teacher employment initiatives such as remote teacher incentive packages to encourage teachers to remain in remote communities for three years or longer.

53. That, notwithstanding that Northern Territory schools have a single curricula framework, DEET is to ensure all teachers in remote schools consult with local communities as to any appropriate modifications, consistent with Recommendations 100, 102, 106, 107 and 108 in the *Learning Lessons Report*.

54. That DEET urgently implements the outcomes of the *Indigenous Languages and Culture Report*.

55. That early consideration be given to the provision of additional residential schools for Aboriginal students, designed specifically for them and being located within reasonable proximity to their country to enable maintenance of family and cultural ties, taking into account prospects for the involvement of the non-government sector and for Australian Government funding.

56. That in order to foster and support a culture that values learning throughout life and provides for those people who identify a need or desire for further education, the Government acknowledge the importance of adult and community education and provide more opportunities for Aboriginal people in regional and remote locations to access that education.

Community education and awareness

57. That the government drives a fundamental shift in family and community attitudes and action on child sexual abuse by:

- a. developing appropriate resource information on sexual abuse and conducting regular media campaigns that explain sexual abuse as described in Recommendation 94
- b. expanded delivery of mandatory reporting training to professionals including school staff
- c. high profile Aboriginal men and women to provide positive, proactive leadership on the prevention

of sexual abuse and the setting of appropriate community norms for sexual behaviour

- d. expansion of parenting education and parenting skills training for young people (the next generation of parents) and those already caring for children
- e. engaging in a dialogue with communities to discuss the particular education that might be needed in a specific community and how that education can best occur
- f. recognising the appropriateness of messages being in language and delivered through a number of mediums
- g. ensure sexual health and personal safety programs are in all schools as part of the curriculum.

58. That the government establish an Advice Hotline (perhaps expanding the role of the existing 1800 Central Reporting Number) to provide advice to both community members and professional service providers about the options available to them if they are concerned about possible child sexual abuse. The Advice Hotline must be culturally accessible for Aboriginal people and adequately resourced to ensure the advisory service does not affect the timely and appropriate responses to child protection reports.

59. That the government actively support Aboriginal men to engage in discussions about, and address, child sexual abuse and other violence in communities.

60. That a community and parent education campaign be conducted on the value of schooling and encouraging a culture of community and parental commitment to sending children to school.

Alcohol

61. That the government continue to implement the Alcohol Framework as a matter of urgency and focus on reducing overall alcohol consumption and intoxication and not just on “visible” or “risky” drinking.

62. That, as a matter of urgency, the government consults with all Aboriginal communities with a view to identifying culturally effective strategies for reducing alcohol related harm that are incorporated in individual community alcohol management plans.

63. That, as a matter of urgency, the government makes greater efforts to reduce access to takeaway liquor in the Northern Territory, enhance the responsible use of takeaway liquor, restrict the flow of alcohol into Aboriginal communities and support Aboriginal community efforts to deal with issues relating to alcohol.
64. That the government develops a “best practice” model of a “community drinking club” and apply that model across the Northern Territory to existing community drinking clubs and any new such clubs that may come into existence. This model should be designed to avoid, as best as possible, both the obvious and insidious effects on the community of alcohol consumption.
65. That the Licensing Commission be required to take into account advice from the Police and DHCS when considering all liquor licence applications and that the Police and DHCS have a specific responsibility to provide advice in respect of all applications.
66. That the Licensing Commission be required to call for and consider community and child impact statements, to be prepared by relevant government agencies, when giving consideration to liquor licence applications. Further, that consideration be given to the proposal that licence applicants be required to gather and submit information as to the community impact of their application at the time of making their application.
67. That the new liquor legislation currently under consideration by government include the following features:
- a. significantly increase the ability of the Licensing Commission to take into account the social impact of granting a liquor licence
 - b. require the Licensing Commission to give substantial consideration to both the social impact and the economic benefits of granting the licence
 - c. require the Licensing Commission to take into account a wide variety of views when considering whether to grant, or when reviewing, a licence including those:
 - i. of the Police
 - ii. of the Department of Health and Community Services
 - iii. reflected in submissions from any community or sector of the community that may be affected by the grant of a licence
 - iv. reflected in community and child impact statements relating to any significant negative impact on children by the grant of a licence
 - d. make it mandatory for both the Police and DHCS to provide input to the Licensing Commission in relation to the granting of and the review of a licence
 - e. significantly increase the ability of the Licensing Commission to review liquor licences at any time on any reasonable grounds with potential reasons for such review to be broader than a breach of the licensee’s conditions and to include evidence of any significant negative social impact or any significant negative impact on children
 - f. allow the Police, DHCS, the Department of Justice or any Aboriginal community governing body to recommend to the Licensing Commission that they conduct a review of a liquor licence
 - g. provide for clear guidelines for reviewing licences, including that the Licensing Commission must consider:
 - i. the social impact on the community
 - ii. the impact upon children
 - iii. the effect on the drinking patterns of the community and consequences of those drinking patterns
 - h. significantly increase the power of the Licensing Commission to revoke or modify licences following a review.
68. That, in consultation with Aboriginal communities, a significant media campaign for Aboriginal communities be designed to both promote healthy alternatives to drinking alcohol and to convey information about the negative impact of alcohol with an emphasis on the relationship between excessive consumption and the increased incidence of child abuse and other family violence.
69. That options for delivering alcohol counselling to Aboriginal communities be explored and implemented including consideration of visiting counsellors for smaller communities and resident counsellors and local rehabilitation centres for larger communities.

Other substance abuse

70. That government develop and implement a multi-faceted approach to address the abuse of illicit substances in Aboriginal communities, in particular cannabis abuse, including prevention, intervention and enforcement strategies which recognise:
- the geographic context of substance abuse, that is, urban and remote locations and the implications this has for effective prevention, intervention and enforcement
 - population-based, youth-focused prevention and intervention strategies that integrate substance abuse, mental health, and other health and welfare concerns into youth programs.

Community Justice

71. That, as soon as possible, the government facilitate dialogue between the Aboriginal law-men and law-women of the Northern Territory and senior members of the legal profession and broader social justice system of the Northern Territory. That such dialogue be aimed at establishing an ongoing, patient and committed discourse as to how Aboriginal law and Northern Territory law can strengthen, support and enhance one another for the benefit of the Northern Territory and with a specific emphasis on maintaining law and order within Aboriginal communities and the protection of Aboriginal children from sexual abuse.
72. That, based on the dialogue described in the recommendation above, the government gives consideration to recognising and incorporating into Northern Territory law aspects of Aboriginal law that effectively contribute to the restoration of law and order within Aboriginal communities and in particular effectively contribute to the protection of Aboriginal children from sexual abuse.
73. That the government commit to the establishment and ongoing support of Community Justice Groups in all those Aboriginal communities which wish to participate, such groups to be developed following consultation with communities and to have the following role and features:

Role of Community Justice Groups

- Set community rules and community sanctions provided they are consistent with Northern

Territory law (including rules as to appropriate sexual behaviour by both children and adults)

- Present information to courts for sentencing and bail purposes about an accused who is a member of their community and provide information or evidence about Aboriginal law and culture
- Be involved in diversionary programs and participate in the supervision of offenders
- Assist in any establishment of Aboriginal courts and provide a suitable panel from which Elders could be chosen to sit with the magistrate
- Be involved in mediation, conciliation and other forms of dispute resolution
- Assist in the development of protocols between the community and Government departments, agencies and NGOs
- Act as a conduit for relevant information and programs coming into the community
- Assist government departments, agencies and NGOs in developing and administering culturally appropriate local programs and infrastructure for dealing with social and justice issues, particularly child sexual abuse
- Any other role that the group deems necessary to deal with social and justice issues affecting the community providing that role is consistent with Northern Territory law.

Features of Community Justice Groups

- Group membership that:
 - provides for equal representation of all relevant family, clan or skin groups in the community and equal representation of both men and women from each relevant family, clan or skin group
 - reflects, as far as possible, the traditional authority of male and female Aboriginal Elders
 - is subject to screening and a criminal history check.
- Flexibility to develop its own structures, functions, processes and procedures to deal with social and justice issues provided these allow and encourage input from the rest of the community

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- c. The ongoing assistance of a government resourced “cultural broker” to facilitate meetings, assist with administration and provide general advice.

74. That, having regard to the success of Aboriginal courts in other jurisdictions in Australia, the government commence dialogue with Aboriginal communities aimed at developing language group-specific Aboriginal courts in the Northern Territory.

The role of communities

75. That the government actively encourage, support and resource the development of community-based and community-owned Aboriginal family violence intervention and treatment programs and any other programs that meet the needs of children and are designed to respond to the particular conditions and cultural dynamics of each community and commit to ongoing resourcing of such programs.

76. That the government, in conjunction with communities, develop violence management strategies for each Territory community, with a core services model to be developed based around the existing services and infrastructure available to run night patrols, safe houses and other related services available to Territory communities.

77. That, following on from Recommendation 76, a plan be developed to:

- a. assess the quality of current family violence approaches and safe place approaches in the Territory
- b. increase the number of communities with safe house/places for women and children fleeing violence.

The Overarching Agreement between the Australian and Northern Territory Governments may be an avenue for funding the construction of safe places.

78. That the government support community efforts to establish men’s and women’s night patrols in those communities which identify a need for these services.

79. That each city, town, region and community through an appropriate body develop a local child safety and protection plan to address indicators of high risk in the area of child sexual abuse, prevention of child abuse generally and sexual abuse specifically. Such

plans could be incorporated into community plans developed by local Boards established by the new local government shires and monitored through the Shire Plan, or alternatively in remote communities these plans might be prepared by the local community justice group.

Employment

80. That further work be undertaken by DEET in regard to the development of innovative employment training options for Aboriginal communities in such areas as the creation and support of local industries, use of cultural skills and knowledge, community leader roles, and brokerage/liaison with external agencies, and that this be supported through adequately resourced adult education and training.

81. That efforts be made to develop a local workforce to address health and welfare issues within communities to provide a base of continuity for more transient professional responses, and linking professionals to mentor and support these workers.

82. That Government provide support for the development of Aboriginal people as local community development workers (with either defined or generic roles) to improve capacity, problem-solving and administrative self-sufficiency within communities.

83. That the NT Public Sector, led by the Office of the Commissioner for Public Employment and DEET, make renewed efforts to increase the level of Indigenous employment in the Northern Territory Public Sector and in the non-government and private sector respectively.

Housing

84. Given the extent of overcrowding in houses in Aboriginal communities and the fact this has a direct impact on family and sexual violence, the Inquiry strongly endorses the government’s reform strategy of critical mass construction in targeted communities, and recommends the government take steps to expand the number of communities on the target list for both new housing and essential repairs and maintenance in light of the fact that every community needs better housing urgently.

85. That, in recognition of the importance of community employment in addressing the existing dysfunction,

and the need for more community housing, an intensive effort be made in the area of training and employment of local Aboriginal people in the construction and repair and maintenance of houses in Aboriginal communities, with input from DEET as appropriate.

86. That further consideration be given to:
- a. the concept of cluster housing in communities to accommodate extended family groupings as a culturally functional living arrangement
 - b. flexible accommodation options for single men, single women and older people where this concept is needed and desired by communities.

Pornography

87. That an education campaign be conducted to inform communities of:
- a. the meaning of and rationale for film and television show classifications
 - b. the prohibition contained in the *Criminal Code* making it an offence to intentionally expose a child under the age of 16 years to an indecent object or film, video or audio tape or photograph or book and the implications generally for a child's wellbeing of permitting them to watch or see such sexually explicit material.

Gambling

88. That an education campaign be conducted to target gambling in Aboriginal communities, showing the impacts of gambling and especially the risk posed to children who are unsupervised while parents are gambling.
89. That options for delivering gambling counselling to Aboriginal communities be explored and implemented including consideration of visiting counsellors for smaller communities and resident counsellors for larger communities.
90. That further research be carried out on the effects of gambling on child safety and wellbeing, and that consideration be given to the enactment of local laws to regulate gambling as part of the community safety plans to be developed pursuant to recommendation 79.

Cross-cultural practice

91. That compulsory cross-cultural training for all government personnel be introduced, with more intensive cross-cultural capability training for those officers who are involved in service delivery and policy development in respect of Aboriginal people. Specifically, government to introduce:
- a. a comprehensive Aboriginal culture induction program for all new teachers to the Territory and for existing teachers about to take up positions in remote schools (it is recommended this program run for three weeks full time)
 - b. training in Aboriginal language concepts for those teachers already teaching in or about to commence at remote schools to promote an understanding of the nuances of Aboriginal society.
92. That government personnel who are working closely with Aboriginal people be encouraged to undertake relevant language training and such encouragement should be accompanied by appropriate incentives.

Implementation of the Report

93. That the Chief Minister to release forthwith for public scrutiny and consideration this Report in its entirety, subject only to the time taken for its printing and publication, and that the Overview section be translated into the nine main Aboriginal languages in the Northern Territory, published in an appropriate format and distributed to communities throughout the Territory.
94. That a public awareness campaign for Aboriginal people be introduced forthwith to build on the goodwill, rapport, and awareness of the problem of child sexual abuse which now exists in Aboriginal communities, and that this campaign:
- a. include public contact, meetings and dialogue with the communities and service providers with the government to be represented by a suitably senior officer or officers
 - b. acquaint leaders of communities and, as far as possible, all members of those communities with the key elements of mainstream law in relation to such issues as the age of consent, traditional

or promised brides, rights of the parties within marriage, individual rights of men, women and children generally, rights of parents and/or guardians to discipline children, and of the recommendations contained in this Report and the proposed implementation of it

- c. be conducted with advice being sought from community leaders as to the most effective and culturally appropriate manner in which to convey the messages, utilising local languages wherever appropriate.

- 95. That the government promote a vigorous campaign to educate and alert the general public to the tragedies and traumas experienced by victims of sexual assault, particularly children, the means of identifying such cases and the necessity to report such cases.
- 96. That the Commissioner for Children and Young People as proposed in Recommendation 9 be given responsibility and resources to monitor and report six monthly on progress made in implementing the findings and recommendations of this Inquiry.
- 97. That in respect of monitoring and reporting on the implementation of this report, as an interim measure until the proposed Care and Protection of Children Bill is enacted and the Commissioner for Children and Young People is appointed, that the Deputy Chief Executive of the Department of the Chief Minister assume responsibility for monitoring and reporting to government on the implementation of the report.



Top End

The Inquiry travelled across the Top End of the Territory, visiting a range of communities in the East Arnhem region, including Nhulunbuy, Yirrkala, Ski Beach, Groote Eylandt, Elcho Island and Gapawiyak. The Inquiry also visited Maningrida, Milingimbi and Ramingining, Gunbalanya, Jabiru, the Tiwi Islands, Darwin and communities in the Daly River and Wadeye region.







Katherine Region

The Inquiry made several visits to Katherine and also visited Beswick, Barunga, Binjari, Numbulwar, Ngukurr, Timber Creek, Lajamanu, Kalkarindji, Dagaragu and Yarralin.



Barkly Region

The Inquiry met with a range of organisations in Tennant Creek and also visited Elliott, Ali Curung and Borroloola.



Alice Springs Region

The Inquiry made a number of visits to Alice Springs to meet with various organisations and individuals. Remote communities visited by the Inquiry included Yuendumu, Papunya, Kintore, Docker River, Mutitjulu and Hermannsburg.



PART I

BACKGROUND



1. Introduction

The increasing expansion and identification of social ills or issues (such as child abuse and parenting problems, youth suicide, bullying, domestic violence, substance abuse, relationship breakdown etc.), combined with a greater focus on the quality of family life and the health and wellbeing of family members (Tomison & Wise 1999) have produced significant demand for assistance from families and communities. They seek external support to help them achieve and maintain a “reasonable” standard of living, health and wellbeing. This has occurred as traditional forms of support provided by extended family and/or friends and neighbours appear to be decreasing (Bittman & Pixley 2000).

Accurate statistics about the incidence of child abuse and other family violence in Aboriginal communities are scarce (Bolger 1991). Although the available statistics are imperfect, they are sufficient to demonstrate that the occurrence of violence in Indigenous communities and among Indigenous people “is disproportionately high in comparison to the rates of the same types of violence in the Australian population as a whole” (Memmott, Stacy, Chambers & Keys 2001:6).

O’Donoghue illustrates the extent of the problem of family violence, noting that many Indigenous children are growing up in communities where violence has become “a normal and ordinary part of life” (2001:15).

Only one per cent of the Australian population lives in the Northern Territory – occupying one-fifth of the nation’s land mass. Almost one third of the population identifies as Aboriginal or Torres Strait Islander, and many of these people live in small settlements in some of the most remote parts of the country. It is a young population often beset with a range of social and environment problems. It is not surprising, therefore, that the rate of child sexual abuse and other forms of maltreatment and family violence are among the highest in the country.

Despite having some knowledge of the nature of the sexual abuse problem Aboriginal communities are facing, it has only been relatively recently (since the 1990s), that concerted efforts have been made by a number of government agencies to address the incidence of sexual abuse. The extent of the problem has also been more clearly demonstrated. Since 2001-02, greater attention

and surveillance of the maltreatment of Aboriginal children in the Territory has meant that the actual number of Aboriginal children who have been the subject of substantiated child abuse and neglect now outnumber non-Aboriginal children in the Territory’s published child protection data. This did not happen because Aboriginal children suddenly became more at risk of harm, but has more likely resulted from a new focus and investment in the Territory’s health and welfare system. Expanded FACS and health (and police) services have been better placed to deliver increased surveillance of rural/remote and Aboriginal populations (see below).

The Inquiry into the Protection of Aboriginal Children from Sexual Abuse was created to further explore the nature of the problem and provide some ways forward for government in addressing sexual abuse.

1.1 Establishment of the Inquiry

The Chief Minister of the Northern Territory, Clare Martin MLA, established the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse on 8 August 2006. The purpose of the Inquiry was to find better ways to protect Aboriginal children from sexual abuse.

Inquiry members

Rex Wild QC and Patricia (Pat) Anderson were appointed Co-Chairpersons of the Inquiry under the Northern Territory *Inquiries Act*. Initially, Mr Mick Palmer (a former Commissioner of NT Police Fire and Emergency Services and of the Australian Federal Police) was announced as Co-Chair, along with Pat Anderson in June 2006, but Mr Palmer resigned prior to his appointment being formalised and was replaced by Mr Wild.

Rex Wild has a Master of Laws degree from Monash University and was admitted to practice as a Barrister and Solicitor in Victoria in 1968. He joined the Victorian Bar in 1973 and was appointed a Queen’s Counsel in 1991. Mr Wild was admitted to practice as a legal practitioner in the Northern Territory in 1992 and subsequently worked as Senior Assistant Director to the Director of Public Prosecutions (DPP) and then Senior Crown Counsel with the NT Attorney-General’s Department. Mr Wild was

appointed as Acting Director of Public Prosecutions in October 1995, an appointment which was confirmed in early 1996 and which he then held until January 2006. He is now a member of the Northern Territory Bar.

Pat Anderson is an Alyawarr woman who is well known, nationally and internationally, as a powerful advocate of the disadvantaged, with a particular focus on the health of Indigenous people. She has extensive experience in all aspects of Indigenous health, including community development, advocacy, policy formation and research ethics. She is also the Chairperson of the Cooperative Research Centre for Aboriginal Health, and a Board member of Beyondblue (National Depression Institute).

Inquiry Terms of Reference

The Board of Inquiry was established to find better ways to protect Aboriginal children from sexual abuse. In particular, the Inquiry's task was to:

1. Examine the extent and nature of, and factors contributing to, sexual abuse of Aboriginal children, with a particular focus on unreported incidences of such abuse
2. Identify barriers and issues associated with the provision of effective responses to, and protection against, sexual abuse of Aboriginal children
3. Consider practices, procedures and resources of NT Government agencies with direct responsibilities in this area (FACS and Police), and also consider how all tiers of government and non-government agencies might contribute to a more effective protection and response network
4. Consider how the NT Government can help support communities to effectively prevent and tackle child sexual abuse.

Context for the NT Inquiry

The Inquiry came about as a response by the NT Government to a number of media stories that indicated a significant child sexual abuse problem in many remote Aboriginal communities in the Northern Territory.

In particular, the ABC *Lateline* program ran a story on 15 May 2006 in which NT prosecutor, Dr Nanette Rogers, highlighted the extent of violence and child abuse in Aboriginal communities in Central Australia. This story

attracted national interest and considerable media coverage. The *Lateline* program subsequently aired a story on a suspected paedophile trading petrol for sex with young girls in the Central Australian community of Mutijulu. Following this, on 22 June 2006, the Chief Minister announced the government would establish an inquiry into child sexual abuse in Northern Territory Aboriginal communities, noting:

It's time to break through the fear, silence and shame about what's happening in the bush. Too many families are being destroyed by child abuse – we must draw a line in the sand and get all the facts and act on them.⁹

This coincided with the NT Government's announcement, on 14 June 2006, that it had established a Child Abuse Taskforce (CAT), comprising representatives of the NT Police and NT Family and Children's Services (FACS). The taskforce formalised the joint investigative efforts of FACS and the Police in responding to allegations of child sexual and physical abuse and is designed to build expertise in investigating such matters. The taskforce consists of detectives qualified in forensic child interviewing techniques and FACS child protection officers. As well as providing a more effective response to Territory child abuse and child protection issues, the taskforce identifies offence trends in communities and works with key stakeholders to look at wide-ranging solutions to child abuse.

On 17 July 2006, with the support of the Council of Australian Governments (COAG), the Australian Crime Commission announced the establishment of the National Indigenous Violence and Child Abuse Intelligence Task Force (NIITF). The task force is led by the Australian Crime Commission and involves the Australian Institute of Criminology and Federal, State and Territory police services. NIITF is based in Alice Springs and is due to report in 2008-09. Its role includes improving national coordination in collecting and sharing information and intelligence about violence and child abuse in remote and Indigenous communities across Australia. It is also responsible for enhancing understanding of the nature and extent of violence and child abuse in Indigenous communities. As well, the task force will research intelligence information and coordination and identify good practice in preventing, detecting and responding to violence and child abuse in Aboriginal communities.

9 "Chief Minister Orders Inquiry into Child Sex Abuse" media release dated 22 June 2006.

1.2 Terminology

The focus of this Inquiry has been on the Aboriginal peoples of the Northern Territory. The Inquiry does not attempt to address the issues facing Aboriginal people or Torres Strait Islanders residing in other parts of Australia, although the findings are likely to have relevance. Thus, when discussing issues or data relating to Australia's Indigenous peoples as a whole, the term, "Aboriginal and Torres Strait Islanders", will be used. However, the term, "Aboriginal", will be used to refer to the Northern Territory's Aboriginal communities who are the subject of this Inquiry.

For the purposes of this report, a "child" is defined as a person below the age of 18 years, as specified in the Northern Territory *Community Welfare Act* and consistent with the Northern Territory *Criminal Code*.

Defining "child sexual abuse"

In section 3(e) of the *Community Welfare Act*, "sexual abuse" is defined very broadly as where:

he or she has been sexually abused or exploited, or where there is substantial risk of such abuse or exploitation occurring, and his or her parents, guardians or persons having the custody of him or her are unable or unwilling to protect him or her from such abuse or exploitation.

A better definition was provided by the Australian Institute of Health and Welfare (Angus & Hall 1996; Broadbent & Bentley 1997), where child sexual abuse was defined as:

any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards.

Broader definition

How child abuse and neglect is conceptualised and defined will determine policy and practice responses (Goddard 1996). The present framework for understanding child abuse and neglect is located within the white Western world, where the vast majority of research has taken place (Goddard 1996).

Within this framework, Kempe and Kempe produced a widely used definition of child sexual abuse:

the involvement of dependent, developmentally immature children and adolescents in sexual activities that they do not fully comprehend, to which they are unable to give informed consent, or that violate the social taboos of family roles (1978:60).

The importance of the definition lies in the acknowledgment of the limitations of children to give truly informed consent. Put simply, child sexual abuse is the use of a child for sexual gratification by an adult or significantly older child/adolescent. It may involve activities ranging from:

- exposing the child to sexually explicit materials or sexual behaviour
- taking visual images of the child for pornographic purposes
- touching, fondling and/or masturbation of the child, or having the child touch, fondle or masturbate the abuser
- oral sex performed by the child, or on the child by the abuser
- anal or vaginal penetration of the child (or making a child engage in sexual penetration of the others) (Tomison 1995).

Incest, on the other hand, has become progressively more constrained, to the extent that it refers specifically to the societal taboo of intercourse between immediate family members (Goddard & Carew 1993).

Child sexual abuse has been further classified by some academics and practitioners as *sexual exploitation*, which involves touching the child and/or compelling the child to observe, or be involved in, other sexual activity (e.g. watching pornographic videos); sexual assault, molestation, victimisation, and child rape.

Some (e.g. the Victorian Parliamentary Crime Prevention Committee Report on Child Sexual Abuse, 1995) recommended that child sexual abuse be referred to as "child sexual assault" rather than by terms such as "harm", "injury", or "abuse". The report noted the term "child sexual assault" would highlight the true nature of the offence, avoid minimisation of the abusive acts and compel or force the "abuse" to be considered as a criminal assault and treated as such from the beginning of any investigation of the abusive concerns.

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The US expert, Dr David Finkelhor (1979), argued against the terms, “sexual assault” and “sexual abuse”, because he felt they implied physical violence which, it was contended, was often not the case. Finkelhor favoured the term, “sexual victimisation”, in order to underscore that children become victims of sexual abuse as a result of their age, naiveté and relationship with the abusive adult.

For the purposes of the Inquiry, “child sexual abuse”, was used as a term to describe all types of sexually abusive behaviour, regardless of whether that abuse involved incestuous acts. The term, “child sexual assault”, was used to refer to criminal justice offences.

The NT *Criminal Code* also describes a series of sex offences committed in relation to children – ranging from child pornography-related offences to sexual intercourse without consent. Appendix 5 provides a list of offences identified as being relevant to the Inquiry.

It is important to note that under the *Criminal Code*:

- as is the case in most Australian jurisdictions, it is not against Northern Territory law for an adult to have consensual sex with a child aged 16 or 17 (unless that child is 16 and under the ‘special care’ of the adult)
- it is an offence to have sexual intercourse with a “close family member” regardless of age (incest-related offences)
- under Northern Territory law, penalties are more severe for offences against children under 10 than for offences against children aged between 10 and 16 years.

Further, despite legal definitions of childhood, it should be recognised that in Aboriginal culture, post-pubescent children (from as young as 11 to 14 years) are often considered to be adults.

Other forms of child abuse and neglect

The Australian Institute of Health and Welfare (Angus & Hall 1996; Broadbent & Bentley 1997) defined the three other commonly accepted main types of child maltreatment as:

- *physical abuse*: any non-accidental physical injury inflicted upon a child by a person having the care of a child
- *emotional abuse*: any act by a person having the care of a child, which results in the child suffering any kind of significant emotional deprivation or trauma

- *neglect*: any serious omissions or commissions by a person having the care of a child, which, within the bounds of cultural tradition, constitute a failure to provide conditions that are essential for the healthy physical and emotional development of a child.

These definitions do not explicitly identify children’s exposure to domestic or family violence as a separate form of maltreatment, but it is usually covered through classifying the harms as emotional and/or physical abuse.

The terms “child abuse and neglect” and “child maltreatment” are used interchangeably throughout this paper. Unless otherwise stated, the term “child abuse prevention” encompasses the prevention of all forms of child abuse and neglect.

Family violence

The term “domestic violence” is gender-neutral and encompasses all potential forms of spousal or intimate relationship violence.

The term “family violence” will be used to describe the range of violence that may be perpetrated within a family. The term encompasses the totality of violence and has become widely adopted as part of the shift towards addressing intra-familial violence in all its forms, including child abuse and neglect. Family violence is widely seen as the term that “best encompasses the various forms of violence that may take place between family members. It is the most inclusive term, and is capable of encompassing changing ideas about what “family” means in late 20th Century Australia” (DVIRC 1998:36).

Cultural security

“Cultural security” (or “culturally secure practice”) is a commitment to provide effective clinical care, public health and health systems administration and to provide services offered by the health and wellbeing system that will not compromise the legitimate cultural rights, views and values of Aboriginal people (DHCS 2005a).

Cultural security is :

a shift in emphasis from attitude to behaviour, ensuring that the delivery of health services is of such a quality that no one person is afforded a less favourable outcome simply because they hold a different cultural outlook. Cultural security recognises that a more respectful and responsive health system will contribute to improved outcomes and greater efficiency. (DHCS 2005a:26).

1.3 Commencement of Inquiry

Upon commencement of its work in August 2006, the Inquiry immediately announced a call for submissions (see Appendix 1) and held initial public launches and media conferences in Darwin and Alice Springs.

The Inquiry also developed an innovative DVD to provide information for Aboriginal communities about the Inquiry. It introduced the Inquiry members and aimed to encourage discussion about ways to better protect Aboriginal children from sexual abuse. The DVD was sent to all local and community government councils in the Territory, was handed out at meetings during the early months of the Inquiry and was also placed on the Inquiry's website.

The Inquiry quickly developed a set of policies and procedures to underpin its work and began an extensive consultation process that continued from August 2006 through to March 2007 (see Appendix 2).

Finally, an Expert Reference Group was appointed in September 2006. This group has been an important resource for the Board of Inquiry, offering advice on such matters as best practice in the area of child protection and issues for Aboriginal communities. Several members of the Reference Group also provided advice and assistance in relation to consultations with community and stakeholder organisations.

The Inquiry took the opportunity to move into more publicly accessible office premises on the ground floor of Tourism House in Darwin in early September 2006.

Inquiry Process (Methodology)

A full set of the Inquiry's policies and procedures is provided in Part II. These were designed to enable the Inquiry to collect material in an effective and sensitive manner, while at the same time being mindful of the psychological wellbeing of Inquiry staff¹⁰, respondents and other affected parties from dealing with disclosures of abuse and detailed accounts of violence and assaults.

These materials primarily consisted of staff recruitment and data collection policies. The latter covered receipt and management of written submissions, consultations

and site visits, sourcing government data, interviewing children, staff safety planning, and data management.

Informing the Inquiry

The Inquiry ensured its work was informed by developing a large collection of relevant reports and literature about child sexual abuse, from within the Northern Territory and other Australian and international jurisdictions, and information and statistics relevant to the Inquiry's terms of reference.

In order to form a view about the nature and extent of sexual abuse, its causes and possible solutions within a Territory context, the Inquiry also collected substantial information through consultation, seeking information from government agencies and through the receipt of written submissions.

Meetings

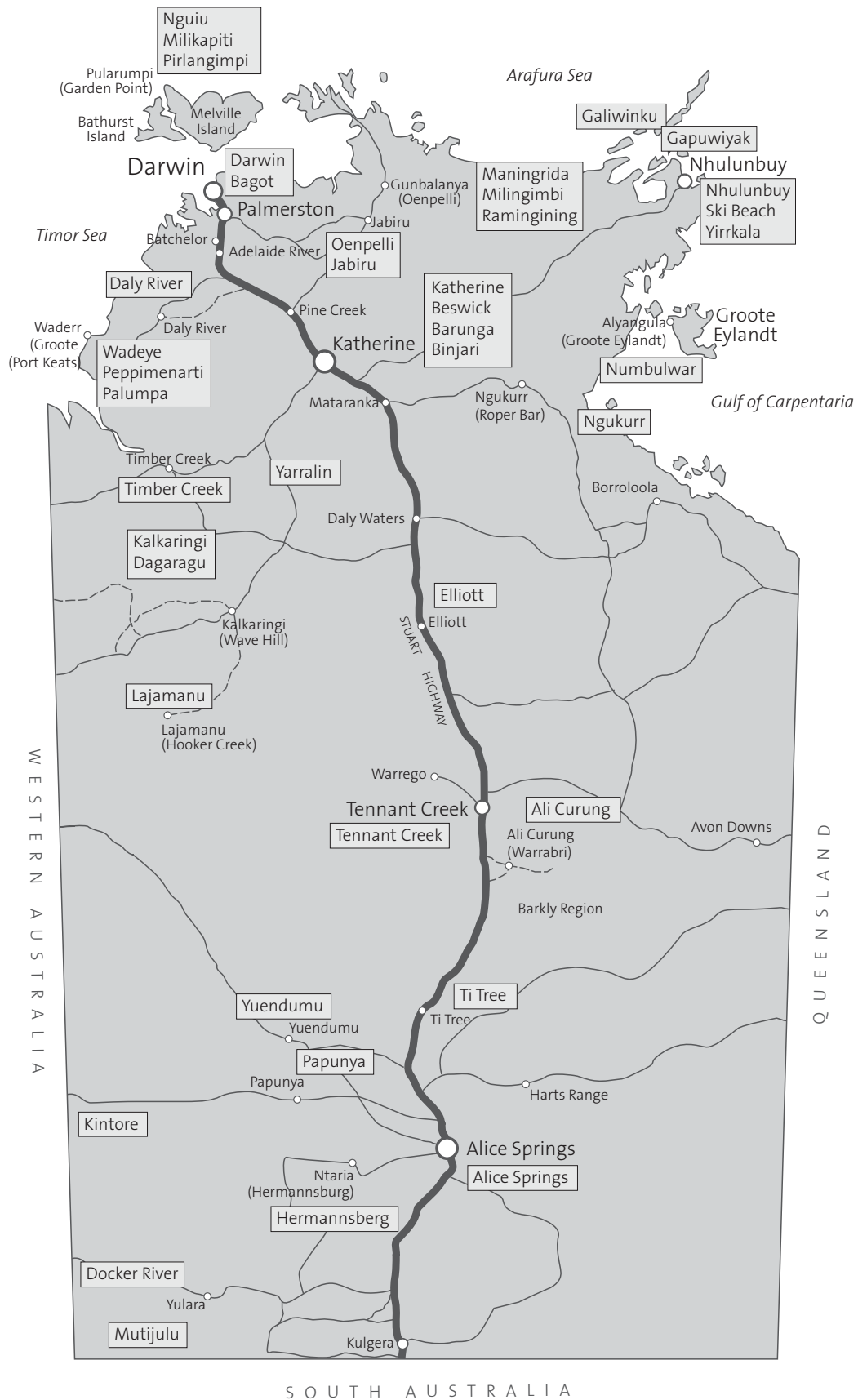
Under section 9 of the NT *Inquiries Act*, the Inquiry had the power to hold formal hearing processes and to subpoena witnesses to provide information. However, it decided early in the Inquiry process that, rather than arranging formal hearings and using its statutory powers, it would conduct its enquiries in a cooperative and relatively informal manner, preferring to collect information or statements from self-identified individuals and non-government agencies "in the field", via telephone interview, or at the Inquiry's office.

The Inquiry subsequently held more than 260 meetings with stakeholders around the Northern Territory and, in some cases, from interstate. These included meetings with service delivery organisations, Aboriginal communities, government agency staff and individuals. The Inquiry conducted consultations in the main regional centres of Darwin, Nhulunbuy, Katherine and Alice Springs and also visited and held meetings in regional and remote communities in the Tiwi Islands, the East Arnhem region including Groote Eylandt and Elcho Island, western Arnhem Land, the Daly River region, Katherine region, Barkly region and in Central Australia (see Figure 1 - Map of the Visits).

The Inquiry's Senior Policy Officer traveled to many communities in advance of the visit to make contacts in those communities, explain the purpose of the Inquiry, encourage people to consider the issues, and arrange planned meetings.

10 For the purposes of this paper, unless otherwise defined, "Inquiry staff" is defined as Board members and all other staff attached to the Inquiry. They are identified in Acknowledgements.

Figure 1



In a second round of consultations, the Inquiry held regional forums in Katherine, Nhulunbuy, Darwin and Alice Springs, to which delegates of Aboriginal communities and organisations were invited to attend, with costs being met by the Inquiry. This gave the Inquiry an opportunity to present the findings from its earlier consultations, to confirm these with delegates and to workshop those themes and issues.

Many communities expressed appreciation for the manner in which the meetings were conducted, the fact that “senior people from government” (the Inquiry Co-Chairs) came to the communities, and that the Inquiry talked *with*, rather than *to*, communities.

Information requests – NT Government agencies

The Inquiry met with the chief executives of each of the principal NT Government agencies with a role in responding to child sexual abuse, these being the Department of Health and Community Services, Police, Fire and Emergency Services, the Department of Employment, Education and Training and the Department of Justice. The Inquiry invited them to make written submissions and met with a range of officers from these agencies during the course of investigations.

As part of its information gathering processes, the Inquiry requested a range of briefing materials and information from various agencies, including summaries of individual child sexual abuse cases and unpublished aggregate case data. A number of agencies also made presentations to the Inquiry. In December 2006, the Inquiry wrote to all NT Government agencies requesting they complete a questionnaire on awareness and training in relation to (1) mandatory reporting requirements and indicators of child abuse and neglect and (2) the extent to which “child safe” work practices and policies existed in agencies. Most agencies responded to this request. Although in general terms, agency awareness and policies in these areas could have been greater, the Inquiry was pleased to note that some agencies were prompted by the questionnaire to initiate training or other work in these areas. The Inquiry believes it is critical that government, as the single biggest employer in the Territory, take the lead in terms of ensuring employees who have contact with children in any capacity in the workplace are aware of mandatory reporting requirements. It also sees as critical, the need

for all workplaces to have at least a basic child safe policy to protect children who may come onto work premises or with whom staff have contact through their duties.

The Inquiry also requested the Department of Health and Community Services and NT Police, Fire and Emergency Services to produce 20 individual case summaries that highlighted case outcomes and elements of interagency practice. The summaries also identified issues or “lessons learned”, as identified by the agencies themselves.

Submissions

Overall, 65 written submissions were received by the Inquiry, including 11 from NT and Australian government agencies, committees, councils and commissions. The level of response reflected the interest and concern those organisations and individuals had in relation to the issue of child sexual abuse in Aboriginal communities, but also reflected interest in the broader agenda of preventing all forms of maltreatment for all Australian children, and a desire to uphold or promote the rights of all children and young people.

A list of people and organisations who provided submissions is at Appendix 3. All individuals making a submission were given the opportunity to choose not to be identified publicly (in some cases, this was to ensure the personal safety of the individual). In such cases, no references have been made in this report to the individual concerned.

Information storage

The Inquiry ensured that any material collected as part of the Inquiry and relating to individual cases, was kept secret, stored securely and used in a manner that preserved client confidentiality at all times. At the conclusion of the Inquiry, all records will be archived and will be subject to the highest level of ongoing security and confidentiality.

Managing information requests, complaints and reports of suspected abuse and maltreatment

There were two key aspects to working with the wider government sector – developing protocols for information-sharing and working within the framework for dealing with requests regarding suspected abuse and maltreatment and complaints against government agencies.

In terms of information-sharing, the Inquiry had the power, if required, to request any relevant information by virtue of sections 8 and 9 of the *Inquiries Act*. However, this was interpreted by some agencies as not overriding the privacy and confidentiality conditions of the NT *Information Act* 2003 or the NT *Community Welfare Act* 1983 as it related to sharing case material. To resolve these issues of interpretation, and given the volume and sensitive nature of the material required, the Inquiry and key NT Government agencies agreed to an information-sharing protocol. This described how the Inquiry would request information and its liability regarding information confidentiality. It also identified to whom requests would be directed and the response (and timeliness of response) made by the agencies.

With regard to complaints handling, section 14 of the *Community Welfare Act* stipulates that all people in the Northern Territory are mandated to report suspected child maltreatment (physical, sexual and emotional abuse and neglect) to FACS or the Police.

Inquiry staff were required to document any information regarding alleged child abuse matters and/or complaints and to refer those matters (through the Inquiry) to FACS or the Police as the case may require. It was not the role of Inquiry staff to “investigate” or question respondents or others with regard to child protection, criminal investigation or complaints about government agencies. The Inquiry negotiated separate processes with the NT Police and the Department of Health and Community Services (DHCS) for referring:

- all new cases of suspected maltreatment requiring protective and/or criminal investigation that arise through the Inquiry processes
- complaints regarding DHCS (with particular reference to FACS) and Police management of case matters that arise in the course of the Inquiry.

It is important to note that the role of the Inquiry was never to investigate allegations of child sexual abuse nor to undertake investigations with a view to identifying or prosecuting perpetrators. Despite this, the Inquiry received persistent media enquiries as to how many perpetrators the Inquiry had identified and/or prosecuted – or worse, actual media commentary that the Inquiry “had not found any perpetrators”. This misrepresentation of the Inquiry’s role was at times a matter of some frustration.



2. Reforming the response to child sexual abuse in Aboriginal communities

Best practice responses and solutions to Aboriginal family violence, and particularly Aboriginal sexual abuse, are difficult to find due to a dearth of programs and the lack of documented evaluations about the effectiveness of such programs. The many reports on the problems within Aboriginal and Torres Strait Islander communities conclude that the general failure to find solutions is exacerbated by a significant lack of resources, an ongoing paternalistic approach towards Indigenous people and a reluctance to address the problem. The latter results, in part, from Indigenous peoples' mistrust of the government, and government uncertainty about what should be done (Stanley et al 2003).

A number of broad principles for reform are repeatedly identified in the literature. They include the need for major policy change to give power and decision-making back to the Indigenous community, a broad set of principles that underpin good practice while acknowledging the need for adequate financial resources to enable change, and the need for ongoing partnerships between professionals and the community.

2.1 Key reform events

Despite a number of government inquiries into the response to child abuse and neglect and child protection reform, few attempts have been made to explicitly target child sexual abuse, and more specifically, sexual abuse in Aboriginal communities. Those that have been undertaken can be seen as predominantly non-Aboriginal attempts to address issues of abuse and violence in Aboriginal families and communities.

Parliamentary Crime Prevention Committee 1995 (Victoria)

In 1995, the Parliamentary Crime Prevention Committee published a report that presented their recommendations for increasing the effectiveness of the State's response to child sexual assault. The committee examined the

roles of child protection services, the police and the legal system. One of its more important recommendations was that multi-disciplinary Sexual Assault Response Teams (SARTS) should be established. The teams would be led by specialist personnel from the Police and child protection services, and supported by medical and specialist counselling personnel. Although the Victorian Government chose not to adopt the key recommendations of the report, such a model has implications for recent attempts to better integrate the Territory's response to child sexual abuse.¹¹

Gordon Inquiry 2002 (Western Australia)

The Gordon Inquiry has been perhaps the best known and largest inquiry into sexual abuse in Aboriginal communities (Gordon, Hallahan & Henry 2002). Headed by Magistrate Sue Gordon, the Inquiry examined the responses by government agencies to complaints of family violence and child abuse in Aboriginal communities. It followed a Coroner's Inquest into the death of a 15-year-old girl in the Swan Valley Nyoongar Community in Perth. The Gordon Inquiry made 197 findings and recommendations in its report, entitled *Putting the Picture Together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*.

Aboriginal Child Sexual Assault Taskforce 2006 (New South Wales)

We have already referred to the establishment of the NSW Attorney-General's Aboriginal Child Sexual Assault Taskforce in July 2004 to examine the incidence of child sexual assault in Aboriginal communities, and to review the effectiveness of government service responses to this issue. The taskforce's report, *Breaking the Silence: Creating*

11 Twelve years after the Crime Prevention Committee Report, it was reported in April 2006 that Victoria has developed a variation of the 'SART' team to be employed in a number of regions – the new model also incorporated DPP prosecutorial staff.

.....

the Future. Addressing Child Sexual Assault in Aboriginal Communities in NSW, was presented to the NSW Attorney General in March 2006 and publicly released in July 2006. The report made 119 recommendations that would give effect to the aspirations of NSW Aboriginal communities who were “clear and resolute in wanting the violence against their children to stop and healing for their people to begin.” (ACSAT 2006:291).

In response to the taskforce report, the NSW Government developed and published the Inter-agency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011 (NSW Government 2007). The plan had three high level goals:

1. To reduce the incidence of child sexual abuse in Aboriginal communities
2. To reduce disadvantage and dysfunction in Aboriginal communities
3. To build up Aboriginal leadership and increase family and community safety and wellbeing.

The plan also nominated four strategic directions:

1. Law enforcement
2. Child protection
3. Early intervention and prevention
4. Community leadership and support.

A suite of proposals has been built around the four strategic directions mentioned above, and they attempt to strike a balance between those four areas of government action. In broad terms, it proposes:

- strong justice interventions, recognising that child sexual assault is a serious crime against children requiring immediate “circuit breakers”
- comprehensive early intervention and prevention services to support families at risk of violence and child abuse and to promote the wellbeing of Aboriginal children and young people
- opportunities to improve the way child protection services operate, with these measures balanced against “robust support” for community capacity and leadership to assist Aboriginal communities, to ensure the safety of their children and families and to address the problem in ways that are culturally meaningful.

The Inquiry does not cavil with any of these goals or strategies - they are all appropriate. We would suggest, however, that the protection of children should start before they are born. That is, that the programs developed target the next generation of parents - young Aboriginal men and women - and provide high levels of support for them, particularly young women. The aim of the exercise will be to support the potential mother during pregnancy and, therefore, the unborn child. After the birth, the mother and new child would receive continuing concentrated support through provision of infant health services, leading into pre-school, kindergarten and primary school.

2.2 Other inquiries

Recent child protection system inquiries have been carried out in Queensland (Crime and Misconduct Commission 2004), the ACT (Vardon review, 2004), South Australia (Layton review, 2003) and Western Australia (Ford, 2007). In most cases, these have been initiated after a child death and, while generally of interest with regard to system reform, most do not focus much on sexual abuse cases specifically.

South Australia is presently undertaking a Children in State Care Commission of Inquiry, which has been examining children’s experiences in out of home care in that state from 1908 onwards. A part of its terms of reference has been to inquire into *any allegations of sexual abuse of a person who, at the time that the alleged abuse occurred, was a child in State care*. The Inquiry began on 18 November 2004 and is now in its final stages. To date, 1849 people have contacted the commission regarding the sexual abuse of children in care.



3. Rules of engagement

The people are overwhelmed and have reached a point where they think that things cannot change. The only way it will is if the whole community lifts together and works towards change. Things need to be put into place that will encourage this. The present government way of dealing with things only adds to the feeling of disempowerment and hopelessness

Remote Area Nurse

In this section of the report we provide some Rules or Principles of Engagement with Aboriginal people. We have already made clear our view that there needs to be immediate and ongoing effective dialogue with Aboriginal people with genuine consultation in designing initiatives that address child sexual abuse. These principles underlie the recommendations which follow.

The Inquiry believes there needs to be a radical change in the way government and non-government organisations consult, engage with and support Aboriginal people. A different approach is urgently needed.

This view was reached after extensive consultation with a variety of Northern Territory Aboriginal communities. It was a common theme of discussions that many Aboriginal people felt disempowered, confused, overwhelmed, and disillusioned.

The Inquiry observed that this situation has led to communities being weakened to the point that the likelihood of children being sexually abused is increased and the community ability to deal with it is decreased.

The Inquiry's discussions with Aboriginal people revealed that this situation exists due to a combination of the historical and ongoing impact of colonisation and the failure of governments to actively involve Aboriginal people, especially Elders and those with traditional authority, in decision making.

To remedy this situation, the Inquiry is of the view that governments need to adopt certain guiding principles of reform. Otherwise:

even with the best intentions, in the rush to address a perceived issue the process of ethical reform may sometimes be neglected. This can impact upon the effectiveness of the reform and can reflect negatively in outcomes for Aboriginal people (LRCWA 2006:33).

In September 2006, the Law Reform Commission of Western Australia (LRCWA) released its landmark 472-page report on “*The Interaction of Western Australian Law with Aboriginal Law and Culture*” (the LRCWA Report). The LRCWA invested six years into preparing that report and this Inquiry was much assisted by it. That report distilled nine principles of reform on which the principles in this report are based (see pages 33-40 LRCWA Report).

Principle One

Improve government service provision to Aboriginal people

The Inquiry found that the provision of services to Aboriginal people, particularly those in remote areas, was severely deficient.

The process of reform needs to begin with genuine whole-of-government commitment to improving service provision to Aboriginal communities. This effectively means that governments (local, Territory and Federal) need to cooperate, collaborate and coordinate much more effectively and move away from the ‘silo’ mentality that presently exists.

It also means there must be a significant fiscal outlay, much better infrastructure and improved provision of resources.

Principle Two

Take language and cultural “world view” seriously

English is a very tricky language for us

Anindilyakwa Elder

The Inquiry has formed the view that much of the failure to successfully address the dysfunction in Aboriginal

.....

communities has its roots in the “language barrier” and the “cultural gap”.

The Inquiry was told that the “language barrier” is the initial barrier to genuine communication. It reduces the ability to both express ideas and to understand the ideas of others. Many Aboriginal people only speak limited English as a second, third or fourth language.

The difficulty is that because of the language and cultural barriers many people never get an opportunity to express their knowledge or their ideas. The impression is given to them that they are idiots and that people outside of their community are more qualified to deal with their problems. As a result of this general attitude people become apathetic and take no interest in dealing with the problems.

Alyawerre Elder

The Inquiry was told that the “cultural gap” exists independently of the ability to speak the English language and exists due to a failure to understand the “world view” or concepts of the other culture. Further, that it takes language experts a lot of time and hard work to translate concepts but that the level of understanding gained is worth the effort.

It was a common theme in consultations that many Aboriginal people did not understand the mainstream law and many mainstream concepts. It appeared to the Inquiry in its consultations that some Aboriginal communities were unclear on what child sexual abuse was. However, the following comment was also noted that:

by discussing child sexual abuse in English you take it out of the hands of the people and into the white forum. By doing this the people will respond to what the white person wants rather than speaking truthfully. These types of issues need to be dealt with a bit more innovatively and intelligently utilising language. People need to feel like they own the story and then they will speak truthfully about it.

Alyawerre Elder

The Inquiry was also told that many youth today have an erroneous belief that the wider Australian society is lawless. They believe that:

it is acting within “white fella” law when being abusive. A thinking that began with the systemic undermining of our own law with the colonization of

Australia and the atrocities that followed. It is now reinforced by TV, movies, pornography and drugs brought into our community from wider Australia.

Rev. Djiniyini Gondarra press release, 19 May 2006

It became clear to the Inquiry during its consultations that in many of the communities visited, the “language barrier” and the “cultural gap” was greater in the younger generation. The Inquiry was told that this problem is increasing, when intuitively it might have been assumed the gap was decreasing.

As well as many Aboriginal people not understanding the “mainstream” world view, it was a common theme of the Inquiry’s consultations that many Aboriginal people thought that the “mainstream” world failed to understand their “world view”. One old man told the Inquiry that the government:

sees Aboriginal people from the front but fails to see the full background of law behind them.

This failure to understand the Aboriginal “world view” resulted in many culturally inappropriate practices and programs that failed to achieve the desired outcomes.

The endemic confusion and lack of understanding about the mainstream world was reported to be preventing many Aboriginal people from being able to effectively contribute to solving problems such as child sexual abuse. The “catch-22” is that genuine solutions must be community driven.

One of the first steps in genuine reform, therefore, is empowering Aboriginal people with conceptual knowledge.

People need to be empowered with knowledge and once that knowledge reaches critical mass, then they will be in a position to themselves create the structures that are needed to service their communities.

Language expert

It is vital that the government adopt this principle of reform and ensure ongoing strategies for dealing with both the “language barrier” and “cultural gap”. This is a crucial step towards seriously tackling issues such as the sexual abuse of children.¹²

12 The Board commends the work of the Aboriginal Resource and Development Services Inc. (ARDS) aimed at addressing both the “language barrier” and the “cultural gap” and in particular the education provided through *Yolngu Radio* - for more information see ards.com.au

Principle Three

Effective and Ongoing Consultation and Engagement

During its research and consultations, the Inquiry formed the view that many government policies are formulated without the active involvement of the very Aboriginal people whose lives and livelihoods are going to be affected by them, and whose support is needed for their success. The result is that these policies have not had the “on the ground” impact that it was hoped they would.

The Inquiry believes that effective and ongoing consultation and engagement is an essential principle in reform.

The Inquiry was told a number of times during its consultations that the meetings it conducted were the “best” that the community “had ever had”. Many communities wanted it to be the first of many similar meetings.

We never have meetings like this. If we have more meetings like this we will have more answers.

Walpiri Elder

The Inquiry believes that its meetings were a success due to pre-planning consultations and using “pre-visits” to make contacts, utilising existing resources such as Aboriginal organisations and non-government organisations, utilising interpreters, seeking advice from “cultural brokers” and holding consultations in places where community members felt comfortable. More often than not, this was outside and under a tree.

Many communities also told the Inquiry that they were rarely, if at all, consulted about programs, policies or structures affecting their community, and they often felt that they had been ignored.

The Inquiry believes the government needs to adopt certain protocols to ensure that effective and ongoing consultation and engagement consistently occurs in dealings between Aboriginal people and government agencies. It is beyond the scope of this Inquiry to develop these protocols but the following things need to be taken into account when they are developed. It needs to be recognised that:

- building mutual respect, identifying responsibilities and sharing aspirations through active and meaningful engagement is crucial to successful outcomes
- many Aboriginal people and communities presently do not trust the government and that investment needs to be made in building trust
- there is presently a serious deficiency of effective communication
- there needs to be a willingness and effort to understand the Aboriginal world view and Aboriginal perspectives
- consultation needs to occur with great care because a lot of what is first said by Aboriginal people in remote areas is not, in fact, what they want, but either what they think the mainstream culture wants them to say or what they think the mainstream culture wants
- effective consultation is an ongoing process in which relationships are built over time, rather than in a one off event
- effective consultation means actively seeking out views that represent all members of the community and not just those of one family or of the “community manager”; and
- feedback from consultations is important, as are the results on the ground attributable to consultations.

For a more comprehensive guide to useful principles for engaging with Aboriginal people, the Inquiry commends the WA guide, “Engaging with Aboriginal Western Australians” (Department of Premier and Cabinet & Department of Indigenous Affairs 2005).

This principle requires an approach whereby the relevant community is not only consulted about and engaged and voluntarily involved in, developing the policy but there is at least majority community consent for the final policy developed. This consent needs to be informed consent.

Principle Four

Local focus and recognition of diversity

There cannot be a one-size fits all approach to reform in Aboriginal communities. The Northern Territory Aboriginal population is made up of many culturally diverse groups. Recognition of this diversity demands that government initiatives have a local focus and that generic programs have sufficient flexibility to adapt to the cultural dynamics of individual Aboriginal communities.

Principle Five

Community-based and community-owned initiatives

It is time that the government accepts that Aboriginal people need to have some control and that we need to at least be given the opportunity to fail.

Yolngu Elder

There is now sufficient evidence to show that well-resourced programs that are owned and run by the community are more successful than generic, short term, and sometimes inflexible programs imposed on communities (e.g. Commonwealth Grants Commission 2001, Commonwealth Standing Committee on Aboriginal and Torres Strait Islander Affairs 2001, and House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2004). This was further confirmed by Fred Chaney's views as described earlier in this report.

This is because community-based and community-owned initiatives inherently respond to the problems faced by the community and are culturally appropriate to that community. They are driven by real community need rather than divorced governmental ideology (page 36 LRCWA).

The Inquiry was told that many Aboriginal people perceived that present government policy tended to focus more on government control than on supporting community-owned initiatives. For example, the Inquiry was told about a venture called *Ngali Ngali Mitji*, which was started by Yolngu women in the 1970s to address petrol sniffing. The women would pick up petrol sniffers, talk to them, sit with them and teach them about culture. They operated out of a paperbark flat top shelter down on the beach. It was this group that formed the basis for the development of a sobering-up shelter and the local Harmony Group.

The Inquiry also heard that both the Harmony Group and the Sobering up Shelter were established without meaningful consultation and engagement with the Yolngu. As a result, the initial drivers of the *Ngali Ngali Mitji* Group have been pushed into the background and the Harmony Group is made up predominantly of non-Aboriginal persons. The Inquiry was told the result is that instead of the *Ngali Ngali Mitji* being supported, it has in fact been

superseded and is now driven by non-Aboriginal persons. This has resulted in a loss of ownership of the program.

The Inquiry heard that, historically, this has been a big problem for the Yolngu in that they are told that something is theirs but they are then "pushed into the background" and do not continue to play a prominent role. As one Yolngu woman told the Inquiry:

Yolngu need to be the ones making the decisions as to their future but at the present it is more often than not non-Yolngu people meeting and making decisions on behalf of us.

Yolngu Elder

The Inquiry was told that:

Making decisions on the part of others robs them of their integrity and control over their lives.

Adam Blakester, Executive Director, NAPCAN

And further:

It's patently unfair to continually say to Aboriginal people to take responsibility for their problems while at the same time always interfering and overriding their decisions and authority.

Remote area health professional

The Inquiry recognises the significant challenge for bureaucrats and politicians to avoid reverting to the familiar habits of seeking to control, incorporate and assimilate. The Inquiry takes the view that the government must offer realistic and useful support for local initiatives rather than:

only seeking to re-orient communities toward better acceptance of existing mainstream legal processes and institutions. (Chantrill 1997)

In essence, the Inquiry believes there needs to be a process of "de-colonising" attitudes (Libesman 2007) and developing new policies that recognise both Aboriginal strengths and deficiencies and work to support the former and provide substitutes for the latter.

Principle Six

Recognition and respect of Aboriginal law and empowerment and respect of Aboriginal people

An overwhelming request from both men and women during community consultations was for Aboriginal law to be respected, recognised, and incorporated within the wider Australian law where possible. However, the recommendations the Inquiry makes reflect the need for further extensive consideration and consultation in these sometimes controversial issues.¹³

The Inquiry is not in a position to provide a comprehensive outline of how Aboriginal law should be recognised in relation to all aspects of Northern Territory law. However, the Inquiry does think that such recognition is important and commends the LRCWA Report as an invaluable resource for recognising Aboriginal law in the Northern Territory.

The Inquiry is greatly influenced by the findings of the LRCWA¹⁴ due to the fact that:

- it undertook a meaningful six-year consultation process with the Aboriginal people of Western Australia
- there are similarities between the problems faced and history experienced by the Aboriginal people of Central and North Western Australia and the Aboriginal people of the Northern Territory
- there are similarities between the results of the LRCWA community consultations and the results of the Inquiry's consultations.

The Chairperson of the LRCWA, Gillian Braddock SC, noted in the foreword to the report that:

the Commission hopes that the results flowing from this report will benefit the Aboriginal peoples of Western Australia and their culture, enhance the integrity of the legal system of this state and have a positive influence in other states and territories where Aboriginal culture and laws extend (Page vii)

13 We do not ignore the valuable work also undertaken by the Northern Territory Law Reform Committee on this topic (see its Report officially released by Attorney-General, Dr Peter Toyne, on 6 November 2003).

14 See the Inquiry's Recommendations 71-72.

Principle Seven

Balanced gender and family, social or skin group representation

An important theme of the Inquiry's consultations was that Aboriginal communities should not be viewed as a "whole". Within each community there is a division between different language groups and within those language groups there is a division between clans or families.

For policies and programs to truly reflect the needs of the whole of community, consultations must include representatives from all different groups.

In developing new structures and in engaging with community, care must be taken that all family groups have an equal role, that men and women are equally represented and that the old and the young are equally represented.

The Inquiry was told that members of one clan may be prevented from speaking out in the presence of a separate clan. Certain clans may also dominate certain resources to the exclusion of other clans. An awareness of the clan and family structures in each community is essential to ensure the effective delivery of services. The Inquiry was told that the failure to recognize and act through these structures was a core reason for the failure of shared responsibility agreements in some communities.¹⁵

At Nguiu on the Tiwi Islands, the Youth Diversion Centre organises regular meetings of the different skin groups. These meetings allow the members of each skin group to talk freely about issues within their own group. From these meetings, representatives for each group are chosen to participate in meetings with outside organisations. This ensures that the needs of each separate skin group are equally represented.

This is the kind of model that the government could be supporting in relation to engaging with Aboriginal people.

15 For a more detailed examination of how Government policy can take the clan or family system into account, see "Crossed Purposes", Ralph Folds, UNSW Press, 2001

Principle Eight

Adequate and ongoing support and resources

Another common theme throughout the Inquiry's consultations was the lack of ongoing support for many programs. While initial support to commence a program could often be obtained, continuing support was much more difficult to obtain.

We have a 20-year history of six-month programs

Gunbalunya resident.

We have been piloting pilots for long enough

Yolngu Elder.

The Inquiry heard that often programs, which were viewed by the relevant community as being successful, were discontinued without evaluation or consultation and this left the community feeling further disempowered:

Every time something like a Law and Justice Committee falls over, it breaks people's spirits, disempowers them further and brings shame in the eyes of the community.

Yolngu Elder

It is essential for service providers to develop "relationships of trust" with Aboriginal communities and this takes time. Unfortunately, the patience and continuity of personnel necessary to achieve this is often lacking, as is recognition that engagement is a necessary but sometimes slow process.

Things are too spasmodic: you get to engage some people, then you lose funding or support - and then you lose those people.

NT Government employee

Another theme in the Inquiry's consultations was the need to comply with the complex and onerous government accountability requirements placed on funding and grants.

The emphasis is on enforcing the rules without considerations of humanity or compassion.

Tennant Creek Elder

This could impact on the prospects for success.

There is no commitment by Governments to success, only a commitment to bureaucracy.

Allen Benson – Native Counselling Services, Alberta, Canada (meeting with Inquiry – February 2007, Darwin)

Principle Nine

Ongoing monitoring and evaluation

The LRCWA Report noted that:

in order to ensure the success of the reform process, policies and programs must be evaluated to determine their effectiveness and the agencies responsible for implementing them must be monitored.

The report went on to say that:

if the process of monitoring and evaluation is to be properly executed it is necessary for government agencies and independent reviewers to have access to reliable data and statistical information to establish appropriate benchmarks.

The LRCWA also noted that monitoring the implementation of recommendations of past reports in the area of Aboriginal affairs has been marred by "self-assessment" and that Aboriginal people must be involved in the evaluation of programs and services that seek to meet their needs.

The government rhetoric rarely matches the reality on the ground. There is no monitoring of the outcomes of the various programs that are supposed to be operating.

Wadeye resident

The Inquiry was repeatedly informed that programs that Aboriginal people saw as successful were often discontinued without an evaluation involving Aboriginal input.

Tomison noted that "evaluation" is not merely a measure of outcome or "success" which does not tell us why a particular initiative is successful (2004b:104).

An increased understanding and accommodation of an Aboriginal cultural perspective is required in order to effectively evaluate service provision in Aboriginal communities. Further, there is a need to acknowledge Aboriginal people's history of being "researched on", and to develop culturally appropriate collaborative

partnerships, where Indigenous communities share ownership of the research (and service provision) process (Stanley et al. 2003).

Overall, consideration must be given to developing better ways to monitor and evaluate what is effective and what is not, and to coordinate an overall approach that assists communities, NGOs and government in working together.



4. The nature of child sexual abuse in Aboriginal communities of the Northern Territory

4.1 Introduction

As noted previously, it is not possible to accurately estimate the extent of child sexual abuse in the Northern Territory's Aboriginal communities (see The Extent of Child Sexual Abuse, Part II). However, the Inquiry has found clear evidence that child sexual abuse is a significant problem across the Territory. This view mirrors that of most of the individuals and organisations with whom the Inquiry has had contact and from whom submissions were received.

Giving consideration to the wider context within which sexual abuse has occurred (i.e. other child maltreatment and family violence and the general dysfunction of Aboriginal communities), the Inquiry's perception is that there has been a breakdown of peace, good order and traditional customs and laws.

Although the Inquiry's task was to examine the incidence of child sexual abuse in Aboriginal communities and identify ways and means of coping with that problem, it is apparent that little will be achieved by short-term measures aimed at responding after abuse has occurred (crisis intervention). Clearly, a greater investment in prevention of abuse and the structural forces or factors that impact on the health and wellbeing of a community (e.g. education, substance abuse, housing, attitudes to abuse and violence and building on cultural and other community strengths) are required. This theme runs throughout the report.

4.2 Myths

The Inquiry is well aware of the media and political attention surrounding the issue of sexual abuse of Aboriginal children. Using the consultations and submissions received by the Inquiry, it is important to first dispel some of the myths that have been prominent in various media reports and other comments on the issue.

Myth: Aboriginal men are the only offenders

While the incidence of sexual abuse of Aboriginal children is a significant problem, it does not follow that all Aboriginal males are offenders, or that Aboriginal males are responsible for all offending against Aboriginal children. It is the Inquiry's experience that the sexual abuse of Aboriginal children is being committed by a range of non-Aboriginal and Aboriginal offenders – and these are a minority of the overall Australian male population.¹⁶

As would be expected in any community, most of the Aboriginal men the Inquiry spoke with found the idea of child sexual abuse abhorrent and advocated severe, sometimes fatal, physical punishments for offenders. The Inquiry recognises that Aboriginal communities, and Aboriginal men, must be supported to better address the abuse and violence in their communities, but remains concerned that, at times, Aboriginal men have been targeted as if they were the only perpetrators of child sexual abuse in communities. This is inaccurate and has resulted in unfair shaming, and consequent further disempowerment, of Aboriginal men as a whole.

Myth: Aboriginal law is the reason for high levels of sexual abuse

This Inquiry notes that this myth has gained popularity in recent times (e.g. Kimm 2004; Kearney & Wilson 2006; Nowra 2007). It is a dangerous myth as it reinforces prejudice and ignorance, masks the complex nature of child sexual abuse and provokes a hostile reaction from Aboriginal people that is not conducive to dealing with the problem.

My alarm bell is that sloppy and questionable academic research has the power to influence many

¹⁶ In addition, many of the offenders who were identified as having assaulted more than one victim were in fact non-Aboriginal.

people. Prejudice and ignorance may be reinforced. Media representations may then support such misconceptions, and hence feed into and trigger political action that has the capacity to create more problems. We do need education for early childhood; education for life; education for healing. But please not education that is fatally flawed (Atkinson 2006:22)

The Inquiry also believes that it promotes poor responses to a complex problem¹⁷.

A constant theme from both Aboriginal men and women during consultations was that they felt deeply offended by the way the media and some politicians and commentators had spoken about them and their culture. This had, in effect, potentially created a further barrier to addressing the issue of child sex abuse.

The Inquiry believes that the general effect of this misrepresentation of the Northern Territory situation has been that the voices of Aboriginal women and men have been negated by powerful media and political forces. This has hampered the important development of systems, structures and methods that have a genuine chance of reducing violence and child sexual abuse.

The Inquiry rejects this myth and notes that it is rejected by many other authoritative sources (e.g. Gordon et al. 200); HREOC 2006; LRCWA 2006).

The reasons for the present level of child sexual abuse in Aboriginal communities are many and varied. They include the effects of colonisation and “learnt behaviour”. The Inquiry does not take the view that this absolves Aboriginal people from responsibility in dealing with this issue, but it goes some way to explaining why it exists and provides an insight into how to deal with it more effectively.

Myth: Aboriginal law is used as an excuse to justify abuse

The Inquiry has examined the relevant Northern Territory cases referred to in media reports, political remarks and academic research, as well as Northern Territory cases in general, where Aboriginal law has been an issue. The Inquiry was unable to find any case where Aboriginal law has been used and accepted as a defence (in that it would exonerate an accused from any criminal responsibility) for an offence of violence against a woman or a child.

Similarly, the Gordon Inquiry in Western Australia found no actual criminal cases in that state where legal argument on behalf of men charged with family violence or child sexual abuse has been put to the court to the effect their behaviour was sanctioned under Aboriginal law (Gordon et al. 2002).

The Law Council of Australia has stated that there is “no evidence that [Australian] courts have permitted manipulation of “cultural background” or “customary law” (Law Council of Australia 2006:17).

Myth: Aboriginal culture is the reason for under-reporting

Many of the Aboriginal people with whom the Inquiry spoke were interested in discussing the problem of child sexual abuse. During these discussions, it became clear to the Inquiry that child sexual abuse was not a highly visible problem and one of which many people were still unaware. That is, many people did not know what “sexual abuse” was and were confused about what constituted “sexual abuse”. In a number of communities, the attitude was “we are happy to work to stamp out sexual abuse in our community but we don’t know what it is”. Further, many of those who did suspect sexual abuse was occurring were unsure how to deal with it.

The Inquiry noted that, in many cases where the sexual abuse was obvious, the local people had notified the Police or the local health centre. The reasons why other cases were not reported were varied and complex. They included fear and distrust of the Police, the criminal justice system and other government agencies; shame and embarrassment; language and communication barriers; lack of knowledge about legal rights and services available, and lack of appropriate services for Aboriginal victims. This is discussed in greater detail in the next section, (Reporting Sexual Abuse of Indigenous Children).

The Inquiry did recognise certain aspects of Aboriginal culture that may discourage some Aboriginal people from disclosing abuse, in particular the obligations under the kinship system.

However, the Inquiry agrees with the conclusion of the Law Reform Commission in Western Australia in its report on customary law in that while:

cultural issues may play a part in the under-reporting of sexual and violent offences against

¹⁷ An example of this is the Commonwealth Government’s passing of the *Crimes Amendment (Bail and Sentencing) Act 2006*

.....

Aboriginal women and children, it is clear that there are numerous other and arguably more compelling reasons why Aboriginal women and children do not speak out about the abuse to government justice and welfare agencies. (2006:26)

Myth: Aboriginal men do not have an important role to play in preventing child sexual abuse

The Inquiry was pleasantly surprised to meet with groups of up to 60 men in some communities. The men with whom the Inquiry met appeared sincere in their abhorrence of child sexual abuse and were keen to do something about it.

However, it was a common theme in virtually all places visited by the Inquiry that Aboriginal men felt disempowered. Aboriginal women have been speaking out about issues like sexual abuse and requesting assistance for decades. Many Aboriginal women have been working hard for years to improve their communities.

Many of the women with whom the Inquiry spoke said they needed their men to join with them in dealing with this problem. As one Yolgnu woman said:

Our communities are like a piece of broken string with women on one side and men on the other. These strings need to be twisted together and we will become strong again.

4.3 The nature and extent of child sexual abuse in the Territory – What the Inquiry found

NT Police noted that:

it has been difficult to date to apply intelligence-led policing practice to sexual crimes due to endemic secrecy attached to crimes of this nature. Very little information has been forthcoming from police officers, informants or through CrimeStoppers about sexual offenders or offences committed in any communities in the Territory.

Police submission

Despite the secrecy surrounding sexual abuse, the Inquiry has found that the sexual abuse of Aboriginal children in the Northern Territory is a complex problem and includes

a wide range of circumstances. It is now well-recognised that child sexual abuse can occur in a range of ways - often with other forms of abuse and neglect being present - and is perpetrated by a range of different offenders. For example, the offender may be someone within the family unit who provides primary care for the child (generally referred to as intra-familial abuse or incest), or someone outside the family unit who may or may not know the child prior to the abuse (generally referred to as extra-familial abuse). Sometimes, the nature of the child's family situation may leave him or her vulnerable to extra-familial abuse, such as when the level of supervision and care of the child is such that the child can be abused without the knowledge of his or her parents or immediate family.

While media portrayal of the issue has predominantly related to incidents of older Aboriginal men assaulting young women and "paedophiles" operating in Aboriginal communities, the reality of child sexual abuse is that it:

- involves both female and male victims - from the very young to adulthood
- is committed by non-Aboriginal and Aboriginal males of all ages - with a proportion of assaults being committed by offenders who are themselves children
- has led to inter-generational cycles of offending - such that victims have subsequently become offenders and, in turn, created a further generation of victims and offenders
- occurs across urban and remote communities and in various circumstances (in the home, during social occasions, in institutional settings).

The moral culpability of offenders will vary greatly depending on the circumstances, such as age of the offender and their own history of sexual or other abuse, though notwithstanding that all sexual offences must be treated as serious crimes.

In developing solutions aimed at child sexual abuse, it is important to define the nature of the problem being dealt with. Each circumstance may require a different solution.

There is not a uniform perspective on the issue

Part II of the report (see Addressing Structural Factors that Impact on the Prevalence of Sexual Abuse), identifies the different ways in which different cultural groups will perceive a problem. It is also acknowledged that the non-Aboriginal cultural view predominates.

For example, many of the Aboriginal people the Inquiry spoke with, saw the history of colonisation, non-Aboriginal people and the non-Aboriginal ‘system’ as responsible for the present child sex abuse problems. Many saw the sexual abuse of children as a new problem and one that their ancestors had not had to deal with in their pre-contact history.

Further, the finger was pointed at non-Aboriginal paedophiles being able to infiltrate communities and then walk away with little or no punishment. The Inquiry noted a perception of racial injustice based on past injustice and a lack of education.

The nature of child sexual abuse in Aboriginal communities

Part II presents the formal datasets that describe the reported child sexual abuse of the Territory’s children. However, this “dry” reading of the offending that has been identified cannot do justice to the realities of children’s abuse experiences. The Inquiry has heard of many cases and many different forms of sexual abuse. In the following sections, an attempt will be made to capture the range and type of offending perpetrated against Aboriginal children.

During the course of the Inquiry, a range of child sex offences were identified, including:

- “Paedophile” activity
- Incest (intra-familial) offending
- Situational or “opportunistic” offenders
- Child and adolescent offenders
- Cyclical offending and intergenerational trauma.

Concerns were also raised about:

- Children’s exposure to sexual activity
- Sex between children
- Traditional marriages (and sub-cultural traditional marriage – for further information see later in this Chapter).

Each situation requires a unique response.

Despite the fact that children are significantly more likely to be abused by a family member or friend of the family, the general public perception of sexual abusers remains that of the “dirty old man” and the so-called “stranger danger” (Tomison 1995; Brown 2005).

Perhaps it is not surprising then, that the majority of the cases described to the Inquiry did not involve a close family member committing the abuse. It is generally accepted that the closer the relationship between a perpetrator and a child victim, the less likely the family will wish to make a formal report and involve child protection and/or the criminal justice system.

This is true of many families, not just Aboriginal families (Wallis Consulting 1992). However, as has been evident through much of the Inquiry’s consultations and submissions received, formal reporting is even less likely with Aboriginal families. The reasons are best described in the section below titled “Understanding and awareness of child sexual abuse”.

As a result, however, the Inquiry cannot definitively estimate the prevalence of various types of child sex offending, nor accurately identify the proportion of cases involving non-Aboriginals, Aboriginals, family members or others. The following sections, therefore, reflect some of the types of offending that were commonly brought to the Inquiry’s attention by professional or community sources.

Paedophiles

The term “paedophile” or “paedophilia” is a psychiatric diagnosis that has become commonly used in the media and the wider community. It is frequently mis-used in attempts to refer to all child sex offenders or to particular types of offending. Stereotypically, a “paedophile” is a male with no family ties to his victims, and who has a preference or disposition for engaging in sexual behaviour with children (Marshall, Serran & Marshall 2006). The label “paedophile” will typically be applied to offenders who abuse large numbers of children, though they may offend against same-sex, opposite sex children, or against children of both genders (Willis 1993).

In reality, despite the vast majority of typological studies conducted with samples of offenders who are convicted, hospitalised, or receiving psychotherapy, there is no paedophile profile:

The only common denominators appear to be an offender’s lack of sensitivity to the child’s wishes and needs, along with a willingness to exploit the child’s trust for the abuser’s own gratification, profit, or selfish purposes. (Wurtele and Miller-Perrin (1993:20).

While the Inquiry found no evidence of any “paedophile rings” operating in the Northern Territory, there was enough evidence to conclude that a number of individual non-Aboriginal “paedophiles” had been infiltrating Aboriginal communities and offending against children. Clearly, a small number of offenders did fit the stereotypic “paedophile” category. As is often the case, these offenders appeared to have offended against many victims. However, they were often known to the community (and the child and her/his family) and often held positions of influence or trust in a community rather than being a “stranger”.

For example, it was alleged that a non-Aboriginal Christian Brother in one community had sexually abused many children over a lengthy period of time. This man was charged and found guilty of some offences but these were set aside by the Court of Criminal Appeal. Difficult evidentiary problems often arise in such cases.

As a further example, it was alleged that in one community, a non-Aboriginal man who had risen to a position of power within that community had abused a large number of boys and youths over a long time. It is understood the matter had been drawn to the attention of authorities by a senior male Elder from the community. The allegations were investigated by the Police on two occasions, once in 1997 and once in 2000, and on both occasions no victims would come forward. This man was never charged or prosecuted and he is now deceased.

In another community, two non-Aboriginal offenders had been accused of abusing children at different times. One was jailed. The other, who drove the school bus, was investigated following concerns he had had inappropriate dealings with as many as 16 children. The Inquiry was advised that he came to the community’s attention when he was seen at night riding a quad bike naked with a female child passenger then, three days later, he was discovered watching a video with two young girls in the community library, at which time he was noted to have hastily adjusted his clothes and changed the video channel. Following this, statements were made to the Police and FACS about the man’s behaviour. An investigation was conducted and charges laid. The man was fined \$250 after the charges were reduced due to victims’ unwillingness to speak.

Intra-familial offending – incest

The Inquiry was not told many stories concerning intra-familial child sexual abuse. However, given the experiences of the community mentioned above, and noting the findings in other Australian jurisdictions, it is safe to assume that it is more prevalent than was identified in consultations. Also, given the parlous state of many communities, it may be on the increase.

Despite the level of disclosed intra-familial sexual abuse, the unanimous view among Aboriginal community members across the Northern Territory who participated in the Inquiry’s consultations, was that incest was an extremely serious breach of traditional law and punishable by death. One reason for complex and intricate traditional “skin” systems being developed was to prevent incest. Any breach of that ‘skin’ system was treated with the utmost seriousness.

Although episodes of sex offending were reported to be occurring in communities where Aboriginal laws were still strong, the prevalence of incest and other intra-familial offending appeared to be higher in communities where Aboriginal law had significantly broken down.

For example, the Inquiry was made aware of one community where a person had been sexually abused as a child by a relative more than 37 years ago. That person had gone on to have a daughter who was also sexually abused by a relative. The Inquiry was further informed that many of the daughter’s cousins had also been sexually abused by family members. The person said that Aboriginal law had started breaking down at the time she was abused and had now deteriorated to such an extent that young children in the community were sexually abusing one another.

A prominent case referred to the Inquiry, and which had been dealt with by the courts, involved a father having a sexual relationship with, and impregnating, his daughter.

The Inquiry was also told about a former community president and church leader who had been sexually abusing his 14-year-old niece.

Situational or “opportunistic” offenders

Situational or opportunistic offenders are those who may not be predisposed to sex with prepubescent children, but who will commit child sexual abuse when an opportunity

.....

presents. Situational factors and the general environment can be a powerful determinant influence on this type of offending – either increasing or decreasing the risk of harm (Marshall et al. 2006; Smallbone & Wortley 2006 – see Part II).

The existence of various social ills (risk factors) may encourage offending (e.g. inadequate overcrowded housing, a lack of privacy when bathing and the failure to show children affection and love), as may an absence of protective factors, such as a capable guardian, physical security or social taboos.

This type of offending would appear to become more prevalent as a community's level of functioning decreases. It is linked to chronic substance abuse, a breakdown in cultural restraints and certain environmental factors. This type of offending may also be more violent - relying on physical force rather than the development of an attachment relationship with the child.

In one community, an 18-year-old youth anally raped and drowned a six-year-old who was swimming with friends at a waterhole. It was an opportunistic crime and the offender was a chronic petrol sniffer and under the influence of petrol on the day of the murder.

In another community, an 18-year-old youth digitally penetrated the vagina of his seven-month-old niece. This offender was also a chronic petrol sniffer, and under the influence of alcohol at the time of the offence.

In yet another community, a 26-year-old man passed out drunk near a public phone in a town camp. When he awoke he saw a two-year-old child playing nearby, picked her up, carried her away and digitally penetrated her vagina and anus. He then attempted penile penetration but was unable to maintain an erection¹⁸.

In the examples above, the significance of alcohol and other drugs in overcoming the inhibitions to offending are evident. In a different way, the Inquiry was also provided with anecdotal information about opportunistic sexual abuse where substance abuse (addiction) and poverty had led people to “sell” their children (for sexual purposes) for money, alcohol or drugs.

18 These three cases are referred to by Dr. Nanette Rogers in her 2005 paper.

Emotionally vulnerable children

As is evident in the literature on offending, emotionally neglected children are often vulnerable to sexual abuse because of a (very understandable) desire for affection and love. The Inquiry was told that many children who were sexually abused had been “neglected” by their own families or did not have a strong family network. These were children:

who fall through the care-giving structure such that nobody takes primary control for ensuring that the basic needs for that child is met. This does not just include physical needs but also moral and ethical support. This was a phenomenon that was recognised within the community and such children were often referred to with the Pitjantjarra term “anangitja” which translated means “not a person”. These were the children who were most vulnerable to abuse.

P. Fietz, Anthropologist

The Inquiry heard that different family members would play a role in the child's development at different stages. Where relatives with an important role in caring for a child were absent, this could produce a range of negative outcomes as described above. This has been a particular problem with boys, where the number of suitable male relatives and other community members has been inadequate.

The Inquiry was also advised that children born outside of the normal “promised marriage” or ‘skin” system were more likely to not have the same protective family network that children born within that traditional system have. Further, it was contended that the endemic level of Aboriginal children's hearing loss can play a significant role in abuse. Children with a history of middle ear disease are generally less confident, less assertive and anxious and find it more difficult to protect themselves and express to others that they have been abused.¹⁹

The Inquiry believes that these “situational factors”, and the structural factors identified throughout this report, need to be addressed in order to ensure that children are safer.

19 Damien Howard, Psychologist

Juvenile Offenders

Congruent with the wider literature, a disturbing finding of the Inquiry was the fact that many sexual offenders were, in fact, children themselves, and some of these offenders were female children.

The Inquiry was told of a range of juvenile offending, including a 12-year-old boy allegedly interfering with a three-year-old, a 13-year-old boy allegedly interfering with a five-year-old, a 15-year-old boy who had interfered with a three-year-old and an eight-year-old, a 15-year-old girl who allegedly interfered with a group of younger boys, and a 14-year-old girl who allegedly interfered with girls and boys.

Again, the pattern of offending against children younger than the perpetrator, though horrifying, is consistent with the literature. As noted in Part II, juvenile offenders have been identified in committing a similar range of severe penetrative assaults against both children and adults (Davis & Leitenberg 1987). The younger age of the victims described above, is explained at least in part, by the fact that it is easier to offend against a weaker, smaller, more innocent child, than someone of the same age and size.

The Inquiry was also told a story of a 17-year-old boy who would regularly show pornographic DVDs at a certain house then get young children to act out the scenes from the films. He was described as having built “a little empire”. The community knew what was happening and tried to keep their children away from the house but that was difficult. When the behaviour became more widely known, the community was ashamed about it, with many community members described as being “in denial”.

The Inquiry became aware of two recent court cases. One involved a 15-year-old boy who anally raped a five-year-old boy. The other involved a 15-year-old boy who raped a 13-year-old girl. The latter case occurred in an urban context and the court noted that:

At the time you committed these crimes, you were a young Aboriginal boy with a dysfunctional and sad history resulting in entrenched behavioural problems which, despite the best efforts of those who sought to assist you, would come to the fore from time to time²⁰.

20 The Queen v. KH (22 March 2007) in the Supreme Court (No. 20425514)

In two of the most prominent and graphic cases in recent times in the Territory, the digital rape of a baby and the anal rape and murder of a six-year-old, it must be noted that the offenders were only 18 years old.

One theme presented by both men and women throughout the Inquiry’s consultations was that the young people were often committing the sexual abuse. The Inquiry believes that this situation exists due to the combination of inter-generational trauma, the breakdown of cultural restraints and the fact that many of these children (if not all) have themselves been directly abused or exposed to inappropriate sexual activity (through pornography or observing others).

As is noted elsewhere in the report, this is a powerful argument for substantial education about sexual issues being provided to communities and to Aboriginal children from an early age (in order to entrench behavioural norms of what constitutes appropriate children’s behaviour). This must be done within a wider agenda of working with communities to educate them about sexual abuse and to assist them to establish and enforce community norms of child and adult behaviour.

The exploitation of vulnerable youth

The Inquiry became aware of many instances of adult Aboriginal and non-Aboriginal men²¹ taking advantage of predominantly post-pubescent, female Aboriginal children. The offending occurred in a variety of situations and it was reported that in many cases the girls actively sought out the men and consented to sex in exchange for goods or favours.

They are vulnerable and desperate and they crave the things that they do not get at home, such as love, attention and material goods.

Remote Area Nurse

In a number of communities, it was claimed that both local Aboriginal men and non-Aboriginal outsiders were providing alcohol and drugs to teenage Aboriginal girls in exchange for sex. Yet more disturbingly, in some cases it was reported that non-Aboriginal men were providing alcohol, drugs and goods to adult family members in exchange for sex with the teenage daughters of those

21 These men were community members as well as men with no link to a particular community.

adults. In one community, it was claimed that a non-Aboriginal man would give people swags in exchange for sex with teenage girls.

A number of reliable people in one community alleged that a rampant informal sex trade existed between Aboriginal girls aged between 12-15 years, and the non-Aboriginal workers of a mining company. It was alleged that the girls were provided with alcohol, cash and other goods in exchange for sex. It was further alleged that the girls would actively approach the workers and, at times, would climb over the fence into their residential compound.

The local Police were aware of this “sex trade” and described the workers as the “pied-pipers” for these teenage girls, providing money, material goods, attention and affection. The Police told the Inquiry there was little they could do because of a “culture of silence” among the workers and that the girls themselves would not speak out because they saw themselves gaining from the activity.

Young women in some communities will often exchange sex for benefits to themselves. This will often involve a weighing up process. That is, what is the benefit to them personally versus what is the detriment to them personally.

P. Fietz, Anthropologist

The Inquiry was also told that:

The girls don't listen to their parents or grandparents, they say, "it's none of your business, it's my business".

Yolngu Elder

Taxi drivers in some larger communities were said to have taken advantage of teenage Aboriginal girls. It was alleged that some drivers would accept sexual favours in lieu of cash for fares. It was also alleged that some taxi drivers were involved in “pimping” for Aboriginal teenage girl prostitutes.

It was alleged that, two years ago, one taxi driver left one community under suspicion of offering 12-year-old Aboriginal girls as prostitutes. In the same community, a taxi driver was charged with having sex with a teenage Aboriginal girl but he fled the jurisdiction before the matter was dealt with. In the same community, a taxi

driver allegedly fathered a child to a 13-year-old girl. This matter was investigated but it is alleged the offender paid the family for their silence.

The Inquiry's experience is not unique. In 2004, a male community Elder, Bakamumu Marika, lodged a complaint with the Police alleging that girls as young as 13 years were working as prostitutes in a Territory town in exchange for cannabis and money, and that taxi drivers were taking them to their “clients”. Mr. Marika told the NT News (17 June 2004) that he wrote to the Police with his concerns and nothing had happened. Mr. Marika was reported as follows:

We need to get the authorities to help stop this ... It's outrageous and disgusting ... These are young girls and they are being exploited.

He said the children either had no parents or their parents were not aware of what was occurring. A source said the Police needed details about the under-age prostitution before they could act, but that no-one would talk to them.

The same NT News article noted that, in a separate matter, the Police were investigating allegations that a man had made a 15-year-old Aboriginal girl pregnant. In a letter of complaint to the Police, the Yirrkala Dhanbul Community Association said the girl had been sexually assaulted. The letter said:

We are strongly opposed to young girls being raped and our culture being used as a reason for this to be overlooked.

Organised offending

In an example of more “organised” offending, the Inquiry heard about Aboriginal teenage girls being taken to Darwin to work informally as prostitutes.

In one community, the Inquiry was told about a non-Aboriginal man who ran an elaborate scheme that involved taking young Aboriginal girls from a remote community to town and trading sex with the girls for drugs. He would use some of the drugs to “pay” the girls and the rest to exchange for traditional paintings. He would then sell these paintings for large sums of money to fund overseas travel and plastic surgery.

The Inquiry was told that, in one town, a non-Aboriginal man was regularly video-taping young girls doing sexual

acts. He got them to be involved in this by offering them cannabis. He even went so far as to blond the tips of the girls' hair so he could identify them as being "his girls".

In another community, a non-local Aboriginal health worker is alleged to have "befriended" a number of local children and provided them with goods, drugs and attention in exchange for sex. One 15-year-old girl is said to have described him as her "boyfriend". At the time of writing this report, this matter was proceeding through the court system.

The Inquiry believes there is an urgent need to educate Aboriginal youth about the physical, emotional and psychological implications involved in sexual intercourse, and to combat a culture where it has become acceptable for families or young people to 'sell' their bodies .

Exposure to sexual activity

It is apparent that children in Aboriginal communities are widely exposed to inappropriate sexual activity such as pornography, adult films and adults having sex within the child's view. This exposure can produce a number of effects, particularly resulting in the "sexualisation" of childhood and the creation of normalcy around sexual activity that may be used to engage children in sexual activity. It may also result in sexual "acting out", and actual offending, by children and young people against others (see Part II; see also the chapter on Pornography later in this Part).

The Inquiry was told that due to overcrowding in housing, children were often exposed to adults having sex. The following two anecdotes illustrate the potential danger of this exposure.

First, in one Central Australian community, the clinic nurse told us the following story:

I was attending to a mother in the waiting room area one day when her three-year-old daughter, who was naked, laid down on the floor in front of a young boy. This three-year-old girl then spread her legs wide apart and motioned the boy to her vagina.

There was no evidence this girl had been sexually abused but clearly she had been exposed to sexual behaviour and it had made her a vulnerable target. The Inquiry was told that in another community, children as young as

six-years old were regularly seen acting out sexual behaviour in groups.

Second, the Inquiry was told a story about a 17-year-old boy showing 10 younger children degrading and depraved pornography and making them act it out. A couple of years later, one of those children became an offender in a serious rape and murder of a teenage girl.

Consensual sex between children

This is a difficult area and one that the Inquiry has given a lot of consideration. Some would argue that consensual sex between two children - both aged between 13 and 16 years - for example, does not fall within the definition of child sexual abuse. However, underage sex and underage pregnancies were a cause of great concern to many of the Aboriginal people consulted by the Inquiry. It is also clearly against the law (NT *Criminal Code*).

The Inquiry is further concerned that:

- sometimes sex between children may contain an element of inequality and coercion that children may be incapable of effectively dealing with
- unchecked sexualised youth are more vulnerable to becoming victims or offenders of sexual abuse.

Sex between children was a primary cause of widespread concern in all communities that the Inquiry visited. The Inquiry was told that people were concerned about the following things:

- a breakdown in cultural restraints on sexual behaviour
- increasing rates of STIs and teen pregnancies (see Part II)
- an increasing number of single parents
- a breakdown in the family and social support network
- an increasing number of neglected children
- increasing sexually aggressive behaviour by both boys and girls
- an increase in "jealousy fights" among teenage girls that often led to larger community fighting
- incentives being offered for children to become pregnant.

The Inquiry was told that sexually aberrant behaviour involving both boys and girls was becoming more common

among even younger children. In all communities, both men and women were concerned that teenagers were becoming more violent, more sexual and more anarchic. The Inquiry was told that the high rate of STIs in children aged between 12 and 16 years, as well as the high rate of pregnancy, could also be attributed to the high rate of consensual sex between children²².

The sexualisation of children was seen as a direct result of the breakdown of culture and the influence of the “bad” aspects of the dominant culture. As one old man from Central Australia said:

Them boys have too many sexy thoughts in their head and not enough teaching to know to act the right way.

Further, girls in some communities had become empowered by refusing older men who wanted sex with them, and were themselves actively pursuing young men in the community. In some communities, the Inquiry heard that the boys would joke about who was going to be the first to have sex with those girls that are almost “ready” for sex.

In a more sinister development, the boys in some communities coerced girls to have sex with them and, in one community, it was reported that girls did not understand that they had a choice to refuse sex. They accepted that if they walked around at night they were available for sex.

Conversely, in other communities the Inquiry was told that the girls were sexually aggressive and actively “tempted” and “teased” the boys. In some communities, groups of girls as young as 12 years, would encourage one another to have multiple sex partners. The Inquiry was approached by the parents of one such 12-year-old girl, who were at their wits end as to how to stop her behaviour and were requesting assistance to do so.

Such is the concern in relation to children’s sexual behaviour that mothers and grandmothers in some communities are taking children as young as 11 years to the clinic to get the Implanon contraceptive implant.

22 The Inquiry recognises that such statements mask the incidence of sexual abuse that may also be occurring, and acknowledges that for STIs to be found in young children or adolescents, that it is likely they were introduced by an adult, or much older adolescent at some stage.

Some community people suggested that many girls were deliberately having a child at a young age, and many people in communities across the Territory saw the Australian Government’s “baby bonus” payment as providing further encouragement for teenage girls to get pregnant so they could receive a significant amount of money.²³ This could also be a strategic decision as it gave the young women an important role to play within the community and enabled them to avoid other riskier behaviours (i.e. having a baby was a protective strategy). Further supporting this view was the suggestion that girls “hooked up” early because “kangaroo marriages” gave them some protection against the rest of the boys in the community. Unlike “traditional marriages”, these marriages were often short-lived.

Overall, the constant message passed to the Inquiry was that as traditional Aboriginal and missionary-imposed norms regarding sex broke down, they were being replaced with rampant promiscuity among teenagers. Teenagers no longer saw themselves as bound by the “old ways” and many viewed the modern world as “lawless”. One Yolgnu Elder told the Inquiry:

For young people today having sex is like fishing, and they throw that fish back when they finished.

Such behaviour was seen as being encouraged by the dominant non-Aboriginal culture. The Inquiry was told in one community that the Elders were trying to teach the young people about staying with the “right skin” and getting “married” at the right time. At the same time, the Inquiry was told, the local health centre was distributing condoms and telling them they could have sex with anyone they want at any time as long as they wore a condom.

The Inquiry is concerned that a gap now exists in education with regard to the morality and community-sanctioned norms surrounding sexual behaviour. While the Inquiry is concerned that any action taken does not have the effect of exposing more Aboriginal youth to the criminal justice system, it is also concerned that a failure to act in some capacity will be seen as acceptance of the behaviour. This failure to act is also confusing to many Aboriginal people. One Aboriginal man from a remote Central Australian community asked:

23 It was also the case that in some instances family members were encouraging early pregnancies so that they could get the baby bonus money.

Why does the government stand by and let under-age sex happen? In our law the promise system is a very highly respected system but from the white perspective if an old man takes his young promised wife then there is immediate and serious action. But when young people who are under-age have sex with one another, which in Aboriginal law is seen as a very serious breaking of law, there is no action from the white law.

The Inquiry believes, yet again, that education is a starting point. Communities also need to be supported to be able to establish and enforce norms relating to sexual behaviour. This may be something that a Community Justice Group could do. While the Inquiry would not support criminal sanctions, it would support action that would make community expectations clear, reinforce those expectations and encourage a cultural shift in relation to sexual matters.

A cycle of offending

The literature is clear that when interviewed, many offenders will relate, as part of their own histories, episodes of being sexual abused. The Inquiry came across many instances of child sexual abuse that lend support to this assertion. The case of “HG” in the Foreword of this report is a case in point.

In another community, a six-year-old was sexually assaulted by an 18-year-old. The medical records of that 18-year-old showed that he had been raped when he was six.

In her unpublished PhD thesis, Caroline Atkinson-Ryan interviewed 58 Aboriginal prisoners from around Australia (including in the Northern Territory), who had been convicted of sexual and/or physical assaults. She found that 22 of the 58 prisoners indicated during interviews that they had themselves experienced rape or sexual abuse. She classified 19 of the 22 as suffering from post-traumatic stress symptoms. Some of their experiences and insights make harrowing reading:

And you know like; I suppose the biggest part in my life was the sexual abuse. You know that happened from not long after the old man grabbed me, a friend of the family, and I put up with it till the age of 14, when I said no enough's enough. It started about four or five years old. Now, like with my crime now, [rape] like when I see these programs mob and they say “hang on,

you talk about empathy. Now let's put on your shoes, putting yourself in the shoes of the victim” and I said hang on, woo, pull up, I was a victim. So I've seen both sides of the fence and I can comment to you as a victim and as a perpetrator of the crime.

Atkinson-Ryan noted that these men saw children:

... as being “born innocent” and it was the environment that was viewed as the cause of their dysfunctional behaviours. There was a clear desire or obligation expressed by many of the participants to break the dysfunctional cycle and provide a safer, more harmonious life for the next generation. The challenge is making sure that we as a society provide these people with the tools to achieve that.

She also noted that the number of family members who:

... have been incarcerated, are presently incarcerated, are either a perpetrator or victim of sexual assault/rape, a perpetrator or victim of physical violence, have committed suicide and abuse drugs and alcohol is significantly higher in the present generation when compared to the older generations. This suggests that the “flow down” of traumatic events and dysfunctional behaviours across the generations for those specific items results in those events and behaviours being repeated at an increased rate, and will continue to increase across successive generations without effective intervention.

With no intervention, the potential results can be horrific, as the following account demonstrates:

When I was six my old man shot my mum, yeah fucking shot my mum, bang in the head. They had been blueing all night. He made me clean her brains off the floor. When I raped that girl I felt like all my pain was going into her, when she screamed that was me screaming, I know it sounds fucked up but that's what it felt like. I looked at my hands after, the blood on my hands and the shit, it was all slimy, I thought I was cleaning up my mum's brains again, it felt the same.

The impact of “getting away with it”

Concern was voiced to the Inquiry that in some communities child sex offenders had been allowed to act unchecked for several years and that this had created a cycle of abuse within these communities, because many of the victims had now become perpetrators. One community

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claimed it took seven years between the “whistle being blown” on a known child sex offender’s behaviour and his ultimate arrest. A view expressed that because of the length of time this person had carried on his behaviour, and because of the perception that he had “got away” with it “because he was white”, people were no longer shocked by such behaviour and were not motivated to report it.

A similar sentiment was expressed to the Inquiry in two other communities. In one case, the Inquiry heard that a non-Aboriginal man had made himself “untouchable” due to his ability to utilise the “two-worlds” to his advantage. The Inquiry was told that he was a valuable resource to some local families because he was willing to immerse himself in the Aboriginal world and, at the same time, be able to effectively deal with the non-Aboriginal world. This resulted in these families receiving considerable financial benefits that may have led them turning a “blind eye” to his behaviour and to deterring others from speaking against him. The Inquiry was also told that many people were unaware of what was happening at the time while others did not want to believe it.

In another community, the view was expressed that this person got away with it for a long time because he would buy alcohol for the families of the children concerned. The Inquiry was told that the community was disheartened by this result and unmotivated to speak out in future cases.

Traditional marriages

The media has highlighted a few cases where sexual abuse of a child has occurred in the context of an Aboriginal traditional marriage in the Northern Territory. However, the Inquiry did not come across any evidence, anecdotal or otherwise, during its consultations, to show that children were being regularly abused within, and as a result of, traditional marriage practices. This was despite the fact that in many places, such practices still existed.

It is accepted that, given the media prominence of such issues, communities may also have been somewhat reluctant to raise concerns for fears of a further backlash against their culture.

The Inquiry was informed that traditional marriage practices have existed for thousands of years. These practices do not exist to provide young women for the sexual gratification of old men, but are a part of a complex system that has had many practical aspects. These include

preventing inter-family marriage, providing a system of custodianship to land, information and ceremonies, and ensuring that women and children are cared for by a mature man who could protect and provide for them.

As traditional “communities” comprised relatively small numbers of people, it was vital for the health of offspring that men only procreated with the “right skin”. This ensured the genetic integrity and survival of the group. This would be ensured through “marriage contracts” usually made when the girl was very young. However, these contracts were also an important aspect of forward planning and intimately bound up with complex considerations of estate tenure and religion (Bagshaw 2002). They were not viewed as contracts between individuals but rather contracts that implicated several people (Australian Law Reform Commission 1986).

Family groups were interested in maintaining the population of their area so that there was always someone to attend to the sites and keep up the traditions. They wanted more people to be produced but in the right groups and with the right affiliations (Berndt & Berndt 1978). The initial contract created a series of lifelong responsibilities and obligations between the man and his in-laws (Australian Law Reform Commission 1986).

The Inquiry was told that once the contract was made, there was no bestowal or formal “marriage” ceremony. An agreed relationship was accepted by the community as a “marriage”. “Marriage” entailed many family responsibilities and was not to be entered into lightly (as is evident in the story told in the movie *Ten Canoes*).

It must be noted that neither the girl nor the man had a choice as to their marriage partner. The emphasis is on marriage as an aspect of the structure of Aboriginal society, of more general social relations between families, rather than of individual autonomy and self-expression. The interests of the parties, male and female, their affection and attraction for each other were considered subsidiary to balancing of kinship obligations including reciprocal obligations between individuals, families or larger groups (Australian Law Reform Commission 1986).

The Inquiry was told that the girl was considered to be the wife of her promised husband from the time the contract was made. In most cases, she would be encouraged from a young age to cultivate a relationship with her promised

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husband then once she had reached puberty, go and reside with him at his camp. The Inquiry was told that although the relationship would be cultivated from an early age, the man was forbidden to have sexual contact with the girl until she was a woman.

The Inquiry was also told that in pre-colonisation Aboriginal society, men were generally only allowed to marry once they had achieved a certain level of maturity and status (usually around 30 years of age). Women were expected to marry shortly after puberty. There was no concept of “age” as the western cultures know it today. In accordance with the natural law, a girl was a woman once she was able to reproduce and was therefore ready for marriage.

In traditional times once a girl's breasts developed she could not remain single (Bagshaw 2002).

The Inquiry notes that up until 1883, the age of consent in the wider Australian society was 12 years. This was increased amid much opposition from those who claimed that the increase would:

curtail a woman's chance of acquiring a husband and would allow the blackmailing of respectable gentlemen, tricked into sexual relations with precocious, mature-looking young women (Siedlecky 2004).

The Inquiry was told that in pre-colonisation Aboriginal society, rape outside of marriage was extremely rare as there were strict marriage laws that protected a woman from advances from anyone other than her “husband”. The “contract” between a girl and her intended “husband” was considered sacred. Women were also generally considered sacred:

To rape a woman was to take away her sacredness and this was an offence worse than murder and punishable by death with a spear.

Yolgnu Elder

Consent to sex within marriage was not an issue that was considered in pre-colonisation Aboriginal society. It was only in recent times that the wider Australian society broke away from a similar situation. It was not illegal for an Australian man to rape his wife up until the mid-1980s in most Australian jurisdictions, and until 1994 in the NT. This very proper change came about due partly to a strong women’s movement and a cultural shift.

This is a simplistic explanation of an extremely complex system.

The Inquiry’s experience was that even today, traditional marriage practices are still part of life in many Aboriginal communities in the Northern Territory. However, the strength of the practices depends on the individual community and the impact of colonisation upon it.

The prominent traditional marriage/sexual assault cases referred to earlier occurred in communities where the practice of traditional marriage was still relatively strong and the impacts of colonisation reduced due to relative geographical and social isolation.

However, these cases demonstrate that even in such places traditional marriage practices as they once existed cannot continue in the modern world, especially when they conflict with modern international human rights. Practices such as accepting goods in exchange for a “wife”, for example, are not consistent with modern international human rights.

Three particular court cases have dealt with the issue of “promised brides” in the context of offences under the NT *Criminal Code*. The two most recent have gone to the High Court, on application by the accused for special leave to appeal, but both applications were refused. However, a proper examination of the issues involved in these cases is not possible without resorting to a full account of the impact of the offences upon the complainants. Both men were originally charged with unlawful sexual intercourse (colloquially referred to as “rape”) but, due to a number of issues (including the reluctance of complainants to appear in court and the intention and understanding of the men in relation to the offending), both men ultimately pleaded guilty to a lesser charge.

These cases reflect some of the difficulties facing the criminal justice system in its ability to effectively deal with such cases.

The following analysis of the cases is, therefore, flawed to the extent that it largely concentrates on what transpired in the context of the court proceedings. They do not necessarily accurately reflect the precise physical and emotional impact upon the complainants and the physical and emotional exchange between the parties.

R v. Mungurula²⁴

The victim in that case was 10 years old and the offender 18 years old. The victim was the promised wife of the offender's grandfather, who had since passed away. As a result, she became the promised wife of the offender, but the offender did not know that. In having sex with the victim, the offender was not knowingly acting in accordance with traditional marriage practices and was, in fact, in breach of Aboriginal and NT law by doing so.

Jamilmira's Case²⁵

This case involved a 50-year-old man having sex with his 15-year-old promised wife in 2001. The girl's parents had promised her to Jamilmira at birth in accordance with the local custom.

The normal traditional protocols were not followed leading up to co-habitation. The Inquiry notes, however, that it is difficult in most communities today for those protocols to be followed to the letter.

The family of the girl believed she was already sexually active and using ganja and this was placing great stress upon them. The family, in turn, was placing stress on Jamilmira to fulfil his responsibilities as a promised husband. Ultimately, the girl was driven by her family to Jamilmira's outstation.

The following day, Jamilmira had sex with the girl. It is important to note that he was not required to have sex with her pursuant to Aboriginal law. However, he believed that as her husband he was entitled to do so.

The next day her friends attended at the outstation and noticed the girl was unhappy. She tried to leave with them. In response, Jamilmira produced a shotgun and fired it in the air. The girl stayed with Jamilmira until her friends alerted the Police.

GJ's Case²⁶

This case involved a 54-year-old man having sex with his 14-year-old promised wife. This happened in June 2004. The girl's father had promised her when she was around four years of age. This involved an initial exchange of

goods as consideration and then an ongoing relationship where GJ would provide goods and services to the father. The girl's mother was against the girl being promised.

As with *Jamilmira*, the traditional protocols were not followed leading up to co-habitation. The girl's grandmother was upset with the girl because she believed she was sexually active with a young adult male from another community who was the wrong skin. The grandmother and GJ confronted the girl and the young adult male. The girl was assaulted by both the grandmother and GJ and ordered by the grandmother to accompany GJ to his outstation.

Once at the outstation, the girl was subjected to non-consensual anal intercourse. As with *Jamilmira*, GJ was not required to have sex with the girl pursuant to Aboriginal law and the court noted this. However, he believed that as her husband he was entitled to do so.

As Chief Justice Martin stated in the sentencing remarks:

I have said that you believed that what you did was permissible and justified. It must be said, however, that there was nothing in your Aboriginal law which required you to strike the child or to have intercourse with her... Recognising these beliefs and their effect upon your culpability is not to condone what you did, but simply to recognise as a factor relevant to sentence.

The Inquiry notes that the latter two cases sparked controversy that was widely reported in the media. However, the Inquiry also notes that in both cases:

- there was strong evidence presented in court relation to the traditional marriage aspect of the respective cases
- the sex was not considered part of Aboriginal law
- the Judges in the first instance were correct to have taken into account the traditional marriage context as one relevant factor in sentencing
- the Judges in the first instance erred by not giving enough weight to the ordeal suffered by the victims
- these errors were corrected on appeal.

The Inquiry concludes that traditional marriages and the "promise system" have been an important and integral part of traditional Aboriginal culture. This is the appropriate starting point when dealing with this matter.

24 Unreported decision of the Northern Territory Supreme Court, 18 April 1975

25 *Hales v Jamilmira* [2003] NTCA 9.

26 *The Queen v GJ* [2005] NTCCA 20.

The Inquiry also concludes that traditional marriage practices are in decline. The Inquiry's experience was that this was not seen by many Aboriginal people as a good thing. The research also supports this experience.

Sexual relations between an older man and a post menarche female spouse, is not considered aberrant in Burarra society. Rather, it is the cultural ideal, sanctioned and underpinned by a complex system of traditional law and practice. That such behaviour may be at variance with contemporary western sensibilities, mores and laws... in no way diminishes the fact that it is regarded as entirely appropriate – indeed, morally correct – conduct within the traditional parameters of the Burarra life-world (Bagshaw 2002)

The Australian Law Reform Commission noted:

Admitting the decline of traditional marriage practices does not mean its disappearance is desired or accepted (Australian Law Reform Commission 1986).

The Inquiry received many oral submissions from older men and women, to the effect that traditional marriage practices should be restored. Submissions from younger people were more inclined to favour a less restrictive regime.

Sub-Cultural Traditional Marriages

The concern of many older Aboriginal people was that, by abandoning traditional marriages, many of the old teachings and responsibilities were not being passed on and the family structure was being compromised. Much concern was expressed that a “sub-culture” of rampant promiscuity among the youth was superseding the traditional system. As noted previously:

Kids get married one week, have a kid and then divorce the next week.

Jingli Elder

Despite this apparent decline, it was reported that some older men are still “claiming” younger girls as their “wives”. This type of claiming was not in accordance with traditional law and was not arranged through the families. It involved the man acting on his own, sometimes with the consent of the young woman involved, but more often than not with a strong element of coercion.

In one community, the Inquiry heard a story of a 14-year-old becoming pregnant to her 30-year-old “husband”. The

authorities apparently decided it was not in the public interest to pursue the matter. In the same community, another 30-year-old had apparently “detained” his 12-year-old “wife”.

In another instance, a 12-year old girl went to a community chasing her 32-year-old “husband”. In that case, the girl was removed from the community and sent home.

The Inquiry was told that this type of conduct is against Aboriginal law but the Elders are now powerless to stop it. It is a cause of great discontent among the older Aboriginal people and a cause of great harm among the young. It would appear that this was why, in the cases discussed above, that many older members of the community supported the offenders as opposed to the victims.

A way forward

It is the Inquiry's view that action must be taken to establish a new set of moral “norms” within Aboriginal communities that do not fetter the freedom of choice but encourage the young to make appropriate and healthy choices in relation to sex and make certain behaviours socially unacceptable. Traditional marriage practices can still exist but the age difference between husband and wife will need to be reduced (otherwise the girl will not consent to be with the man), the “marriage” cannot be consummated until both parties are 16 years or older, and the sex must be consensual. In other words, the girl must enter the marriage of her own free choice.

Clearly, many Aboriginal people were still confused as to the age of consent and as to the general state of the wider Australian law as far as traditional marriage practices were concerned. Most Aboriginal people consulted by the Inquiry had little knowledge of the cases discussed above. Even those who knew about the case dealt with in their community did not know of the appeal.

The Inquiry notes that the present attitudes of the wider Australian society have come about through education and a cultural shift in attitudes. Many Aboriginal communities have not been part of this process. The Inquiry concludes that there needs to be mass education aimed at creating a “cultural shift” so that the human rights of all people are understood and respected. There also needs to be dialogue and support provided to Aboriginal communities so that they can modify practices and find alternative ways to deal with the ramifications of the changes to their traditional structures.

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The Australian Law Reform Commission has concluded that the resolution of conflicts between competing cultural standards is difficult and cannot occur quickly and without consultation. The balancing of basic human rights and freedoms on one hand, against the value of the social and cultural integrity of Aboriginal communities on the other, was not a straightforward task (Australian Law Reform Commission 1986).

It is of some interest that in 2003 - two years prior to the GJ case - the Committee of Inquiry into Aboriginal Traditional Law in the Northern Territory made the following recommendation:

Recommendation 5: Responding to promised marriages.

That so far as the concept of “promised brides” exists in Aboriginal communities, the government sets up a system of consultation and communication with such communities to explain and clarify government policy in this area.

The Inquiry hopes it will not be another two years before consultation, education and dialogue begins with Aboriginal people in relation to this important issue.

4.4 A related issue: child discipline

Young people these days have their own culture and it's a bad one.

Gurindji Elder

The children are lost to us.

Yolngu Elder

A constant theme during the Inquiry's consultations was that Aboriginal children had become unruly, disrespectful and lawless. The Inquiry was told that in many communities, the younger generations are living in anarchy and associated with this is rampant promiscuity and violence. This is seen as a major contributing factor to children being vulnerable to sexual abuse and also perpetrating sexual abuse.

The Inquiry was told that, generally speaking, autonomy is promoted in children from an early age in Aboriginal culture. Once children are old enough to walk around they are often pushed out into their wider peer group. They then become accustomed to making their own decisions and setting their own course in life.

This “traditional practice” involves a fine balance between individuality and connectedness to the group and can be a good thing if it is balanced with proper care. This care is provided by different relatives, depending on the child's stage of life. When this is working well, there is a consistency of care and moral learning that accompanies the encouragement of autonomy.

Problems begin to occur when one of those things starts to outweigh the other. When this consistent care is not present, the children become highly autonomous and eventually rebel against later intervention. This traditional method of child rearing was reported to be breaking down due to a lack of appropriate people available at the right time of the child's development.

The Inquiry was also told that while “initiation” still occurs in many communities the ceremonial practices that follow, which promote discipline and responsibility, have ceased due to a lack of available men. The result is male youth who think they are men but who do not have any notion of discipline or responsibility.

The Inquiry was further told that compounding this breakdown is the fact that the youth of today get their view of mainstream law from movies and observations of non-Aboriginal people, which leads to a contemporary vision of law that is completely different from the mainstream statute law. As one Yolgnu Elder stated:

Kids are more interested in rap music, baseball hats and basketball shoes than they are in following the law.

The Inquiry believes it would be helpful if dialogue began with Aboriginal people with a view to determining the strengths and weaknesses of traditional child-rearing practices in a modern context. Measures could then be put in place to build on the strengths and deal with the weaknesses.

Urgent education and dialogue with Aboriginal people needs to be provided in relation to the discipline of children, as does support for this discipline to occur.

Examples of ways in which discipline may be encouraged include keeping the genders separate until they are 18, learning of what in Yolngu is known as Raypirri (moral law), attendance at ceremony, and involvement in traditional dispute resolution practices.

The Inquiry believes the government, in consultation with Aboriginal people, must develop strategies to inform Aboriginal communities about their rights and responsibilities under Northern Territory law, in relation to the discipline of children, and in particular, to inform Aboriginal communities of their right to use physical correction that is reasonable in the circumstances.

These educative strategies must provide information to Aboriginal communities about effective alternative methods of discipline.

The Inquiry believes that these strategies must be developed and presented by Aboriginal communities and organisations. In particular, Elders and other respected members, including members of a *Community Justice Group*, should be involved in designing and delivering any educational programs.



5. Reporting sexual abuse of Aboriginal children

People are more willing to talk about sexual abuse these days. Why? Because it affects most/all families and often involves a family member but it is still difficult to get information about it, for people to talk about it –it’s like “digging into hard ground”

Comment from a senior woman in a Top End community.

5.1 Understanding and awareness of child sexual abuse

The Inquiry found that it cannot be assumed that all Aboriginal people have an understanding of what constitutes child sexual abuse. Government agencies responsible for responding to reports of abuse have a clear view of what they consider to be child sexual abuse and intervene accordingly. When these agencies interface with communities, clans, families or individuals as a result of allegations of child sexual abuse, an immediate problem can be that there is no shared understanding of what constitutes child sexual abuse. This can impact on all further actions and outcomes.

The Inquiry found that while many Aboriginal people and communities did have an understanding of what range of behaviours might constitute sexual abuse, there were a considerable number who did not. Being able to have a clear understanding is also complicated by the context in which the term is being used and who is using it. For example, the term, sexual abuse, may be used by Police to refer to an 18-year-old having sex with a 15-year-old, or a FACS worker may use the term to describe a step-parent who shows their child a pornographic magazine. It may be used to describe behaviour ranging from inappropriate touching to sexual intercourse. At one meeting in a Top End community, the group said they were not familiar with the concept of abuse, that it was a new word and not “in their culture”. They asked for an explanation of what was meant by abuse. They expressed surprise at the explanation and there was much discussion in language.

Discussion about what constitutes child sexual abuse is also complicated by the appropriateness of who should be talking about the issue, with whom and with what audience.

Northern Territory Government agencies rely on communicating in English even though this might be the second, third or fourth language of the Indigenous person they are speaking with. There is a risk that explanations of child sexual abuse in English are an inadequate way of communicating the complexities of this term. Where agencies may be able to access interpreters there is also a risk that officers assume that three words like “child sexual abuse” are easily translated with the same meanings they attach to them into another language and cultural system.

The Inquiry found that a particular point of confusion was the legal definition of “age of consent”, with many the Inquiry spoke with not having a clear understanding of what it was and what it meant. The NT *Criminal Code* makes it clear that a person under the age of 16 years cannot, by virtue of their age, give consent to engage in a sexual act, even if, to all intents and purposes, it appears to be consensual.

The Inquiry found that this lack of understanding or lack of a shared meaning of what constitutes child sexual abuse has significant implications for:

- the victims of sexual abuse
- agencies and their staff delivering services (Health, Police, DEET, FACS, Justice, SARC, NGOs)
- community action and development of a strong community position on the matter
- the provision and effectiveness of public health messages and media campaigns
- the opportunistic development of misinformation and incorrect understandings leading to an acceptance and normalisation of sexually abusive behaviour.

The Inquiry found that at many community meetings, both men and women expressed a keen desire to be better informed about what constituted child sexual abuse and the health, social and legal responses to it. However, people did not want to be talked at. They wanted to be able to enter into a dialogue in their own language through which they could develop this understanding, with information, assistance, support and time being given by the relevant agency to facilitate this process of learning.

Awareness of sexual abuse occurring

The Inquiry found that there was an awareness of child sexual abuse occurring because either a community had experienced it as a local issue, or because of the high degree of media attention the problem received in 2006. In all community visits, the Inquiry asked community members if they were aware of child sexual abuse occurring in their community. It was acknowledged that this was a difficult question to ask and answer but it had to be asked because the issue is so important. A number of communities acknowledged that there had been incidents of child sexual abuse in the past, some acknowledged there was a present problem, and some said it was not a problem in their community but they knew it happened in other communities.

This small selection drawn from the Inquiry's meeting notes reflect some of the concerns expressed by communities on this issue:

The group believed that Community X, mainly because it was a small community, did not suffer to any large degree child sexual abuse. If it did happen they would know about it. However, they were concerned about children walking around at night unsupervised and called them "larrikins".

*Comment by women at a meeting in
Central Australia*

Young men of the community had too many sexy thoughts in their head and not enough education to know what to do about it. They said the girls were also very sexually active and would sometimes tease groups of young boys. They believed that cannabis and pornographic videos were the main influences on this behaviour. They said that there was no abuse in the community from old people towards young people but that the combination of marijuana and pornography had created sexualised youth that were not educated and not properly in control of themselves. They gave an example of a twelve year old boy touching a younger girl and also of an older girl touching young boys. They noted also that there had been white people in Community X that had abused children and noted one fellow who used to expose his penis to young children. They noted that the young men in the community see

white fellas that live in the community having many different girlfriends and the young men then think that that is acceptable behaviour.

*Comment from men at a meeting in
Central Australia*

The men were aware of one episode of sexual abuse back in the early "90's where the offender (X) is still in jail. They pointed out that in relation to the sexual abuse in the early "90's the community tackled it head-on and the council were very strong on the issue. They said that back in those days people were happy to put these things out in the open because they were supported by the strong council and things worked out well. The whole X family had to leave the community.

*Comment from men at a meeting in the
Barkly District*

Service providers – understanding and awareness of child sexual abuse

The Inquiry found that both government and non-government service providers, tended to have a general understanding of what constituted child sexual abuse but did not necessarily feel confident that they could identify when it might be happening. Even if they did identify it, they were unsure of what they could or should do. Many commented on the need for training and information on indicators of child sexual abuse specifically and child abuse generally.

The level of awareness that sexual abuse was, or is, occurring in communities in which they worked varied. For example, in one large Aboriginal community there were a significant number of service providers (health, police, aged care, arts centre, youth program) who were unaware of the child sexual abuse that had recently been uncovered in their community. The Inquiry's meeting notes record the following response from a group of service providers in a remote community:

Without exception, they all expressed shock at the recent publicised incident. They went as far to say that if the Inquiry had of come out three months ago prior to the incident they all would have said that the community was pretty much safe and sound. They said there was mass community grief at present and people

had more questions than answers. They have since discussed it among themselves and realised that there is probably more of it going on than they appreciated.

Those who made written submissions to the Inquiry indicated that they had no doubt child sexual abuse was occurring in towns and out in communities and were very aware of the problem. While most submissions were from organisations with an interest in this issue, either because they were service providers or advocates, submissions also came from individuals who often, through their own work, had been confronted by the issue of child sexual abuse. A consensus of views was expressed in the submissions in relation to the extent and nature of sexual abuse of Aboriginal children that:

- it was being under-reported
- accurate data is virtually non-existent and what data does exist is inconsistent and/or often anecdotal
- the incidence of sexual abuse has worsened over the years despite the real extent of the problem not being able to be accurately measured
- it is more likely to be intergenerational.

The working experience of this committee persuades us that abuse is rife.

Submission from a group that has contact with victims of crime

5.2 Failure or reluctance to report

Everyone talks loud after the event but are silent and doing nothing beforehand.

Comment from a senior woman from a Top End community

A community perspective

The United Nations Convention on the Rights of the Child provides children with a right to protection from all forms of violence including sexual abuse (Article 19, United Nations Convention on the Rights of the Child).

One way of protecting children is for people to take action. In a civil society this action can be to report concerns that a child may be experiencing violence, to an agency that has the authority, skills and experience to intervene

to protect the child. In some jurisdictions, this action of reporting has become a mandatory obligation under child welfare legislation. In the Northern Territory, section 14 of the *Community Welfare Act 1983* requires a person to make a report if they believe a child is being abused or at risk of abuse. The Act also provides protection to the person making the report from civil, professional or criminal liability if they have made the report in good faith. In the Northern Territory, such reports are made to Family and Children's Services (FACS) or the Police.

The Inquiry found that while some reports of suspected child sexual abuse are being made to the relevant authorities, there is also, at best, a reluctance to make reports and, at worst, a failure to do so. As mentioned previously, there is a lack of understanding and awareness in relation to child sexual abuse, which obviously impacts on whether a report is made. Increasing individual, family, clan and community knowledge in relation to the following matters would go some way towards improving the protection of children through increased reporting:

- what child abuse and neglect is generally and what constitutes child sexual abuse specifically
- their reporting obligations under the present *Community Welfare Act*
- how to go about making a report.

A comment at a community meeting in the Katherine region was:

We need education in the community so people can recognise the signs and if they do have a suspicion then take it to the Law and Justice Committee.

The Inquiry found, from interviews, submissions and community consultations, that even if people were aware of sexual abuse and how to report it, they were reluctant to do so. It became obvious to the Inquiry that a number of factors lead to this reluctance, including:

Fear of the consequences of reporting

The Inquiry was told that for Aboriginal people there are multiple causes of fear that prevents reporting. One clear concern was the fear of violence and intimidation by other community members if they made a report, and that it might not be them but their family members who would suffer if a report was made. Some other causes of fear identified were:

- that the child victim of abuse may be ostracised by the community
- past history of interaction with powerful authorities presently represented by FACS and Police (history of Stolen Generations)
- possible removal of the child from the community (history of children never returning).
- the perpetrator going to jail and implications of this in terms of community repercussions (memory of deaths in custody).

A subculture of violence needs to be broken – people need to feel confident they will not suffer [as a result of reporting] and that the effort was worthwhile.

From a submission to the Inquiry

The Inquiry became aware of one instance where, instead of responsibility for unlawful behaviour being laid at the feet of the offender, blame was shifted to sorcery to avoid accountability:

Strong fears of sorcery, shamans and witchdoctors – tradition that is now abused.

Comment at meeting in a Top End community

Feelings of shame

The Inquiry was told that victims and their families may experience feelings of shame when a report is made and responded to, and that these feelings can be reinforced by the perpetrator to ensure secrecy. In addition, families may be fearful of the shame that will be brought to their family and community by reporting. The recent media attention on an Aboriginal community has left that community shamed and angry and it would be reasonable to suggest that decisions to report in the future will be tainted by this experience.

Feelings of ambivalence

Concern was expressed that in some communities there is ambivalence about reporting or dealing with the issue of child sexual abuse. This ambivalence results from many interacting factors. One can be a view that even if a report is made nothing changes or the change is a negative one, such as the child being removed, the perpetrator remaining in the community and perhaps not receiving

any legal punishment, while the community is shamed and disrupted.

While a community can express public concern about incidents of sexual abuse, the reality is that this often does not translate into action at an individual or family level.

A history of negative experiences when reporting abuse

Some are reluctant to report or decide not to report because of negative past experiences when reporting abuse. Some of the features of a previous reporting experience can be:

- outcomes are not what was expected or what the person was led to believe would occur
- fear of violence from other community members or of being ostracised
- no feedback to the reporter once a report has been made, which can exacerbate real fears that the reporter may have had to overcome to make the report
- the reporting process was too intimidating.

From the way the present system operates, people see the angst and stress involved in making a report and that deters others from making a report. One way to address this was to have an independent venue that people were comfortable confiding in and where they could consult about their options before going to the police.

From a meeting at a Top End community

Reliance on the English language

For many people, English is not a first language. Given that education and information regarding child sexual abuse is invariably provided in English, this can result in ineffective communication. Further, the child protection and criminal justice system tend to rely on victims and witnesses being able to communicate in English. Even though interpreters are used in some cases, there is a risk that something may be lost in translation, especially when the issues being discussed are deeply personal, delicate and frightening. There may also be difficulties in translating some concepts into Aboriginal language in a way that preserves their meaning, leading to confusion and misinterpretation. At one community meeting in the Top End, the participants were asked if they understood what mandatory reporting

meant. They responded that they were unsure as it was English language which they did not understand well, and they needed to explain it in their own language.

Cultural requirements and obligations

A traditional cultural system where reciprocal obligations, trust and sharing are key features complicate an expectation that an individual must report and is able to report. There was concern that it is unrealistic to put pressure on Aboriginal women and children to be responsible for reporting especially when the consequences have a community wide impact:

with sex abuse there are sometimes cultural impediments for certain persons to deal with the issue. For example, if a girl was sexually abused that would not be able to be discussed with her brothers. It would be culturally inappropriate for the brother to hear that kind of thing.

From a meeting with men in a Top End community.

Normalisation of violence

It should also be noted that the level of violence and aggression in many contemporary Aboriginal communities is significantly greater than would be considered acceptable in other communities. This is supported by a range of national and Territory statistics on crime and violence (see Part II). As a result, violence has been normalised and, to some degree, accepted in communities.

Concern was expressed that women experience a high level of physical and sexual violence, which goes unreported or is not acted upon. It is unrealistic to expect that child abuse will be reported where community violence is high.

Enculturation of violence, where the violence is socially and culturally accepted and therefore minimised and justified. This is reflected and reinforced by the mainstream society through individuals and institutions with which Indigenous people interact. Victims are often held responsible or blamed for the violence and/or abuse that they experience.

From a submission to the Inquiry

A service provider perspective

The Inquiry found that some service providers, both government and non-government, are also reluctant to report child sexual abuse, or fail to do so. This is of

particular concern given that they are often in positions of responsibility that bring them into close contact with children and their families. It is also concerning because government service providers should have policy and procedural guidelines to follow in relation to the identification and reporting of child sexual abuse, as well as organisational support to do so. If workers in government agencies are not trained or supported in reporting, how does that reflect on that agency's commitment to the protection of children? Is it then reasonable to expect the private citizen to report when government does not ensure that it's own staff work in an organisational culture that promotes the protection of children and provides them with training and support in relation to reporting?

Some reasons for failure or reluctance to report were similar to those of Aboriginal people, and included:

- **Fear of the consequences of reporting**

The Inquiry was told that some non-Aboriginal people are fearful of violent repercussions and intimidation that might occur if they report and also that pressure might be exerted to make them leave a community. This fear appears to be exacerbated if they live in a location where there is no police presence.

Children of non-Indigenous members of the community have been sexually assaulted by Indigenous children and parents have not reported but quietly left as they wish to carry on working in Indigenous communities and reporting would result in vilification/isolation/ostracisation (sic).

From a submission to the Inquiry

- **Feelings of ambivalence**

The Inquiry was told by some service providers that they are ambivalent about reporting or dealing with the issue of child sexual abuse. As noted above, the perception is that reporting may not produce any real change, or the change will be a negative one (e.g. child removed, perpetrator remains, the reporters feel at risk themselves).

(The school) has made reports to FACS but has had no visits/feedback/response and hasn't seen a FACS worker in 4 years.

Comment at a meeting of service providers at a community in the Katherine district

- **History of negative experiences when making a report**

For some service providers, the result of making a report has, from their perspective, been a very negative one, or the process of reporting itself has been a negative experience and they are, therefore, reluctant to report again. Some features of a previous poor reporting experience can be:

- there have not been any services available to help the child or the family after the report is made and the investigation is over
- there was no information sharing between FACS and on site service providers, with the latter feeling powerless and excluded from helping the child and their family
- actual discouragement to report because of “institutional secrecy” in some organisations
- inconsistent responses to reports, particularly in respect of sexually transmitted infections (STIs) in children and underage pregnancies;
- negative impact on their professional relationship with the family and/or community
- no support from their agency when they have made a report.

Lack of practical and effective support and resources to Aboriginal communities, organisations and families in providing services and support for children and young people

From a submission to the Inquiry

- **Lack of awareness of mandatory reporting obligations**

The Inquiry found that some service providers were unaware of mandatory reporting obligations under the *Community Welfare Act*. Some were unaware of their own agency’s policies and procedures for reporting, or of any protocols that existed between themselves and other agencies in relation to reporting.

The school is unaware of mandatory reporting, any education department policies and procedures and have had no training in this area. They would be concerned about reporting especially if it was able to be identified back to them as the source of the report.

Indigenous teacher – Katherine district.

School staff have not had any training in mandatory reporting or indicators of child abuse and neglect - the principal will be in Adelaide during the holidays and is going to attend a sexual abuse notifiers training course (he has organised this himself).

Comment at a meeting with school staff in a Top End community

A further example came from a discussion with service providers at a community in the Katherine region. Both the school and clinic representatives were unsure about what steps they would take if they became aware of child sex abuse. They said that there was a deficiency in training in that regard and they were not aware of any particular protocols. They said if there was a suspicion about abuse, they would discuss it with their supervisors but even their supervisors were not sure as to what the next step would be.

- **Lack of confidence or misconceptions**

The Inquiry found that some service providers did not report because they did not feel confident in making an assessment of whether a child might be being sexually abused. Many reported having no training or professional development in this area. Some reported having minimal training. For example, they were given an explanatory memo to read which in some agencies sufficed as “training”. Therefore, a person might not report because they did not feel that the belief they held regarding possible abuse was sufficient. The provision of adequate training might have at least ensured they contacted the FACS Child Protection Intake team to discuss their concerns.

Perception of role

The Inquiry found that some service providers did not consider it part of their role to report child abuse and neglect.

The Health Worker felt strongly that it was not their role to report suspected abuse to FACS – that was the family’s responsibility and the Health Worker role was to be there to help. They said that Health Workers need leaders to help them when confronted with reporting issues.

Women at a meeting in a Top End community

It was also apparent that some professionals working in communities were not reporting suspected child sexual abuse because of a perception that to do so would harm their relationship with community members. That is, they

felt that making a report would mean that community members would no longer trust them or use their services. Their judgement was that the need to maintain their relationship of trust with the community outweighed the requirement to make a report. The Inquiry's view is that while maintaining a positive engagement with children, families and communities is important, professional engagement does not override the legal (or professional and ethical) requirement to report suspected child abuse. That said, further work could be done to reduce any perceived negative impacts on reporting, particularly through the education and active engagement of the Aboriginal community in combating child sexual abuse. Some mechanisms for community involvement (described later in this Report), such as a role for elders in working with victims' (and offender') families, and the creation of community justice groups and/or community 'brokers', might create communities more accepting of the need to report and therefore lessen any mistrust of professionals who report suspected child abuse.

Discussion and support for the recommendations

The remainder of the Chapters in Part I discuss and provide support for the report's recommendations and place them in context.



6. Leadership

From what goes before, it is hardly necessary to say that the Inquiry found Aboriginal child sexual abuse to be an issue of urgent national significance. It is an issue requiring the immediate attention of the Northern Territory and Australian Governments with a collaborative and consultative approach. It is necessary, in the Inquiry's view, for the Northern Territory Government to take control of the issue and demonstrate real leadership. All the reasons justifying this view and approach appear in the earlier parts of this report, so stating them again here would be an exercise in repetition.²⁷

Wherever the Inquiry has been, people have complained of the short-term nature of funding of programs, projects and pilots.²⁸ They do not allow time for strategies to be firmly established over long periods, for personal relationships (important in communities) to develop or for consultation and genuine commitment to bridge cultural divides. The complaint comes not only from the communities but from agency staff providing the services.

The Inquiry was told that such programs, project and pilots are also tied with so much complicated red-tape and paperwork that local communities were often unable to complete them in time. Some communities gave examples of projects where the paperwork in reporting "outcomes" was so comprehensive there was little time to carry out the core business of the program. In at least one case, the deadline for making an application passed unnoticed. No extension of funding was apparently possible.

These arrangements must be flexible. There is great difficulty in enforcing such matters from thousands of kilometres away in Canberra, or even hundreds of kilometres from Darwin.²⁹

It has been suggested that the cyclical nature of the electoral process throughout the country is much to blame for government action and inaction, which tends

to respond predominantly to the needs of the day. Governments of all persuasions are more obsessed with being re-elected than concentrating on dealing with those issues which justify their existence in the first place. There is nothing new or surprising in this. It is, however, sometimes necessary to remind ourselves that hard decisions do have to be made. The Inquiry is positively convinced that unless prompt and firm decisions are made, and leadership shown at ALL levels of society, real disaster faces Australia within a generation.

Recommendations

1. That Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory Governments, and both governments immediately establish a collaborative partnership with a Memorandum of Understanding to specifically address the protection of Aboriginal children from sexual abuse. It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.
2. That while everybody has a responsibility for the protection of all children, the Northern Territory Government must provide strong leadership on the issue of child sexual abuse, and that this be expressed publicly as a determined commitment to place children's interests at the forefront in all policy and decision-making, particularly where a matter impacts on the physical and emotional well-being of children. Further, because of the special disadvantage to which the Aboriginal people of the Northern Territory are subject, particular regard needs to be given to the situation of Aboriginal children.
3. That the Northern Territory and Australian Governments develop long term funding programs that do not depend upon election cycles nor are limited by short-term outcomes or overly bureaucratic reporting conditions and strictures.

27 Those who require reminding might refer, inter alia, to the Foreword and Overview

28 See, for example, the remarks from community members on the previous pages of this Report.

29 We heard from one very senior public servant who had worked for over 30 years in the Territory and had visited one community in all that time (in 2006).



7. Government responses

That addressing issues of Aboriginal health and welfare are a cross-government responsibility is a “given”. This section describes some of the mechanisms by which governments may act.

7.1 Council of Australian Governments

The *National Framework of Principles for Service Delivery to Indigenous Australians* was endorsed at the Council of Australian Governments (COAG) meeting on 25 June 2004. It underpins the way state and federal governments work together in Aboriginal affairs. The principles of the National Framework include:

- *Sharing responsibility*: Committing to cooperative approaches on policy and service delivery between agencies at all levels of government and maintaining and strengthening government effort to address Indigenous disadvantage, as well as building partnerships with Indigenous people based on participation and mutual obligation
- *Harnessing the mainstream*: Ensuring that Indigenous-specific and mainstream programs and services are complementary, improving access to services and jointly identifying priority issues
- *Streamlining service delivery*: Delivering services and programs that are appropriate, coordinated, flexible and avoid duplication; recognising the need for services to take account of local circumstances and be informed by appropriate consultations and negotiations with local representatives
- *Establishing transparency and accountability*: Strengthening the accountability of governments and funded organisations through regular performance review, evaluation and reporting to increase the effectiveness of their programs and services
- *Developing a learning framework*: Information-sharing and striving for best practice in the delivery of services to Indigenous people, families and communities

- *Focusing on priority areas*: Tackling agreed priority issues, including those identified in the *Overcoming Indigenous Disadvantage Report* (2005).

Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities Summit 2006

COAG held an Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities on 26 June 2006, following concerns about the level of sexual abuse in NT Aboriginal communities. It was subsequently reported after the July COAG meeting (COAG Communiqué, 14 July 2006) that the council would develop an immediate national targeted response, focused on improving the safety of Indigenous Australians. Further, it was recognised that improved resourcing and a concerted, long-term joint effort are essential to achieve significant change.

COAG reiterated its endorsement of the National Framework described above and agreed to adopt a collaborative approach to addressing particularly the issues of policing, justice, support and governance. The Australian Government agreed to make available about \$130 million over four years to support national and bilateral actions. This was on the basis that the States and Territories agreed to complement this effort with additional resources, to be negotiated on a bilateral basis in the following areas, with bilateral agreements between the Commonwealth, States and Territories being the key to ensuring this proceeds:

Policing, community education and support for victims and witnesses

COAG agreed that, on the basis that Indigenous Australians must be able to rely on, and have confidence in, the protection of the law, more resources would be provided for policing in remote areas where necessary, to improve the effectiveness of bail provisions and establish a National Indigenous Violence and Child Abuse Intelligence Task Force to support existing intelligence and investigatory capacity. Further, joint strike teams were to be established on a bilateral basis, where necessary, to work in remote Indigenous communities where there is evidence of endemic child abuse or violence.

COAG also agreed to invest in community legal education to ensure Indigenous Australians are informed about their legal rights, know how to access assistance and are encouraged to report incidents of violence and abuse. Further, more support for victims and witnesses of violence and abuse will be provided.

In the Territory, COAG's initiatives have so far translated into funding to build remote Police stations, employ drug detector dogs, and develop the Australian Crime Commission Intelligence Taskforce (based in Alice Springs).

Complementary measures

COAG agreed to work together to fund and administer complementary measures that address key factors contributing to violence and child abuse in Indigenous communities and, in particular, to address alcohol and substance misuse, which are among main factors influencing the incidence of sexual abuse. As COAG noted –

... reducing substance misuse can substantially reduce levels of violence and abuse, improve the overall health and wellbeing of Indigenous people, and may also increase educational attainment, household and individual income levels, and reduce crime and imprisonment rates. (COAG Communiqué, 14 July 2006)

COAG agreed to further support communities seeking to control access to alcohol and illicit substances at a local level, while the States and Territories agreed to encourage magistrates to make attendance at drug and alcohol rehabilitation programs mandatory as part of bail conditions or sentencing. COAG also agreed to further resource drug and alcohol treatment and rehabilitation services in regional and remote areas.

Recognising that Indigenous leaders and organisations play a vital role in addressing the problem of violence and abuse, COAG agreed to support networks of Indigenous women and men in local communities so that they can better help people who report incidents of violence and abuse. In support of this, it is understood that the Australian Government has committed:

- \$23 million over four years to 30 June 2010 for Indigenous Community Leadership initiatives, to be led by its Department of Family and Community Services and Indigenous Affairs (FaCSIA)
- \$10.7 million over four years to 30 June 2010 as assistance for community organisations to support

families tackling family dysfunction and the circumstances leading to breakdown of relationships, conflict, substance abuse etc

- \$23.6 million over four years to 30 June 2010 for Indigenous Family Violence Prevention Legal Services (through the Attorney-General's Department).

All governments agreed that sound corporate governance is important for the stability and effective functioning of communities and non-government organisations and that, in principle, they will only fund non-government organisations led and managed by fit and proper persons. To this end, the Australian Government has committed \$28.1 million over four years to 30 June 2010, to be managed by the Office of the Registrar of Aboriginal Corporations, to assist in reforming the delivery capacity of Indigenous corporations. In addition, it is understood that there will be revisions to Australian Government procurement policies, particularly for FaCSIA programs, which will include new standards relating to leadership and organisational fitness to receive government funds.

Poor child health and educational attainment can also contribute to an inter-generational cycle of social dysfunction. COAG agreed to an early intervention measure that will improve the health and wellbeing of Indigenous children living in remote areas by trialing an accelerated introduction of the Indigenous child health check in high-need regions, with locations to be agreed on a bilateral basis. This check has since been implemented through DHCS.

COAG has also agreed that jurisdictions would work together on the important and complex issue of the low rates of school attendance in Indigenous communities, which reduces the future life chances of Indigenous children. All jurisdictions will collect and share truancy data on enrolments and attendance. The Australian Government will establish a national unit to monitor, analyse and report on this data. Given the significant issue of Aboriginal children's truancy across the Territory, this requires actual investment in processes that will ensure children regularly attend school from a young age. COAG has asked the Ministerial Council on Employment, Education, Training and Youth Affairs (MCEETYA) to consider the issue of enforcing compulsory school attendance. At its April 2007 meeting, COAG noted the recent establishment of a National Student Attendance Unit to monitor, analyse and report on truancy data.

COAG also asked the Standing Committee of Attorneys-General (SCAG) to report to the next COAG meeting on the extent to which bail provisions and enforcement take particular account of potential impacts on victims and witnesses in remote communities and to recommend any changes required. Progress on implementing this action strategy was to be reported back to COAG in December 2006 but the meeting did not proceed and the report back had not happened as of April 2007.

7.2 Managing Indigenous Affairs at a national level – Australian Government

In January 2006, the responsibility for managing Indigenous affairs moved from the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) to the Department of Family, Community Services and Indigenous Affairs (FaCSIA).

As well as managing Indigenous affairs, FaCSIA is responsible for social policies and support affecting Australian society and the living standard of Australian families.

Prior to its move to FaCSIA, DIMIA established the Office of Indigenous Policy Coordination (OIPC) to coordinate a whole-of-government approach to programs and services, as well as develop and oversee national policy frameworks for Indigenous Australians. FaCSIA took on responsibility for this unit in January 2006.

Indigenous Policy Branch

FaCSIA has an Indigenous Policy Branch with an Indigenous Policy Framework that aims to:

- reduce the gaps in key social and economic indicators between Indigenous and non-Indigenous Australians
- build the capacities of Indigenous individuals and families to increase choice and participation, and enhance self-reliance
- build the capacities of Indigenous communities to ensure sustainable and prosperous futures.

The objective of the Indigenous Policy Branch is to integrate the work of FaCSIA for urban, rural and remote Indigenous people and co-ordinate FaCSIA's Indigenous research effort.

Shared Responsibility Agreements

A major role of the OIPC is to develop, implement, establish, support and monitor Shared Responsibility Agreements (SRAs). These agreements spell out what all partners, including communities, governments and others, will do to bring about long-term improvements for Indigenous communities.

This new arrangement in Indigenous affairs was implemented by the Australian Government from 1 July 2004 and is linked to the wider Indigenous reforms being pursued by COAG. "Shared responsibility" is the key philosophy that underlies this way of working and recognises that:

- governments alone cannot bring about all the changes necessary to overcome Indigenous disadvantage
- Indigenous people and communities must be involved in planning and building their own future.

Indigenous Coordination Centres (ICCs), which operate in 29 locations around Australia, (including four in the Territory) look after the Australian Government's Indigenous programs and negotiate SRAs with local Indigenous people and communities. Essentially, ICCs have been established to identify, develop and assist in regional planning at a state, regional and local level.

Bilateral Agreements

The National Framework of Principles for Government Service Delivery to Indigenous Australians provides for negotiation of Bilateral Agreements between the Australian Government and each of the state/territory governments. A bilateral agreement has been developed between the Australian and Northern Territory Governments. Consistent with the priority areas in the Overcoming Indigenous Disadvantage Report, one schedule now being developed as part of the bilateral – Child Health and Wellbeing – is designed to address child protection and support for vulnerable Indigenous families.

7.3 Northern Territory Government

The present Northern Territory Government was elected in 2001 with major policy agendas for health, education and employment and crime (including victims of violence), which led to a substantial investment in a range of areas of DHCS service delivery. This new focus on health and welfare, resulted in expanded and improved service delivery (e.g. the Caring for our Children child protection reforms), and a significant increase in surveillance of rural/remote and Aboriginal populations.

The protection of children and the prevention of child abuse and neglect have become key components of the NT Government's *Building Healthier Communities Strategy 2004-2009*, a strategic framework for DHCS (specifically it forms part of the Giving Kids A Good Start in Life theme), the DHCS *Five Year Aboriginal Health Plan* and the whole-of-government *Agenda for Action – A whole of government approach to Indigenous Affairs in the Northern Territory 2005–2009*. The protection of children is also a theme of the Government's *Building Safer Communities Strategy*.

This framework identifies the government's six main Indigenous affairs priorities for achieving substantial, lasting improvement to Indigenous people's social and economic wellbeing. An important part of this framework was "giving Indigenous kids a good start in life".

These include:

- ensuring access to education and training
- using early intervention initiatives aimed at supporting expectant mothers with information relating to combined health and nutrition information
- providing access to medical, parent support and early childhood services
- ensuring young people are safe and that the child protection system meets the needs of all Indigenous children and their families.

Responding to sexual abuse in Aboriginal communities – 2006

On 13 July 2006, following media and Australian Government interest in sexual abuse in Aboriginal communities in mid-2006, the Chief Minister announced a proposal to develop a long-term plan to significantly

narrow the gaps between Indigenous people and other Australians – as identified by the "Overcoming Indigenous Disadvantage" report produced by the Productivity Commission.

It is unclear how this plan will fit with the *Agenda for Action*. Regardless, depending on how it is constructed, this plan may impact significantly on the structural factors that underpin community levels of sexual abuse. The Chief Minister noted that:

the gaps are such that it will take a national commitment, over a generation, to make a major difference to the disadvantage experienced by Indigenous Australians....That's why I've called for a long term plan to improve housing, health, law and order, education, and governance – Indigenous communities must also play their part.

With support from the COAG meeting of 14 July 2006, the Chief Minister announced that work would begin on a detailed proposal for concerted, sustained action, and that the plan would incorporate "...definite goals over the short and medium term and I favor targets at 5, 10, 15 and 20 years...These targets should be tied to Productivity Commission indicators so we can measure our progress." (NT Government Media Release, 14 July 2006).

Caring for our Children reform

Since 2001, following what has become a national and international trend, the Territory has had a significant increase in the number of child protection reports identified and managed by FACS, with a significant increase in the number of children entering out of home care.

As evidence of the changing focus of NT child protection work, Aboriginal children now represent the majority of cases (actual children) dealt with by DHCS and account for much of the growth in service delivery, while the number of cases involving non-Aboriginal children has remained relatively stable. This supports the contention that it is the "discovered" high need of Aboriginal families, coupled with better surveillance of rural and remote populations, and the government's greater focus on child protection and child welfare policy that is responsible for the most of the increased demand.

In 2004, the Northern Territory Government announced the Caring for Our Children child protection reform

.....

package designed to “lead the way in fixing the problems inherent in the (child protection) system” by injecting a total of \$53.8 million over five years to FACS.

The intent was to fund FACS to both reform the child protection system and cope with expected increases in child protection service demand. Despite this funds injection, significantly greater than expected growth in child protection caseloads, (including a 97% increase in the number of children in out of home care) has meant that much of the funding provided to date has had to be used to manage the significant increases in service demand. There has been limited funding available to enact child protection reform. Without greater investment, the likely continued growth will affect the branch’s ability to reform information technology and staff education/training and to implement the new *Care and Protection of Children* legislation, or any other planned significant reform to policy and practice.

To ensure that child abuse intervention and prevention remains prominent as a whole-of-government agenda, the Inquiry is of the view that a senior officer should be designated in each NT Government agency with any contact with or responsibility for children, to coordinate that agency’s response to ongoing child protection issues. It is anticipated these officers would work in conjunction with FACS and Police as necessary and play an important role in facilitating inter-agency collaboration and communication in the area of child protection and related matters.

7.4 Legislation

The primary legislation underpinning the response to child sexual abuse and other maltreatment concerns in the Territory is the *Community Welfare Act 1983*. Criminal offences relating to child sexual assault are set out in Part V (Acts injurious to the public in general) of the NT *Criminal Code*.

The *Community Welfare Act* was developed in response to the death of a child following parental abuse. At the time of its enactment, the legislation was considered “ahead of its time” due to the inclusion of mandatory reporting responsibilities for the entire community. However, in order to provide a contemporary framework for the care and protection of children, the government approved the development of new legislation as a key element of the wider “Caring for our Children” child protection reform process.

Draft Care and Protection of Children Bill 2007

By the late 1990s, most Australian jurisdictions had updated their child welfare legislation to provide legal frameworks that better reflected changes in knowledge about child maltreatment and that would enable more flexible child protection responses. The new legislation takes into account recent developments in determining what is harmful to children and young people - both the identification of new forms of harm (e.g. children’s exposure to internet-based sexual activity) and/or expansions to the broad forms of harm that constitute child abuse or neglect.

In late 2003, government approved replacement of the NT *Community Welfare Act 1993* with new legislation that would provide a contemporary framework for the care and protection of children. This new legislation would also provide a more flexible legal framework under which the government’s “Caring for our Children” child protection reform process would be enacted.

From late 2003, the government undertook a significant public consultation process in support of the new legislation, holding public forums, releasing a Discussion Paper and issuing a call for submissions. In late 2004, the government tabled a Discussion Draft of the proposed legislation for a third phase of the community consultation. Extensive individual and group consultations around the Discussion Draft, involving over 500 participants, was undertaken in urban and remote areas between December 2004 and February 2005. To date, however, the government has not finalised and introduced a bill for the new Act to Parliament.

References in this report to the provision of the draft Care and Protection of Children Bill relate to Version 31, the most recent draft of that legislation available to the Inquiry. The draft legislation was not publicly available at the time of finalising this report.

Key elements

The Act incorporates appropriate cultural arrangements in relation to Indigenous and ethnic communities, which are reflected specifically in the principles of the role of the family, treating a child with respect, the best interests of the child and Indigenous children. Similarly, the definitions of family and relatives also reflect what these terms can mean in a multicultural society.

As has been the case with some other child welfare acts, the main forms of child maltreatment (sexual abuse and exploitation, physical, emotional abuse and neglect) are broadly defined under the draft NT Bill. The intent is to provide a definition that can encompass any further changes to the definition of what is harmful or abusive for children, with specific harms defined explicitly through child protection policies. Section 15(1) of the draft Bill describes harm to the child as:

Any significant detrimental effect caused by any act, omission or circumstance on:

- (a) the physical, psychological or emotional wellbeing of the child*
- (b) the physical, psychological or emotional development of the child.*

Without limiting subsection (1), harm can be caused by:

- (a) physical, psychological or emotional abuse or neglect*
- (b) exploitation (section 15(2)).*

“Exploitation” of a child “includes sexual exploitation and other forms of exploitation of the child by another person” (section 16(1)).

Mandatory reporting

The Northern Territory is still the only jurisdiction where reporting of child abuse and neglect by all members of the community is mandatory. Under the new Act, there is a continuing requirement for mandatory reporting when a belief is formed that a child is suffering, has suffered, or is at risk of suffering, harm or exploitation. The legislation will include a further requirement specifying that agencies have a duty to ensure their staff are aware of the mandatory reporting obligations.

Given the apparent failure of some professionals and community members to report child sexual abuse (see earlier), the additional requirement is welcome if it is used as the basis for ensuring professionals are better trained in relation to their obligations to report sexual and physical abuse. It is acknowledged, however, that any attempt to increase awareness and reporting must be undertaken in combination with increased resourcing of statutory child protection services and treatment/support services. This is to ensure that when reports are

made, they are able to be managed effectively. This is a clear lesson from the experiences of other Australian jurisdictions, which failed to prepare adequately when increasing mandatory reporting, and subsequently sent their child protection systems into crisis (Tomison 2004b).

Working in partnership

The proposed legislation frames the abuse and neglect of children as a whole-of-community issue, encouraging inter-agency and community partnerships that protect children more effectively, yet also promote the development and wellbeing of children and offer support to families and communities in caring for their children. Thus, the legislation underpins a broader agenda of preventing (not just responding) to child abuse and neglect.

By explicit recognition that all agencies are responsible for child protection, the manner in which FACS deals with reports can be reformed so that a range of agencies can be called upon to participate in investigatory or assessment tasks, and in providing therapeutic or other supports for vulnerable or maltreating families. In addition, it will enable FACS to divert a proportion of cases involving vulnerable families, to key partner agencies after initial telephone assessment, thus allowing its child protection services to focus on children and families who actually require a full statutory involvement.

Further strengthening inter-agency collaboration, the Chief Executive Officer (DHCS), under the draft legislation, is able to establish inter-agency Review Teams that can provide a mechanism for ensuring that the child protection response by agencies is of a high standard. Members of the teams can be drawn from across government and non-government agencies and organisations to ensure that there is opportunity for the development of coordinated and collaborative efforts to safeguard the wellbeing of children. A Review Team will report to the Chief Executive Officer (and the Children’s Commissioner) about the operation of the child protection and care system in the Northern Territory, highlighting aspects of good practice and areas where improvements are required. For example, the Review Team may examine services in a region and recommend processes that could make the system more effective or accessible for families, or highlight certain client groups whose needs are not being as effectively met as others. The Chief Executive Officer will be required to report annually to the Minister.

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The Board supports inter-agency collaborations being established and strengthened, and mechanisms developed to allow inter-agency child protection approaches to be monitored and refined.

A number of provisions not previously incorporated in the *Community Welfare Act 1983* have been proposed in the draft Act. These elements have been enacted in most other Australian jurisdictions and are considered key components in the care and protection of children and young people. They include:

- a Children's Commissioner
- background employment screening for people who work with children
- a child death review process
- provision of support for persons exiting the statutory care system
- increased regulation of children's services.

Screening for child-related employment

The Bill requires people working with children (including in a voluntary capacity) to have been issued a clearance notice by a Screening Authority. This clearance will be based on information obtained from a criminal history check in relation to prescribed offences. Part of the implementation of this provision will also be public education that a clearance notice is not sufficient to protect children. In addition, it is necessary for organisations and agencies to have child safe policies in relation to the recruitment and supervision of staff.

The Bill presently exempts voluntary workers in an educational institution for children, or in providing children's services, from needing to hold a clearance notice, provided they are a caregiver for at least one of the children in that setting. This addresses community concern expressed during consultations, that screening of close family members in these services is an unnecessary burden and may impact on the availability of valued volunteers.

It is acknowledged that this exemption may be abused by people intent on accessing children for improper purposes. In the case of the proposed exemption (for close family members within school or child care settings), there is a risk that a person who met all the criteria for the exemption would attempt to use the opportunity to

gain the trust of children within the supervised setting in order to take advantage of it outside of that setting. However, this risk is minimised by the strict requirements of the provision and needs to be weighed against the valuable contribution that family involvement brings to the classroom and child care settings.

Strong support for employment screening was expressed in the consultations undertaken by DHCS in support of the Bill's development, and in the consultations carried out by the Inquiry.

Children's Commissioner

Children's Commissioners presently exist in New South Wales, Queensland, Victoria, Tasmania and the Australian Capital Territory. Western Australia is in the process of appointing a Commissioner and South Australia is considering legislation to provide for a Commissioner. The Commissioners have different structures and functions based on the specific needs identified in their jurisdictions. What is common is that they are all (with the exception of Victoria) independent advocates for children, with some also having a complaints investigation function.

In a paper presented to the Law Institute of Victoria's President's Luncheon in October 2002, the then Chief Justice of the Family Court of Australia, Justice Alistair Nicholson, made a case for the creation of a Children and Young People's Commission in Victoria. Although talking specifically about Victorian children, his comments could be equally applied to Territory children:

Our children need a Commission which will champion their rights and ensure that their needs are considered by all levels and arms of government and every element of a society that too often leaves them out on a limb. (2002:1)

Justice Nicholson (2002) identifies what he considers to be the key features of a Children's Commissioner or Ombudsman as:

- having a mandate that takes the United Nations Convention on the Rights of the Child as its frame of reference and having lead responsibility for monitoring how convention obligations are met

- being an independent office with its own permanent statutory powers and accountable to Parliament rather than the government of the day
- having a recognised place and responsibility in the government bureaucracy
- being adequately resourced, not just financially, but also in terms of access to information
- being focused upon and accessible to its young constituents
- having a breadth of remit that includes all levels of government, non-government and commercial organisations which impact upon children and young people
- being concerned with advancing and promoting respect for the rights, interests and wellbeing of all children and young people and not only focusing on child protection, but rather a “force for the prevention of abuse and neglect”
- having a Commissioner who is independent.

Justice Nicholson also identified what he saw as the key functions and responsibilities of a Commissioner or Ombudsman for Children, and these were:

- on an ongoing basis review and report on proposed and existing laws, practices and policies which relate to children and young people
- promote public education programs about the UNCROC
- conduct inquiries in response to a reference or at its own instigation and have the capacity to exercise powers related to the production of evidence and the protection of witnesses
- promote models of children and young people’s participation in decision making, not only about their individual circumstances but also about laws, policies and practices that affect them.

The draft Care and Protection Bill provides for a suitably qualified and experienced, independent Children’s Commissioner to be appointed by the Administrator on the recommendation of the Minister. The functions of the Commissioner centre on five key activities and the legislation provides the Commissioner with the powers to undertake these activities. The Act provides a Children’s Commissioner with the functions of investigating a

complaint made by “protected children³⁰”, initiating a complaint in relation to a “protected child”, advocating for children generally, reviewing laws and practices as they relate to children, making recommendations to the Minister about the operation of this Act and monitoring the ways in which service providers respond to investigations and reports.

The Inquiry supports the introduction of a Commissioner for Children. Given that the NT already has a number of complaints handling mechanisms (Ombudsman, Health Services Complaints Commissioner, Anti-Discrimination Commissioner), (and consistent with interstate Commissioner roles), it is the Inquiry’s view that the principal role of the Commissioner should not be complaints handling, but rather:

- advocacy for children and children’s rights
- conduct of inquiries
- service system monitoring (particularly relating to child protection concerns)
- research
- auspicing or involvement with the child death review committee.

The relevant legislation must include, as an explicit priority for the Commissioner, the interests and needs of Aboriginal children and young people, as is incorporated in the *West Australian Commissioner for Children and Young People Act 2006*.

Finally, the Inquiry is of the view that an independent statutory office should be appointed to monitor the government’s response to the Inquiry’s recommendations and to formally report on its progress in implementing the recommendations, and to suggest any further action required on an annual basis. This role could be incorporated into the proposed Children’s Commissioner’s role and responsibilities, but it would sit equally well with another statutory appointment, such as a “Commissioner for Aboriginal Issues” – an independent statutory position tasked with monitoring the rights, health and wellbeing of all Aboriginals in the Territory. Support for such a position

30 A protected child is defined within the Act as a child subject to Chapter 2 of the Act (children in CEO’s care), a child with a disability, a child under a court ordered health or rehabilitation treatment program, under an order of the *Youth Justice Act*, or is in detention or imprisonment under a law of the Northern Territory.

(and for independent monitoring) is found in the Law Reform Commission of Western Australia's Final Report on Aboriginal Customary Law (2006: 52-58).

The LRCWA noted the frustration expressed by Aboriginal people in relation to the number of reports previously prepared and recommendations made by government that are never implemented. They noted that self-assessment by government is often silent on what Aboriginal people themselves perceive and experience in terms of progress and that assessment is never ongoing nor independent. Like the LRCWA, the Board of Inquiry recognises the need for an ongoing flexible review process that facilitates the participation of Aboriginal people in implementing the recommendations of this report and also focuses on outcomes. Further, there should be an independent statutory appointment made with the responsibility for regularly monitoring and reporting to Parliament on the government's progress in implementing this report's recommendations.

The proposed Children's Commissioner could fulfil this function. The Inquiry recommends that, given such a position does not presently exist, the Deputy Chief Executive of the Department of the Chief Minister regularly monitor and report in the interim.

Child Death Review and Prevention Committee

The purpose of this committee is to prevent deaths of Territory children by conducting research and maintaining a database about such deaths, and developing appropriate policy concerning child deaths, diseases and accidents.

The committee will be appointed by the Minister and comprise between 10 and 16 people with qualifications or experience relevant to the committee's functions. One member must be the Deputy Coroner and at least two members must be Aboriginal. Appointments will be for two-year terms and the committee will meet at least three times a year. The committee will have the capacity to call on advisors where appropriate, and provisions in the Bill will ensure it has access to the relevant information that will allow it to perform its functions.

The committee must report annually to the Minister, and the report must be tabled in the Legislative Assembly. A copy of the report must also be provided to the Children's Commissioner.

The scope of the proposed committee is to assess and report on all children's deaths. The Inquiry believes the proposed review function has the potential to improve the classification of child deaths, identifying preventable "risks" to child health and wellbeing and providing valuable insights into service issues that may require resolution.

It should be noted, however, that child deaths identified as arising from child maltreatment are infrequent in the Territory. The Inquiry recognises that often the difference between a child who dies and a child in similar circumstances who does not, can be quite small. To that end, the Inquiry notes that consideration should be given to examining a sample of non-fatal serious child abuse and neglect cases in order to create greater opportunities to identify problems and improve system responses.

7.5 Legal intervention – new options

Few submissions considered refinements to the present operations of the NT Courts as a means of improving the protection of children and young people.

However, a submission by a senior Magistrate proposed an increase in the powers of Magistrates sitting in the NT Family Matters Court as a way to increase the statutory options available for managing perpetrators (and neglectful parents) and strengthening the means of protecting children from sexual abuse and other maltreatment.

Perpetrator orders

The main setting for Magistrates to make findings concerning child abuse (including sexual abuse) is in the Family Matters Court³¹ pursuant to the *Community Welfare Act*. The Act permits the Family Matters Court to make findings that a child has suffered maltreatment (including sexual abuse or substantial risk of abuse of exploitation) on the balance of probabilities. The Family Matters Court is not bound by the rules of evidence and often utilises reports from professionals to inform itself.

31 The NT Family Matters Court hears child protection applications for a range of orders designed to ensure FACS can effectively supervise and monitor a child where maltreatment has been substantiated and/or to enable FACS to remove a child permanently or temporarily when risk of serious maltreatment is too high.

Once a finding is made, and if the child is found in need of care, the Minister may remove the child or put in place such measures as are necessary to protect the child.

In more cases than not, criminal charges are not laid against an alleged perpetrator, typically because of a lack of evidence that makes the criminal standard. Thus, the alleged perpetrator may well remain in an extended family situation or in the community without being under any restraint as there are no associated criminal proceedings. Thus, while the child who is the subject of the declaration may be safe during the period of the declaration, the perpetrator is not usually obliged to address their behaviour at a broader level and may pose a risk to other children.

If the alleged perpetrator is a parent or carer of the subject child then officers may seek directions for counselling etc. as a condition of access, but this does not always address the broader issue. However, while there is no offence proven, the perpetrator has every right to live unrestrained.

It has been suggested that, once a balance of probabilities finding is made, the Family Matter Court should be empowered such that when the processes of the Court have identified a perpetrator of child sexual abuse in the context of “child in need of care” applications, the Court is able to make restraining orders, treatment or other appropriate orders against a perpetrator. This could be achieved through a legislative mechanism allowing the *Family Matters Court*, as an ancillary order after the *need in care* proceedings are complete, to make such orders as appear necessary on the perpetrator with a view to modifying their behaviour and protecting other children (e.g. limiting the alleged perpetrators contact with the child subject to a declaration, or other children).

Although there is a certain discomfort from a traditional civil liberties point of view to compel people who have not been found to have committed any offence, circumstances arise in the *Family Matters Court* where there are clear findings of abuse. In those circumstances, a proportionate response could be to place identified persons on orders that address their behaviour and restrict their access to particular children. (This is close to the situation that exists in relation to restraining orders within the NT *Domestic Violence Act*. Other examples of civil restraint are presently the subject of other statutes). Where this

matter becomes more controversial is in determining what should happen on breach of an order, as criminal sanctions might then need to be considered.

Parental orders

A second issue was raised with the Inquiry. That was that parents or carers of children who are found to be in need of care through neglect, or are at risk of sexual abuse because of a parent or caregiver’s neglect, should be able to be placed on similar orders as suggested above. That is, in serious cases of proven neglect (related to the failure to adequately supervise a child or allowing a child to be exposed to a dangerous situation), similar orders may need to be made as described above. Often such cases will involve the parents or carers presenting with chronic alcohol and drug problems.

FACS child protection workers may, through their practice, attempt to achieve the voluntary cooperation of parents to undertake treatment and counselling to ensure they better meet the needs of their children. The failure to take appropriate remedial steps may then be further grounds for the Minister to seek to remove the child from the family.

The proposal put to the Inquiry was to enable Magistrates to place neglectful parents on restraining orders, treatment or other appropriate orders to ensure they modify their behaviour. This again raises the unpalatable situation of persons not found guilty of any offence, being required to be subject to restraint or coercive order. It is submitted, however, that in serious cases, it is difficult to see much of an alternative.

The introduction of such civil restraints has been an increasing legal trend for some time and is often utilised when obvious wrongs are committed, but the conduct or proof issues are compromised and do not reach the standard required by the criminal law, an obvious issue in child abuse cases.

The Inquiry sees some merit in the proposal for parental orders, but notes that further investigation of the issues surrounding such an approach is needed. This matter is referred to FACS for further consideration.

Proposals for change in Government – Child Impact Analyses

In order that children's issues are considered as part of any policy and operations development across the NT Government, the Inquiry believes there is value in government agencies preparing a Child Impact Analysis to accompany all major policy, procedure and legislation developments, as applicable. This analysis should identify how children are likely to be affected by the proposal, in particular in a health and well being sense, whether it be a direct or indirect impact.

Recommendations

4. That the government develop a Child Impact Analysis for all major policy and practice proposals across Government.
5. That the government develop a whole-of-government approach in respect of child sexual abuse. Protocols should be developed as a matter of urgency to enhance information sharing between agencies and the development of a coordinated approach in which all agencies acknowledge a responsibility for child protection. The approach might build on the work of the Strategic Management Group and Child Abuse Taskforce but needs to extend well beyond those initiatives.
6. That all Northern Territory Government agencies adopt policies, procedures or guidelines that promote child safety (e.g. reporting child abuse, appropriate recruitment and selection practices of staff and volunteers who work with children, including screening processes wherever appropriate) and further that agencies ensure that compliance with such policies, procedures and guidelines relating to child safety are a requirement of all funding agreements they enter into with non-government organisations.

7. That a senior executive officer be designated in each Northern Territory Government agency which has any contact with or responsibility for children to coordinate that Department's response to ongoing child protection issues in conjunction with Family & Community Services (FACS) and Police, and to facilitate interagency collaboration and communication on child protection and related issues. A suggested designation for such officers could be "Director of Child Safety", and this group of officers to report to the Deputy Chief Executive in the Department of the Chief Minister.
8. That employment screening be mandatory for all employed persons and volunteers working with children as described in the draft Care and Protection of Children Bill 2007.
9. That a position of Commissioner for Children and Young People be established, with duties and responsibilities as described in the draft Care and Protection of Children Bill 2007. The Inquiry further recommends that:
 - a. the Commissioner should have a broad role not limited to individual complaints handling with the power to conduct inquiries into any issues affecting children and young people in the Northern Territory, but with an emphasis on child protection and child abuse prevention
 - b. The Commissioner to have specific responsibility for the wellbeing of Aboriginal children.
10. That a child death review process as described in the draft Care and Protection of Children Bill 2007 be established. In addition, the Inquiry recommends that the Child Death Review and Prevention Committee's terms of reference be extended to also enable case specific reviews of serious child abuse cases (where the child has survived) for the purposes of improving policy and practice and to make recommendations to Government as necessary. That the Committee be adequately resourced to perform these functions.



8. Family and Children's Services

8.1 The NT Child Protection System

A common misconception is that responsibility for child protection lies solely with Family and Children's Services (FACS) and the Police. In fact, the Territory's child protection and response system involves many people and agencies. **Responsibilities range from the broad role of all Territorians – government agencies and professionals and families and community members – to prevent abuse, to individuals reporting suspected abuse, to the FACS and Police statutory responsibility to protect children at risk of being abused, to the provision of a range of family recovery and support services provided by various government and non-government organisations (NGOs).** Together, families, communities, government and NGOs form a complex child protection and response "system".

As has been the case with all Australian jurisdictions to some extent, it is generally accepted that the total NT child protection system presently focuses its resources and attention on child protection "intake", i.e. the investigation and response by FACS and Police statutory child protection services to reports of suspected child abuse and neglect. Further, it is considered that the emphasis on "forensic investigations" has been at the expense of a focus (and resourcing) on the prevention, support and recovery elements of the system.

Unlike other jurisdictions, however, the NT system is further hampered in its ability to respond effectively to child sexual abuse and other child maltreatment. Firstly, small geographically-isolated communities (affecting up to 50% of the Territory's population) generally have limited access to health, welfare, education and other support services³².

Secondly, while most other state/territory jurisdictions can call upon a substantial network of NGOs to provide child and family support, there is a general lack of child and family support infrastructure across the Territory, which is particularly evident in remote Aboriginal

communities. This means that access to family support services (especially culturally secure services) and a range of support options is severely constrained. Without the creation of a larger infrastructure, it will be extremely difficult to attempt to cater to the support needs of children and their families. Of particular concern for the Inquiry is the dearth of sexual abuse counselling services, and the virtual non-existence of culturally appropriate sexual assault counselling services. Given that a well-functioning family support system is vital for undertaking the therapeutic work necessary to (1) prevent child abuse and neglect, (2) prevent the recurrence of abuse or neglect in maltreating families and (3) ensure that maltreated children are supported and assisted to grow up to be well-functioning adults, the Territory has a significant barrier to developing an effective response.

8.2 Family and Children's Services

The Family and Children's Services (FACS) branch sits within the NT Government's Family and Community Services portfolio. It is part of the Community Services Division of the NT Department of Health and Community Services (DHCS), along with the Mental Health, Alcohol and Other Drugs, Aged Care and Disability branches.

The 2004-2009 "Building Healthier Communities" framework for Health and Community Services provides clear directions for all DHCS services. The framework requires that DHCS focus on two key areas that are especially relevant to preventing and responding to sexual abuse:

- Giving kids a good start in life
- Strengthening families and communities.

Although often perceived to only undertake statutory child protection responses (i.e. investigations and crisis response, taking children into care when their parents or caregivers are unable to care for them), FACS also provides:

- funding for a range of parenting and family support services
- community education campaigns

³² Further, in some communities, ensuring the confidentiality of service provision is often a greater issue than is the case in more populated urban areas (Tomison 2004).

- Supported Accommodation Assistance Program (SAAP) – in partnership with the Australian Government
- domestic and family violence intervention programs.

The program has a total 222 full-time equivalent staff positions and most are involved in providing direct child protection services.

Budget

The FACS program budget is presently \$51.5 million per annum. The department noted that the capacity of the FACS program to deliver on the child protection reform agenda had been significantly eroded by extraordinary growth in demand and ongoing commitments (see Child Protection data, Part II). Further, the department noted:

Even with increased budget, FACS struggles to meet increased demand. Joint Taskforce responses are highly resource intensive over extended periods. FACS and NGO services require additional funding in order to seriously address the critical need for robust prevention and recovery services. Additional funding is also required for sexual assault counsellors and for intensive response and support work with victims and families.

DHCS conceptualises the NT's child protection and response system as having four key elements:

- Prevention: keeping children safe
- Intake: recognising and reporting possible child abuse
- Investigation and response: to possible child abuse
- Recovery and support: for victims, families and communities.

Much of the present focus within FACS child protection services is on intake and investigation processes. While these are critical services and must be adequately resourced in their own right taking into account real growth beyond the present reform program, there is an equally strong argument for adequate resourcing of parenting and family support services as preventative measures.

Recommendations

11. That FACS maintain a role in responding to cases of extra familial sexual abuse, develops and evaluates therapeutic support plans for the child, family (and community, where necessary).
12. That FACS be a division in its own right within the Department of Health and Community Services with its own Assistant Secretary.
13. That there be further government investment (and continued real growth beyond the current child protection reform program) to enable significant planned reform of the statutory child protection system.
14. That a separate branch be established within FACS with a specific focus on the provision of parenting and family support services designed to prevent the occurrence of child abuse and neglect. This branch should also manage the professional and community education programs recommended by the Inquiry.
15. That the Department of Health and Community Services (DHCS) urgently implement the FACS Child Protection Reform Agenda and the 2006 FACS Child Protection Workforce Strategy. The Inquiry recognises these are key strategies to support the delivery of consistent, high quality and timely investigation and response services by FACS and a coordinated therapeutic interagency response to children and their families.

Investigation and response

Primary responsibility for the investigation of child abuse lies with Police and FACS. FACS has a statutory responsibility to respond to sexually abused children and those perceived to be at risk of harm. FACS response options include:

- undertaking investigations and assessments (including the interviewing of children and their families)
- referring families to support services
- providing support and case management
- taking children into care to ensure their safety.

Despite public perceptions that FACS has responsibility for all instances of child abuse, the *Community Welfare Act* defines child abuse, and the protection of children, as being about the abuse or risk of abuse of a child through the commission or omission *of the child's parent or guardians*. Thus, FACS is only responsible for investigating intra-familial sexual abuse cases, or those where the child's parents or guardians have failed to protect them from exploitation or abuse. Police are responsible for investigating such cases in so far as a criminal assault may have occurred.

With regard to extra-familial abuse – where there are no concerns regarding the ability of parents and caregivers to protect a child from harm – such cases only involve criminal justice issues and are, therefore, the responsibility of the Police who carry out all criminal investigations. FACS staff have often assisted Police by organising a therapeutic response for the child victims and their families, but typically on an ad hoc basis.

It is important to note that, despite Police and FACS protocols stating that these two agencies should jointly investigate reports of child sexual abuse, until recently this occurred only where the matter was intra-familial or where the Police believed there was some other omission on the part of the child's parents or guardians in regard to protecting the child. The recent creation of the Police-FACS Child Abuse Taskforce (known as CAT) has led to a rethink of this approach and the development of revised investigation protocols. It has also led to the creation of therapeutic “community response plans” that FACS will enact, following a CAT investigation, to assist traumatised children, families and communities to cope with disclosures of abuse and/or any other traumas arising from the investigations process. See the chapter on Police, FACS and Prosecutions for more detail.

The role of other agencies

Other DHCS services also have important roles during the investigation and response process. Hospital specialists and Sexual Assault Referral Centres (SARCs) play key roles in the medical assessment and treatment of suspected victims, while remote and community health centres, alcohol and other drugs, disability services, and mental health services all provide important and necessary services.

FACS may also call on various government agencies for crisis support during the investigation and response process. Key agencies providing immediate assistance include Australian Government departments and agencies (e.g. Centrelink, the Department of Health and Ageing), NT Government departments and agencies (e.g. DEET, Local Government, Housing and Sport, the Department of Justice), and local councils. A number of NGOs also play a role in immediate crisis support by providing emergency accommodation and safe housing.

Response and intervention in relation to suspects and offenders is primarily the responsibility of criminal justice system agencies including: Police, Director of Public Prosecutions (DPP), Courts, Correctional Services, (custodial and community-based treatment and rehabilitation programs). The Department of Justice (DOJ) has responsibility for crime prevention and rehabilitation programs.

Recommendation

16. That FACS and Police undertake greater liaison with family or clan groups when conducting investigations, including the conduct of post-case debriefings, and utilising trained community brokers where appropriate.

Recovery and support

Primary responsibility for supporting survivors of child sexual abuse lies with SARC and FACS. The impact of sexual abuse on victims, families and communities can last a lifetime and may eventually result in inter-generational trauma, re-victimisation or the development of sex offending behaviours, and further family dysfunction.

Areas within DHCS which have roles in supporting survivors and their families include urban and remote health centres, sexual health, women's health and mental health. FACS also funds and coordinates the delivery of longer term generalist support services to survivors and their families, including crisis accommodation and support, women's groups, parenting education, youth services, family violence services and counselling services. These services are primarily delivered by other government agencies and the NGO sector.

However, as noted above, there is a general lack of resources and programs to help individuals, families and communities fully recover from sexual abuse in the NT. The intensive and sustained counselling and support necessary to help survivors and their families fully recover from sexual abuse is almost entirely unavailable in the NT. Thus, child protection workers and other professionals are often in the invidious (and professionally unrewarding) position of only being able to provide rudimentary, short-term, “band-aid” support to survivors and families after sexual abuse has occurred.

Ensuring the right focus

Across Australia, government family and children’s services (including the statutory child protection services) have at times been co-located with health services, or amalgamated to form new super departments. As a case in point, the Department of Community Services, including NT FACS, amalgamated with NT Health (and several other government functions that have since been moved to other agencies) to create DHCS in the late 1980s. At present, only three jurisdictions - Tasmania, Victoria and the Northern Territory- have maintained a combined health and welfare department.

The perceived benefit of these super departments is a reduction in bureaucracy and enhanced cross-program engagement, coordination and communication. However, such benefits have historically not always been realised and the present national trend is to separate family and children’s services from health services. Typically, this is because of a perceived need to ensure a clear focus on the protection of children and concerns that a combined health and welfare structure was not the most effective structure to achieve this goal. Further, some jurisdictions have then separated statutory child protection services from other family and community support functions. Queensland created the Department of Child Safety (separate from a Department for Communities) and West Australian is in the process of creating a Department of Child Protection, which will be separate from a Department of Community Development.

It can be argued that bureaucratic restructuring is not the best way to achieve “on the ground” improvements in service delivery or cross-agency coordination. That said, the Inquiry has some concerns that the present DHCS structure has not given FACS (within Community

Services Division) enough prominence as a department and government priority area. The Inquiry has, therefore, recommended that DHCS consider the creation of alternative departmental structure, which would boost the prominence of FACS.

Further, while acknowledging the investment the NT Government has already made in child protection and child protection reform (Caring for our Children reform), it is clear that significant increases in child protection caseloads (see Part II) have meant that additional funding for reform and associated family support systems has been subsumed in attempts to manage the escalation. Clearly, government will have to increase FACS funding if the significant reform that has been planned as part of the FACS Child Protection Reform Agenda (and the 2006 FACS Child Protection Workforce Strategy) is to eventuate.

Finally, a clear message throughout this Inquiry, backed by all the available literature, is that prevention is better than cure. Only by investing adequately in the prevention of sexual abuse and other maltreatment will government be able to slowly reduce the level of harm in families and communities, and the demand for crisis intervention services.

It is a difficult job to balance the resourcing of the preventative end of service delivery when crisis services are overloaded and struggling to meet significant levels of violence in NT communities. However, evidence from across the western world’s child protection services clearly indicates that unless a greater focus is placed on (1) enhancing family support services, which can “treat” and alleviate child and family distress, and (2) the development of services that work to prevent vulnerable children and families becoming abusive or violent and enhance child health and wellbeing, the demand for child protection and crisis services is unlikely to be reduced.

To that end, the Inquiry recommends that FACS establish a separate branch (within FACS) with a focus on preventative service development. This will include things like community education strategies and parenting and family and support services. Although perhaps not meeting the needs of government or DHCS, such branches have existed in FACS or the Community Services division in the past and would provide a much-needed focus on the need to balance investments between prevention and crisis intervention.

Enhanced information sharing and service coordination

Inter-professional and inter-agency coordination (i.e. “working together”) and communication (essentially information sharing) are critical elements of good child protection practice. Conversely, barriers to the protection of Aboriginal children against sexual abuse include poor service coordination and a failure to share appropriate information. Child death reviews have shown, time and again, that a failure to share information can, in extreme cases, lead to the death or significant harm of a child. The importance of appropriate information sharing and service coordination is discussed further in Part II.

The Inquiry formed a view that significant problems with information sharing and service coordination exist in relation to the protection of Aboriginal children from sexual abuse. The child protection system can function more effectively in responding to the needs of children, families and communities when service coordination and appropriate information sharing does exist. In the Northern Territory, coordination of service provision takes on even greater importance when services must be provided to a widely dispersed population covering a large geographic area.

Service coordination

Examples of failure in service coordination, identified in submissions, included:

- families and communities being visited by multiple service providers to address similar issues
- service providers working in isolation from each other on the same issue, but with each trying to access geographically-isolated communities separately
- a range of generally short term ad hoc services being delivered without consultation with the community or other service providers
- communities confused about the role of various agencies and who would be providing what service
- case conferences on children occurring without all relevant service providers attending
- a mis-assumption that a service was available and was being provided when it was not, for example that a sexual assault counselling service was available to a child in a remote community

- the failure of coordination groups created at various levels (e.g. at the service delivery level, at a regional or Territory wide level). These groups failed in one of two ways; either they could not sustain themselves because of the loss of key members, a loss of momentum, or other issues overtook members and the group; or they failed to communicate effectively with those around them, to subordinate staff or units (if they were at a Territory wide level).

There is no agreed upon case management life plan that enables the case to be planned and tracked; no agreed upon whole system practice intervention goals established; no agreed upon intervention goals; no integration of the intervention focus of different stakeholders in a case; inadequate “case recording” protocols and formats to ensure continuity of service intervention; and lack of appropriate information communication inter-change.

Comment from a submission

The Inquiry has focused on identifying barriers to the protection of Aboriginal children from sexual abuse, but it must be mentioned that some Territory service providers were trying to work together in a coordinated way and were doing so successfully. Sometimes this appeared to the Inquiry to be in spite of, rather than because of, any support from their particular organisations. The Inquiry strongly supports greater attempts by FACS and the Police to work together more effectively. Similarly, DEET and DHCS have been engaging in a range of collaborative and coordinated service initiatives in communities.

In general, the comments made in submissions were supported by the Inquiry’s observations when members visited communities and agencies and met with service providers. The Inquiry acknowledges that insufficient funding, an inexperienced (yet often very busy) workforce, the “fly-in fly-out” or “drive-in drive out” nature of a significant portion of the work done with many urban and remote communities, a failure to introduce effective coordination mechanisms (e.g. mandatory case conferencing), and exhausted communities, will all contribute to difficulties in service coordination.

The Territory’s child protection and family support system must create mechanisms to identify and close gaps in services, to better coordinate multiple interventions, and develop inter-agency agreements and protocols for providing services to children, families and communities.

Such a system would have, at its foundation, an agreed commitment to the protection of the child; appropriate information sharing arrangements; a shared understanding of each others' role and responsibilities; an acknowledgement that no one agency or organisation alone can protect and provide support to a child and their family or community; a mutual respect and recognition of each others skills and expertise, and lastly, goodwill and a commitment to developing positive professional relationships.

Information sharing

As a result of information provided through submissions and meetings with individuals and service providers, as well as the Board's experiences through the course of Inquiry, it appears that there are problems in the sharing of information within agencies, and also across agencies, including the non-government sector. Specifically, there appeared to be a failure to share information relating to:

1. the development and implementation of relevant policies, procedures, strategies and actions determined in policy units and executive-level management areas
2. specific children and whether:
 - i. a report of suspected abuse is made
 - ii. all relevant information is provided when a report is made or an investigation is being conducted
 - iii. investigating agencies advising other involved service providers of the outcomes of an investigation and ongoing planning for the child
3. service delivery and service development.

There was no coordination among the various government departments and each department wanted to take their own lead in relation to the various issues.

Comment from a community in Central Australia

The reasons for this failure to share information included:

- poor communication of information within and across agencies and organisations. Assumptions were often made at senior management level that information had been communicated effectively, clearly and in a timely way to officers delivering services on the ground. The Inquiry found that this was not always the case and was confronted with this disparity a number of times. A common example of this was in

relation to the understanding of mandatory reporting obligations. In some agencies, senior management had a view that all staff had been given information about their reporting obligations, whereas staff on the ground were unaware of this information

- lack of awareness or a poor understanding of information sharing arrangements where they existed
- confusion regarding what information sharing is allowed by legislation and what it prohibits
- weak information management systems (both human and technological) that cannot be relied upon to ensure information reaches its intended recipients. This weakness may be due to high staff turnover, a reliance on personal relationships rather than formal protocols or processes, a lack of shared understanding or a shared commitment to progress an issue, poor management systems or inadequate technology
- distrust and hostility between and within agencies, including protection of own areas of "expertise".

The failure to share information appropriately, consistently, reliably and in a timely manner in regard to the sexual abuse of Aboriginal children is of great concern to the Inquiry because:

- suspected cases of abuse are not reported
- decision making by FACS/Police about how to respond to a report may be compromised
- reporters become reluctant to report because they are not provided with appropriate feedback on the decisions that are being made or the actions being take (see below)
- children who have been reported as at risk of abuse, or where suspected abuse has occurred, remain in a community or are returned to a community and local service providers are unaware of whether the child is still at risk, what action has occurred, what is planned for the child or what their role is (see below).

Need to ensure there are policies and procedures that emphasise duty of care and sharing of information on a need to know basis, with the safety and wellbeing of children at risk of abuse or victims of abuse held paramount

Comment from a submission

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The Inquiry believes that all agencies and organisations must ensure that information regarding policies, procedures, strategies and actions related to the protection of children are communicated effectively, clearly and in a timely way to staff.

Where training and resources are required to achieve this, they should be provided. It is important that agencies and organisations work together to develop a culture that supports the sharing of information within a framework of children and parents rights; legal, departmental or organisational guidelines; and with the safety of the child as a central focus.

Two broad information-sharing issues commonly referred to in submissions and during the Inquiry's consultations are discussed below.

Lack of feedback to notifiers

In accordance with legislation, the strict confidentiality of child protection investigations and responses is strongly enforced by FACS and Police. Consistent with this approach, notifiers are often not given feedback about their report or on the progress of the investigation and response, or any subsequent criminal proceedings. This lack of feedback is contrary to an acknowledgment of the important role that notifiers play in protecting children from harm and harms the development of productive working partnerships.

Failure to provide feedback to notifiers can lead to a number of problematic outcomes:

- a perception that nothing is being done by “the authorities” (which at times appears to result in less trust in “the system” and reduced willingness to co-operate in the future)
- families removing alleged victims from the community in order to protect them from further abuse or community threats
- increased vulnerability of notifying individuals or organisations to threats or violence
- increased rumour, suspicion and distrust, which in turn may cause further trauma to the child, family and community
- valuable Police and FACS time being spent in responding to further requests for action by notifiers (duplicated effort)

- reduced ability by local health staff to provide relevant child and family support
- reduced ability of the family and community to deal appropriately with the allegations.

In the event that no charges are laid due to a lack of evidence, these problematic outcomes can be exacerbated. The lack of feedback to health and family support professionals is of particular concern because it is difficult to provide appropriate victim or family support when working in an information vacuum.

The need to improve feedback to families and communities about investigation processes and outcomes has been a key feature of many submissions and many of the Inquiry's consultations with communities, professionals and agencies. It was also strongly emphasised by DHCS Aboriginal staff who noted some additional risk related to poor information sharing:

- that the alleged perpetrators may not be effectively monitored, and may be able to commit further abuse while the investigation or criminal proceedings takes place
- communities need accurate information in order to take appropriate decisions and actions to keep children safe.

Acknowledging the need for confidentiality around sexual abuse allegations and responses, it is important to recognise the child protection roles of notifiers by providing them with appropriate feedback. In particular, feedback to authorised urban and remote health centres, Aboriginal community controlled health services, family support NGOs, or locally-based police will assist in protecting the child and notifiers from harassment and danger, and in providing appropriate clinical and other support.

Recognition of the critical role of notifiers in keeping children safe will also assist in building family and community trust in the child protection system. Feedback to community-based notifiers may also assist in conducting more effective investigations and responses, and facilitate the creation of better working relationships, as other agencies feel more like they are a partner in the child protection response.

DHCS (FACS) could further improve its partnership with communities by ensuring it take the time to actively engage and communicate with the community – family and clan groups – during and after conducting investigations. The consultations undertaken with communities have led

the Inquiry to recommend that FACS (and other agencies) should develop a greater understanding of the family and “clan” structures in a community. Further, the Inquiry is of the view that acting through those structures is an important and vital ingredient for achieving successful outcomes, and police, FACS, government agencies and NGOs need to be aware of this.

The Inquiry was told that when investigating and acting on child sexual abuse, it was best to go through the “right people”, i.e. the right people within the alleged offender’s clan or family group. This was because, under Aboriginal law, it is for each family group to decide how to deal with a breach of the law by or against one of their kin. The creation of employment for local Aboriginal people as “community brokers”, to facilitate FACS effective access to community members and “the right people”, has been widely supported in the submission and the consultation process.

Improve internal links and communication about children at risk

Given the number, variety and different locations of DHCS staff with roles in preventing and responding to sexual abuse, it is not surprising that some children can “slip through the cracks” within the department and fail to receive support.

Only limited opportunities presently exist at the service delivery level to facilitate information-sharing between the FACS child protection areas and other services, such as remote and community Primary Health Care (PHC), mental health, and alcohol and other drugs within DHCS. Possible mechanisms that could build more effective internal links and communication. include:

- the collaborative development by FACS and PHC providers of protocols and training for PHC providers in child protection
- shared care planning for children at risk by PHC and FACS
- improved systems for sharing information about clients between program areas
- scheduled meetings between FACS and representative/s of the relevant PHC provider
- involvement of PHC practitioners in the new regional review teams

It should be noted that establishing and supporting any of these mechanisms will require leadership, attention, time

and administrative resources and it is likely that it may not be possible to fully achieve these links within existing resources.

Coordination with the hospital sector

One particular issue identified in the DHCS submission, and other submissions, is that, while the quality of clinical care provided to sexual abuse victims in hospitals is in accordance with national standards, there is a need to better coordinate the various sources of clinical/medical expertise required to care for children prior to, during and after any admission to hospital.

At times, it is unclear who has ultimate responsibility for coordinating the medical assessment and care of child sexual abuse victims before, during and after hospital admissions. Presently, there are many medical experts with a role in the assessment and care of child sexual abuse victims. General Practitioners and District Medical Officers have key roles in initial assessment and in reporting the need for further medical assessment and care. NT Aerial Medical or Royal Flying Doctor Service doctors have a role during the retrieval of victims. Hospital-based paediatricians have key roles while the child is being assessed, admitted and cared for in hospital. SARC, Clinic 34 doctors and mental health experts are vital in medical assessment and support before, during and after hospital admission. Consultant Paediatricians, (who may also work in private practice), also have roles in hospital-based care. FACS and Police have statutory roles before, during and after admission.

From a FACS perspective, this lack of clarity presently manifests itself in:

- confusion about who has decision-making power for sexual abuse victims in the hospital setting
- lack of clarity about who to contact out of hours
- the extensive use of informal networks and links between various medical experts
- occasional unacceptable delays or confusion on admission
- FACS experiencing difficulty in planning additional care or support for the victim and family.

Initial work to improve the coordination of hospital-based medical care to sexual abuse victims has started and must be progressed as part of a DHCS agenda to improve information sharing.

Recommendations

17. That DHCS lead the development of enhanced information sharing between FACS, health (hospitals and health centres, including Aboriginal medical services) and community services (mental health, alcohol and other drugs, aged care and disability), Police and Education in support of more effective coordinated case management practices.
18. That FACS explore the possibility of providing confidential feedback on the progress and outcome of investigations to key service providers and notifiers, with a view to increasing communication and effective partnerships between FACS, Police and professional notifiers in particular.

Workforce issues

The recruitment and retention of qualified and experienced child protection staff is a major problem across Australia and the western world. The problem has been exacerbated in recent years by a rapid increase in numbers of statutory child protection staff in most Australian jurisdictions, resulting in increasing competition between jurisdictions for experienced staff. Within this competitive context, salaries and conditions of service, including opportunities for training and professional development, become even more important incentives to attract and retain staff.

Difficulty in attracting and retaining skilled staff is a major barrier to the delivery of appropriate and timely investigation and response services. An inability to recruit and retain sufficient professional and experienced staff can result in:

- a lack of continuity in case management
- missing early warning signs of abuse (due to lack of experience or expertise)
- increased workload for remaining staff
- increased time and cost of training new staff
- difficulty building and maintaining trusting relationships with victims and families

- a high proportion of valuable management time spent on staffing issues (e.g. supporting on-the-job training, monitoring work of inexperienced staff, conducting interviews etc).

FACS has always experienced difficulty filling all of its positions, particularly in areas outside Darwin. The vacancy rate for the FACS program in 2005-06 was about 14%. In 2005-06, a total of 99 new staff joined FACS to fill existing and new positions within the program, (i.e. a 50% staff turnover per annum).

The 2004 FACS Human Resources Strategic Plan was developed in response to these difficulties and key aspects of the plan have been implemented. This work has been reviewed and a new FACS Workforce Strategy is being finalised for implementation in 2007. The implementation will be an important building block for addressing the recruitment, retention and management issues in an area where demand is increasing and practices are being reformed and remodelled.

Increased number of child protection workers

A clear consequence of the government's greater focus on child protection issues, increased media coverage, and the Inquiry's proposal for more professional and community education, will be increased reporting of suspected child sexual abuse (and other maltreatment) and the need to boost the resourcing of child protection services and health and family support services to cope with and respond effectively to this demand.

A key element of increased resourcing will be an expansion of the FACS child protection workforce. The government and DHCS will have to work creatively to attract its share of Australian child protection workers. As importantly, DHCS will have to invest more in the professional training and support of these workers (including access to professional, supervision) if they are to retain them for lengthy periods. Accepting that FACS has already recently improved training and support, further effort (and resourcing) will be required.

Another important element of an effective professional response is ensuring that FACS workers are adequately trained and have access to specialist advice, when investigating reports involving Aboriginal children. Effective cross-cultural (culturally secure) practice would be enhanced by access to greater numbers of Aboriginal

staff trained to assist workers to conduct investigations in Aboriginal communities³³.

The Inquiry has found strong support in communities and in consultations with professionals for the training of Aboriginal people in communities and their recruitment to a range of positions. Given the fly-in fly-out nature of much of the family support and child welfare work done in rural and remote communities, it is vital that there be an ongoing local presence of people who can work with the community (or with families and clan groups) to support and inform community action to prevent sexual abuse and other violence. Such workers would be an integral part of any existing professional infrastructure in the communities (e.g. health centres, schools, crèches) and would be the “point-of-contact” person when other more intensive family support or community development services were delivered by FACS, NGOs or other government agencies. To be effective, these positions would need adequate education, training and ongoing mentoring and support.

DHCS already supports a similar program that is working to create volunteer positions in Aboriginal communities to address/prevent domestic and family violence. The Strong Families program involves workers visiting remote communities to develop local responses to violence. Further, the department has actively recruited people from some communities to be trained in anti-violence and community development principles. These volunteer workers (the first batch recently graduated from a Certificate III course) will be supported by the Strong Families team to work with their community to find ways to reduce violence. Such a program provides a start to development of a range of volunteer and paid worker positions in remote communities filled by local people.

33 The Inquiry is aware that FACS presently has some Aboriginal policy positions that assist the branch’s child protection teams to improve their practice with Aboriginal families, together with a small number of Aboriginal Community Resource workers. However, a greater number of such positions, and with a clear practice focus, are required.

Recommendations

19. That the number of child protection workers be increased and there be enhanced training and support for workers, including implementation of the following initiatives:
 - a. use of imaginative incentives to encourage staff recruitment and retention (and in particular the recruitment and retention of Aboriginal staff), given the national competition for skilled staff and the crisis in FACS staffing
 - b. enhanced FACS training programs, combined with more ongoing professional development, support and supervision
 - c. FACS staff must have access to cultural experts who can provide them with cultural advice generally and in relation to specific matters.
20. That there be more strategic, planned investment in local community workforces through:
 - a. more Aboriginal personnel (e.g. Aboriginal Community Workers, Aboriginal Community Resource Workers, Aboriginal Health Workers) to be trained and located in remote communities and towns for family support, community development and to act as local brokers. These positions to be provided with continuing and adequate professional support and mentoring, and to be integrated with health and family support programs delivered on a drive-in/drive-out or fly-in/fly-out basis as applicable
 - b. establishment and support for a network of community volunteers to work in communities to help make children safe – similar to the Strong Families program where community members are trained to assist in the prevention of domestic and family violence. It is noted that such a network of volunteers will require ongoing management, coordination and regular training

Sexual Assault Referral Centres

Children who have been assessed as likely to have been sexually abused, (often identified by local primary health care practitioners), are referred to a Sexual Assault Referral Centre (SARC) or the Paediatric Ward at the closest hospital for a forensic examination, and for medical management. SARC and the Paediatric Ward then provide care for the child until she/he is considered well and safe enough to return home. During this early response stage, FACS, SARC, Hospital Paediatric units and Police are in regular contact to:

- protect the child from further harm
- deal with physical injuries and/or sexually transmitted infections
- provide services to reduce psychological trauma
- support family members.

The Northern Territory SARC services sit within DHCS and historically were positioned under the FACS Urban/Regional line management. SARC's positioning within the department has been debated and, on many occasions, the comment has been made that SARC does not fit neatly under FACS as it provides services to adults as well as children. The implementation and management of the Child Abuse Taskforce (CAT) project was absorbed within the FACS Urban line management resulting in SARC being re-located to FACS Rural/Regional line management to accommodate workloads for senior managers. This administrative change has brought about a stronger alignment with Remote FACS and built a bridge for the delivery of services to Aboriginal communities.

SARC has a personnel budget for eight full time equivalent positions across the Territory, and a total operational budget of \$933,799 for 2006-07. Historically, the operational budget has mainly been consumed by payment of medical officers to provide a 24-hour response to recent victim/survivors of sexual assault.

Service provision

Sexual assault counselling services are designed to facilitate individual healing from the impact of the trauma of sexual assault, which in turn impacts upon the ability of the sexual assault survivor to engage in healthy relationships. Counselling endeavours to assist survivors to re-build trust and confidence in themselves and others, enabling them to build/re-build healthy relationships. This in turn leads to the building of healthier communities.

Crisis care for victims/survivors is provided via an integrated model where a sexual assault counsellor works in partnership with a medical officer trained in the area of sexual assault forensic examinations. This integrated model utilised in the Territory is highly regarded, as evidenced by the 2004 World Health Organisation, United Kingdom report on developing good practice in SARC. The report lists the inclusion of forensic examiners as part of an "ideal SARC".

As well as crisis response and counselling for sexual assault, SARC is integral in identifying ways in which sexual assault can be prevented. This may take the form of training, education and awareness at a local level, or participation in NT or national campaigns and coordination of services. **SARC also plays a pivotal role in assisting to limit the systems abuse to survivors through the coordination of service response, particularly in the area of child sexual abuse involving Aboriginal communities.**

Counsellors are assigned to all medical examinations for counselling, support/information and service coordination. The provision of the range of options after sexual abuse is in line with SARC philosophy of empowerment for victims/survivors.

The functions of SARC service delivery are not mutually exclusive as each impacts upon the other. The broad range of expertise of SARC counsellors ensures a capacity to function as a specialist sexual assault service. SARC does not work in isolation from other services and programs and, in fact, relies upon inter-agency relationships to maximise the support available to sexual assault victims, their families and communities.

SARCs presently operate in four NT locations – Darwin, Alice Springs, Tennant Creek and Katherine (the latter is outsourced to Katherine West Aboriginal Medical Health service). However, significant concerns have been raised as to the suitability of existing SARC premises, the lack of staff and the ability of the service to cope with demand and to provide an appropriate, professional service to clients. For example, Alice Springs has only one P2 level counsellor to service significant demand and there is no formalised response to managing a recent disclosure of child sexual abuse. With no clear protocol or a single agency responsible for the management of such cases, responses often tend to be ad hoc.

In their submission, SARC staff noted that they hoped:

to see an end to lone sexual assault counsellors attempting to deliver services to remote communities and an expansion of services to include a Darwin equivalent in Alice Springs and the development of a SARC service in Katherine. We hope to see our commitment to prevention bolstered through an increased capacity to deliver education, training and community development. SARC seeks to increase Indigenous FTE significantly along with adequate training and resources to increase our capacity to deliver services to Aboriginal communities and improve and enhance the skills of aboriginal and TSI workers in supporting and responding to victims/survivors of child sexual abuse and delivering information to Indigenous communities in a way that is culturally appropriate and sensitive.

It is also apparent that similar services operating in other jurisdictions either provide, or have access to, a range of specialist counselling and support programs for victims where the intent is to reduce trauma, prevent future re-victimisation and/or to prevent the development of sexually “acting out” or offending. These services do not appear to exist in the Territory despite their importance in ensuring victims overcome their trauma and become well-functioning survivors.

DHCS recently moved to provide additional resources for SARC by funding a new Alice Springs premises and increasing the number of staff counsellors. However, it is not clear that this investment will subsequently enable demand to be met. It is certainly unlikely to enable resourcing of the much-needed therapeutic program development.

Child interview facilities

In 1996, specialist sexual assault and child interviewing facilities were opened to service the Darwin region. These rooms are located near the existing SARC to provide a “one stop shop” type service for victims of sexual assault away from the police station and hospital environments, which can often be intimidating. The Darwin facility has covert video and audio taping equipment in a purpose-built room with toys and interview aids. The rooms also have computer facilities and a place where victims can rest if required, during an interview. The rooms are utilised for child interviews which occur in the Darwin region and when a child has been transported to Darwin from a remote or rural community for a medical examination.

As a result of Australian Government funding to the Peace at Home Project (see below), specialist child interview facilities have been built in Katherine, at a location away from existing Police and FACS offices. No similar facilities exist at any other centre. In Alice Springs, for example, children are interviewed at the police station and sexual assault and child abuse medical examinations are carried out at the hospital. The implication of this is that often police officers or FACS workers will need to accompany a victim into the public area of the hospital providing little privacy for someone who has suffered a traumatic personal event.

With the introduction of legislation to allow video-taped interviews/statements of children into evidence, there is an expectation that forensic interviews with children will make use of this mechanism. There is a pressing need for appropriate child interview facilities to be established in all major centres in the Territory.

Recommendations

21. That urgent action be taken to expand and upgrade the facilities occupied by Sexual Assault Referral Centres (SARC) in all locations, with an increase in staffing and capacity to respond to sexual assault cases across the Territory.
22. That SARC services across the Northern Territory be based on an integrated response model and that the effort to improve the coordination of hospital-based medical care to child sexual abuse victims continues including the development and adoption of a protocol for the management of victims of child sexual abuse (medical response) to ensure an appropriate standard of care.
23. That victim and community support programs be developed in remote Aboriginal communities as well as urban settings that:
 - a. reduce the risk of a child subsequently acting out sexually
 - b. prevent re-victimisation and/or the likelihood of the child subsequently offending at a later time
 - c. provide case coordination for those children who require ongoing support.



9. Health – crisis intervention

9.1 Introduction

While hospitals may contribute to the forensic investigation of child sexual abuse and the treatment of injuries and infections, it is Primary Health Care (PHC) services that play the largest role in the response to child sexual abuse. Provided through government and non-government community health centres in urban locations, and through remote health centres in communities, PHC practitioners are the “eyes and ears on the ground”.

Through their day-to-day work with children and families, they are often the first people outside the family, or possibly the school, to suspect that something is wrong. PHC services therefore provide an important role in identifying and reporting abuse, providing family support to keep children safe, and helping prevent sexual abuse. PHC also has a significant preventative role (see the chapter entitled “Health – A Role in Prevention”).

A number of DHCS services are largely urban-based, but provide visiting PHC services to remote communities. Programs with important roles in child protection and family support include:

9.2 Mental health

It is apparent that the mental health services available to children and adolescents in the Territory, particularly to those who are significantly traumatised by their abuse experiences, are negligible. In 2006 (14 July COAG Communiqué), COAG endorsed a National Action Plan on Mental Health, which will make a significant investment in the Territory’s mental health services. The most relevant item for this Inquiry was the investment of \$4 million to increase services to rural and remote communities. This will include funding for additional child and adolescent clinical positions for rural and remote areas.

However, the Inquiry contends that present services are not adequately focused on, nor perhaps adequately resourced for, supporting FACS to deal with the victims of abuse. Nor are there safe places available for children and adolescents when they are so traumatised that they are not safe, whether from themselves or from others.

Program Area	Relevant services
Mental Health Services	Specialist mental health assessments forensic mental health assessments
Child, Family and Youth Health Services	Outreach midwifery support Post natal home visits Parenting and family support Health and development assessment Strong Women, Strong Babies and Strong Culture program
Communicable Diseases	Sexual health/ safe sex education STO screening and tracking STI data collection and analysis
Chronic Diseases	Women’s health educators, Men’s programs Women’s health screening
Alcohol and Other Drugs	Alcohol education and awareness raising AOD use assessments
Disability Services	Disability assessments and services for CSA victims Disability assessments and services for perpetrators.

9.3 Responding to children with sexually transmitted infections or who are sexually active

The issue of how to respond appropriately to instances of Sexually Transmitted Infections (STIs) in children and young people remains the focus of considerable debate in the health sector in the Northern Territory, nationally and internationally. Central to the policy debate is whether to define an age at which abuse will be assumed, and therefore require mandatory reporting of the infection. It should be remembered that in the Territory, sexual intercourse before the age of 16 years is a criminal offence.

However, from a health perspective, a critical concern raised with the Inquiry is that mandatory reporting of all STIs, even for children under 16 years, may deter a young person from seeking treatment, resulting in the risk of negative outcomes in the longer term, and of further spreading of the disease.

STI rates are much higher in the NT than in other Australian jurisdictions (see Part II). Apart from the immediate physical, social and emotional health consequences of STI infections among children, a number of serious medical complications may also arise in the longer term. These include infertility, congenital disease and adverse pregnancy outcomes.

The presence of an STI only indicates that intercourse has taken place and does not, of itself, indicate abuse. The STI may have been contracted through:

- consensual activity with another child/minor
- non-consensual activity with another child/minor
- sexual activity with an adult.

Health care providers in the NT are legally required by the *Community Welfare Act* to notify FACS or Police if they know or suspect that a person under the age of 18 years is suffering sexual abuse or other maltreatment. Although it is illegal for persons under 16 years to have sexual intercourse, there is no legal requirement under any NT Act to report evidence of sexual intercourse in a person of this age, unless there is reason to believe that it constitutes maltreatment as defined in the *Community Welfare Act*.

The likelihood of sexual activity at a certain age being abusive can partly be inferred from knowledge of when most people become sexually active. Data from the WA Child Health Survey (2002) indicated that 33% of 15-year-olds, 44% of 16-year-olds and 74% of 17-year-olds had had sexual intercourse (Blair, Zubrick & Cox 2005). While there is no NT data on the rates of sexual activity of children of different ages, local PHC and sexual health practitioners generally believe that Aboriginal children in remote communities commence sexual activity earlier than their urban or non-Aboriginal counterparts.

Sexual health practitioners in the NT have developed the view that sexual activity:

- in a child under 12 years of age is highly likely to indicate abuse
- in a child aged 12-13 years is likely to indicate abuse, and requires very close examination
- in a person 14 years or older can often be consensual in nature, but can still indicate abuse.

DHCS has recently developed policy and protocols with recommended responses varying with the age of the young person. DHCS guidelines require that:

- suspected sexual abuse or assault of any child under 18 years must be notified to the centralised child protection Intake system
- any evidence of a child less than 14 years of age having sexual activity must be notified to the centralised child protection Intake system for normal assessment
- DHCS health professionals use their professional judgement in deciding whether to notify the centralised child protection intake system about any child 14 years and over who is having sexual activity. The professional is required to assess whether the child may have been subjected to sexual abuse or assault. Where the health professional decides that sexual abuse or assault may have occurred, the centralised child protection Intake system must be notified.

Protocols on the appropriate and legal management of the sexual health of children and young people are provided for DHCS employees. DHCS also recommends that these guidelines are used by health professionals in NGOs, community controlled health organisations or private practice. The protocols are an important resource for health practitioners who seek to ensure the best

possible social, physical and emotional outcomes for children and young people who have an STI or who are sexually active. The protocols also provide a basis for meeting legal obligations under the relevant Acts, while ensuring that an appropriate broad range of clinical and other support is provided.

The Inquiry is aware that until recently the new STI protocols were still the subject of much internal debate within DHCS by health practitioners. It is the Inquiry's view that while the new protocols are by no means perfect, they need to be widely disseminated to relevant health professionals, and be supported by a training program, as soon as possible.

Investigatory implications

FACS, Police and other DHCS PHC practitioners have felt frustrated, during some investigations of STIs in children, when the only evidence that can be gathered suggests that the child has contracted the STI from sexual activity with another child/children. Where child-to-child sexual activity has been found to be occurring, it has not always been possible to determine if there has been sexual abuse by an adult or older juvenile perpetrator. Closure of child protection and Police criminal investigations at this point is believed to be premature. Consequently, the approach being taken by the new joint Child Abuse Taskforce is that these investigations will be held "pending", and that further educative and supportive work will be done with the child/children, their families and the community.

The aim of the follow-up activity is to address issues of child sexual activity, to provide education about child sexual abuse and STIs, and to build a sense of trust and safety so that children and adults can disclose if sexual abuse is occurring. The recent experience of the taskforce is that, with sensitive, intensive and appropriate individual, family and community work, further information and disclosures of abuse can come several months after an initial investigation found little or no evidence of sexual abuse.

Recommendations

24. That appropriate guidelines and training on the management of sexual health of children and young people be provided to government and non-government primary health care providers and relevant FACS staff on a regular basis.
25. That, in respect of mental health services, consideration be given to putting in place comprehensive child and adolescent mental health services with a focus on the provision of increased services for young people with a mental illness whose behaviour is indicative of significant trauma and distress resulting from their abuse.



10. Police, FACS, prosecutions and the victim

10.1 Introduction

The Northern Territory Police Force (NT Police) is part of a unique combined organisation with Fire and Emergency Services. The Tri-Service has more than 1600 personnel, including 860 police officers, 141 Police Auxiliaries and 78 Aboriginal Community Police Officers (NT Police Gazette, 2006).

The Police Operations Service has responsibility for providing law enforcement and community policing services through 39 police stations and 11 Aboriginal community outposts across the Territory. All stations are staffed by police officers and some include Aboriginal Community Police Officers (ACPO). Outposts have ACPOs who staff a small station, which is visited on a regular basis by police officers. Other areas have an ACPO presence and utilise community facilities³⁴.

Alice Springs, Tennant Creek, Katherine, Palmerston, Casuarina and Darwin each have an investigation unit and (resources permitting) tactical investigation teams called Crime Reduction Units, which are deployed proactively in various crime reduction operations. The Crime and Support Service includes specialist intelligence and investigative sections and units, which manage more complex and protracted investigations. The Major Crime Section (MCS) responds to serious crimes across the Territory, including homicide, sexual assault and child abuse. Investigators from Operations Service at the four main centres deal with less complex crimes and offences.

10.2 Responding to child abuse

Investigations

The investigation of child abuse is undertaken by NT Police in accordance with the *Community Welfare Act 1983*. The NT Police guidelines for the investigation of sexual assault upon adults and children are contained in General Orders. These guidelines, as well as investigative practice and procedures, generally apply equally to, and

are adapted to the investigation of, child abuse, including the abuse of Aboriginal children. Additional reports and allegations of child maltreatment, as defined in the *Community Welfare Act* (which are believed to be criminal offences) are investigated in accordance with the protocol established between the NT Police and DHCS entitled *Guidelines and Procedures for a Coordinated Response to Child Maltreatment in the NT*.

Procedures

When a police officer in a remote Northern Territory community is made aware that a child has suffered maltreatment as defined in the NT Police and DHCS Protocol, guidelines within the Sexual Assault General Order direct that:

- the physical and emotional safety of a child is ascertained and arrangements made for medical treatment if required
- contact is made with the officer-in-charge of the regional investigation unit
- the need for a specialist medical examination is considered. In remote areas, a child is taken to a local clinic. If a medical is deemed necessary, the child will be flown to a major centre. A non-offending parent or carer will travel with the child
- untrained child interviewers are discouraged from undertaking lengthy questioning of a child.

In all cases, FACS is notified at the conclusion of an investigation, in accordance with the *Community Welfare Act*. In cases where a joint investigation is appropriate, i.e. when a criminal offence is believed to have been committed, FACS is notified earlier to participate, if possible, in a joint interview with Police. Recently implemented child forensic interviewing techniques require two investigators to interview a child. FACS may view the interview remotely if utilising the Darwin facilities, or be provided with transcripts and or tapes of the information given by the child.

It is widely reported by police officers that FACS workers are not always available to attend remote communities

³⁴ The material in this section is derived from the NT Police Submission to the Inquiry.

with police at short notice to conduct joint investigations. In these cases, police will do the forensic interview with the child, and other aspects of the investigation, including interviewing family members. Information will then be passed on to the relevant FACS case worker.

Communication and coordination issues are frequently identified as barriers to effective working partnership relating to child protection cases. Thus, notwithstanding that the Police protocol has existed for several years, it is reported that putting the protocol into practice at an operational level and establishing and maintaining a “joint” approach has been a challenge. The creation of the Child Abuse Taskforce (CAT) addresses many of the issues raised, including co-location of staff from both agencies and a more thorough and integrated assessment of notifications/reports. A quality assurance review is a feature of the CAT arrangements. The Peace at Home program in Katherine has the potential to further integrate Police, FACS and other service responses at the local level.

Peace at Home

“Jidan Gudbalawei” (Kriol) or “Peace at Home” is an integrated local FACS and Police service established in Katherine to address family violence in the region. The project was developed in partnership with FaCSIA, which has provided partial funding until 2008.

The program deals with families in the region who present with both domestic violence and child abuse issues and is designed to:

- increase the effectiveness of government agency responses to incidences of domestic violence and child abuse through integrated service responses
- build partnerships between stakeholders, including government, non-government agencies and individuals, to respond to family violence
- develop a cost-effective and sustainable partnership model of family violence prevention to be introduced across the Territory.

The Peace at Home integrated family violence service is an operational “front line” service consisting of police detectives, FACS child protection workers (including Aboriginal community workers) and administrative staff. As well as providing law enforcement and child protection,

the Peace at Home integrated service coordinates client referrals to a range of external and community services such as counselling (e.g. anger management, relationships, drug and alcohol, sexual assault), housing assistance, financial assistance, crisis refuge for women and children, assistance for young people between 12-25 years, men’s programs, child health, mental health assistance and parenting programs.

Although the program has had a number of issues to resolve, such an integrated model has significant potential – such as creating a model that can be tailored to enable the implementation of joint local responses in other NT regions. It is reported that service providers have embraced Peace at Home, which they see as a means to ensure that “at risk” families access and are referred to appropriate services through a combined approach. The feedback from clients who have entered the program so far has been positive with none re-offending at this time. The project has also attracted enthusiasm from the judiciary in developing a complementary sentencing model for family violence offenders.

Rural-remote police presence

A total of 39 police stations and 11 police posts are operating in rural or remote areas across the Northern Territory. In terms of support to these remote stations, police units such as Crime Prevention (responsible for School-based Police Officers and Neighbourhood Watch) provide limited activities for children at some remote communities. Police officers from other areas, such as the Major Crime Squad, Drug Enforcement Section (DES) and the Territory Response Section (TRS) attend remote and rural areas to provide specialist support when required. NT Police provides some training for police officers who may be stationed at remote Territory stations. The curriculum is not rigid and courses are modified to suit the experience levels of participants.

There is no specific policy for managing the investigative and response challenges of child abuse in remote localities. In terms of the protocol when allegations are made, local police officers will make contact with investigators in major centres for advice and guidance, then the NT Police response is assessed and assigned. An allegation of child abuse will be investigated either by detectives within a regional investigation unit or the Major Crime Section (MCS), depending on the complexity

of the case. Since early September 2006, the Child Abuse Taskforce may also be deployed to investigate, depending on the circumstances.

Child Abuse Taskforce

The benefits of operating a co-located joint investigatory child protection-Police response have been recognised in many jurisdictions (e.g. NSW Joint Investigations Response Teams). NT Police and FACS are presently trialling a joint operation to investigate serious child sexual and physical abuse³⁵. Located at Berrimah Police Headquarters (and linked to the establishment of a new central child protection intake service), the Child Abuse Taskforce (CAT) investigates complex incidents of child sexual abuse and sexualised behaviour across the Territory.

Designed to be staffed by experienced Police and FACS workers – and operating a team of specialist child interviewers trained in forensic interviewing, the taskforce has provided the opportunity to build more consistent joint approaches and partnerships between Police and FACS. The joint taskforce approach, based on a case investigation plan, has already proven that more coordinated and timely responses can take place and can improve the safety of children and the apprehension of offenders. The taskforce has been involved in most of the high-profile sexual abuse cases that have occurred in the Territory since mid to late 2006.

Even more positive outcomes could be achieved if both FACS and the Police were able to dedicate additional resources to the taskforce to enable staff to be deployed to that unit on a merit-based, permanent basis and for a team to be established in Central Australia. Staffing stability would help to build relationships and collaborative learning within the team, and would assist in getting together a critical mass of highly skilled expertise in this unique, sensitive and difficult area of investigation. Over time, more stable and skilled teams would be able to develop the more trusting relationships needed to work in effective partnerships with families and communities. Further, to date specialist child interviewers have not been trained and deployed to the team because of resourcing issues – it is vital this be rectified.

The finalisation of the taskforce protocols provides the opportunity to ensure that the FACS and Police response to investigation of child abuse, including child sexual abuse, is managed in a planned and timely way across the NT, either through the joint taskforce or through collaborative team efforts at the local or regional level (see Peace at Home). This revised approach will help to ensure that a child:

- has as much information and control within the investigation process as possible
- is involved in all decisions impacting on them whenever possible
- is supported throughout the process and beyond
- receives more coordinated support from primary health care providers.

Two other issues have become evident as the new joint investigation approach has developed. The first is the importance of having skilled and experienced interpreters and Aboriginal staff working within and alongside the taskforce. The success in obtaining accurate and detailed information from children and other witnesses is critical, as is the ability to effectively engage with children, families and other community people in the investigation, follow up and recovery process.

Second is the need for further work to be done to integrate CAT with local Police and FACS investigation teams to ensure that a seamless set of investigation options is developed. CAT's specialist experience is already being used to effect on "significant" sexual abuse cases. However, greater liaison and integration with the local operations of FACS and Police teams would (1) enable CAT investigations to have better local intelligence through existing FACS and Police staff operating "on the ground", and (2) CAT could become more of a resource to inform the ongoing local investigations of FACS and Police offices, while demonstrating the success of an integrated Police-FACS service model. In that way, CAT, together with "Peace at Home", will provide models for successfully integrating local Police and FACS investigatory responses across the Territory.

35 To date no cases of physical abuse have been managed by the Taskforce.

Recommendations

26. That FACS and Police work to better integrate the Child Abuse Taskforce (CAT) with other local joint Police/FACS responses, and further develop local coordinated, culturally appropriate multi-agency responses (such as the Peace at Home program) which can improve the statutory and therapeutic response for children, families and communities.
27. That the Child Abuse Taskforce be made permanent and provided with necessary additional funding for the existing seconded staff to ensure it is adequately resourced in terms of personnel, vehicles and other tangibles so as to recognise its importance. Consistent with this, CAT to be provided with further funding to include:
- a complement of specialist child interviewers (see also Recommendation 31)
 - a permanent Intelligence Officer
 - a specially-equipped 4WD for use on CAT operations.

10.3 The Criminal Justice System

Statistically, we are dealing here with the great minority of committed offences of child sexual assault. It is estimated in the literature that only 10-20% of all such matters are reported and a smaller number again are the subject of prosecutions.

Clearly, when cases do emerge it is necessary to follow them through diligently and, of course, sensitively. In this area, in cases representing the tip of the iceberg only, it is necessary to consider the separate roles of the police, the prosecution service and the victim in the criminal justice system.

The Police Response to Child Sexual Abuse

The Inquiry has been impressed by the cooperation of the Commissioner of Police, Mr Paul White, and his senior officers, with the Inquiry's work and requests. We have met with the Commissioner four times and with a large number of police officers stationed throughout the Territory.

Members were invited to meet with us when we visited remote communities and these invitations were often accepted. Consequently, we have a good impression – as in other areas – for what is happening on the ground as far as police operations, resources and relations are concerned.

The Police clearly have a difficult task in enforcing the law. The difficulty in controlling alcohol and drug use within communities is manifest. The degree of family violence is, as noted elsewhere in this report, well known and endemic. The problems of communication posed by language, culture and gender issues are significant. These impact heavily on relationships between Police and community members when issues involving sexual assault, particularly with children, emerge.

It is in this latter area where the biggest impact may be felt on the tenuous relationship between the local police officer (assuming that there is one) and the community. Aboriginal people, including their children, are naturally suspicious of Police and are often too shamed and embarrassed to report matters of sexual abuse (particularly where there may only be a male officer available). What is more, the outcomes achieved in many cases of sexual assault do not justify the risks undertaken – in local and cultural terms – in apparently going against community morés.

It is against that background (and here it is not intended to repeat the other relevant demographics which are set out elsewhere in this report) that the Police have established the joint task force (Child Assault Taskforce or CAT) to deal specifically with cases of child sexual assault.³⁶

The Commissioner has provided the Inquiry with a well argued submission, to which he spoke in a subsequent meeting with the Inquiry. The submission and its 16 recommendations are summarised (not intending to diminish the significance of any part thereof by so doing) in the following points:

- The true extent of sexual abuse of Aboriginal children is unknown but it is believed to be widespread and under-reported. The factors contributing to this are listed and they are consistent with other information received by the Inquiry. They include a lack of

³⁶ This is not to ignore the specific catalysts for its establishment in 2006 which involved investigations into a particular series of offending in Elliott. This led to the formation of the Strategic Response Group (comprising representatives from Police, Department of Health & Community Services and the Department of Employment, Education and Training) referred to elsewhere in this Report which, in turn led to the formation of the CAT.

confidence and trust in police and FACS and the lack of government and non-government support or advisory services to the extent they exist in urban centres.

- Barriers to effective response and protection include shyness, language, removal of the victim and finite resources in the police area (investigations require personnel trained in child interview techniques, etc).
- The most effective response is where government agencies (such as Police, Health, FACS and Education) work in a coordinated manner. Exchange of information has hitherto been inhibited.
- The CAT (comprising NT Police and FACS personnel) is presently only on trial and is not permanent. Although 17 offenders have been charged, 10 of those were involved in one series of charges and it is not yet clear how effective the work of the CAT will be.
- Court procedures for child victims are extraordinarily traumatic.

Not surprisingly, the Police submission and recommendations concentrate on the crisis response side of the child sexual abuse issue. That is, how do we best deal with the offenders (and the victims) after the offence? How do we bring the offenders to justice? How best do we rehabilitate them and also provide a healing process for both offenders and victims? The 16 recommendations (which are set out below in summary form) are all addressed to these matters.

However, the Police submissions recognised that crime prevention and reduction are important matters and the last section of their submission deals with those issues but without making specific recommendations. In this area, the integrated service put in place by the joint Child Abuse Taskforce is noted as having the potential to provide a more responsive and effective approach to reports of child sexual and serious physical and emotional abuse and neglect, in such a way as to prevent the more serious examples of such abuse which may involve sexual assault.

Recommendations submitted by NT Police:

1. That a senior member of the judiciary, in consultation with key stakeholders, reviews the present court procedures in relation to child victims of sexual abuse as vulnerable witnesses.
2. That an education program be developed for Indigenous children, outlining what is acceptable and

unacceptable behaviour and outlining the support agencies available to provide assistance.

3. That a permanent coordination team be established to work with both government and non-government agencies to identify risk areas and provide relevant response.
4. That consideration is given to the long term resourcing of extra Police personnel to deal with child abuse investigations.
5. That government consider providing educational programs to communities to enable understanding of what constitutes acceptable behaviour and explain reporting methods to increase confidence in the system.
6. (i) That a multi agency response model be adopted for future operations involving child protection reports, to facilitate the best combined framework of government agencies, and
(ii) That such model involve pro-arrest, pro-charge and presumption against bail; early provision of victim support; pro-prosecution; coordination and case management; rehabilitation of offenders; and it should provide ongoing community support mechanisms with protection and support for victims.
7. That government examine the present situation of lack of interpreters and assess the need for further resources in this area.
8. That government provide a purpose-built 4WD vehicle as an investigation unit to enable a multi-agency response to occurrences at any remote locality including outstations for complex child abuse cases.
9. That health professionals at remote communities receive education about the role of Police in the prosecutorial process and their legal responsibilities for reporting suspected behaviour.
10. That Health, Education and Police receive consistent training and education on child abuse including indicators, procedures for reporting and support to the parties involved.
11. That prosecutors make greater use of the vulnerable witness provisions.
12. That discussions be held between Police and the DPP to address perceived shortcomings in the timeliness of DPP advice on opinion files.

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13. That the Bail Act be amended to include serious sexual offences against children in the presumption against bail provisions.
 14. That suitable people within remote communities be identified and trained to take over Police-initiated sporting programs and other community-based initiatives.
 15. That DEET consider education on protective behaviours in their school curriculum.
 16. That consideration be given to the establishment of a youth sex offenders program within the Juvenile Diversion Section, staffed by a psychologist and three NT Police Officers, and with extra funding from government.

As a result of other information gathered by the Inquiry, the following further comments may be made about policing generally in the Northern Territory and in particular, as it operates in the area of child sexual abuse.

It is suggested that local police officers need specialised training, including cross-cultural courses relevant to the community to which they are posted. They would be introduced to local language and any matters relevant to the particular locations. They would also be instructed in appropriate behaviour towards Aboriginal people of both genders and how best to deal with and interview young people. While acknowledging the primacy of a specialist body such as the Joint Child Abuse Taskforce (CAT), whose members would be expected to have training specific to their role, the local Police Officer (as the point of first referral) must also have appropriate skills.

In almost all of the Inquiry's visits and consultations, the necessity to have both genders represented in the police membership in the local community was stressed. Women and girl victims do not find it comfortable discussing personal matters at all, let alone with a male police officer.

It is acknowledged that police recruitment policies are aimed at enhancement of their ability to interact with Aboriginal people and communities. This is in respect to both Aboriginality and gender of police members. Recommendation 31 demonstrates the Inquiry's support and encouragement of such policies.

It has also been suggested that cooperation between police and local community leaders would enhance the investigative and prosecution procedures in remote

communities. The conventional method of arrest – involving coordinated dawn raids – may not be appropriate or necessary in such communities and may even be counter-productive by establishing poor relations among the respective stakeholders.

It seems that the way ahead is through joint and coordinated team arrangements such as those undertaken with the CAT. Although conscious of the fact that the taskforce is still in trial mode, it has been suggested that the use of the word, *taskforce*, indicates an unwelcome, temporary nature. So perhaps the word, *team*, might engender more respect for the body without upsetting the integrity of the acronym (see Police Recommendations 3 and 6 above).

The CAT, by any new name, could quickly come under pressure of work and while looking to maintain it as a permanent body, attention should be given to its numbers. It is acknowledged that this is a stressful area of work and it is suggested that there should be reasonably short-term postings. This should be managed, however, so that individual investigations are not disjointed and partnerships and trusts developed with other professionals, members of local communities, and victims and witnesses are not disturbed.

There is plainly, and unfortunately, a great deal of investigative work available for its attention. It has been suggested to the Inquiry that its personnel should be augmented, as a matter of urgency, with an Intelligence Officer (see Police Recommendation 4 above). Consistent with our view that there is a need for continuing coordination of processes between Police, health and education in this area, it makes perfect sense that intelligence material be properly assessed and considered.

The Inquiry has received strong representations from interested stakeholders about the desirability of CAT to have child-family friendly areas in which to conduct its interviews, video taping of evidence and the like. Recognition is given to the vulnerable nature of the victims. This would probably be inconsistent with the present siting of CAT at the Peter McAulay Centre at Berrimah. Best practice would certainly suggest an environment which decreases the emotional stress on young people in these pressured situations. It is understood that many of the interviews are, in fact, conducted in the soft interview room at Casuarina near

the SARC office, but not always. Best practice would suggest making victims as comfortable and relaxed as is possible.

How would this be translated to the remote community situation? The flying squads concept may be unnecessarily invasive. In the best situation, local people (that is, on the ground) would be trained in child sexual abuse interviewing techniques and thus a far better liaison with local communities and its leaders could be maintained. This local person would also be ideally placed to be the initial recipient of reports of sexual abuse, as well as the liaison officer with CAT and the person who carries out other similar duties.

The ultimate solution would be a local representative who would have received appropriate professional training and education and would also be accorded proper recognition in the community. Because of gender issues, it is probably important that there be a back up to the liaison officer, with he or she being a local person of the opposite sex.

Community attitudes

The Inquiry was told that an effective and culturally aware and respectful Police Force was important to maintaining law and order within Aboriginal communities. The Inquiry was also told in most communities that people were willing to work with the Police.

However, it was also a common theme that many Police were not culturally aware, did not always act in a culturally respectful way and did not work well with the community. There was also a perception that Police either did not respond promptly, or at all, to certain matters, or the response was disproportionate. The Inquiry was told that in some communities people would actively avoid going to the Police, even for serious problems, due to a poor perception of the individual Police Officers. This is a barrier that must be addressed.

Nobody goes to that policeman for help. He talks badly to people and tells children to piss off. People are scared of him. We had a meeting to talk about this stuff but that policeman never come.

Central Australian Elder

It must also be noted that there still exists an historical barrier for many Aboriginal people, given a history of ill treatment of Aboriginal people by the Police.

A key point made to the Inquiry was that well-functioning communities saw the Police role as a support role and not a “frontline” role. They wanted the Police to work “with” them and not “over” them.

Many people said they would rather see a situation where child abuse issues are discussed with the community leaders or with a Community Justice Group first (see Chapter on Community Justice for more on these groups) and then a strategy worked out with the Police and FACS as to how the matter should be approached.

Many in communities thought the establishment of the Child Abuse Taskforce is a step in the right direction. However, there is a lot more work to be done.³⁷

The general tenor of the recommendations made by the Police is given effect to in the Inquiry’s specific recommendations. To that extent, the views of the Police and the Inquiry are mutual.

Recommendations

28. That the Police actively recruit more Aboriginal police officers, Aboriginal Community Police Officers and Police Auxiliaries and to station more female officers in remote communities with a preference for Aboriginal female police officers.
29. That the Police conduct effective, meaningful and ongoing consultations with individual Aboriginal communities with a view to developing protocols for working with the community and supporting each community’s own efforts at maintaining peace, law and order.

³⁷ The Inquiry was referred to the work in NSW of a specialist child sexual abuse taskforce known as *Strike Force Kamiri*. This strike force does not have as its focus the apprehension of offenders (although it has a good success rate in this regard). The initial primary focus of the strike force is twofold: (1) the welfare and safety of the victim/s, and (2) establishing a relationship of trust within the community. The strike force utilises Aboriginal liaison officers and is underpinned by a genuine commitment to the wellbeing of the community concerned. The victim is provided with counselling and the legal process is fully explained. The strike force takes a flexible approach and not a “city” approach. The ultimate results of the strike force are not measured just in successful prosecutions but also in the level of trust gained by victims and closure provided through counselling and other means.

10.4 The role of the prosecution

Introduction

The place of prosecutors in the prosecution of offenders is pivotal to the administration of the criminal justice system. The relationship between the Police and the prosecution service is well known but not well understood. They are quite separate and independent of each other. Necessarily, of course, they must work together in the preparation of a matter for presentation in court.

Nowhere is this more important than in cases involving allegations of sexual assault, particularly in the cases of vulnerable witnesses and more especially children. The provision of proper support to victims and other witnesses is extremely important. When those victims and witnesses are from disenfranchised minority groups with poor language skills and unaccustomed to mainstream legal practices and procedures (and which child isn't?), then the responsibility becomes even greater. It is because of this responsibility that great attention has been paid to the training of prosecutors and the need for specialists in the field. With this in mind, we repeat later in this section a large portion of what appears in the Asche Report (1999).

Office of the Director of Public Prosecutions' submission to the Inquiry

The Inquiry has received a submission from the Director of Public Prosecutions and his Office (ODPP), which addresses the issues being considered by it. The following background to the recommendations made by the ODPP comes from the introduction to the submission.

The ODPP is responsible for:

- a) preparing and conducting all prosecutions of indictable offences in the Northern Territory
- b) preparing and conducting committal proceedings
- c) overseeing the prosecution of all summary offences.

In child sexual abuse matters: the ODPP provides advice to police at the pre-charge stage, to determine what if any charges should be laid; prosecutes all child sexual offences in the Youth Justice Court, the Court of Summary Jurisdiction and the Supreme Court; and handles all applications and appeals to appellate courts.

The Witness Assistance Service (WAS), formerly known as the Victim Support Unit (VSU), has existed within the

ODPP since 1997. Staff of the WAS³⁸ have had input into the submissions presented on behalf of the ODPP.

Given the ODPP's specialised role in the prosecution of matters that have already been reported to and investigated by other agencies, in particular the Northern Territory Police, its submissions focused on issues associated with the prosecution of matters involving the sexual abuse of Aboriginal children. The ODPP did not purport to provide responses to areas outside its expertise.

Although the Inquiry has been established to inquire into the sexual abuse of Aboriginal children, it is essential to recognise the nexus between child sexual abuse and domestic and family violence. This nexus is recognised by the courts: see *R v Wurramara* (1995) 105 A Crim R 512 and, more recently (and specifically in relation to the sexual abuse of Aboriginal children) *R v Riley* [2006] NTCCA 10 and *R v Inkamala* [2006] NTCCA 11.

There is a high level of tolerance in Aboriginal communities to family violence, which may contribute to a high level of tolerance of child sexual abuse. It is suggested in the submission that child sexual abuse cannot be seen in isolation from other offences of violence, a proposition which is supported by the literature and with which the Inquiry agrees.

Additional barriers to, and issues associated with, the prosecution of matters involving sexual abuse of Aboriginal children include:

- a) the isolation and remoteness of the communities in which many Aboriginal children live
- b) language difficulties
- c) inadequate specialised training of legal professionals, police and health professionals
- d) evidentiary and procedural issues in the Criminal Justice System
- e) court practices, procedures and facilities.

38 The input of WAS is important. This valuable unit within the ODPP gives witness and victims support, assists in preparation of victim impact statements and provides referrals for victims and information to all witnesses. It also arranges interpreters. Many Indigenous children who have been the victims of sexual abuse have been assisted by WAS since its inception in 1997. Victims of Crime (NT) also carries out victim support in urban areas but made no submission to the Board because of its non-involvement to date in the relevant areas.

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The following recommendations (in italics) are made by the ODPP in its submission:

- 1 *That best practice procedures for preparation of Indigenous children involved in court processes be developed and implemented.*
- 2 *That additional resources be provided to locate a WAS officer in Katherine.*

The latter has been advocated by the ODPP since at least 2002, quite notably by one of the Co-Chairs of this Inquiry in his earlier life. We can but repeat the plea for placement of a WAS officer in Katherine such that that part of the Territory can have the benefit of full victim support and ancillary resources as do other parts of the Territory. The recommendation is supported.

- 3 *That positive recruitment of interpreters takes place, with enhanced training and accreditation of interpreters and the creation of interpreting positions that are appropriately remunerated and provide career opportunities.*
- 4 *That prosecutors receive training targeted at improving their ability to communicate with and elicit evidence from Indigenous children.*
- 5 *That training on child sexual assault in an Indigenous context be available to the judiciary.*
- 6 *That police involved in the investigation of child sexual abuse matters receive training similar to that recommended for prosecutors and that child interviews be carried out only by those members who have received training in the conduct of such interviews.*
- 7 *That health professionals adhere to the mandatory reporting requirements under the Community Welfare Act and make thorough and documented enquiry before giving contraceptive implants to underage girls.*
- 8 *That health professionals in remote areas receive training on how to complete a Sexual Assault Investigative Kit.*

The ODPP endorses and commends the recommendations of the Asche Report concerning the training of legal professionals. It provides, inter alia, for training of relevant personnel involved in the justice system.

- 9 *That amendments recommended by the ODPP to the Policy Division of the Solicitor for the Northern Territory be enacted.*

These amendments deal with the *Evidence Act* and committal proceedings pursuant to the *Justices Act*.

- 10 *That s105AA of the Justices Act be extended to preclude children from giving evidence at any committal where one of the charges is a sexual offence.*
- 11 *That legislation be enacted to abolish the Crofts direction.*

The *Crofts*³⁹ direction is a decision of the High Court which provides that the Court may give a warning to a jury relating to the quality of the evidence in a case where there is a long delay. There has been an amendment to the law in Queensland which effectively abolishes this direction and a similar amendment here is supported by the ODPP and by this Inquiry.

- 12 *That additional resources be allocated to the ODPP in light of increased workload associated with special hearings.*

Special hearings are those made necessary by reason of the introduction of the vulnerable witnesses' legislation.

- 13 *That determinations be required on admissibility of evidence and other pre-trial matters that could delay the giving of the evidence of a child witness, before the child is called to give evidence.*
- 14 *That a new CCTV facility be provided for use by the Supreme Court and the Court of Summary Jurisdiction in Darwin. This facility should be in a separate building from the Supreme Court, thereby ensuring witnesses do not come into contact with defendants.*
- 15 *That suitable waiting areas and CCTV rooms be provided at Katherine and Alice Springs Courthouses. The facilities should have their own entrance so that witnesses do not come into contact with defendants.*
- 16 *That CCTV equipment at Darwin Court of Summary Jurisdiction be upgraded or replaced.*

These are all clearly matters of practice and procedure which would, on the face of it, enhance the confidence of the child witness in giving evidence in all Territory courts.

³⁹ *Crofts v R* (1996) 186 CLR 427

It will be recalled the Commissioner of Police in his submissions recommended:

That a senior member of the judiciary, in consultation with key stakeholders reviews the present court procedures in relation to child victims of sexual abuse as vulnerable witnesses.

The Office of the Director of Public Prosecutions commends and endorses this proposal.

It had been intended that this recommendation go forward with the Inquiry's support. However, since consideration was given to this, the Attorney-General has introduced amendments to the legislation dealing with vulnerable witnesses. Although they do not go as far as some of the suggestions coming from the Police and the ODPP, they nevertheless will have an impact. This recommendation has therefore been reframed to provide for a review of the procedures at the end of the 12 months of the new legislation coming into effect.

It is not anticipated that such a review need be a prolonged or time consuming activity so it is suggested it be completed within six months. The Asche Report (1999) would be a valuable starting point as would be the submissions made to this Inquiry by the Commissioner of Police and by the Director of Public Prosecutions (which refers extensively to the Asche Report). The relevant stakeholders, in the circumstances, might properly be regarded as including leading law men and women from the Aboriginal community who might well make a significant contribution in cultural terms to such a review. As is recommended elsewhere in this report, dialogue and consultation are extremely important concepts. They will become invaluable resources in the way ahead.

Special Training for Prosecutors

As has been noted *ad nauseam* in this report, a great deal is known on most of the topics, themes and issues developed during our enquiries. Another good example of this is the Asche Report. In the course of developing its recommendations dealing with the need for special training for prosecutors, the report dealt exhaustively and sympathetically with the special position of the victims of sexual abuse in the criminal justice system. The Inquiry can do no better than to repeat those remarks here (extensive as they are).

Why is training important? One reason is summed up in a booklet put out by Ruby Gaea House entitled *The Facts for Rape Survivors*, which notes "To testify takes great courage". The victim must obviously (and properly) be prepared to reveal a great deal of intimate personal details and will know that there is a likelihood that his or her behaviour will be examined and questioned. Children may find it even harder to discuss distressing and intimate matters particularly if the allegation is against a member of the family.

Sometimes those investigating or prosecuting an assault case may not realise just how severely emotionally upsetting the incident has been. If the case is prepared properly, it may take longer, and the confidence of the victim in the prosecution may be lost if the prosecutor shows impatience or appears unsympathetic, or apparently incapable of understanding what the victim has gone through.

It is now more generally recognised that a person alleging a sexual assault is in a different category from other complainants. People who claim to be the victims of theft, fraud, threats or physical assault may still find the experience of making a complaint and the subsequent court appearance vexatious or daunting. Few such people would enjoy the experience, but their evidence does not entail a detailed account of invasion of intimate parts of the body, coupled often with evidence of acts, which they find degrading and embarrassing to talk about.

A person who complains of theft may be asked to do no more than identify the property allegedly stolen and, if he or she can claim to do so, identify the alleged thief. The person claiming to be seriously assaulted will, unless memory is substantially impaired by injuries, be expected to relate the circumstances of the assault. Difficult though these things may sometimes be to a lay person unaccustomed to court procedure, his or her position is not really comparable to the position of a person alleging a sexual assault.

It is not suggested that allegations of sexual assault should not be properly tested by investigating police, or prosecutors presenting the case, or the court before which the charge is tried. The provisions for protected witnesses have already been referred to.

Those who seek training for prosecutors and others want realisation of the special difficulties in such cases or, to

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put it another way, do not agree that such cases should be treated as “no different from others”, so far as witnesses are concerned.

This does seem to be better appreciated now by police and prosecutors and it is sought only to extend the training already in place so that it becomes ingrained in such officials. In this respect, the committee also notes “Draft Model Guidelines for the Effective Prosecution of Crimes Against Children”, presented to the Fourth Annual International Association of Prosecutors Conference in Beijing from 6-10 September 1999. This document takes into account the views expressed by some 28 members of the International Association of Prosecutors (IAP) including, from Australia, the Director of Public Prosecutions of New South Wales and the Director of Public Prosecutions of the Northern Territory.

Virtually all the submissions dealing with this aspect seek to go further and extend training and education to other court officials including defence counsel, judges and magistrates. This has been suggested in other jurisdictions. For instance, the Law Reform Commission of Western Australia, in discussion paper 87 of 1990, observed “There is widespread agreement that most judges and lawyers need some specialised knowledge and skills in order to deal satisfactorily with child witnesses”. Indeed, by appropriate publicity and information such as has already been suggested, it should be brought home to the general public, from whom, of course, juries will be drawn.

It is important that the public understand more fully the trauma that a victim may undergo, and the need for such victims to be encouraged to speak out without fear or embarrassment. Only in this way will they find protection for themselves and, by their actions, protect the community. It must be stressed that this is not to reverse the onus of proof or suggest that a person alleging sexual assault should necessarily be believed, but rather to remove the opposite suggestion that a child or adult making such allegations should necessarily be treated with special suspicions, or discouraged from continuing the complaint.

It may be thought to be asking too much of defence counsel to suggest that they undertake some form of training to appreciate the predicament of a complainant in sexual assault cases; but a broader view may be

taken that such training may allow defence counsel to better appreciate the case against the client and advise that client accordingly and, if a plea is indicated, to better formulate the plea with such mitigation as the circumstances warrant.

One group of barristers has given a somewhat guarded submission not adverse to training in general: “There can not be any criticism of training people to enable them to better perform their function. It all depends upon what the function is perceived to be, and what the training is intended to achieve”.

Training may enable all counsel to better perform their function, particularly in advising. It is, of course, appreciated that, subject to the rules of legal ethics, defence counsel is bound by a client’s instructions, and that is a sacred duty from which he or she should never waver. But it must be remembered that counsel performs that duty and assists the court as much when his or her client wishes to plead guilty as when he or she pleads not guilty, and in the former case prior understanding may especially assist the plea, particularly if the court itself has undertaken some similar training.

As to judges and magistrates, the committee makes it clear that there can be absolutely no interference with the independence of the judiciary, and no provision should require that a judge or magistrate should undertake such training. Any such provision would be abhorrent. All that the committee would ask is that judges and magistrates might consider that some more detailed study of the human factors involved in these cases may assist them in this particularly difficult area.

However, the committee does suggest that in considering the appointment of future judges and magistrates, the Attorney-General may take into account, as one of the factors to be considered, the suitability of a person to understand and appreciate the special problems relating to complaints in cases of sexual assault. (Asche Report 1999)

Recommendations

30. That, taking note of the Evidence of Children Amendment Bill currently before the NT Parliament, it is recommended the Department of Justice conduct a review of all legislation relating to court procedures for vulnerable witnesses and child victims of alleged sexual abuse following the first 12 months of operation of the new legislation. This review is to be conducted within a period of six months of that time and is to include consideration of the recommendations of the Commissioner of Police and Director of Public Prosecutions to the Inquiry.
31. That all Police receive ongoing training and education on child abuse including indicators, procedures for reporting, and support to persons affected by such abuse. Police and prosecutors involved in the investigation of alleged child sexual abuse to receive training similar to that recommended in the Asche Report (1999) and that no later than from 1 July 2008, child interviews in such cases be carried out only by those members or other authorised persons who have received training in the conduct of such interviews.
32. That the Office of the Director of Public Prosecutions be provided with sufficient resources to allow a permanent Witness Assistance Service officer to be located in Katherine..

10.5 The position of the victim in prosecutions

It is trite to say, but without a victim there would be no prosecution. There have been countless cases over the years where prosecutions have not commenced, been withdrawn or failed at trial because of the reluctance of victims to follow through with their complaints. Of all the matters that come before the courts, those involving sexual assaults are the most traumatic for the victim and witnesses, and even more so where those victims are children.

This has been recognised for some time and hence the legislative provisions already made in respect of vulnerable witnesses.

The Witness Assistance Service (WAS) of the Office of the Director of Public Prosecutions has developed considerable expertise in working with children who have been sexually assaulted. It is accepted that the provision of substantial assistance and support to young people who have been abused, contributes to them being able to give their evidence more confidently and thereby increases the chances of convicting an offender. WAS also has an Aboriginal cultural expertise developed over 11 years of working with child and other witnesses.

The support provided by WAS to victims is highly significant. In addition to the preparation and assistance given in respect to giving evidence, WAS refers its *clients* to other agencies for counselling and to solicitors for financial assistance claims. But the support it can provide is usually limited by the position the victim occupies in the system of the administration of criminal justice. Once the particular victim exits the system (at the conclusion of the hearing, and perhaps appeal process), WAS's involvement will switch to its other "live" cases. The work is resource-intensive.

So, apart from the referral process, WAS is no longer actively involved. Who or what agency takes responsibility for the victim at that stage?

The Inquiry has found a service gap in this area which needs to be filled in a coordinated and structured manner. In respect to child victims involving intra-familial offending, the problem is not as stark. Here, FACS may have a continuing involvement with the family and the child.

There are also the questions in respect to child sexual assault cases in remote communities, of awareness and healing which need to be addressed. A complaint is made, the authorities come in, the community is disturbed and the victim and offender may both be removed, either temporarily or semi-permanently, leaving a void. What happened and why? The community needs to be told how and why the mainstream law has been imposed on the members of that community.

This topic is not complete without referring to a recommendation made to the Inquiry in a personal submission by the Chief Magistrate. Her Honour asked the Inquiry to include in its deliberations the proposal:

Where Court matters involve child witnesses concerning sexual assault in regional areas, there needs to be a presumption in favour of the proceedings being

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conducted in a court in one of the major centres and appropriate funding for travel for not only witnesses (who are presently well catered for), but also defendants and support persons to travel.

This proposal was supported in the following terms:

Although this issue does not concern the Magistrates Court as much as in previous times (given that evidence of children in indictable sexual offences is prohibited from being called in committal proceedings), in relation to offences of a sexual or indecent nature that can be dealt with summarily, there needs to be a simple process in place to cover change of venue applications to the court. The Justices Act provides little guidance about where the court should sit. In most instances the Court of course sits close to the place of commission of the alleged offence as witnesses are generally local. Many of the remote courts have no witness facilities (Wadeye and Galiwinku for example have no witness box at all), let alone any means for assisting young witnesses under pressure or vulnerable to intimidation. Unless there is a good reason not to, it is suggested all matters of a sensitive nature should be heard in a major centre with proper facilities for witnesses.

There is one very strong proviso to this submission, that is that the Northern Territory needs to meet the travel expenses of the defendant and support person(s), to be able to travel to one of the major centres. In the past, when arrangements have been attempted to be made for the relocation of sexual assault cases to the major centres, the arrangements fail if there is no provision to pay for the defendant to come to Darwin, Alice Springs or Katherine. (If the defendant is in custody it is not a problem as the Territory then pays, but often they are not in custody, especially juvenile defendants). Although travel expenses for prosecution witnesses are clearly covered by policy, there is no clear funding mechanism for travel expenses of defendants often leading to matters being unable to be heard in the major centres.

The Inquiry has not had the opportunity to fully explore the proposal but records it here so that it might be considered as part of the review proposed in Recommendation 30 (if not earlier).

The two cases set out in the following sections quite graphically illustrate these problems (i.e. the need for ongoing support of the victim and the community).

Inter-generational sexual abuse of children

The literature is clear on this matter. A proportion of those who are abused as children (and not necessarily just sexually abused), will go on to commit sexual offences. Many offenders, when interviewed, will relate as part of their own histories, episodes of sexual abuse with them as the victim (e.g. Briggs and Hawkins 1996).

A good example of this comes from the history of HG who was born in 1960 in a remote community. He lived in that community for most of his life, except when in prison where he has been since 1997. At the age of 12 (in 1972) he was sexually assaulted by an older man and anally raped on two occasions some nights apart. He was then staying in single men's quarters and preparing, at that time, for his male initiation ceremonies. In fact, they did not take place at that time for reasons which are not of consequence for present purposes. He thereafter had a fairly disturbed life and was in trouble with the law on a regular basis. It is only intended here to note four particular offences for which he was subsequently imprisoned.⁴⁰

At the age of 20 in 1980, HG was convicted of assaulting his young niece with the intent of having carnal knowledge. He was then sentenced to three years imprisonment with a 12-month non-parole period. After a number of other brushes with the law he was charged again in 1990, at the age of 30, with assault with intent to commit carnal knowledge. On this occasion it was again his own eight-year-old niece. He was sentenced to four years imprisonment with a two-year non-parole period. He was again convicted in 1994 at the age of 34 (which means he was only released for a fairly short time before re-offending). This time it was more serious, involving an aggravated sexual assault of a 10-year-old female and involving anal intercourse. He was sentenced to 30 months imprisonment.

Following release, he was again convicted in 1997 (at the age of 37) with aggravated sexual assault. On this occasion the victim was a boy aged eight years (ZH). For this offence, after application by the Director of Public Prosecutions, HG was given an indefinite term of imprisonment as a dangerous sexual offender.

40 This history comes from the reported case of *G v The Queen* (2006) 19 NTLR1 [7]-[8].

Over subsequent years, HG stayed in prison, notwithstanding he was reassessed from time to time as to the then danger he presented to the community. He was unsuccessful in convincing the court that his danger had dissipated. He was regularly interviewed by psychiatrists and psychologists in connection with those applications. For the first time, when interviewed by a new psychologist in 2006, he admitted to the matters set out earlier, namely, that he had been sexually assaulted himself as a young boy.⁴¹

HG now has a definite sentence and will be released shortly.

In the meantime, ZH who was the victim of the 1997 assault (then aged eight), has lived a troubled life himself. In 2004, he committed a similar offence to that committed upon him back in 1997. He anally raped a five-year-old child at the same community. He initially avoided appearing in court and was eventually imprisoned at the Don Dale Centre in about mid-2006 for breaching his bail. Thereafter, his case was dealt with and he was sentenced, following pre-sentencing reports obtained by the court, in March 2007. He was sentenced to four years imprisonment, which was suspended immediately on conditions and on the basis that he had already served eight months in the Don Dale Centre.

Interestingly enough, the psychiatrist who examined ZH for the court expressed the opinion that sexual rehabilitation courses are of limited value (contrary to the views of most health and other professionals in the area). Furthermore, the judge took the view (apparently from whatever victim impact material he had) that the victim – a five-year-old boy – was now a happy seven or eight-year-old and had recovered well from the experience. Bearing in mind the behavioural patterns of HG and ZH, it might be wondered whether the information given to the judge was accurate. Time, perhaps, will tell.

What is clear is the degree of normalisation which apparently attends this behaviour. The five-year-old, having been assaulted by ZH in 2004, complained loudly with the words, “he’s fucked me”. A degree of maturity, knowledge and experience, it might be thought, well beyond a five-year-old.

What further counselling is this five-year-old likely to get, particularly given the nature of the victim impact information provided to the judge? Why should he grow up any different to HG or ZH in this regard?

Dislocation of the victim

The Inquiry interviewed a young woman who had been a victim of a sexual and physical assault in a remote community. The story that follows is heavily edited so as not to identify her. Her difficulties commenced when she complained publicly of the offence. Because her mother supported her, they were both ostracised from the community. Sarah (not her true name), was a 14-year-old at the time of the offence and the offending male was much older. The following summary is taken from the Inquiry’s notes of the meeting.

After reporting the matter, Sarah said it was better for her that she left the community because of the anger she would have faced from others.

Sarah was located by a WAS officer at the request of the Inquiry. It had been some considerable time since any contact was had with Sarah and her mother. Prior to the offence, Sarah had been at a boarding school interstate. Since the court, she and her mother have led a transient lifestyle, living in at least 10 different locations around the Top End. Sarah has been unable to continue her schooling. She said they have moved everywhere since the report. There was a problem with his family threatening her because the offender went to jail. They had wanted her to drop the charges. She stills gets “that nervous thing” (anxiety). It appears that they settle in a location for a time and then hear of threats against them, or are threatened directly, people knowing where they are or seeing people from that community, and they move on. They heard at one stage that people wanted them to go back to the community for a meeting “culture way” but they wouldn’t go as they were fearful “they will probably kill us”. Sarah’s anxiety continues with fears about what will happen when the man is released, “he will do something to us like black magic and curse us”.

The issues identified in this case were:

- *the impact on Sarah*
- *transient lifestyle*
- *no education*

41 *G v The Queen* (2006) 19 NTLR1 [73]

- *no counselling*
- *continued anxiety and fear*
- *disconnected from community*
- *no provision for follow up.*

Sarah and her mother thought that there should be an independent person who comes and gives a proper debriefing to the community on what has happened in the court and its outcomes. It needs to be factual so there is no mis-information. They may also be able to mediate between the victim's family and perpetrator's family to minimise the negative impacts on the victim and her family.

The Inquiry's clear view which flows from this discussion is that victims of child sexual assault need careful monitoring and counselling. This should continue from after the initial report or complaint, well after any court process is concluded and, possibly until they reach adulthood. The Inquiry would yield to expert opinion on the actual outer limits of such a counselling regime (see Recommendation 22 which assigns responsibility for this to SARC).

Furthermore, a debriefing exercise needs to be conducted within the family group or community from which the complaint emerged. This should focus on an awareness of the unacceptability of the behaviour, any educational needs that might follow (as to, for example, the interaction or clash of cultural and mainstream laws in this regard), possible rehabilitation of the offender, and reconciliation, mediation and/or healing within the community. The specific recommendation that flows from this discussion appears below.

Recommendations

33. That, following the conclusion of a prosecution of an offence involving child sexual abuse, a full de-briefing take place in the relevant community dealing with all issues emerging during the complaint and prosecution process. The aim of this process would be to achieve, as far as possible, healing and reconciliation in the community. The CAT to be responsible for arranging such de-briefing in conjunction with a Witness Assistance Service officer and the local community justice group.
34. That the government invest in the recruitment and training of Aboriginal Interpreters – a proportion of whom must be trained and supported to enable them to work in the areas of child protection and criminal investigations of abuse.



11. Bail

The Inquiry received a recommendation from the Northern Territory Police Force suggesting:

That the Bail Act be amended to include serious sexual offences against children in the presumption against bail provisions.

The presumption against bail for *certain offences* is contained in section 7A of the *Bail Act*. Specified offences include murder and some other serious offences. They do not necessarily include serious sexual offences against children, although they may do if other criteria are satisfied.

The general presumption is in favour of bail (section 8) except in respect of section 7A offences and further offences or criteria specified in section 8.

In cases to which the general presumption applies, there are criteria to be considered in bail applications which are listed in section 24. They include the protection and welfare of the community having regard only to, relevantly:

- (ii) *the likelihood of the person interfering with evidence, witnesses or jurors*
- (iv) *where the offence is alleged to have been committed against or in respect to a child within the meaning of the Community Welfare Act, or a youth within the meaning of the Youth Justice Act, the likelihood of injury or danger being caused to the child or youth*

It is against that legislative framework that the Police recommendation, in the following terms is made:

It has been suggested that the Bail Act be amended to include serious sexual offences (e.g., sexual intercourse, gross indecency) against children in the presumptions against bail rather than relying on the provisions at Section 7A(1)(e) of the Bail Act NT in respect to the presumption against bail for "serious violence offences" in some circumstances. Also, where a defendant has previous sexual offence conviction(s) and the new allegations involve indecent dealing with a child then the onus should be on the defendant to show why bail should be granted. While incarceration may not be a preferred option for some, the message to offenders in the community needs to reflect the seriousness

of the offence and the community view of this type of offending. Sometimes incarceration is the only respite that victims and communities will get from perpetrators of abuse.

The knowledge, by a child victim, that the perpetrator is at large and in proximity to them in the community is sufficient to significantly affect wellbeing and feeling safe. This also applies to witnesses. The safety and protection of victims and witness should be a primary consideration in respect to Bail.

Managing a situation where no contact is made between a defendant and victim who normally reside in the same remote community can be particularly challenging. Communities are small and the relationships between the victim and offender and extended family are often complex. If a defendant is not remanded into custody bail conditions are generally sought to keep the parties separated (e.g. the offender may be directed to reside in the nearest major centre). If a Magistrate grants bail then conditions will be sought to restrict such things as the offender's alcohol consumption, places they are allowed to go within the community, the imposition of curfews and reporting conditions and the like.

This recommendation was not supported by the Office of the Director of Public Prosecutions, although no argument was directed to it in its submission.

The major complaint from others making submissions to the Inquiry is the failure of the *Bail Act* to protect children by allowing alleged perpetrators to return to the communities in which they committed the alleged offences. This assumes, naturally, that the word, "alleged", has a token meaning only in the context. This assumption attacks the basic philosophy of bail which is that a person is innocent until proven guilty.

In cases of murder and other serious offences, the community interest is deemed to be greater than that of the *alleged* offender. There is the presumption against giving bail. It is a balancing exercise.

A further overriding difficulty emerges in matters involving allegations of child or adult, sexual or other,

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violence in remote communities. If the making of the allegation (translated thereafter into the charging of a person) leads automatically to the removal of that alleged offender from the community, then that is a powerful tool in the hands of a mischievous complainant.

Furthermore, it is a disruptive event from that community's viewpoint and not always what is intended by the complainant. A child victim in that position might find himself or herself made the subject of a great deal of humiliation, embarrassment and victimisation if left behind in the community with members of the alleged offender's family and friends.

It is too simplistic, given the existing cultural values in remote communities, to assume that the removal of the offender (alleged) from, and retention of the victim (alleged) in, the community will suit all situations.

In a somewhat despairing sense, some of the submissions have noted that the removal of the child victims from communities appears to be a simpler option under the present justice system than the removal of the perpetrator. Recommendations contained in submissions included review of the *Bail Act*. However, the best practice that might flow from such a review remains unclear from those submissions.

The Department of Health and Community Services, for example, identifies specific outcomes it wishes to see in relation to the application of the *Bail Act* but does not specify how it would see these being achieved. The outcomes sought were:

- the rights and safety of victims are given priority when considering terms and conditions for bail and parole of suspected or convicted perpetrators
- suspected or convicted perpetrators on bail and parole are able to be closely monitored
- community input into decisions about bail and parole conditions.

These propositions go a little further than bail and intrude into parole conditions. Obviously, from a victim's perspective, similar considerations apply to the release of a convicted offender into a community following imprisonment and the release on bail of an alleged offender.

Although not relating to the issue of bail itself, the Inquiry received helpful submissions from the Chief Magistrate

in respect to closely related matters. These were to the following effect:

The Justices Act provides little guidance about where the court should sit, generally close to the place of commission of the offences. Many remote courts have no witness facilities, no witness box at all let alone any means for assisting young witnesses.

Unless there is good reason not to, all matters of a sensitive nature should be heard in a major centre with proper facilities for witnesses-proviso is to meet travel expenses of defendants. Where court matters involve child witnesses concerning sexual assault in regional areas, there needs to be a presumption in favour of the proceedings being conducted in one of the major centres and appropriate funding for travel for not only witnesses (who are presently well catered for) but also defendants and support persons to travel.

There are circumstances in the Family Matters Court where there are clear findings of abuse and where a perpetrator would benefit from orders with a view to modifying their behaviours and protecting other children.

When the processes of the Family Matters Court identifies a perpetrator of child sexual abuse in the context of a "Child in Need of Care" the court should be empowered to make restraining orders, treatment orders, program orders and the like.⁴²

The Member for Braitling provided the Inquiry with a copy of her draft Private Member's Bill to amend the *Bail Act*. This Bill seeks to make the amendments recommended by the Police to this Inquiry and to remove the presumption of bail in serious sexual assault offences (including those dealing with children).

The Bill was presented and read a second time, on 29 November 2006⁴³. It has not progressed beyond that stage. The Member, in her speech, noted that she had received submissions that the definition of "serious sexual offence" included in her Bill was too wide. It certainly went beyond offences in respect to children. An amendment, which included only specified offences involving children, e.g. section 131A (maintaining a sexual

42 The Chief Magistrate's views will be explored elsewhere in this Report.

43 Bail Amendment (Serious Sexual Offences) Bill (Serial 72) Hansard, LC Debates

relationship with a child), section 192 (sexual intercourse and gross indecency without consent – restricted to children) and section 192B (coerced sexual self-manipulation-restricted to children) might be acceptable. It would be consistent with the Police recommendation to the Inquiry.

However, the real gravamen of the complaint is the potential effect on the child victim of an alleged perpetrator being released back into the community. It seems to the Inquiry that the answer lies not in removing the presumption but in increasing the guidance given to the courts in how the discretion pursuant to section 24 (referred to earlier) is to be applied. Arguably, section 24, which sets out the criteria to be considered in bail applications is too narrow. Section 24(c) (iv) specifies an alleged offence against a child or youth, but the court may only have regard to the likelihood of *injury or danger* to the victim. Doubts may be expressed as to whether this includes the emotional wellbeing and security of that child.

The Inquiry's recommendation in this area proposes a new sub-section for the Act. It is quite lengthy and may require some fine-tuning, along with the precise numbering. It is envisaged, however, that the proposed sub-section would stand alone and be separate from the existing sub-sections in section 24(1). The Inquiry regards this as an important part of the process of the administration of the criminal justice system. It does not impinge on traditional rights of accused persons but does ensure better and clear attention to the victim's wellbeing.⁴⁴

Recommendations

35. That section 24 of the *Bail Act* be amended to include a new sub-section which provides that where an offence is alleged to be a sexual offence committed against a child, the court when determining bail, take into consideration the protection and welfare of the child having regard to:
- a his or her age at all relevant times
 - b the age of the alleged offender
 - c the familial relationship between the child and the alleged offender
 - d the present and proposed living accommodation of the child and the alleged offender
 - e the need, as far as possible, to allow the child to remain in their existing residence and/or community
 - f the emotional as well as physical wellbeing of the child
 - g any other matter which to the court appears relevant.

⁴⁴ In dealing with this recommendation, the Board is not unmindful of the amendments to the Commonwealth *Crimes Amendment (Bail and Sentencing) Act 2006*. Save to adopt the views of the Senate Standing Committee on Legal and Constitutional Affairs (and all those who made representations to it, with the exception of the Attorney-General's departmental officers) and say that the amendments will have no practical effect in the Northern Territory on any of the issues with which we are confronted, we otherwise disregard them.



12. Offender rehabilitation

12.1 Introduction

The Inquiry believes that effective, culturally appropriate rehabilitation programs are required for Aboriginal people both in prison and within the community. They are important preventative measures that have the potential to reduce recidivism (e.g. Brown 2005) and reduce the inter-generational cycle of offending.

I suppose the biggest part in my life was the sexual abuse. I put up with it till the age of 14, when I said no, enough's enough. It started about four or five-years old. Now, like with my crime now, [rape] like when I see these programs mob and they say "hang on, you talk about empathy. Now let's put on your shoes, putting yourself in the shoes of the victim" and I said hang on, woo, pull up, I was a victim. So I've seen both sides of the fence and I can comment to you as a victim and as a perpetrator of the crime.

Aboriginal prisoner interview by Atkinson-Ryan, unpub.

I served seven years... I was let out into society. There was no programs or nothing in here that would help me cope and nothing out there, they didn't tell me where to go for help and I lost my way, I couldn't handle it. I mean, my head was a mess, there were so many distractions and that... it would be nice if someone helped me out, help me make some sense of this stuff in my head, you know I know it's not right but hey it just gets worse when your left to your self to sort it out, nobody to talk to makes me sick, sick in the head and sick in the body makes me really scared too you know because I always end up back in here, make sure I do, so I can feel a bit safe and a bit supported, it's not real good but it's better than nothing though.

Aboriginal prisoner interview by Atkinson-Ryan, unpub.

The Inquiry was concerned that NT Correctional Services is not presently providing any sex offender rehabilitation programs for prisoners in Darwin and the program in Alice Springs is intermittent. This has been a long standing issue. The Inquiry is also aware that Judges of the Supreme Court have expressed disappointment that programs are not available. This has been particularly

apparent when prisoners' parole applications have been dealt with, it being accepted that prisoner rehabilitation is facilitated by such programs⁴⁵.

The Inquiry received comments from Justice Thomas of the Northern Territory Supreme Court written with the full support of the Chief Justice and the other Judges of Court. Because of the importance of Her Honour's comments, we set out the relevant parts in full. We point out that the letter was specifically directed to our fourth term of reference, namely: *Consider how the NT Government can help support communities to effectively prevent and tackle child sexual abuse.*

As you are well aware, this Court deals with many cases involving child sexual abuse. A number of Judges have made comments to the effect that the "court is a blunt instrument" in dealing with this problem. A prison sentence in itself serves a very limited purpose.

To address the underlying cause of child sexual abuse, it is necessary to develop and provide offender treatment programs both within and outside jail. This requires government to provide resources within the jail and in communities to address the issue of rehabilitation.

Queensland and Western Australia are two states which have developed sex offender treatment programs. Recent sentences from the Queensland Supreme Court deal with the options for conditional supervision and rehabilitation programs.

In Attorney General for the State of Queensland v Keith Albert Beattie QSC 322, delivered on 26 October 2006, Helman J provides details of the six programs available in custodial centres.

In Attorney General for the State of Queensland v Lawrence McLean QSC 137 delivered on 17 May 2006, Dunley J made detailed orders for supervision of a sexual offender who was to be released to the community after

⁴⁵ It is noted that against the trend of the advice received by the Inquiry, Dr Steven Robertson provided a report in the case of ZH (16 March 2007) in the Supreme Court (no. 20427291) *The court should note that most sexual offender programs have been proven to be ineffective in reducing recidivism, despite the lofty claims made by Sex Offender Program Units. I make no further medical recommendation.* A summary of the effectiveness of sex offender programs is provided in Part II of this Report.

...serving a substantial period of imprisonment. These conditions included attending for counselling by an approved psychiatrist or psychologist and attending an appropriate sex offender treatment program.

You are no doubt well aware of the Offender Program Service Guide published by the Department of Corrective Services in Western Australia and a similar publication issued by Queensland Corrective Services. If these have not previously been drawn to your attention, they are available on the internet or alternately I have copies I could make available.

As the rehabilitation of an offender is in the best interests of the community, I consider there should be attention paid to the rehabilitation programs that could be made available in the NT and the necessity for government to resource such programs.

Based on this submission and many others, the Inquiry strongly supports the need for offender rehabilitation. That said, it should not be thought that in advocating rehabilitation programs for offenders, the Inquiry does not have full regard to the seriousness of offences involving child sexual abuse and the significant trauma sexual abuse can cause for victims and their families.

On the contrary, everything this report has presented should indicate our strongest possible disapprobation of such offences. What must be provided, however, is a situation where members of communities are comfortable with reporting offences in the context of knowledge as to what actions will then flow - in terms of police and court processes and effects on victims and the whole community (including the offender).

It is clear, as Justice Thomas and others have said, that the rehabilitation of an offender is in the best interests of the community.

The Inquiry is aware that it would be difficult to implement a protocol that leads to a perception that cases of these types are being dealt with differently in terms of sentencing or being inappropriately diverted from the criminal justice system. The Inquiry's recommendations are therefore aimed at achieving the best outcomes for all stakeholders in the particular circumstances. Specifically, any new alternative model that is developed, after meaningful and substantial consultation, should be dependent upon consent of the victim in each case, before it be utilised.

12.2 Northern Territory

The present situation in the Northern Territory, as the Inquiry understands it, is that there is a small scale generic sex offender program that operates on a sporadic (bi-yearly) basis. One of the issues impacting on the program's operations is the difficulty in finding qualified psychologists to run the program. However, it was suggested to the Inquiry that the program could still run utilising less qualified but suitably trained and supervised people. The Inquiry also notes that there is presently no program available for juvenile sex offenders⁴⁶.

The Inquiry was informed by Correctional Services that it had trialled a Sex Offender Treatment Program (SOTP) at the Alice Springs Correctional Centre in 2005-2006 with eight participants. It is based on an Indigenous SOTP from Western Australia. The Inquiry understands that delivery of the program in Alice Springs is presently being discussed with an Aboriginal NGO.

A program will commence in the Darwin Correctional Centre in September 2007 and is expected to operate for eight months. The program is extremely resource intensive and is not funded as a discrete program – other programs (such as family violence and alcohol treatment programs) are not conducted in order to conduct the SOTP. It is anticipated that only one SOTP per year is conducted. This will mean that only those convicted of sex offences and who are given a term of imprisonment of probably at least 1–2 years will be able to be considered for participation in the program.

Our present understanding is that because of an unsuccessful staff recruitment process the program has not commenced. Serious consideration in those circumstances needs to be given to re-designing the position.

A similar difficulty has apparently existed in recruitment of a psychologist at Juvenile Detention in Darwin and that position has been re-assessed accordingly.

It was noted by the Department of Justice that Juvenile Detention has a sporadic sex offender population. They are generally held on remand for the greater part of their period in care. In 2005-06, the daily average for juvenile detainees was 18. During this period the daily average for sentenced detainees was eight.

⁴⁶ It is accepted that development of a juvenile sex offender program would have implications for the training and development of clinical staff.

Previous program

The Northern Territory has previously investigated the development of rehabilitation programs for Aboriginal sex offenders in prison.

In the late 1990s, the *Gurma Bilni – Change Your Life Program* was developed specifically for Aboriginal sex offenders in prison. The program was the outcome of an intervention research project funded by the Institutional Programs section of Northern Territory Correctional Services, and conducted by consultant Dr Sharon McCallum.

The project which resulted in the *Gurma Bilni – Change Your Life Program* was:

born of the frustration of Community Corrections Officers not having an appropriate intervention option for traditional Aboriginal men who had committed sex offences. The officers' experience had been that interventions on offer may have suited non-Indigenous men, but were not appropriate for Aboriginal men. Similarly, such programs were based heavily on an Anglo culture, and required participants to have a high level of literacy in English.

The Gurma Bilni – Change Your Life program will continue to develop as more is learnt about the sex offending behaviour of traditional Aboriginal men. This is a new field of endeavour and is highly complex and it will take time. Its success is largely dependent on the support which men receive on release from prison. At the moment such support is limited because of the remoteness of the communities to which many men return. Northern Territory Correctional Services is continuing to work on strategies, which would provide appropriate support to these men (McCallum & Castillon 1999).

The Inquiry was unable to find any formal evaluation of this program and it would appear that, for whatever reason, it has not been maintained. There is an urgent need for culturally appropriate regularly operating sex offender programs along the lines of the *Gurma Bilni – Change Your Life Program* for Aboriginal prisoners and juvenile detainees. Such programs should be available to offenders to voluntarily participate in regardless of the length of their sentence and regardless of whether they are on remand or are a sentenced prisoner. Many prisoners spend considerable time on remand prior to being sentenced.

While participation in offender programs should be voluntary the Inquiry believes that there should be incentives to participate. In taking this view the Inquiry notes the success of the culturally appropriate *Kia Marama* sex offender treatment program run at Rolleston Prison in New Zealand.

New Zealand programs

The sex offender treatment program at Rolleston Prison in New Zealand has the Maori name, *Kia Marama*, which means “Let there be Light and Insight”. The program is run for male inmates who have been sentenced for sexual offences against children. When *Kia Marama* was opened in 1989, it was the first treatment facility of its type in the world.

More than 700 men have completed the program to date and an evaluation conducted in 1998 for men who had been treated over the first five years, showed that the program reduced their risk of re-offending by more than 50%. More recent outcome figures shows that treatment effectiveness has improved when those treated after 1994 were compared to those treated prior to 1994. Recidivism rates for those treated after 1994 are less than 5%. A 1998 evaluation found that the differences in the re-offending and re-imprisonment rates suggest the Department of Corrections reaped a net saving of more than \$3 million. Less quantifiable are the societal savings that result from fewer offenders and fewer victims.

The goal of the *Kia Marama* program is to reduce re-offending among men who have offended sexually against children. In the first phase of the program, participants work on developing a thorough understanding of their offending pattern. In the second phase, participants are helped to gain knowledge and skills to deal with the problems linked to their offending. The program lasts about nine months (37 weeks). Groups of 10 men meet for almost three hours a day three days a week. At the start of the program men identify their problem areas and needs.

The group works through modules dealing with issues such as understanding their offending; understanding the effects on victims, changing sexual arousal patterns, social skills, relationship skills and sexuality education, managing moods and coping with risk factors. The department provides follow-up support after release

and former residents take part in post-release parole program with local probation officers (NZ Department of Corrections 2004a).

Te Piriti, an Auckland Prison-based program and innovative extension of the *Kia Marama* program, is designed *specifically for Maori offenders* who are treated in a *Kia Marama*-type program, but in a way that blends Maori cultural values and beliefs (NZ Department of Corrections 2004b).

NT Elders program

The Inquiry does commend the presently existing Northern Territory Elders program by which respected Elders attend prisons and “counsel” prisoners. This program should be extended to include more communities and is another role that Community Justice Groups could be involved in.

This program was officially launched in February 2005 at the Elders Visiting Program Forum held in Darwin. The Elders were nominated through their regional councils and come from the Tiwi Islands, Katherine, Groote Eylandt, Wadeye, Tennant Creek, Hermannsburg and Yuendumu. These seven regions were identified as having the greatest need correlating to the number of Indigenous offenders housed within Darwin and Alice Springs Correctional Centres.

This project seeks to deliver, to eligible offenders housed at Darwin and Alice Springs Correctional Centres, a program involving groups of Elders from different communities visiting prisoners, supporting sentence management and maintaining cultural ties.

Community-based rehabilitation

Effective, culturally appropriate rehabilitation programs are required for Aboriginal people in prison and in community settings.

The hardest part of a prison sentence is the first three months after release.

CEO, Offenders Aid and Rehabilitation Services NT Inc.

At present, Victoria is at the leading edge in developing such programs, particularly post-release and adolescent and youth treatment programs, and this is having a

positive effect in reducing recidivism and crime generally (Sentencing Advisory Council (2007)).

The Inquiry believes it is important that such programs are developed and implemented in the Northern Territory.

Wherever possible, courts should structure sentences to provide sex offenders with the opportunity for community-based rehabilitation⁴⁷. Depending on the gravity of the offending (and taking into account the views of the victim and the wider community), this may include:

- a non-custodial sentence conditional on participation in and completion of, an appropriate program
- a custodial sentence that allows for release before the end of the sentence on condition of participation in and completion of, an appropriate program.

It is accepted that offender programs may take at least six-nine months to complete. The latter course would allow offenders to commence programs in prison and then complete them in the community. This is why the Inquiry believes that such programs should be available, irrespective of the length of sentence.

As noted previously, the Inquiry is well aware of the controversial response invoked by any suggestion of a non-custodial sentence for child sex offenders. However, while the Inquiry does not believe that such an approach is warranted in all cases, it does note that some jurisdictions have had some success with non-custodial models for some offences.

One such model is the NSW Department of Health's *Cedar Cottage Program* which began in 1989. An overseas example of a culturally-appropriate Indigenous offender program is “In Search of your Warrior”, run by Allen Benson and Patty LaBoucane-Benson in Alberta, Canada. This program involves provision of a healing lodge on Cree land, using traditional values to deal with contemporary issues.

The importance of monitoring

The Inquiry believes that the offender's progress in a community-based program needs to be monitored. For this reason, the Inquiry suggests that written reports be provided to the sentencing Judge (or perhaps the Parole Board) at regular intervals.

⁴⁷ The Inquiry recognises that successful rehabilitation is maximised when participants have admitted committing offences and voluntarily participate in programs.

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The Inquiry takes the view that Correctional Services plays a significant role in the rehabilitation of Aboriginal offenders. Many Aboriginal people, when consulted, indicated a need for a Correctional Services officer based at community level. This requires employees who have a sound knowledge of cultural matters and the trust of the relevant communities they service.

The role of Correctional Services will also be influenced by the development of Community Justice Groups and Aboriginal Courts. The Inquiry envisages that Correctional Services would be able to liaise with Community Justice Groups in the development, application and supervision of rehabilitation programs. The Inquiry also envisages that Correctional Services would be able to assist in running Aboriginal Courts and ensure that the necessary rehabilitation services are available.

Community courts

The Inquiry is aware, of course, that community courts do not presently have jurisdiction in the Northern Territory to deal with sexual offences. In a personal submission made by the Chief Magistrate, the Inquiry was invited to consider the proposition that recognition and support be given to the exploration of protective and deterrent measures within Indigenous communities.

Her Honour told us of a matter in the Community Court (involving violence against a woman) where she adjourned the sentencing procedures to allow participation in ceremonies designed to foster reconciliation and healing between the parties and the community. She continued:

I would not want to deal with child sexual abuse matters in the Community Court setting without legislation authorising it, (most criminal cases of this type are dealt with in the Supreme Court in any event), however, in (certain) circumstances, it may be appropriate to order the person to participate in a similar process to that contemplated in the affidavit I have forwarded to you. Properly run, these traditional processes appear to have significant impact and if there are such processes available, there should be legislative mechanisms that allow courts to have specific regard to them in broader contexts than sentencing and power for courts to order persons to undertake similar traditional processes. (You no doubt are aware of trials of this type in New Zealand and Canada concerning Indigenous communities).

12.3 Present outcomes

The present approach to law, order and justice in Aboriginal communities results in a small percentage of offenders being identified and subsequently arrested and convicted⁴⁸.

The Inquiry was also told that the present approach often results in further trauma to the victim and family (sometimes referred to as “institutional trauma”) and outcomes that are not seen in a positive light by victim and family. The Inquiry notes that the criminal justice system, despite the best intentions of those who work within it, is often a traumatic and negative experience for victims and their families. This is especially so for Indigenous people due to language and cultural differences.

The Inquiry was told that unless responses to child sexual abuse are sensitive to Aboriginal culture and Aboriginal notions of justice it is unlikely that actual outcomes will significantly improve in some communities. In particular, many submissions received by the Inquiry recognised the need for interventions that involve families and the wider community as a crucial component in reducing recidivism. Many submissions also stressed a need for a model that placed less emphasis on the present criminal justice system.

Intergenerational victims and offenders might also be better served by a new approach. In a sentencing case, the judge noted a medical report:

*The Doctor reported, “by way of mitigating factors, it seems clear that ZH was a victim of sexual abuse as well as an alleged offender. The situation is not uncommon. The link between victimhood and the migration of offending is not well understood. The theory of the victim developing post traumatic stress disorder being the cause of offending is hypothetical and in this particular case I think the link is more likely due to the normalising of abhorrent behaviour”.*⁴⁹

48 The issue is the failure to identify offenders (i.e. a failure to disclose and/or to report). Once identified, the rate of apprehensions, and particularly convictions, for sex offenders in the Territory, is quite high by national standards (see Criminal Justice Statistics, Part II of the Report).

49 Sentencing remarks, *The Queen v ZH* – no 20427291, 16 March 2007

The Inquiry was told that for many Aboriginal people in the Northern Territory, jail does not have the intended deterrent effect as it is part of life, and does not rehabilitate.

Jail is a resting place, a luxury and a place of no discipline. They come out and their course has not been changed, they cause more trouble and go back again. Traditional law is all about discipline and changing that person's course. That way they then set a good example to others.

Yolngu Elder

In some cases, jail even provides a better standard of living than outside.

I don't care about being in prison. It doesn't really worry me. Yeah of course it's boring in here but it doesn't really worry me being in here. It is kind of like a family, we look after each other. One big community - better than back home not as much violence. Yeah one big community it is.

Prisoner interview by Atkinson-Ryan, unpub.

It is against this general background that the recommendations at the end of this Chapter should be read.

12.4 Alternative approaches: Canadian First Nations

The Inquiry notes that the *Royal Commission into Aboriginal Deaths in Custody* recommended that culturally appropriate alternative approaches to justice, justice programs and services should be developed.

The Inquiry also notes the international experience of Indigenous people. The following striking, yet representative, statement was listed in a Canadian Royal Commission on Indigenous Peoples as its first "Major Findings and Conclusions":

The Canadian criminal justice system has failed the Indigenous peoples of Canada---First Nations, Inuit and Métis people, on-reserve and off-reserve, urban and rural—in all territories and governmental jurisdictions. The principal reason for this crushing failure is the fundamentally different world views of Indigenous and non-Indigenous people with respect to such elemental issues as the substantive content of justice and the process of achieving justice (1996:309).

The Inquiry sees a need for the development of alternative approaches to justice that reflect Aboriginal culture and Aboriginal notions of justice. At the least, such approaches need to be given a significant trial and then independently evaluated as to their effectiveness. Such untested alternative approaches may be the key to reducing the present levels of child sexual abuse in Aboriginal communities.

The Inquiry also acknowledges that such programs will need to be carefully thought through and will require extensive consultation with Aboriginal people before they can commence. Plainly, the mainstream community needs to reach a degree of satisfaction with the proposed outcomes.

For this reason, the Inquiry recommends that the dialogue necessary to develop these alternative models commence as soon as possible. Any negative "wider community" perceptions in relation to such models can be addressed through education and through successful outcomes.

To guide this process, the Inquiry commends the work done in the community of Hollow Water in Canada. It notes that some adaptation would be required for the Territory if a similar program was to be developed, as would be the case if the Hollow Water program was taken up in any other location.

Hollow Water program

The Inquiry was told about Hollow Water (Ross 1995; Aboriginal People's Collection 1997), a provincial Canadian Aboriginal community of around 900 people. More than 15 years ago, the community decided to take ownership of its own sex offenders. The community experience had been that men had gone to jail and had come back and had been even more violent and offended in a worse manner.

The Inquiry was told that the community, including the victims, decided to look at the problem in a different way. The main drivers of the program were the community's traditional ceremony women. The community also recognised that the mainstream system was "breaking them into pieces".

In practical terms, it is understood the program works by dispatching two teams once an offence is alleged. The first team works with the victim and the victim's family

and the second team works with the offender and the offender's family. The offender then gets a choice as to whether they admit their guilt or not. If they do not, then they are dealt with by the normal court system. If they do, then they are required to undergo a five year healing program which is validated by the court.

The Inquiry was informed that this program has now been running in that community for more than 15 years and has been highly successful. During that time, 107 offenders have successfully completed the five-year program. Only one offender did not complete the program. The recidivism rate is 1%. The "magic" of the program is that it is based on traditional teachings and the traditional circle process.

The Inquiry was told that a conservative cost benefit analysis figure showed that the Canadian Government saved \$15 million over a 10-year period as a result of this program. In addition to the cost saving, however, many other benefits from the program flowed to the Hollow Water community. They included sex offences generally reducing, less migration out of the community, a functioning child day-care centre, and more children completing high school.

This type of model was considered attractive by many of the Aboriginal communities consulted by the Inquiry.

These communities saw this model as giving families a way to:

accept that their loved one had done a wrong thing and to support them through the consequences of that while still being able to show that they loved and cared for him. This addresses the common barrier where family members believe that they are betraying their loved one by dobbing them in.

Resident of Top End community

The Hollow Water type model encourages the whole of the community to be involved in the issue, as opposed to encouraging people to "dob" family members in to the "mainstream" system. At the same time, the "mainstream" system still plays an important part.

This is a good example of the two cultures working together for a successful outcome.

A Northern Territory proposal

It should be noted that the Central Australian Aboriginal Congress Inc. has advocated for the development of an alternative model of offender treatment, to be based in the Territory's larger Aboriginal community controlled health services (as part of their Social and Emotional Well Being centre). The program would be staffed by a multi-disciplinary team including psychologists (especially child psychologists), social workers and Aboriginal community workers.

Somewhat similar to Hollow Water, the proposed program would provide culturally appropriate specialist treatment and rehabilitation services for sex offenders and their victims. The intent would be to create a service able to provide treatment to men who presented themselves to the treatment service, provided they acknowledged that they were sex offenders and there was no evidence of ongoing offending. A key element of the proposal was to find ways to reduce the deterrence effect of police and the criminal justice system on men who wish to seek treatment. Clearly this would need to take into account the nature of the offences committed, and the community's attitude to the nature and severity of the offending, when determining the precise role of the criminal justice system. Hollow Water provides a good example of a program where such issues have already been considered.

A Community suggestion

Similarly, during one of the Inquiry's regional forums, a model was suggested that involves three parts. It involves a centre for the protection and healing of the victim, a centre for the healing and rehabilitation of the offender and a centre in between for mediation, restoration and healing of the family.

This model came from the community and received an enthusiastic response. It was recognised and accepted as a culturally appropriate model that reflected Aboriginal perspectives as opposed to "mainstream" perspectives. The emphasis of the model is more on "healing" and "restorative" measures as opposed to "punitive measures."

It is noted that this model reflects, in many ways, the principles of the *Hollow Water* model as outlined in this section. The model is represented in the artwork on the cover of this report.

Recommendations

36. That the government provide more sex offender rehabilitation programs with adequate resourcing and in particular that:
- a. wherever possible the court should structure sentences for sex offenders to provide the opportunity for community-based rehabilitation
 - b. Correctional Services must provide ongoing sex offender rehabilitation programs in jail (irrespective of length of sentence) and for persons on remand, including culturally appropriate programs
 - c. supervision of parolees must be meaningful, and include:
 - i. attendance at an offender rehabilitation program
 - ii. time back in their community
 - iii. written reports from the parole officer to the sentencing Judge.
37. That the government provide community-based rehabilitation programs for those at risk of sex offending, convicted offenders whose offences are suitable for a community-based order and/or as part of probationary arrangements. These should be culturally appropriate and delivered with the involvement of the community.
38. That the government to provide youth-specific, culturally appropriate rehabilitation programs for juvenile sex offenders in detention, and for those on parole or subject to community-based orders.

39. That the government to commence meaningful dialogue as soon as possible with Aboriginal communities aimed at developing alternative models of sentencing that incorporate Aboriginal notions of justice and rely less on custodial sentences and more on restoring the wellbeing of victims, offenders, families and communities. Further, where these models can demonstrate probable positive outcomes within the relevant community that are suitable to the needs of victims, provide rehabilitation to offenders and promote harmony within the broader community, the government commit to the ongoing support of such programs and to legislative changes necessary to implement such programs. Any model which is developed may only be utilised with the consent of the victim.



13. Prevention is better than cure

In the past decade, interest in preventing child abuse and neglect has increased substantially. This has resulted, not only from the humanitarian desire to remedy or prevent the suffering of children, but because of the availability of evidence that the prevention of child abuse and neglect, and the investment in the health and wellbeing of children, families and communities, is socially and economically cost-effective.

As is evident throughout this report, the Inquiry has embraced the view that “prevention is better than cure”. Further, the high level of child sexual abuse and other violence in Aboriginal communities is a marker for the high levels of underlying community dysfunction. The literature is clear: a focus primarily on crisis intervention and responding to abuse after the fact will not be an effective means of preventing sexual abuse.

In the following sections focus on addressing the structural forces that work in communities, and making recommendations for a greater concentration on societal and community-level prevention initiatives. The initiatives are likely to fit well with the Chief Minister’s 20-Year Action Plan to address the health and wellbeing of the Territory’s Aboriginal population.

A key element of a successful long-term strategy will be to define a set of core health and family support services that can be delivered to communities of all sizes in the Territory. That is, to determine what services a small remote, medium and larger community can expect to have available on-site, or should be able to access on an intermittent basis (fly-in-fly-out). DHCS has already done extensive work on mapping a health core services framework (see Health – A Role in Prevention below), but the development of a “community services” framework⁵⁰ requires further work. Because community services are typically focused on addressing the needs of vulnerable families (i.e. targeted serviced delivery) rather than the provision of universal services, there is often little infrastructure available in the smaller communities (such

as a health centre or family support agency) and this severely hinders the ability to provide services on-site across the Territory.

The Inquiry has made recommendations regarding the development of local Aboriginal workforces elsewhere in this report. This may go some way towards the development of a visible “family support” or community services presence in more Territory locations.

Recommendation

40. That the Northern Territory Government work with the Australian Government in consultation with Aboriginal communities to:

- a. develop a comprehensive long-term strategy to build a strong and equitable core service platform in Aboriginal communities, to address the underlying risk factors for child sexual abuse and to develop functional communities in which children are safe
- b. through this strategy, address the delivery of core educational and Primary Health Care (PHC) services to Aboriginal people including home visitation and early years services (see Chapter on Health).

⁵⁰ In this context, “community services” are defined as: statutory child protection and family support services; alcohol and other drug services; mental health; and aged care and disability services.



14. Health – a role in prevention

14.1 Introduction

The medical practitioners most likely to see cases of child maltreatment are General Practitioners (GPs), Accident and Emergency specialists, paediatricians and psychiatrists (Hallett & Birchall, 1992). Similarly, a broad range of nurses may come into contact with children in a range of agencies and settings. In some cases they will be in a position to identify “at risk” or maltreated children (Tower, 1989; Hallett & Birchall, 1992; Goddard, 1996). Some of the medical practitioners with significant roles in child protection case management are discussed in the following sections.

Through their routine support of mothers and infants, maternal and child health nurses provide a universal health education and screening service to families (particularly mothers) of very young children. They develop expertise at identifying problems and referring families to appropriate services, and are ideally placed to identify “at risk” or maltreated children and working with maltreated children and their families.

In rural and remote settings, PHC health centres (and staff) are of even greater importance because they will be one professional element of what are usually small service networks (i.e. there are not many other professionals able to regularly monitor the progress of children and/or their families). Typically, smaller communities will be lucky if they have a health centre, primary school and crèche facility - in addition to a local community council office.

As well as PHC services provided by the NT Government through DHCS, the Territory has a number of Aboriginal medical services providing care in both urban and remote locations. While receiving some funding from the NT Government, these services rely significantly on Australian Government funding. When considering the PHC landscape in the Territory, Aboriginal medical services play an important role in the delivery of both medical services and social and emotional health and wellbeing services.

Aboriginal medical services are also strong advocates for the provision of better health services for Aboriginal people.

Submissions received by the Inquiry, and the Inquiry’s consultations, revealed that at present the health centre staff’s response to issues or disclosures of child sexual abuse is mixed. Perhaps not surprisingly, nursing staff and other health workers who had been located in remote communities for some time, were able to use their engagement with community to work more effectively on health issues. However, this was not always the case, as there were some reports of health centre staff failing to act when presented with suspected child sexual abuse. This was in order to avoid damaging the rapport they had built with the community, and at times, because of fears of a community backlash.

It was also noted in a number of submissions and on consultations that health centre staff were not well-integrated with child protection and family support services and thus, coordinated service delivery to address child sexual abuse (and other maltreatment) concerns were often not evident.

DHCS identified four key ways in which departmental and Aboriginal medical services primary health care services can improve services aimed at preventing CSA. These were:

- increased engagement of PHC teams in community settings
- use of care plans for children at risk of harm
- tools, protocols and training for PHC practitioners in child protection
- improved collaboration between PHC practitioners and schools.

14.2 Increased engagement of primary health care teams in community settings

Comprehensive PHC includes health centre-based clinical services (e.g. treatment of illnesses, management of chronic diseases), preventative care (e.g. immunisation, antenatal care and screening) and community programs such as antenatal, health promotion, substance abuse programs etc. Effective, comprehensive PHC, therefore requires considerable engagement with the community.

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This implies a range of activities conducted outside the health centre setting. The degree of engagement between PHC providers and the broader community varies across the NT. The degree of community engagement can depend on:

- the level of demand for 24 hour emergency care, including after-hours call outs
- whether the team is appropriately experienced and resourced
- whether the team has training or a particular interest in community-based activities
- the degree to which activities outside the health centre are prioritised over many other pressing demands
- whether they are community controlled health services.

In its submission, DHCS noted that “increased community engagement in areas such as postnatal home visits, and child safety initiatives can assist families to marshal their own resources and strengths to address health problems”.

Like all Australian jurisdictions, the Territory is aware of the evidence supporting investment in the early years of life (and for prenatal programs to support healthy pregnancies). A summary of some of the evidence – as it relates to child abuse prevention – is provided in Part II of this report. The Inquiry simply recommends that DHCS and the NT and Australian Governments consider making a greater, sustainable investment in maternal and child health and wellbeing for the early years (birth – 5 years) where the greatest health and welfare gains may result.

In recent times, DHCS and Aboriginal medical services have also identified a need to increase access to health services via active outreach. The department has initiated the development of home visitation services to better support maternal and child health in urban settings as a first step. The Inquiry is of the view that home visitation – one of the few health and welfare initiatives that demonstrates clear success in preventing child abuse (and for enhancing children’s health) – must be implemented in rural and remote settings as well. South Australia has developed an innovative home visitation program that operates in the APY lands in central Australia and the Inquiry recommends DHCS look to introducing similar culturally secure home visitation services across the range of Territory urban, rural and remote communities.

14.3 A greater role in child protection and family support

There needs to be a clearer understanding about how PHC teams can work in community settings to strengthen family and community responses to children who are considered at substantial risk of CSA.

Care plans are useful tools to ensure appropriate and coordinated care by multidisciplinary teams. Such plans are especially useful when some members of the extended PHC team live in remote communities, and some are urban-based. In recent years, care plans have been extensively used in chronic disease management. However, care plans are not presently used to manage care and support for sexually abused or at risk children.

The Inquiry supports the greater use of care plans, particularly where children have been assessed by FACS as “at risk”, but not requiring formal investigation and substantial follow up. FACS and PHC providers could develop a care plan to ensure that appropriate primary health care and other professional support (e.g. alcohol counselling, STI screening, child protection training, disability or mental health assessment) is provided to the child and family. Care plans could also assist in ensuring access to relevant NGO family support services and expertise.

14.4 Increased tools, protocols and training for primary health care practitioners on child protection

However, many PHC practitioners are still unsure of their roles and responsibilities in working with sexually abused children, or those at risk. Some believe their only role is to report suspected abuse, while others have indicated that PHC teams have a role in preventing sexual abuse (through health promotion, screening and opportunistic sexual health education).

It has been made clear by DHCS and through some of the Inquiry’s consultations, that PHC staff presently lack the training, resources and tools to identify and work with children at risk of abuse. Some argue that the day-to-day demands of clinical service delivery simply do not allow

them to work with children at risk. As has been noted previously, others are concerned about community threats and backlash if they “get involved” in this area by reporting or follow-up work.

However, PHC providers, whether urban or remote, play a key surveillance or monitoring role. Such work will be enhanced if they have the tools, protocols and training to take a consistent, pro-active, front-line role in working with children at risk.

Although there is already strong leadership in this direction (and many practitioners already prioritise work with children at risk), further concrete training and support needs to be provided to bring about real changes in practice. Child protection must become core business for PHC providers and DHCS notes that for this to happen, PHC practitioners will need:

- strong and consistent leadership and clinical governance support for work in this area
- basic risk assessment tools for use in PHC settings
- protocols on how to work with FACS to provide care and support to children and families who have been abused or are at risk
- more systematic orientation and training on prevention, symptoms of CSA, reporting and how to follow up and support victims or children at risk
- PHC teams also need to be adequately resourced to undertake this work.

Giving PHC workers a greater role in child protection and child abuse prevention is necessary, particularly in remote settings with limited scope for a regular or locally-situated child protection or family support presence. The new role cannot be undertaken without significant resourcing and, to that end, the Inquiry recommends that DHCS and Aboriginal medical services pursue additional PHC funding with the Commonwealth as a matter of urgency, together with advocating for the priority roll out of the Commonwealth’s Primary Health Care Access Program in the Territory.

14.5 Increased classroom collaboration between primary health care practitioners and teachers

PHC practitioners and teachers have strong links with children and families. PHC practitioners can provide valuable support to teachers in their day-to-day work with children. Case studies show that collaboration between PHC practitioners and teachers to provide protective behaviours training has led to subsequent disclosures about abuse.

The Inquiry has recommended the compulsory provision of sexual health and personal safety programs in schools. This provides increased opportunities for PHC practitioners to work alongside teachers to open up dialogue with children and families about these difficult issues.

14.6 Healing

The starting point might be to recognise that the problem starts with us non-Aboriginal Australians. It begins, I think, with the act of recognition. Recognition that it was we who did the dispossessing. We took the traditional lands and smashed the traditional way of life. We brought the disasters. The alcohol. We committed the murders. We took the children from their mothers. We practiced discrimination and exclusion. It was our ignorance and our prejudice. And our failure to imagine these things being done to us. With some noble exceptions, we failed to make the most basic human response and enter into their hearts and minds. We failed to ask – how would I feel if this were done to me?⁵¹

During consultations, the Inquiry was informed that many Aboriginal people are suffering from depression and a general lack of wellbeing. It heard that this is a result of a combination of the history of colonisation, “intergenerational trauma” and present experiences of disempowerment, racism and trauma.

Australia has a brutal history when it comes to the treatment of its Aboriginal people. While this history is not often discussed in wider forums, the Inquiry found

51 Paul Keating, then Prime Minister, delivered at Redfern Park in Sydney on 10 December 1992 at the Australian Launch of the International Year for the World’s Indigenous People

that it is still fresh in the minds of Aboriginal Australians. This includes the sexual exploitation of Aboriginal women and children throughout colonisation. In more recent times, the “stolen generation” was subjected to sexual exploitation and abuse. The 1997 *Bringing Them Home Report* noted that –

Stories of sexual exploitation and abuse were common in evidence to the Inquiry. Nationally at least one in every six witnesses to the Inquiry reported such victimisation. They were rarely believed if they disclosed the abuse. Almost one in ten boys and just over one in ten girls allege they were sexually abused in a children’s institution. One in ten boys and three in ten girls allege they were sexually abused in a foster placement or placements. One in ten girls allege they were sexually abused in a work placement organised by the Protection Board or institution.

This history of abuse and its subsequent impact is mirrored in the situation of Indigenous people in other countries.

The Inquiry’s experience also noted present examples of mistreatment and exploitation of Aboriginal women and children. In at least three communities, the Inquiry became aware of non-Aboriginal men who had used positions of power to sexually abuse Aboriginal children with impunity. The Inquiry was told that many Aboriginal people had a perception that non-Aboriginal men always “got away” with this behaviour. It was told that some of those abused by these men had themselves become abusers and that the behaviour, generally, had become “normalised” within some communities. The Inquiry heard many stories of men exchanging money or material goods for sex with Aboriginal girls.

The Inquiry was further told that, prior to colonisation, sexual abuse of children and family violence were rare and certainly not endemic. The Inquiry heard that the present level of sexual abuse and family violence resulted from a combination of the erosion of traditional restraints and behaviour that has been “learnt” from the treatment received at the hands of the colonisers.

Professor Judy Atkinson has pointed out that the violence, dispossession of land and disempowerment inflicted upon Aboriginal people during colonisation has had a profound impact on community structures and relationships. The rules and boundaries that provided Indigenous people

with a structure for appropriate behaviour and created a sense of safety, collapsed, leaving relationships between family, kin and communities chaotic (Atkinson 2002).

The Inquiry was told that, left unhealed, the historic and present traumatic experiences have compounded and become cumulative in their impact on individuals, families and communities.

During its hearings, the Inquiry was sent a copy of the PhD thesis of Caroline Atkinson-Ryan (unpub), which drew a link between this cumulative trauma and the suffering of physical and psychological symptoms that were consistent with post-traumatic stress. She also pointed to data that supported a conclusion that:

the “flow down” of traumatic events and dysfunctional behaviours across the generations for those specific items has resulted in those events and behaviours being repeated at an increased rate, and will continue to increase across successive generations without effective intervention. (Atkinson-Ryan unpub).

The Inquiry was informed that violence and abuse will not be reduced in Aboriginal communities until there is widespread healing of Aboriginal people.

The violence will continue until we are funded properly in cultural healing practices, rehabilitation and counselling. This violence is learned behaviour, coming from another culture. I’d like to see money put into mass grief counselling for Indigenous people. We need to challenge ourselves to look at these issues through a holistic approach to family wellbeing, which includes spiritual wellbeing and maintaining our cultural traditions.⁵²

The Inquiry was informed that most Aboriginal people, particularly men, had not spoken openly before about issues like family violence or sexual abuse and the reasons why these things happen. The Inquiry was told that governments and service providers need to start listening to the voices of Aboriginal people and provide communities with the opportunities and resources to translate their voices into workable strategies, policies and programs aimed at healing.

In support of this, government needs to actively pursue the provision of new services, and better resource existing

52 Cathy Abbott – Kids tracks Issue 5 August 2006 page 12. Cathy Abbot runs the Akeyyulere Apmere Healing Centre in Alice Springs.

services, for the counselling, healing, education, treatment and short-term crisis accommodation for Aboriginal men in regional town centres and remote communities.

The Inquiry is of the view that there is an important need to identify and utilise those “healing” programs that presently exist (both locally, nationally⁵³ and Internationally) and, with consultation, develop and support further programs aimed at addressing the “inter-generational trauma” that is experienced by many Aboriginal people, both urban and remote.

We need a healing centre where all skin groups can go to heal their mental, emotional and spiritual pain. They can learn about themselves to bring back identity and culture.

Yolngu Elder

The Inquiry believes that the government must begin dialogue with Aboriginal communities as soon as possible with a view to coming up with innovative ways to effect a widespread healing process aimed at dealing with “inter-generational” and present trauma and enhancing the general emotional and mental wellbeing of Aboriginal communities.

Recommendations

41. That a maternal and child health home visitation service be established in urban and remote communities as soon as possible.
42. That there be an increased focus on pre-natal and maternity support leading into early childhood health development for the 0-5 year-old age group, to be supported collaboratively by health centres and health practitioners, as well as other agencies whose focus is on children and families.
43. That, in order to provide access to comprehensive quality primary health care, DHCS advocate for increased Australian Government funding and continue as a matter of priority the roll out of the Primary Health Care Access Program.
44. That PHC provider roles in protecting children from harm be strengthened by:
 - a. providing relevant protocols, tools, training and support, including the development of a multi-disciplinary training course for PHC providers: “Child Protection: principles and practice for PHC practitioners”
 - b. use of PHC centres as service “hubs” as part of the development of integrated health and welfare responses in remote communities.
45. That, as soon as possible, the government, in consultation with Aboriginal communities and organisations, develop, implement and support programs and services that address the underlying effects of both recent and “intergenerational” trauma suffered in Aboriginal communities and enhance the general emotional and mental wellbeing of all members of those communities.

53 For example, the We Al-li program run through the Gnibi College of Indigenous Australian Peoples in NSW



15. Family Support Services

There is a lack of agreed upon purpose and direction in child protection services for Aboriginal children in Central Australia.

Submission from an NGO in Central Australia

15.1 Introduction

The statutory role of FACS and Police in responding to reports of child sexual abuse, conducting investigations and taking action to protect children is a necessary and critical one. The Inquiry formed a view that NGOs and, in particular, Aboriginal community controlled organisations, have a vital role to play in providing child and family support services to vulnerable or abused Aboriginal children, and to their families. They form part of the broad child and family support system that provides the bulk of the therapeutic and other supports provided to children and families.

The Inquiry was, therefore, concerned at the clear lack of family support programs and infrastructure available across the Territory for children who are “at risk” or who have experienced abuse. The lack of services was most evident for children and families in remote communities with limited access to services, at best. Even in some large communities, the Inquiry found that there were often no NGOs providing family support services. Local councils (now “shires”) increasingly have a focus on the more traditional “roads, rates and rubbish” infrastructure concerns.

The range of child and family support services that can help prevent the occurrence or recurrence of child abuse are generally provided by the non-government sector and, more specifically for Aboriginal children and families, by Aboriginal community-controlled organisations. Often these services are funded by the NT Government or Australian Government.

Where family support services exist in rural and remote communities, they tend to focus on aged care, women’s safe houses and night patrols with a range of other services providing as a “fly in fly out” visiting service. The Inquiry could not identify any overarching logic to the range of services provided or the method of provision from one community to the next. It appeared

that having a particular service could simply depend on whether there was someone within the community with the skill and time to write a submission for funding, or that a government representative with money to spend before the end of the financial year had happened to visit the community.

15.2 The role of Family Support Services in child protection

The provision of recovery and support services to Aboriginal children, their families and communities following sexual assault, is a key part of wider child protection crisis intervention. SARC services are under-resourced and their ability to provide recovery services to children outside of urban centres is severely restricted by staffing levels and access to transportation. They are further hampered by a lack of other community services to which SARC might provide training and support in rural and remote settings. The Inquiry was concerned that there was a high risk that Aboriginal children who have been victims of sexual abuse would not receive any ongoing monitoring of their circumstances or support once the “investigation” has been completed, or if the matter has proceeded to the criminal justice system, when that has concluded.

The Inquiry is aware that, as part of the present child protection reform agenda, FACS is planning to develop a “differential response” to child protection reports (see Part II for a discussion of “differential response” systems). The objective is to enable FACS child protection services to develop a more flexible response to reports of suspected child abuse and neglect, that will also be better tailored to meet children’s and families’ needs. The effectiveness of such a model, however, relies upon having a range of family support services available to which FACS can refer children and families for assessment and appropriate support. If the infrastructure of programs and services is not available or is insufficient, then such a system cannot work and there will continue to be an overuse of the traditional “one size fits all” investigative response.

The NT Government’s strategic directions outlined in *Building Healthier Communities: A Framework for Health and Community Services 2004–2009*, commits to an

improved family support service system. As part of this commitment, FACS has developed a framework that clearly defines family support, its principles and the characteristics that identify effective support services for priority clients across the Northern Territory (DHCS 2004).

What are lacking, however, are strategies for how this framework will be applied and implemented. The document acknowledges the particular challenges facing the Territory in the provision of a family support network, especially in relation to remote Aboriginal communities, but there is no indication of how this will be addressed.

Lack of practical and effective support and resources to Aboriginal communities, organisations and families in providing services and support for children and young people.

Submission from a Central Australian Aboriginal NGO

A role in prevention

The Inquiry takes the view that the protection of children generally would be better addressed by adopting a wider *prevention* perspective, such that in addition to responding to family crises (e.g. assault of a child), the underlying problems in a family that may put the child at risk or have a detrimental affect on their long term welfare, are addressed. Attaching the label of “child abuse” to a child, their family or community does little to reduce the risk of further harm.

Adopting an holistic approach that recognises that children and families have multiple problems affecting the care and wellbeing of children, is preferred. This holistic approach would seem to rely on the availability of adequately resourced services, cross-sectoral partnerships, (e.g. between health and welfare, and between the government and non-government sector), and the development of better mechanisms for effective inter-agency coordination and collaboration – within an overarching strategic framework (as described in the section, Prevention is Better than Cure) to assist in planning for, and providing, services. It is recognised that the non-government sector has a vital role to play in providing these services.

DHCS and NGOs must work in partnership and this partnership approach must be reflected at all levels e.g. policy and operations.

Submission from an NGO

Aboriginal community-controlled services

Given the lack of NGO family support infrastructure in the Territory, serious consideration must be given to providing further financial and other resources to enable NGOs, and particularly Aboriginal-controlled agencies, to increase their capacity to deliver effective services on the ground to Aboriginal children and families. The Inquiry is aware that a number of the AMSANT Aboriginal health services had indicated a desire to expand their service delivery to provide an integrated health and family service for Aboriginal people. To do so will require government (through agencies such as DHCS, Treasury, DCM) to actively support and train each relevant agency to develop a new service capacity and to effectively manage new services.

Ultimately government has to show confidence and faith in Aboriginal communities to take ownership of these issues and support them to protect and nurture their children. This has been the expressed desire of Aboriginal communities since the earliest days of colonization.

Comment from a peak Aboriginal NGO

It was the Inquiry's view that strategic planning in this area must focus more on the development, in partnership with Aboriginal people, of counselling and support services that are provided by Aboriginal organisations to meet the needs of children and families living in remote communities, as well as urban centres. The existing experience, skill, expertise and commitment of Aboriginal medical services and Aboriginal family and child support organisations should be recognised, supported and utilised.

Projects designed for remote communities need to be auspiced by Aboriginal Community Organisations rather than national mainstream auspicing bodies such as the large church groups and national private child care companies. Often such agencies and their workers have little to no awareness of the cultural, geographic and socio-economic climate in which services operate.

Central Australia Aboriginal organisation

The central strategy of the NT Government in supporting communities to effectively prevent and tackle child sexual abuse should be to shift power, resources and accountability for child welfare and protection from the centralised government

department (the formal child protection system) to family and community based systems within a framework of child protection standards and children's rights.

Comment from a peak Aboriginal NGO

While recognising the desire of Aboriginal organisations and communities to have greater control of service provision, the Inquiry's view is that simply funding an organisation is insufficient. To ensure success, there must be a real partnership between government and the agencies. As part of this partnership, agencies must be given ongoing support to develop programs for Territory children and families. In addition to funding, this support will be in the form of mentoring and training for staff and management bodies, a set of reporting requirements that ensure accountability but are not onerous, and funding contracts that are based on dialogue and a genuine commitment to empowerment and mutual respect for local tradition and culture. This is a lesson that has been learnt well in some countries but particularly New Zealand and Canada – in the development of Indigenous family support services.

The group noted that they are so flat out busy trying to fix problems that are coming in externally, that they do not have the time to lead internally.

Comment at a community meeting in the Top End

The Inquiry was made aware, however, of a recent example where such a partnership either had not been initiated or had broken down. The Karu Aboriginal Child Care Agency plays a role in supporting the placement of Aboriginal children in culturally-appropriate out-of-home care situations. Karu has struggled in recent times to maintain its service delivery to Aboriginal children in out-of-home care, while undergoing a series of management changes. Although both Karu and DHCS had continued discussions to resolve issues of concern, the outcome to date appears to have been the de-funding of the service.

A small child protection system cannot afford to lose important agencies like Karu. This would therefore seem to be a clear example of where further work is needed to provide an Aboriginal agency with the professional mentoring and support it needs to provide an effective service – partly in order to avoid the development of such situations. Such a partnership will only work, however, if both sides are willing to engage in a true partnership.

Coordination of service delivery

Poor coordination and communication between services is common in most child protection and family support service networks and is, in fact, a perennial problem. The Inquiry notes the need for both the Northern Territory and Australian Governments to have child and family support service policies and strategies that are based on collaboration, partnership and dialogue with communities and organisations, and explicit service coordination mechanisms.

At present, there appears to be no local coordination of services in Territory communities, which tended to lead to piecemeal and uncoordinated service provision, often not in keeping with the community's needs or wishes, and at times leading to a waste of resources.

For example, in one community the Inquiry visited, there was a 4WD vehicle and trailer filled with toys and other resources to provide a mobile early childhood development program. However, this was not being used because there was no-one to drive the vehicle - and there appeared to be no-one locally responsible for overcoming this problem. The Inquiry acknowledges that the many demands already placed on local leaders makes it impossible for them to address all the issues confronting their communities.

In another community, there was a desperate need to help mothers learn how to prepare healthy meals for their infants to reduce levels of malnutrition. Although not funded or resourced to provide this, the local health centre began a program operating from the ambulance carport.

One community with high levels of substance abuse and family violence had no resources to provide a night patrol, a safe house or a counsellor. In yet another community with multiple victims of child sexual abuse, there was no service to provide counselling or support to the children or their families.

An alarming absence of support, follow up and recovery programs for children, young people and their families after a report of alleged abuse has been made, often leading to the increased vulnerability of victims. This has contributed to an increased sense of distrust of child protection agencies within Aboriginal communities in the NT.

Submission comment from a Central Australian Aboriginal NGO

Service “hubs”

One model of service provision that the Inquiry supports is the creation of integrated holistic, multi-purpose family centres, or “hubs”, in remote communities and regional centres. Such hubs would provide a *coordinated*, integrated and holistic approach to working with families. By both their physical presence and the services located within them, they would provide a focus on the local needs of children and families.

DHCS has identified the need to develop such a service model, which it describes as enabling the integration of health and family support services within an existing local community health centre or other suitable agency (e.g. school, crèche or council building). These could rely on local NGOs and/or government services, depending on availability. They would also provide a base for visiting government and non-government services to operate from. Such hubs would be ideally placed to facilitate a dialogue with the community on issues relating to children and families. They would incorporate and strengthen positive aspects of culture and provide male and female workers (“gender security”).

Families need support before things get out of control. There is a critical need for responsive and relevant early childhood services, and for parenting programs and other supports for young parents. These should be developed in proper consultation with remote families and delivered by non-government (or at least non-statutory) agencies with existing positive relationships with community members or the capacity to develop this good relationship. It is notable that some of the more successful instances of intervention to address family problems are those which are based, at a fundamental level, on Aboriginal values and priorities. They involve connection to country, they involve homelands, they involve kinship and family ties, they involve language.

A peak Aboriginal health NGO

Funding

Finally, nearly all NGOs are funded by the Northern Territory or Australian Government to provide services. There appears to be a range of funding streams each with its own particular acronym and each with various accounting and acquittal requirements. Of particular concern to the Inquiry was that proven effective programs

were often not guaranteed ongoing funding. There was always a level of uncertainty on whether successful programs would be able to continue once they came to the end of the funding period. When the Inquiry raised this issue with Australian Government representatives, it was explained that this was “unfortunate” and “unavoidable” because Treasury regulations prevented “ongoing” funding.

Frustration was also evident in the sector in regards to short term, “one off” funding, or money offered to NGOs to conduct “pilot programs”. It was of concern to the Inquiry that some funders saw a rejection of such offers as an indication of an organisation’s poor management or lack of interest, rather than a conscious decision based on a commitment to quality, planned services and a desire not to inflict another “pilot program” on a community.

These funding methods do not allow for the sustained development of a program, nor do they encourage skill development, ongoing employment, confidence or a commitment by users who have grown tired of seeing programs they have invested in and supported cease due to the end of a funding cycle or change of policy focus. The Inquiry acknowledges that there are occasions when a specific and time-limited problem or situation arises that may warrant one-off funding but that this should be the exception rather than the rule.

Recommendations

46. That in order to prevent harm and reduce the trauma associated with abuse, it is vital there be significant investment in the development of family support (child and family welfare) infrastructure, including:
 - a. funding by both the Northern Territory and Australian Governments to create much needed family support infrastructure (services and programs) targeted to support vulnerable and/or maltreated Aboriginal children and their families in urban and remote settings. This must be a long-term investment - short term or pilot program funding should be avoided unless it is addressing very specific, time limited problems or situations

- b. that efforts be made to support community-based non-government organisations to provide recovery and support services following child sexual abuse in Aboriginal communities across the Territory
- c. that the Aboriginal Medical Service Alliance Northern Territory health services and other Aboriginal-controlled agencies be supported to establish family support programs for Aboriginal children and families in urban and remote settings
- d. the establishment of multi-purpose family centres or “hubs” in remote communities and regional centres to provide an integrated holistic approach to working with families. These will be a focal point for the provision of a range of local and visiting programs and services including prevention programs, child and family services, specialist services (e.g. SARC) and public education programs. They will also be a focal point for reporting and action, strengthening and incorporating positive aspects of culture, to assist local workforce development and provide male and female workers “gender security”

15.3 Youth Programs

The Inquiry was told of a serious deficiency of places in Aboriginal communities where Aboriginal children can develop their self esteem in a safe and “neutral” environment. The Inquiry was also told that the development of such places would go a long way towards addressing child sexual abuse.

In almost every community visited, the Inquiry was told that the communities needed male and female youth workers to conduct structured programs for young adults and all school aged children.

The Inquiry was also told that school-aged children and young adults needed activities, which engaged and occupied them, particularly after school and on holidays. Communities were concerned that there were presently too many unsupervised children “prowling” around the streets at night, getting up to mischief and putting

themselves at risk.⁵⁴ The following two programs are excellent illustrations of work that such centres can do.

The Docker River Project

The Inquiry was told that the key elements of the Docker River Project included establishing a youth centre that was independent of the community council and staffed by a qualified male and a female youth worker.

These youth workers tapped into the local strengths of the community but at the same time remained independent of it. In this way these youth workers play a similar role to a “cultural broker”. The Docker River Project works by encouraging community cohesiveness but also providing an independent venue where children and youth feel safe to discuss issues that they may not be able to discuss within the community cultural framework.

A key strength of this program is that it has a heavy family involvement, incorporates intergenerational relationships, integrates the roles of traditional Elders into the program and incorporates gender and age divisions. The program is culturally strengthening and is bringing young and old people together to do positive things. The Inquiry was told that families often have great ideas but lack the practical support to make it happen. This program was providing that support. It also built on the strengths that already existed within the community and allowed them to assimilate “mainstream” ideas and concepts into their own cultural framework rather than vice versa.

As an example, the program set up a special learning forum, called the *Wati College*, for young initiated men. The *Wati College* recognises the unique situation of young initiated men no longer considering themselves as children. The *Wati College* allows them to learn in an environment separate from other children and which respects their unique status. It focuses not only on literacy but on building self esteem, developing practical skills and contributing to the community.

One part of the program involves the young men going out once a week and killing a camel. They would then butcher the camel and provide the meat to the girls

54 While such programs smack of parents abrogating their responsibilities and duty of care, at present the risks to children are such that it is deemed better to focus initially on ensuring children are safe and well-cared for while working to re-institute parental responsibility.

who would mince it and cook chilli con carne and pizza. The camel pizza would sell in proper pizza boxes on a Wednesday to fund sporting trips. A flow on effect from this practice has been a drastic reduction in the incidence of anaemia in the community.

The Inquiry was informed that, in the first three months of the program, there was a massive drop off in petrol sniffing. It was told that the program gave positive aspirations for kids and they had started to choose this over petrol sniffing (prior to the program, petrol sniffing had filled the “vacuum” and was seen as a “cool” lifestyle choice). School attendance had gone right up. The key to this success was a focus on positive things (as opposed to highlighting negatives) and creating a culturally specific learning environment.

The Inquiry is of the view that this type of youth service is a practical and realistic way to prevent sexual abuse. It provides a place where children are comfortable and have someone to confide in should there be any problems⁵⁵.

The Jaru Pirrjirdi (Strong Voices) Program

The Jaru Pirrjirdi (Strong Voices) Leadership Program⁵⁶ began in 2004. It is a part of the successful Mt Theo Substance Abuse Program that eradicated petrol sniffing in Yuendumu. Yuendumu was the only community that was able to achieve this prior to the introduction of Opal fuel, and it credits its success to changing the social norms within the community in relation to substance abuse and redirecting users to more positive values and outcomes. This key element is equally applicable to the problem of child sex abuse.

This Yuendumu program provides a formal and strategic framework through which young adults progress and graduate. When the Inquiry visited Yuendumu, 42 young people were involved in the program. The key strength of the program is that it is Walpiri controlled and owned. It is also evaluated monthly.

⁵⁵ The Inquiry was told that the *Central Australian Youth Link-Up Service (CAYLUS)* is attempting to roll the Docker River program into other communities. CAYLUS has documented the core elements of successful youth programs including the costing. Central to these core elements is having qualified, well supported and well trained people in the youth worker positions and a central body for each region to coordinate these programs.

⁵⁶ More information on the *Jaru Pirrjirdi (strong voices) leadership program* can be found at www.mttheo.org

The Inquiry believes that a program like this is an essential ingredient of an overall strategy to tackle child sexual abuse. It provides a process through which children can learn about child sexual abuse, and it builds confidence so that they can speak out about it. It also provides a training ground that can link up with a Community Justice Group.

Recommendations

47. That, as soon as possible, the government in consultation with Aboriginal communities and organisations, develop and support youth centres and programs in Aboriginal communities that are independently run, staffed by qualified male and female youth workers and adequately resourced to provide a wide range of services to Aboriginal youth.
48. That the government to support community efforts to establish men’s and women’s groups (and centres) – where there is a focus on developing community education and community-led responses to child sexual abuse, family breakdown and other social issues.
49. That the government actively pursue the provision of new services, and better resource existing services, for the counselling, healing, education, treatment and short term crisis accommodation of Aboriginal men in regional town centres and remote communities.



16. Education

“...we’re resourced to cope, not to succeed.”

Principal, Remote Area School

16.1 Introduction

Lack of education excludes Aboriginal people from confidently and competently participating in either their own culture or mainstream culture, or even the ability to choose when to participate in either culture. A sound education for all Aboriginal children, wherever they live, is now crucial for the future of all of us who live in the Northern Territory.

16.2 Language and culture in schools

Successive governments have failed to communicate effectively with Aboriginal people in any sustained and focused way. Aboriginal people and non-Aboriginal people continue to “miss” each other. The Inquiry believes that this profoundly affects all relationships between Aboriginal and non-Aboriginal people in the Territory.

Non-Aboriginal teachers are unable to explain concepts in a way that Aboriginal students can understand. The Inquiry has been told that concepts need to be explained in the local Aboriginal language. This goes well beyond simply understanding the English words. Forcing Aboriginal children to merely learn English words without learning the actual concepts is intellectually limiting those children. Teachers themselves need to be bilingual so they can then teach concepts in the students’ first language. English is then taught as a separate subject.

Schools teaching and instructing in English alone, the Inquiry is told, develops a failure syndrome for many children as they return home at the end of the school day often unable to remember what was taught that day - which causes them to become depressed. A strong cohort of bilingual and trilingual teachers trained in cross cultural sensitivities is essential and of prime importance for the NT education system. To do anything less will see people

in the Territory continuing to mis-communicate and result in further dislocation.

When two students aged 12 and 13 years were asked by Yolngu Radio what they wanted to hear on the radio service, they responded:

We don’t retain information – we hear teaching, especially in English and feel that we don’t grasp what is being taught, and so it disappears. We go to school, hear something, go home, and the teaching is gone. We feel hopeless. Is there something wrong with our heads because this English just does not work for us? In the end, we smoke marijuana to make us feel better about ourselves. But that then has a bad effect on us. We want to learn English words but the teachers cannot communicate with us to teach us. It is like we are aliens to each other. We need radio programs in language that can also teach us English. That way we will understand what we learn.

These students speak English as a second or third language, but almost all their teachers at school spoke English only.

Three common themes emerged during the Inquiry’s community visits in respect to education: poor attendance at school, teaching was in an inappropriate language and there was inconsistent or non-existent delivery of sex education.

Much of what needs to happen in terms of providing a proper education to Aboriginal children in the NT is in the 1999 *Learning Lessons Report*. *Learning Lessons*, in fact, highlights what the Inquiry found and gives a comprehensive explanation of what needs to happen in schools.

The importance and pivotal place of language in learning is recognised in the *Learning Lessons Report*. Recommendations on Two-way Learning (Recommendations 100 and 102) state:

Two-way learning

100 *NTDE issues a formal policy document which clearly states the NTDE policy of support for “two-way learning”, affirming the value of Indigenous*

language and culture and highlighting the importance of learning of Standard Australian English oracy and literacy as a crucial element of the schooling process.

- 102 *NTDE urgently commissions high-level research into the use of vernacular in Indigenous schools to develop the most appropriate pedagogy to support effective learning in this environment. A comprehensive analysis as part of this research must establish what is required to ensure effective exposure to Standard Australian English oracy and literacy takes place, while supporting vernacular language development. The research undertaken must be focussed on improving outcomes.*

The report also recognised the importance of Aboriginal perspectives (Recommendations 106, 107 and 108):

Language teaching

- 106 *Indigenous viewpoints, perceptions and expectations about social, cultural and historical matters are reflected in the curricula, teaching and administration of all NT schools.*
- 107 *NTDE examines options for producing high-quality curriculum material, which would add to the understanding by students everywhere of the value of our unique Indigenous cultures and languages and their interaction with Western culture.*
- 108 *options for extending the IAD Languages in Schools Program are explored.*

The Inquiry is not confident the above recommendations have been implemented in any sustained, systemic way.

It is not clear to the Inquiry why the *Learning Lessons Report*, which was presented in 1999, has not received more importance and/or urgency with implementation than it has. However, a good example of the way in which governments can become hide-bound by bureaucracy is contained in the treatment of the report.

In 2003, and four years after the report was received, the Indigenous Languages and Culture in NT Schools Review commenced. During the course of the review the NT Government set an imperative to put bilingual education back on the agenda (Ministerial Statement, 24 August 2005).

The review conducted by DEET bears a title incorporating the years 2004-2005. Neither the Foreword nor Acknowledgements are dated.

They provide recommendations that include further reference, reviews and developments and the introduction of a new NT Indigenous Languages and Culture Policy to be introduced in 2007, with full implementation for all DEET schools in 2008. An implementation plan was finalised by DEET in late 2006 and some work has commenced, although this appears to be proceeding relatively slowly.

The work of the Inquiry over these short eight months confirms the broad findings and recommendations made by the *Learning Lessons Report*: That is, there is a need for two-way learning in accordance with the above recommendations, as well as teaching in local language and providing quality curricula materials with appropriate Aboriginal perspectives. Hopefully, there will come a time soon where these children are greeted in their own language upon arrival at school. Also, curricula materials need to include Aboriginal perspectives within teaching and administration of schools in the Territory.

By way of summary, in the foreword to the *Indigenous Languages and Culture in NT Schools Report 2004-2005* (a response to the *Learning Lessons Report* of 1999), the Chief Executive Officer of DEET recognised the importance of the teaching of Indigenous language and culture in NT schools. There were two reasons:

Firstly, there is irresistible evidence to show that when the home languages and cultures of students are reflected in their learning experiences and learning environments, students achieve better levels of learning. We owe it to our Indigenous students, who constitute forty percent of our student population, to provide the best possible standard of education we can, to ensure participation and achievement outcomes for Indigenous students continue to improve.

Secondly, the Indigenous and non-Indigenous young people of today are fundamental to the Northern Territory's future social and economic vitality and wellbeing. Schools are rightfully a place to assist all young people to gain intercultural understandings that will provide the foundations of mutual respect among our diverse communities.

The Inquiry cannot agree more. The Inquiry cannot urge the NT Government strongly enough to now implement the proposals expressed here. The evidence is too compelling to do anything less.

Early childhood development

Once again, like *Learning Lessons*, the Inquiry found the need to prepare Aboriginal children for learning and get them “ready” for school and learning. The importance of the early years in a child’s development are well documented by health professionals and education experts. The work of Professor Fiona Stanley and her research in Western Australia further confirms the importance of the 0-5 years period in the development of an Aboriginal child (Western Australian Aboriginal Child Health Survey).

Seven years ago, the *Learning Lessons Report* said that “within a period of five years there would be guaranteed access to play centres and pre-schools for all children in the three to five-year age group.” This has not happened. The Inquiry believes that early childhood education must be available now for all Aboriginal children, wherever they live. This is now critical.

Recommendations 80-86 of the *Learning Lessons Report* are set out below:

Early childhood

- 80 *There be an increase in the exposure of all Indigenous children to early literacy and numeracy learning in vernacular where appropriate and Standard Australian English oracy.*
- 81 *NTDE investigates joint funding arrangements with Territory Health Services, DETYA and the Federal Department of Family and Children’s Services to develop play centres and distribute reading and pre-literacy material and education play equipment to all sites that are accessible to parents and children, for example, health clinics and women’s centres. This would build on the THS-NTDE Framework Agreement on the Provision of Early Childhood and Outside School Hours Care Services for Young Territory Children (NTDE/THS 1999).*
- 82 *Mobile preschools and playgroups are considered as interim solutions to ensure guaranteed access for all children to structured early childhood education.*

- 83 *Sufficient funding is sought to enhance the key role libraries play in the development of literacy outcomes for Indigenous students and opportunities for coordinated service development and a coordinated approach to funding are explored.*
- 84 *Within a period of five years, there be guaranteed access to play centres and preschools for all children in the three to five year age group*
- 85 *New facilities for infants and toddlers be designed with the aim of establishing multipurpose early childhood centres that offer infant health and other early childhood services. Such centres would not need to be administered by the school but could be run by other suitable organisations*
- 86 *The multipurpose early childhood centres incorporate childcare facilities for indigenous school staff and young mothers who are still students.*

16.3 Getting children to school: a reason to get up in the morning

The Inquiry has already made clear its view that if there is to be any hope for any future for Aboriginal people, education is vital. There is a link between education (or lack of it) and manifestations of a disordered society. At the bottom of the pile, the final degradation, as it were, is the abuse of children, and sexual abuse in particular.

So, the Inquiry joins those who are imploring governments to strive higher to solve the problems. Get the kids into school and off the streets, provide them, from the youngest possible age, with facilities and school programs that engage them, and give to them and their parents a purpose for them to be at school, or as it has been described to the Inquiry, *a reason to get up in the morning*.

At present, children are laughing at the government because there are no consequences if they do not go to school. Something needs to be done such as having a truancy officer, fining parents or linking welfare payments to school attendance.

Central Australian community

The school was making every effort to engage families and had local people working in positions such as cultural brokers within the school and who conducted cultural activities. This initiative greatly assisted the relationship between the school and families. Nevertheless, school attendance could be improved upon. The Principal stressed how important it was for children to come to school and suggested that parents need to be constantly reminded about the importance of education to Aboriginal children wherever they lived.

Central Australian community

Once again, there is no mystery about any of this. Governments, educators, Aboriginal leaders and social commentators have been exploring, researching and analysing these issues for years. The Inquiry might be tempted to say it is time something was done. In fact, a lot has been done, but without (with the greatest of respect to a large number of decent people) a real commitment to success – a determination to get kids to school and keep them there. One principal at a remote school described resourcing in his, and other similar Territory schools, in the terms, “we are resourced to cope, not to succeed”. This remark was made in the context of the Inquiry visiting the school and suggesting more should be done to get those children missing-in-action back to school. The response was that those children would disrupt classes, divert attention from the reliable students and, in any event, would not cope. Catch-up resources would be required. If all the eligible students suddenly turned up, the school buildings and professional staff would prove inadequate.

The Inquiry has been told that staffing decisions and related activities are based on attendance and not enrolments. This means that even if all Aboriginal children turned up at their local school tomorrow, there would not be enough teachers, classrooms and resources for them. It is not appropriate for the NT education system to be based on such a negative premise. This policy must be reviewed and reversed.

Attitudes towards Aboriginal children and perceptions about their capacities and abilities to succeed are limiting their opportunities. This view colours all interaction with Aboriginal children at school and outside. It seems teachers and the system can find funds and energy to take Aboriginal children to football carnivals and matches in town but that same energy is not applied to

take these children to a careers expo or to expose them to careers counselling or even information on what might be available to them, or to expose them to other opportunities and options. In this way, Aboriginal children might be shown the link between going to school and achieving one's goals in life.

This commitment to fail needs to be turned around.

The Inquiry has discussed these matters with members of local communities. People are worried that children are not going to school. They are worried that parents do not see the value of school. They worry that parents were often too preoccupied with drinking, gambling and/or fighting to get their kids to school each day. They are somewhat despairing of getting children, who have reached their teens or are young mothers, (back) into school. People are very clear that children need to go to school to learn skills that will give them some chance of co-existing with mainstream Australia, and people well understand the link between school and potential employment.

A specific issue raised with the Inquiry was that children experience bullying and teasing at school and this impacts on their willingness to attend school. It appears that some of this bullying and teasing results from disagreements and feuding between adults, which the children are exposed to, and they then bring it into the school playground.

This is one aspect of a broader issue of children's behaviour. Community people told the Inquiry that they worry that children are undisciplined, that they do what they want to do, and families are unable to control them, even smaller children. A female Pitjantjatjara Elder told the Inquiry, “We are walking behind our kids, walking in their footsteps, but we need to go ahead so that they are walking in our footsteps.”

Children have never been very good at listening to their Elders, but they have never failed to imitate them.

James Baldwin, 5th Avenue, Uptown from Nobody Knows My Name, 1961

Parents don't value education for their children however the school does have a 60% attendance rate which compares well to some other communities. In addition, we have a home liaison officer and a worker in each housing area who has the job of rounding kids

up to get to school. The song “Gotta Go” is played in the mornings over the loudspeaker in the community to help get people going.

Arnhem Land community representatives

The Inquiry asked DEET what strategies could be employed to get children to school. The following list of strategies, some already in place and some proposed, was provided. The Inquiry urges DEET to implement these strategies with the utmost urgency and commitment.

DEET strategies for systemic and school-based responses to non-attendance

Systemic Responses

- Systemic coordination – Create an AO8 Senior Adviser – Enrolment and Attendance, to work with General Managers Schools on a sustained and coordinated enrolment and attendance effort
- Enhance the use of Police and Family and Children’s Services for non-attendees – will require the development of service agreements with Police and Health

Enhanced legal effort

- Investigate the possibility of prosecution for non-enrolment/non-attendance and also the introduction of a fine regime
- Introduce “authorised persons”, as designated under the *Education Act*, to identify young people of compulsory school age not at school for reasons of non-enrolment or attendance and report them
- Investigate with Centrelink the ability to trial joint programs
- Investigate with the Australian Government the ability to link welfare payments and non-attendance.

Policy redesign

- Tighten up school enrolment and dis-enrolment procedures to ensure that students are continually monitored, regardless of their attendance record
- Develop policy to mandate school intervention after a specific number of absences and the actions that would follow e.g. notification to parents/carers, home visit by Aboriginal and Islander Education Worker (AIEW), Home Liaison Officer (HLO)

- Enhance school enrolment and attendance accountability – DEET has one of the most comprehensive data collection regimes in Australia in relation to attendance. DEET will use this data to better the accountability of schools

Usage of resources

- Re-badge School Attendance Officer positions as members of cluster-based teams being established by Student Services to respond to behaviour and wellbeing issues, and base them in key regional centres to case-manage primary school age students (and their families) who are not enrolled or who have poor attendance records
- Align the roles and accountability of key staff, both systemic and school-based (re-badged School Attendance Officers, Aboriginal and Islander Education Workers, Home Liaison Officers, Alternative Education Provision teachers) towards better enrolment and attendance outcomes
- Re-align other DEET resources, such as Indigenous Education Strategic Initiatives Program, towards better enrolment and attendance outcomes.

Data

- Undertake an accurate determination of the non-enrolled cohort in the NT by cross-checking DEET data with ABS data
- Work with other agencies to track students and identify where students may not be enrolled
- Map patterns of non-enrolment and attendance to identify areas and cohorts where there are significant issues
- Research patterns of travel and population movement between schools by particular cohorts and develop plans for continuity of provision to mobile students.
- Engage with the National Student Attendance Unit as part of the national effort to improve enrolment and attendance, including its brief of collecting and sharing best practice strategies.
- Develop a resource for schools and a system that provides information and guidance in the design, development and implementation of successful approaches.

- Facilitate provision of curriculum that is relevant and flexible for different cohorts including VET provision.
- Implement an effective media campaign that promotes regular schooling to students, parents and the community and shares good practice – possible linkages with the Community Engagement initiative.

School Based Responses

- Introduction of attendance targets with attendance plans being required for schools not achieving the targets. Link with the School Accountability Framework and to Principals Performance Enhancement through the GM's Schools.
- Key staff such as Aboriginal and Islander Education Workers and Home Liaison Officers to focus their efforts on maximising student attendance with an emphasis on case management of students and families. This may require additional professional development of these staff.
- Change enrolment policy implementation to reflect the removal of the four-week takeoff period. A child will only be removed from the roll if the school is notified of a new enrolment at another school.
- Develop a range of school-based strategies and policies that can be articulated in school attendance plans.
- Develop and implement flexible approaches and/or alternative provision models to improve attendance e.g. wet season timetables. Identify impediments to flexible delivery in current industrial relations policy.
- Provide links to existing DEET pedagogical enhancement initiatives.
- Develop mechanisms that will enable employment opportunities in Indigenous communities to be linked with school effort to enable students to see the pathways available if they attend school.

16.4 A call to action on education

In the opinion of the Inquiry, education remains the key factor in all future relationships between Territorians. Much work needs to be done, but a lot of work has already been done and a lot of people, both Aboriginal and non-Aboriginal, are very knowledgeable about this and what needs to be done. However, as mentioned

earlier, the people of the NT are unable to engage in any meaningful dialogue about anything at the moment, let alone child sexual abuse. As the Inquiry has been told, the powerless need to be empowered with information before anything else can be done.

The Northern Territory needs to turn on its axis and turn education around. There needs to be a much more intellectually honest and pragmatic approach, based on the amount of knowledge already accumulated in the NT. The future of what kind of society we are developing and growing in the Territory depends upon major initiatives being undertaken now. The Inquiry urges the NT Government not to merely “tinker at the edges” but to develop and adequately cost out how much is needed to undertake the task of properly educating all Aboriginal children in the NT irrespective of where they live. The very future of who we are depends upon this.

Dr Chris Sarra, Director of the Indigenous Education Leadership Institute in the Queensland Aboriginal community of Cherbourg and former award-winning principal of Cherbourg State School, told his first school assembly:

The most important thing you'll learn from me is that you can be Aboriginal and you can be successful.

Dr Sarra was asked how he improved school attendance and performance. His response was that replacing the negative stereotype of being Aboriginal with the “strong and smart” identity was the beginning. Then, he said, it was crucial to change staff and remove teachers who colluded with the negative perception of Aboriginal children by not bothering to ring the bells on time or by setting work that was too easy. (McCrossin 2006)

The Territory needs such leaders and teachers in order to replace this acceptance of merely “coping” with an “agenda for success”.

It is clear to the Inquiry that every effort by everyone is needed to turn schooling and learning into a positive experience. To this end, the Inquiry suggests that DEET investigate the possibility of a pedagogy that might work better for all Aboriginal children. The objective is for Aboriginal children to have the same outcomes as non-Aboriginal children and DEET needs to determine how best to deliver the set curricula to achieve this.

.....

The Inquiry was made aware that perhaps the school year, as it is presently organised may not necessarily be best for Aboriginal people. Is starting the school year in mid-February and ending mid-December the best times for all of us in the Territory? The dry season (May-September) for many people is a busy cultural and business period, yet the long holidays occur December/January. The Inquiry urges DEET to allow some flexibility in order for schools to negotiate with community leaders and parents an academic year which better suits communities, if those communities so desire.

The Inquiry was told about young children coming to school for the first time and either having no English at all or only a bare minimum of understanding. Mostly, as said in other places in this Chapter, teachers only speak English. It is clear then that these children are not being communicated with. Often these classes consist of at least 20 children. It is the job of the education system to turn learning into a lifelong interest, if not a lifelong passion. This is not possible with such large class sizes. The Inquiry urges DEET to reduce class sizes, especially in the lower grades. By way of comparison, the Inquiry was told that children who are recent arrivals into Australia, attend classes of ten children or less.

The importance of getting young people back to school has been mentioned previously in this section. The Inquiry has suggested that this happen through the VET sector or through the adult education route. DEET should also consider remedial classes for children who do not attend school regularly. DEET must make every effort to again “capture” and engage these young people.

In almost every community the Inquiry visited, people told us that boys and girls aged 12 and over must be in separate classes for cultural reasons. People were also concerned about too much contact between young people too early, which often led to them not paying enough attention to their school work and to values.

The Inquiry was impressed with the work of the Aboriginal and Islander Education Workers (AIEWs) and believes that they are pivotal to promoting school as a positive experience for Aboriginal children. The AIEWs also work closely with teachers and, because they know the children and their families, are often aware of any family problems which may be affecting the child at school. Their role works both ways with the children but also with the school community and teachers in particular.

The Inquiry believes that AIEWs should have a coordinator who would be able to further enhance their role and functions so that they are recognised as significant members of the school support team. The coordinator could further define the roles within the school community and enhance recruitment and further develop their professional capacity.

As already stated in other places in this Report, the Inquiry supports all children being taught positively about Aboriginal history and culture, which should be promoted as a shared history. Similarly, Aboriginal children often do not know a great deal about non-Aboriginal culture and school should encourage this kind of two-way exchange of cultures.

Most people we spoke to said they wanted all school children to receive meals at school. Some schools had a program but most did not. The Inquiry supports the introduction of universal meals for Aboriginal students, i.e. breakfast, morning tea, lunch and afternoon tea. The Inquiry believes that parents need to contribute financially to this and parents and family members should be encouraged to volunteer to prepare and serve these meals. The Inquiry urges DEET to explore this with schools, parents and community leaders. The Inquiry wishes to make it clear that it is not intended that the school prepare and serve these meals –this needs to be a parental and community effort.

The Inquiry was told about Home School Liaison Officers who worked in some schools and who assisted in getting children to school and being a link between home and school. Where these positions existed they worked well. It is recommended that DEET further investigate this role in schools and work towards having at least one such officer in each school.

The Inquiry was also impressed with the work of School Counsellors but, unfortunately, they were few and far between. These counsellors work closely with the children as well as teachers and are able to give constructive advice to teachers in dealing with perhaps difficult Aboriginal children or those facing family problems. The work of these counsellors is invaluable in assisting the learning and understand between pupil, the school community and teachers. They are essential to providing quality professional assistance to Aboriginal children experiencing difficulties. All schools should have access to a school counsellor. Some schools could share a counsellor or a counsellor could service two to three schools in close proximity to each other.

.....

The Northern Territory needs to encourage experienced teachers to not only come and work in remote locations but to stay at least three years. Attractive packages, including not just financial incentives but also professional and personal enrichment incentives, should be offered to these teachers. The Inquiry urges DEET to consider introducing teacher employment initiatives, such as remote teacher incentive packages, to encourage teachers to remain in remote communities for three years or longer.

The Inquiry was told of a model of residential schools for Aboriginal students, designed specifically for them and being located within reasonable proximity to their country to enable maintenance of family and cultural ties. Such a model might suit some locations and families who prefer to have their children educated in the Western system while maintaining a strong family affiliation. The Inquiry believes that, for these types of schools, which are strongly supported by communities in a culturally cohesive region, there are prospects for Australian Government funding and for the non-government sector to be involved. Residential schools established along such lines should be encouraged and supported.

Parents and communities must be educated about the value of schooling and how important it is to send their children to school each day. An intensive but appropriate campaign setting this out clearly for parents and communities needs to be conducted. The Inquiry cannot stress enough the importance of such a campaign. A culture of community and parental commitment to sending children to school must be encouraged and supported at every opportunity. The Inquiry was told at almost every meeting that parents do not value education and need to be educated about how important it is to their children that they attend school regularly. Further discussion and a recommendation to this effect appears in the Community Education and Awareness chapter.

The Inquiry found that sex education in schools was either non-existent, inconsistent or done on an *ad hoc* basis and often depended on personalities and their willingness or unwillingness to engage with young people in this way.

Both male and female senior community people spoke to the Inquiry about morality and that young people needed to be taught again about values and issues surrounding “womanhood” and “manhood”, as described at community, gender-specific meetings. A small number of Top End communities have already begun work in local

languages about values. Rapirri Rom is one such example (see the Community Justice chapter).

Community people indicated their willingness to work with their school and health clinic to deliver appropriate sex education in schools. Most people believed this was the proper combination to deliver sex education to children and young people, i.e. appropriate senior community men and women (men with boys and women with girls), teachers and health clinic staff.

It is also clear to the Inquiry that all children need to undergo some personal safety training and to know about “good touching, bad touching”. Some schools are delivering such courses but again in an inconsistent way and, in many cases, not often enough.

Another issue of major concern is that many teachers are not clear about mandatory reporting. DEET must ensure that all teachers are confident about what is required of them in regards to reporting child sexual abuse.

The Inquiry needs to again point out the fact that the Northern Territory has the youngest population of all states and territories in Australia. The Territory also has the highest population of children under 15 years of age.

Wilson and Condon (2006) have made some projections of the Aboriginal population for 2001-2031. They predict that within that time frame:

- the annual number of Indigenous births will increase from around 1600 per year to around 2200
- there will be large increases in all age groups including a 278% increase in the 65+ age group
- the median age will increase from 21.8 to 26.9 though the latter will still be lower than the 2001 median age for non-Indigenous Territorians (32.4).

Wilson and Condon state that –

The projections reveal that considerable growth in the Indigenous population may be expected in the coming decades... Substantial increases in size may be expected for all age groups, with the older ages increasing by proportionately greater amounts... These coming changes clearly present considerable challenges for present and future NT and Commonwealth Governments. (2006:77)

Some of the challenges will be in addressing issues of family violence, alcohol and substance abuse, poverty, chronic diseases, housing, lack of services and community

infrastructure and poor education outcomes. In a recent ABC radio program, Charles Darwin University economist Dr Rolf Gerritsen stated that:

The proportion of the population that's growing is also the poorest portion. It's the portion that doesn't have the education, qualifications and skills that are required for the 21st century economy.⁵⁷

If they are not addressed then the Territory could be on a "trajectory of despair"⁵⁸.

This demography of the Northern Territory is a significant factor with profound implications for governments, not only in terms of the infrastructure required but in terms of getting off this "trajectory of despair". As it is, our society is unable to educate and protect all Aboriginal children. If this situation does not change dramatically, worse tragedies will occur – and affect more children.

16.4 Adult education

Young people who walk out of school for whatever reason, need to be re-engaged and enticed back to school, either through the VET sector or adult education or any other route which encourages them to complete their education, so that they are functional in literacy and numeracy, at the least.

Governments have recognised the role and importance of adult education. The Opening Statement to the Ministerial Declaration on Adult Community Education, says in part:

... In July 2002, state, territory and Commonwealth Ministers with responsibility for Education, Employment, Training and Youth Affairs endorsed a new Ministerial Declaration on Adult Education at the 13th meeting of MCEETYA (Ministerial Council on Education, Employment, Training and Youth Affairs) chaired by the Hon. Lynne Kosky, Minister for Education and Training, Victoria.

The Declaration puts strong emphasis on achieving community capacity building through community ownership, and on the importance of the ACE sector as a pathway to further education and training for "second chance" learners.

57 ABC Radio National AWAYE 3 February 2007, "Fear of a Black Planet" transcript.

58 Ibid.

The goals and strategies demonstrate the Ministers' commitment to the future development of adult community education in Australia and firmly places adult community education as a significant contributor within the continuum of education and training provision in Australia...

This Declaration demonstrates a national commitment to adult education and training and places it firmly as part of the continuum of education. Adult and community education can be used to foster and support a culture that values learning throughout life. Adult education can also provide more opportunities for Aboriginal people in regional and remote locations to access that education. School facilities could be used after school hours for activities such as adult education classes, training courses, community centres, supervised homework rooms etc. In this way, schools might be seen more as a community resource and valued accordingly.

Recommendations

50. That, given that children and young people who chronically non-attend or are excluded from school are severely disadvantaged and that there is a correlation between school non-attendance and criminal activity, poverty, unemployment, homelessness, violence and sexual abuse, the government must as a matter of highest priority ensure:
- the Department of Employment, Education and Training (DEET) implements the attendance strategies set out in this chapter and any other strategies required to ensure all children of school age attend school on a daily basis, in accordance with DEET's responsibilities to provide compulsory education for all school-age children
 - every child aged 3 years by 1 February 2008 should attend, on or about that date, and continuously thereafter, a pre-school program
 - every child aged 5 years by 1 February 2008 should attend, on or about that date, a full-time transition program and, in this regard, DEET to re-visit recommendations No. 80-86 of the *Learning Lessons Report* (1999) and complete their implementation.

Recommendations (continued)

51. That by reference to the very considerable work already done as part of the *Learning Lessons Report* and by the Learning Lessons Implementation Steering Committee (2002-2005) and the review which resulted in the *Indigenous Languages and Culture in Northern Territory Schools Report 2004-2005*, the Inquiry recommends DEET examines issues such as:

- a. pedagogy
- b. how best to deliver the same outcomes for Aboriginal students as other students
- c. flexibility in the timing of the school year
- d. smaller class sizes especially in lower grades
- e. remedial classes for students who have been out of school for some time
- f. separate classes for boys and girls aged 12 and above
- g. employment of Aboriginal and Islander Education Workers (AIEW) in all schools
- h. cross-cultural training for Aboriginal children on “dominant culture” and all children to be taught about Aboriginal people’s history and culture.

52. That, with reference to the wealth of existing knowledge and reports such as *Learning Lessons* and *Indigenous Languages and Culture in Northern Territory Schools* coupled with the need to have good teachers, healthy and secure students and ownership of the educational system by the local communities, DEET:

- a. introduce a universal meals program for Aboriginal students (breakfast, morning tea, lunch and afternoon tea) with parents to contribute to the cost of providing meals and the community or volunteers to undertake food preparation
- b. appoint a full time home-school liaison officer for every school
- c. appoint 20 additional school counsellors to service those schools currently without such counsellors i.e. the major remote towns, the town camps in the regional centres, and one in each group school (i.e. those schools in remote areas which supply services to a number of smaller schools in the area)

- d. encourage the utilisation of schools after hours for purposes such as community centres, supervised homework rooms, community meeting rooms, adult education and training courses
- e. appoint an AIEW Coordinator to enhance the role and functioning of AIEW staff to recognise they are significant members of the school support team e.g. review their role within the school community, enhance recruitment and develop their capacity
- f. consider the introduction of teacher employment initiatives such as remote teacher incentive packages to encourage teachers to remain in remote communities for three years or longer.

53. That, notwithstanding that Northern Territory schools have a single curricular framework, DEET is to ensure all teachers in remote schools consult with local communities as to any appropriate modifications, consistent with Recommendations 100, 102, 106, 107 and 108 in the *Learning Lessons Report*.

54. That DEET urgently implements the outcomes of the *Indigenous Languages and Culture Report*.

55. That early consideration be given to the provision of additional residential schools for Aboriginal students, designed specifically for them and being located within reasonable proximity to their country to enable maintenance of family and cultural ties, taking into account prospects for the involvement of the non-government sector and for Australian Government funding.

56. That in order to foster and support a culture that values learning throughout life and provides for those people who identify a need or desire for further education, the government acknowledge the importance of adult and community education and provide more opportunities for Aboriginal people in regional and remote locations to access that education.



17. Community education and awareness

17.1 Introduction

The Inquiry found that some Aboriginal people were confused or unclear about what constitutes child sexual abuse. The Inquiry believes there needs to be public education aimed at Aboriginal people to explain clearly the nature and types of child sexual abuse, other forms of child abuse and neglect, their significant detrimental effects to the child, family and community, and other concepts, such as the age of consent and what non-Aboriginal laws say about these matters. This important information must be conducted in a culturally appropriate way and in local Aboriginal languages.

Little information is actually communicated to the general Aboriginal population in any real, effective way. Governments have a tendency to speak, in English, to a few Aboriginal people who often do not have the resources to widely disseminate that information. Thus, important information gets “bottle necked”, yet governments feel they have communicated this information to Aboriginal people. As a result, many Aboriginal people remain powerless because they do not have access to information. It is the Inquiry’s view that, regardless of whether it is a public health message, changes to legislation or providing information about child sexual abuse, information must be communicated to Aboriginal people in their local language if we are serious about properly engaging with Aboriginal people. A number of specific areas where community education is required are discussed below.

17.2 Mandatory reporting

It was clear to the Inquiry that a significant proportion of the population – community members and some professionals – do not feel they know enough about sexual abuse, or how to respond if they suspect abuse.

Further, despite reporting of child sexual abuse being mandatory for all people in the Territory, the clear message received by the Inquiry was that many professionals and community people are not reporting to FACS or the Police. As discussed previously (see Understanding and Awareness of Sexual Abuse), this may be due to a range of reasons, including:

- a lack of training and education about responsibilities to report. Many professionals who work in key professional roles with Aboriginal families and communities – teachers, health and medical staff, NGO family support staff are unaware or unsure of their roles and responsibilities to report
- a lack of awareness as to what constitutes sexual abuse and how to recognise the signs
- fears of the consequences of reporting for the reporter (i.e. community backlash)
- cynicism regarding the likelihood of a positive outcome for the child and/or family.

The Inquiry recommends that an expanded program of mandatory reporting education and training of professionals be carried out as soon as possible. It also recommends that a child protection advisory helpline be set up to provide advice to both community members and professional service providers about the options available to them if they are concerned about possible child sexual abuse.

17.3 Advice line

In 2006, the NT Government introduced the NT HealthDirect service, a confidential nurse-staffed health support/advisory line (operated from Western Australia). The service is not staffed to provide a specialised service for the management of sexual abuse concerns. HealthDirect has a protocol for handling disclosures of child abuse (taking into account NT mandatory reporting) and, where appropriate, refers child abuse-related matters to the FACS “1800” child abuse reporting hotline. It is also clear that relatively few NT respondents are availing themselves of the existing online and telephone counselling support provided by Kids Helpline, and this is particularly the case for Aboriginal respondents.

Given the present level of community interest, and the professional and community education campaigns proposed elsewhere, the Inquiry recommends the creation of a child protection advice line be considered. The existing 1800 central child protection reporting

service could be expanded to provide this service. However, any advice hotline would need to be culturally accessible for Aboriginal people, and if developed as part of the 1800 reporting service, it would have to be adequately resourced to ensure the advisory service did not affect the timely and appropriate response to child protection reports.

17.4 The role of Aboriginal men and women

With regard to educating Aboriginal communities, Aboriginal people must be active participants if campaigns are to be effective. The Inquiry recommends that high profile Aboriginal men and women (identified as suitable by communities) should be engaged and actively participate in educating communities about child sexual abuse, and support the development of community norms of appropriate sexual behaviour for young people and adults.

Further, they should be encouraged to develop or participate in community-led activities that discuss the messages arising from community education campaigns, and to generally play the part of community “champions” to promote child abuse prevention and child friendly communities.

The Inquiry met many Aboriginal Elders and respected people when visiting communities and organisations across the Territory. In Tennant Creek, the Inquiry was fortunate to have a formal meeting with the Council of Elders and Respected Persons (CERP). The council explained to the Inquiry that the CERP is all about empowering the Elders of the community and restoring their authority and respect. There are 11 language groups represented on the council, with each group having a male and female representative. The key to the council’s operations is for them to take responsibility under the Indigenous way of doing business. In other words, they ensure that cultural protocols are respected and deal with any cultural issues that arise in a culturally appropriate manner. They address key Aboriginal issues in the community, such as housing, the importance of early childhood development services and the need for Aboriginal Courts in the justice system.

It was apparent to the Inquiry that Aboriginal Elders are important leaders and role models for the rest of their

community and, as such, have a significant role to play in preventing sexual abuse and setting norms of behaviour within the community. Similarly, Aboriginal people who have gained special respect because of their particular positive actions, skills, knowledge, advocacy or media exposure, also have a role to play in protecting Aboriginal children. The Inquiry acknowledges that this is a heavy responsibility to place on Elders and respected people who are often looked to by their own local community and the broader Territory community to respond to or find solutions for a wide range of problems that might exist.

Having said that, the Inquiry believes that Aboriginal Elders, respected people and “champions” need to speak out against sexual abuse, set appropriate norms of behaviour and participate in community education and awareness as well as championing the positive actions of communities to protect their children. They must be assisted and supported in doing so.

17.5 Parenting education and support

The provision of parenting education and support has been described as a “cornerstone” of any attempt to prevent harm to children and to support children’s health and wellbeing (Tomison 2004b). Such programs are designed to educate parents about children’s development and needs and to teach a range of skills that will enable parents and other family members to better care for their children. They work best when used as an element of a comprehensive multi-faceted strategy to prevent abuse and neglect.

Through the consultations undertaken by the Inquiry, it was clear that many parents (and communities as a whole) required some form of parenting education to ensure they were better equipped to care for their children - and so they had a better understanding of what could be considered good quality parenting.

Of particular concern to community members and professionals was the young age at which Aboriginal women (girls) were falling pregnant and the lack of skills these young women had about caring for their child. The development of *life skills* and *healthy relationships* courses for adolescents has been widely adopted in Australia. These courses promote appropriate interpersonal relationships and behaviour (Tomison

& Poole 2000). Such courses represent an attempt to develop children's and young people's social competence, problem solving skills or self-esteem. Many of these courses incorporate components where young people are taught parenting and childrearing skills. The intention is to teach the next generation of parents the skills they need before they are parents and, thus, to break what can be inter-generational cycles of poor parenting and maltreatment (Tomison & Poole 2000).

17.6 School-based personal safety and sexual health programs

The lack of universal sexual health programs in Territory schools is of great concern to the Inquiry, particularly given the obvious need. Aboriginal children are sexually active at young ages and a sexual health program, especially one which has the support and active participation of the Aboriginal community, has the potential to increase the age of first sexual experience and to promote safe sex, good sexual hygiene and reduce the rate of unwanted pregnancies.

A range of school-based personal safety programs is presently used in Australian schools – Protective Behaviours is but one popular program. While they will not solve the problem of sexual abuse by themselves, these programs have demonstrated some success at (1) increasing disclosures of abuse, (2) increasing children and parents' knowledge about sexual abuse and what to do when faced with sexual abuse and (3) providing some education to children (and parents) about how they may avoid some potentially abusive situations.

No universal personal safety program curriculum is presently operating in Territory schools. The Protective Behaviours program has been supported, but school principals determine its actual use. It is also not clear that the original curriculum has been modified to meet the needs of Aboriginal children in the Territory.

Given the size of the sexual abuse problem in the Territory, the failure to provide an appropriate universal personal safety curriculum for primary and secondary schools is concerning. The Inquiry was interested in the use of Protective Behaviours programs and was also impressed with the Child Sexual Abuse Prevention Program, which has run successfully in Victoria and in a number of Asian and Pacific nations.

Overall, the best program will:

- be tailored to meet Aboriginal needs
- provide age-specific versions that can be run in primary and secondary schools⁵⁹
- involve the active participation of parents and other community members
- be modular, that is, contain a number of specialist element that can be run in support of the main program to better meet local community needs (e.g. providing a bullying component, or peer relationships components which can be added dependent on perceived need)
- have behavioural or experiential components enabling children to actively participate in scenarios rather than be passively lectured to
- be linked to sexual health programs.

The Inquiry recommends that DEET work with DHCS and consult with Aboriginal medical services and Aboriginal NGOs to develop a suitable program for the Territory and ensure it runs in all schools, together with the sexual health program.

17.7 The value of schooling

It was apparent through the consultation process that a number of parents are not sending their children to school because they do not see any value in education. The link between gaining a good education and subsequent employment has been broken. People's everyday experience is that there are no real jobs for them in their communities, and thus, they see no reason to expect that educational attainment will translate into employment for their child.

The education of children is one of the most important tasks for any society, for on the success or failure of such education ultimately depends the survival of that society.

Warren 1983:34

⁵⁹ Given the early onset of children's exposure to sexual activity and involvement in sexual activity, it is important that sexual health and personal safety programs are run in primary schools as well as in secondary schools. Targeting such programs for secondary students alone will not be effective – education must be provided prior to the onset of sexual behaviour.

In addition to the extensive recommendations the Inquiry has made regarding the provision of education to Aboriginal children, there is a need to ensure that parents and communities re-discover the benefits of education, if they are to be motivated to send their children to school.

Recommendations

57. That the government drives a fundamental shift in family and community attitudes and action on child sexual abuse by:
- a. developing appropriate resource information on sexual abuse and conducting regular media campaigns that explain sexual abuse as described in Recommendation 94
 - b. expanded delivery of mandatory reporting training to professionals including school staff
 - c. high profile Aboriginal men and women to provide positive, proactive leadership on the prevention of sexual abuse and the setting of appropriate community norms for sexual behaviour
 - d. expansion of parenting education and parenting skills training for young people (the next generation of parents) and those already caring for children
 - e. engaging in a dialogue with communities to discuss the particular education that might be needed in a specific community and how that education can best occur
 - f. recognising the appropriateness of messages being in language and delivered through a number of mediums
 - g. ensure sexual health and personal safety programs are in all schools as part of the curriculum.

58. That the government establish an Advice Hotline (perhaps expanding the role of the existing 1800 Central Reporting Number) to provide advice to both community members and professional service providers about the options available to them if they are concerned about possible child sexual abuse. The Advice Hotline must be culturally accessible for Aboriginal people and adequately resourced to ensure the advisory service does not affect the timely and appropriate responses to child protection reports.

59. That the government actively support Aboriginal men to engage in discussions about, and address, child sexual abuse and other violence in communities.

60. That a community and parent education campaign be conducted on the value of schooling and encouraging a culture of community and parental commitment to sending children to school.



18. Alcohol

18.1 Introduction

The Inquiry finds that there is a strong association between substance abuse, particularly alcohol, and the sexual abuse of children.

This does not mean that alcohol, or other substances, are directly involved in or responsible for all instances of sexual abuse of children.

The Inquiry finds, however, that alcohol and other drugs are having a massive negative impact on the social fabric of Aboriginal communities and contribute greatly to family and cultural breakdown. This ultimately results in an environment where children are unsafe.

The right for children to be safe and healthy is far greater than the right to drink yourself into oblivion.

Remote areas paediatrician

The Inquiry believes that extreme alcohol abuse has become normal in the Northern Territory and the devastating effects on children are rapidly increasing. The Inquiry was also told of increasing numbers of Aboriginal children taking up alcohol and that the ages of first time drinkers are decreasing.

The importance of effectively dealing with substance abuse, in particular alcohol, as part of an overall strategy aimed at protecting Aboriginal children from sexual abuse, cannot be emphasised strongly enough. Only radical, determined and wholesale reform will make a difference.

All of the social issues that exist in Tennant Creek stem from alcohol abuse.

Until that is tackled it will be impossible to deal with other social issues.

Tennant Creek resident

The sexual abuse of children is an “other” social issue. During consultations, the Inquiry sometimes heard the argument that people have a right to drink and why should that right be affected just because a minority of drinkers cannot drink responsibly.

The Inquiry takes a different approach. Given that so many Aboriginal children are adversely affected by alcohol in some way, the Inquiry sees the issue as not that the right to drink is being compromised by a minority of irresponsible drinkers, but that the lives of Aboriginal children are more important than the right to drink.

18.2 Evidence

It is generally accepted in Northern Territory, national and international literature that when used excessively, alcohol is an extremely dangerous drug that results in a wide variety of serious physical and social harms, including the sexual abuse of children. When used moderately and responsibly, however, alcohol is a pleasurable part of our social fabric.

It is also well known that while a lower proportion of Aboriginal people than the general population drink alcohol, and drink less frequently, those Aboriginal people who do drink generally consume at much more harmful levels (Gray et al 2004).

The consequences of alcohol abuse for Aboriginal Territorians are extraordinarily damaging. A recent report into alcohol-related Aboriginal deaths found that alcohol causes the death of an Aboriginal Australian every 38 hours. A quarter of these deaths occur in the Northern Territory. Central Australia has the worst rate of alcohol-attributable mortality in the country, with 14.6 deaths per 10,000 Aboriginal people between 2000 and 2004. The Top End of the Territory recorded 6.8 deaths per 10,000 Aboriginal residents in the same period (National Drug Research Institute, 2007).

The most damaging aspect of alcohol is not the illness and death it causes to those who abuse it, but the fact that it affects significant numbers of innocent people, including children.

The statistics collected by the Department of Justice are staggering. In 2004-05 21,863 intoxicated people were taken into police protective custody in the Northern Territory. In the four years from 2001, there was an average of 2000 assaults per year that were known to

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have been alcohol related. In the same period, an average of 110 sexual assaults per year were known to have been alcohol-related. Each year during that same period, an average 65% of the prison population were serving sentences for alcohol-related offences (*Northern Territory Alcohol Indicators*).

The courts are seeing an increase in both the quantity and ferocity of alcohol-fuelled violence in Aboriginal communities. On 14 March 2007, Supreme Court Judge, Mr. Justice Riley stated in court that:

The situation regarding alcohol-related violence within the Aboriginal community in Central Australia has gone from bad to worse...The number of victims seems to be ever increasing and the level of violence continues to be horrifying...The problem is not one just for the Aboriginal community of Central Australia. It is not one just for the people of Alice Springs. It is not one just for the people of the Northern Territory...It must be a matter of deep concern for the nation. This is a tragedy about which all Australians must feel embarrassed and that all Australians should feel the need to address⁶⁰.

Justice Riley also stated:

While the number of matters coming before the courts is disturbing enough, the reality is that the courts see only a small percentage of the violence that occurs...All the Judges and Magistrates can do is to impose ever-increasing sentences of imprisonment upon the violent offenders, but as experience reveals, that has not served to stem the flow of such cases.

The Inquiry's experience

The old ways are still there in the back of people's minds but now they have kava and grog in the front of their minds.

Female Elder – East Arnhem

Every one of the 45 places visited by the Inquiry indicated that alcohol was having an extremely significant detrimental effect on almost every aspect of community life including the safety of children.

The Inquiry heard enough anecdotal evidence to conclude the following:

- Alcohol abuse increased the possibility that a person would sexually abuse a child (the Inquiry noted that many of the offenders who have been dealt with by the courts for sexually abusing children were intoxicated at the time of their offending).
- Alcohol abuse by a children increased their vulnerability to being sexually abused (the Inquiry was told by one clinic nurse that she was aware of many young women who had been raped but who could not recall who the assailant was due to their intoxication).
- Intoxication of family members results in less awareness and reduced supervision and reduced protection of children.
- The quest to obtain alcohol, the involvement in long drinking sessions and severe intoxication often resulted in children being unsupervised, neglected and “forgotten”.
- Aboriginal culture is being lost as alcohol has impacted severely on the teaching and practicing of culture.
- Alcohol is being used as a bartering tool to gain sex from children, either by offering it to the children themselves or in some cases to adult members of their family;
- Alcohol abuse clearly led to general physical violence and dysfunction.
- Alcohol impacted negatively on education (the Inquiry was told that children were often sleep deprived due to the late night antics of “drunks”).
- Large numbers of children are drinking alcohol.
- Alcohol impacted negatively on employment and employment prospects.
- Alcohol is a major cause of family and social breakdown and leads to the weakening and in some cases destruction of the normal family and social protections that exist in relation to children.

Police told the Inquiry that the alcohol problem, particularly in Alice Springs, was “out of control” and the “worst it has ever been”.

60 The Queen v Ricky Nelson, 14 March 2007, NT Supreme Court.

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The Inquiry was provided with a letter written by a female Yolngu leader in 2004. It is a powerful indictment on the effects of alcohol and an edited extract is reprinted below:

We can see that the young people are coming out of school and going straight into drinking – this is a very bad habit. They do not listen to their Elders and they have no respect for them.

We can see that children are being neglected and that they have no one to look after them, to care for them and feed them. We can see that the young people are overtaking us and dying before us.

It is devastating for us to bury our young people; they should be burying us. But the tide has turned: we the Elders are singing and crying for our young ones.

We want you to help us by putting in place a strong law so that our people are supported and can change and again become clean, responsible, motivated, and strong – not social outcasts. Not all Yolngu are like the drinkers, and we don't want to be stereotyped as though we are all like them.

Because this white man's water is a curse, we implore you who are leaders and policy-makers in government, in corporations in the public sector, and in community organisations, to hear our plea to close the take-away liquor outlets in order to eradicate this curse that is killing us physically, mentally, emotionally, and spiritually, leaving us in a desperate situation. Act quickly to make necessary changes in policy and legislation!

In addition to all of the horror stories surrounding alcohol, the Inquiry received positive evidence that demonstrated the dramatic difference that occurred when alcohol consumption was significantly reduced.

Borrooloola

The Inquiry attended Borrooloola on 31 January 2007. In the four months preceding that visit, alcohol consumption in and around Borrooloola had been drastically reduced.

This was as a result of the indefinite suspension of licensed trading of the Borrooloola Hotel from 16 October 2006 and a similar suspension to the "Heartbreak Hotel" on the Carpentaria Highway. At the time of our meeting, the only alcohol available in Borrooloola was medium and light strength beer from the store. There was a one carton per person limit on purchase.

The Inquiry met with a group including representatives from the police, health clinic, school, council and Indigenous Resource Centre. The group estimated that crime in Borrooloola was 70% alcohol-related. Since the trading licences had been suspended, the safe house coordinator indicated that they had not had any work. The group noted that people seemed to be more at rest and were talking and acting in a much happier manner than they would have been if the pub was open. They also noted that no annual riot had occurred last Christmas. Since the pub closed, some hard-core drinkers did leave town but most had adjusted to the light alcohol beer.

The group estimated that around two pallets of light and mid-strength beer were consumed per day, which equates to about 240 cartons a day. However, when the pub was open the group estimated that eight pallets of full strength were consumed a day, which equated to 960 cartons - or 8640 litres - of alcohol a day. The Inquiry is of the view that even in the absence of "visible" problems or "risky" drinking, this level of consumption has a massive negative impact on employment, relationships, child rearing, education, health, sexual abuse and other social aspects.

Significantly, since the licensed trading suspension, a traditional ceremony was held in Borrooloola for the first time in nine years. This information was repeated to us by female representatives from Borrooloola at the Inquiry's regional forum in Katherine. These women stated that since the pub lost its licence the community had become quieter, there was no brawling, more kids were attending school and parents and adult family members were spending more positive time with children doing family activities such as fishing.

In short, the reduced access to alcohol, consequent reduced consumption and ultimate significant reduction in intoxication had resulted in an environment where women and children in particular were significantly safer and happier and where the opportunities to enhance education, family cohesion and culture had dramatically increased.

Nguiu

The Inquiry referred earlier in this report to the Coronial Findings of Mr Greg Cavenagh in November 1999, in which attention was drawn to the excessive use of alcohol (and cannabis) at Nguiu at that time. It was found that alcohol abuse has a frequent association with suicide attempts and attempts at self-harm and that alcohol abuse on the

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Tiwi Islands was at unacceptable levels. Submissions were made to the Coroner that he recommend that the (then) Liquor Commission consider whether it should take steps to reduce the availability of take-away liquor on the Tiwi Islands. The coroner referred the evidence and documents to the Commission with a recommendation that it be studied and consideration given –

.... as a matter of urgency [to] the needs of the communities on the Tiwi Islands in relation to alcohol with a view to restricting hours and days of trading ...

The Inquiry was unable, due to time constraints, to follow up on the Coroner's recommendations. However, it did attend Nguiu community late in 2006 after the Nguiu Club's conditions had been changed such that only mid or light strength beer could be served. The group of 60 men who spoke to the Inquiry agreed that the introduction of mid strength beer was a good initiative and was having a positive result within the community as far as reducing violence and making children safer.

However, the men noted there was no education in the community about how to drink responsibly and that was urgently needed. They also noted that there were no rehabilitation programs at Nguiu. They had constructed their own rehabilitation facility at a place known as Four Mile. It has three to four houses recently built (it took 10 years for that to happen) and is a place where people go for self-imposed rehabilitation. It receives no funding but the men believe it is the ideal venue for a rehabilitation centre for alcohol and drugs on Nguiu.

These comments demonstrate that reducing alcohol or alcohol strength is a good first step but that it needs to be part of a more comprehensive multi-faceted approach.

Umbakumba

The Inquiry was told that Umbakumba had gone from being an extremely violent community with a severe crime problem to a peaceful community where crime had been reduced by 98% due to a change initiated by the women of the community in 2002. With assistance from the *Living with Alcohol Program*, the woman devised a plan for addressing the community's alcohol consumption, which was seen as the primary cause of violence and crime.

Through a series of meetings, and with the men gradually becoming involved, certain resolutions were made. It was decided not to restrict drinking altogether

but to allow people to drink on special days. However, the quantity that could be consumed on those days is determined by a sub-committee that consists of women leaders in the community. One woman at the meeting gave us this example:

At that last birthday them men wanted 30 cartons. We said they could have three.

When the Inquiry visited, this plan was working extraordinarily well and the flow-on effects to the community had been positive.

Community members said there were seven integral parts to their success. These were:

- strong community-based leadership, particularly by women, who took up the ownership and running of the plan
- government support through laws aimed at reduced access to alcohol
- a strong core of skilled and committed "outsiders" who had built up a relationship of trust with the local community over a long time and who worked in partnership with the local community
- a strong employment program that provides employment for the majority of the community
- a successful, non-alcoholic, sport and social club that caters for everyone in the community and provides a variety of activities
- a change in community attitudes to alcohol
- a community driven approach to dealing with any problems immediately if and when they arise.

Present at the meeting was a husband and wife and, at one point the wife stated:

I stood by my husband during his drinking days even when he was violent towards me. He even broke my arm. But I always knew I would get my good husband back one day.

The husband, who had not drunk alcohol for two years replied:

When I drank I used to be a fighter, swearer and wife abuser but now I'm happy being a good husband and a good father.

The group said that over time the men had become used to not drinking and, more importantly, the young men had not developed a taste for it and are working busily

on the employment program and enjoying the various social activities after work. As a result, the culture of the community has changed dramatically in a positive way, from one that revolved around alcohol and violence to a more traditional family orientated one.

It must be noted that while Umbakumba provides an excellent example of a community actually winning the war against alcohol, it was the only place of the 45 visited that was happy to make that claim. The reasons behind Umbakumba's success need to be studied and utilised to develop plans for other communities.

Katherine

The Inquiry spoke to a nurse who had worked at the Katherine Hospital, which was described to us by another person as the “bucket” into which all Aboriginal people in Katherine fall. The nurse said that during a three-month trial restriction of alcohol trading hours, she was working in the hospital's Accident and Emergency. She noticed that during that period the number of people coming in with violence-related injuries had, drastically reduced. The same nurse noted that, during the Katherine Flood in 1998, there was no alcohol for two weeks and she did not see one person present at the hospital with violence-related injuries in this period.

Get rid of the alcohol because the alcohol is, well, it's poison all over again, it's just like poisoning the water holes, except now you're doing it legally.

Queensland man, C. Morseu

18.3 Action required

The Alcohol Framework

The Inquiry acknowledges that the Northern Territory Government recognises alcohol is a serious issue and that it has done a lot of work on developing strategies to tackle alcohol abuse. In particular, the Inquiry commends the good work done in developing the Northern Territory Alcohol Framework. However, the Inquiry is of the view that the pace of reform must be picked up urgently if a difference is to be made on the ground.

The Inquiry has been told, and accepts, that the government focus has drifted away from reducing overall consumption and intoxication and is focused on “visible” or “risky” drinking. The Inquiry is of the view that, rather than re-inventing the wheel, the government needs to

implement the Northern Territory Alcohol Framework urgently and in its entirety. In doing so, it needs to ensure it promotes a sustainable and ongoing approach that attacks the issue from all angles. This includes:

- more emphasis on reducing overall consumption
- more emphasis on changing the culture that surrounds alcohol
- more emphasis on changing the attitudes to irresponsible drinking
- less focus on just “visible” or “risky” drinking
- recognition that “addiction” is not a symptom but a significant problem in itself and the first step in addressing it is stopping or at least reducing consumption. (The Inquiry notes that Noel Pearson has been at the forefront of recognising that addiction cannot be dealt with while people continue to have easy access to alcohol. Intoxicated people are impervious to education and cannot deal with the problems underlying their addiction unless they are sober)
- recognition of the Aboriginal cultural factors that may make Aboriginal people more vulnerable to excess consumption
- less concern for the “right” to drink and the “right” to sell alcohol and more concern for the “right” of a child to grow up in a safe, non-violent environment and uninfluenced by intoxicated persons
- more emphasis on the social costs and less on the economic costs
- recognition of the importance of healing historical and generational hurt that may influence excessive consumption
- recognition of the importance of providing healthy and positive alternative options such as employment, sports and recreation
- recognition that supporting and strengthening Aboriginal culture is a vital part of dealing with the dysfunction that leads to excessive consumption
- recognition that all of the reasons for dysfunction must be addressed in a genuine and determined manner
- recognition that there is an ongoing cycle of excessive consumption and children draw conclusions from alcohol related social norms from what they see and hear about alcohol in their families and communities

- a proper method of co-ordinating and monitoring the effectiveness of any action taken
- recognition that the problem is urgent.

The following account of an Aboriginal prisoner taken from the PhD thesis of Caroline Atkinson-Ryan demonstrates that the normalisation of alcohol and drugs within the family and community environment is such that in many cases it has become part of identity and there is a need to belong by adopting substance abuse behaviours:

Well, see when I was a kid I was raised in a big family right. My mum and that used to drink all the time... and they'll drink and that and then they'd just all turn on each other. But that's what everybody does, everybody I know anyway, it's just normal. I do too because I like the feeling of them, the drink and the drugs they make me feel like everybody else.

It is the Inquiry's experience that excessive alcohol consumption has become a way of life for many Aboriginal people and particularly men. This drinking not only causes damage to their own health but creates destruction and chaos around them in both subtle ways (unemployability, lack of cultural involvement, lack of respect for cultural norms) and not-so-subtle ways (domestic violence, assault, fighting, homicide, sexual abuse).

The Inquiry saw many examples and spoke to many people in relation to how this impacted on children. This problem is increasing and must be stopped.

The Inquiry believes that the Northern Territory Alcohol Framework is a good place for the government to start.

Recommendation

61. That the government continue to implement the Alcohol Framework as a matter of urgency and focus on reducing overall alcohol consumption and intoxication and not just on "visible" or "risky" drinking.

Community Alcohol Management Plans

The Inquiry notes the success achieved in Umbakumba and has also been informed about the "permit" plan in process in Nhulunbuy. The Inquiry commends the hard work put in to the development of these initiatives. However, the Inquiry is of the view that this is not nearly

enough. Every community the Inquiry visited was in urgent need of an effective, culturally-specific, alcohol management plan.

The Inquiry is of the view that a Territory-wide process of consultation with Aboriginal communities, and development of alcohol management plans, is urgently required. At present, the process is too slow, too reactive and limited to only a handful of communities.

The starting point in every community must be in recognising that alcohol is a problem. It must be kept in mind that not all communities are educated enough about alcohol and its effects on individuals, families and communities to be able to develop their own solutions, so there may need to be initial capacity building.

It must also be recognised that there is often a huge division between the drinkers and non-drinkers and in many places the drinkers may be in positions of power. Many people may not speak out for fear of reprisals.

While there cannot be a "one size fits all" approach, the core issues are the same everywhere and the general policy behind a response is the same.

Community Justice Groups can play an active role in developing and implementing local alcohol management plans. Any positive community initiatives must be supported.

Recommendation

62. That, as a matter of urgency, the government consults with all Aboriginal communities with a view to identifying culturally effective strategies for reducing alcohol related harm that are incorporated in individual community alcohol management plans.

Takeaway Alcohol

The Inquiry was told on many occasions that access to takeaway liquor was a huge concern everywhere, and particularly from "remote" pubs.

The Inquiry was also told that 70-75% of alcohol consumed in the Northern Territory is takeaway alcohol. Many people told the Inquiry that a reduction in takeaway sales at these places would have a significant impact on reducing the problems associated with alcohol.

From the Inquiry's perspective, this would mean less drinking around children and safer children. The Inquiry has heard many concerns about children being exposed to drinking from an early age in outdoor drinking places like the "drinking paddock" at Daly River.

People residing in urban areas were concerned with the number of takeaway liquor outlets in existence and were particularly concerned with local supermarkets having liquor licences.

The Inquiry is of the view that urgent government action is required to reduce access to takeaway alcohol in the Northern Territory and to enhance responsible use among those who do drink takeaway alcohol.

Recommendation

63. That, as a matter of urgency, the government makes greater efforts to reduce access to takeaway liquor in the Northern Territory, enhance the responsible use of takeaway liquor, restrict the flow of alcohol into Aboriginal communities and support Aboriginal community efforts to deal with issues relating to alcohol.

Community Drinking Clubs

The opinions expressed to the Inquiry about community drinking clubs were often deeply polarised between those who placed a high priority on drinking rights and those who regarded alcohol as a destructive force that destroys social and cultural community life.

Those in favour of a club argued that:

- clubs provide a controlled, safer environment where people can learn social, moderate drinking habits and alcohol-related trouble can be contained
- with access to a source of alcohol in communities, people may be less likely to have alcohol-related car accidents driving to and from town to drink
- having clubs in remote Aboriginal communities would reduce the numbers of heavy drinkers and associated problems with public drunkenness in town areas.

However, the Central Australian Aboriginal Congress has argued that it is inappropriate and irresponsible

to promote controlled drinking practices as a harm-reduction strategy for many Aboriginal drinkers, given their social, political, cultural and economic situation. Many individuals already have severe and chronic alcohol-related medical problems and "live in a world that revolves around drinking and drinking to enormous excess". (*National Drug Strategy, Aboriginal and Torres Strait Islander Peoples Complementary Action Plan 2003–2009 Background Paper, May 2006:28*).

Evidence from throughout Australia, and from Cape York and the Northern Territory in particular, suggests that rather than mediating alcohol-related harms, the introduction of licensed clubs on remote communities is associated with development of a heavy drinking culture with significant negative impacts on people's health and community wellbeing in the short and long term (*National Drug Strategy, Aboriginal and Torres Strait Islander Peoples Complementary Action Plan 2003–2009 Background Paper, 2006:28-30*).

- The argument that responsible drinking clubs promote responsible, controlled levels of drinking is contradicted by a study of consumption levels on seven of the eight Northern Territory communities with licensed clubs in 1994-95. The study found high levels of consumption in all but one community, with a mean consumption level about 50% above the level designated as "harmful" by National Health and Medical Research Council guidelines. The rate of consumption per capita in Cape York where community clubs are common is the highest in the world.
- Research with Cape York communities found that the numbers of non-drinkers or moderate drinkers actually declines with the normalisation of heavy chronic consumption and a social life based around the canteen.
- The Inquiry was also told that community councils become dependent on the profits from community clubs for their power-base in the community and/or funding for community projects, and this can interfere with decision-making when excessive alcohol consumption becomes a problem.

Evidence also suggests that the presence of drinking clubs does little to reduce alcohol-related problems in nearby towns. A study of rates of Aboriginal Protective Custody Apprehensions (APCA) in Darwin, for example, found that

the communities with highest rates all had drinking clubs. On the other hand, the community with the lowest APCA rate had no club and the strongest dry area restrictions *National Drug Strategy, Aboriginal and Torres Strait Islander Peoples Complementary Action Plan 2003–2009 Background Paper, May 2006:28-30.*

The overwhelming weight of evidence would appear to be against having community drinking clubs. As a result of its consultations, the Inquiry can see no reason to dispute this evidence.

The Inquiry acknowledges that some community clubs already exist and that some would argue they are well-managed and reduce social harm. However, the following concerns were raised in relation to these clubs:

- In those communities with clubs most, if not all, of the men over 18 were drinkers. As the clubs were the main social hub, there seemed to be little choice, especially among the men, but to drink. The Inquiry was informed by one clinic nurse that the children would come into the clinic regularly to find out how long it was until they turned 18 so that they could go to the club and drink.
- The Inquiry was told by a number of remote area nurses that most of their patients have alcohol-related illnesses and the medical cost of long-term alcohol use is enormous.
- Most clubs had become the social hub of the community and this sent a negative message to youth and encouraged them to join in the “drinking culture” (the Inquiry was told, and itself witnessed, that children would often congregate around the clubs. The Inquiry has a vivid memory of several young children sitting outside the wire fence around a community club watching the adults drinking alcohol).
- Some community leaders had become alcoholics and this had affected their judgment and ability to effectively lead.
- Alcohol and drinking clubs are impacting negatively on employment and employability. For example, the Inquiry was told that work effectively stops at lunchtime in Gunbalunya due to the club opening at that time.
- Alcohol and drinking clubs are impacting negatively on cultural life. For example, the Inquiry was told that ceremonial life in Gunbalunya had ceased since the opening of the club.

- There is a lack of accountability for the profits of the club and a lack of community knowledge as to where those profits were going.

It is interesting to note that both the police and the health centre at Gunbalunya confirmed that, during the two weeks that the drinking club was closed as a result of the March 2007 floods, no violent incidents occurred and people were actively involved in cleaning up the community. The night the club opened there was a minor violent incident.

If drinking clubs are to exist then the Inquiry is of the view they must be subject to stringent conditions with serious thought given to the following:

- sales restricted to light and mid-strength beer
- restricted hours, especially during normal accepted work hours
- a code of conduct that enables the club, community or council to ban people from the club
- no takeaways.
- good quality food
- transport home at closing time (as is provided at Kalkarindji)
- regular monitoring of the club’s effect on the community. Note that the experience in Cape York suggests that although many clubs begin with strict rules, these rules often relax over time with pressure from committed drinkers and/or the lure of greater profits. It must also be noted that the success of a club often depends on the personnel involved and when that changes so can the club.

The Inquiry notes the experiences of Borroloola and Umbakumba, particularly the fact that communities can adapt positively to reduced access to alcohol and reduced strength alcohol and also the fact that the social hub of the community does not need to involve alcohol. It is only when the focus is not on alcohol as the driving element of existence that it becomes truly social. As one person said to the Inquiry:

At present people are living to pursue grog so they can forget why they are living.

Resident in Western Top End community

This cycle must be broken.

Recommendation

64. That the government develops a “best practice” model of a “community drinking club” and apply that model across the Northern Territory to existing community drinking clubs and any new such clubs that may come into existence. This model should be designed to avoid, as best as possible, both the obvious and insidious effects on the community of alcohol consumption.

Role of Police and DHCS

The Inquiry was told that both Police and DHCS are well placed to provide informative advice on the potential social impact of a liquor licence being granted. Both the Police and DHCS are on the “frontline”, so to speak, when it comes to dealing with the negative effects of alcohol use in the Northern Territory.

For these reasons, the Inquiry believes that the Police and DHCS should provide social impact advice to the Licensing Commission in respect to all applications for a liquor licence and this advice be required to be taken into account by the Licensing Commission.

Recommendation

65. That the Licensing Commission be required to take into account advice from the Police and DHCS when considering all liquor licence applications and that the Police and DHCS have a specific responsibility to provide advice in respect of all applications.

Community and Child Impact Statements

The Inquiry is concerned that any community that may be affected by the granting of a licence have an opportunity to be heard when the Licensing Commission is considering the granting of a licence. The Inquiry is especially concerned that the status of children who may be impacted upon is properly considered.

The Inquiry has already noted that excessive alcohol use is presently impacting negatively on children and significantly increases the potential for child sexual abuse

to occur. The need to keep children safe must be properly considered by the Licensing Commission before a licence is granted.

To ensure this, the Inquiry believes that the Licensing Commission should be required to request that both community and child impact statements be provided for consideration. It is anticipated that these statements would outline in some detail the potential effects the granting of a licence would have on a community and, in particular, on the community’s children.

The Inquiry is of the view that relevant government agencies be responsible for preparing these statements.

Recommendation

66. That the Licensing Commission be required to call for and consider community and child impact statements, to be prepared by relevant government agencies, when giving consideration to liquor licence applications. Further, that consideration be given to the proposal that licence applicants be required to gather and submit information as to the community impact of their application at the time of making their application.

Licenses and the Licensing Commission



They [the liquor outlets] are profiting from our misery.

Alice Springs resident

The Inquiry is aware that new liquor legislation is being drafted. The Inquiry believes that this new Act must have provisions that in effect, place certain requirements on licensees as to both obtaining and keeping a liquor licence. In particular, the Inquiry believes there needs to be a greater emphasis on the “social impact” that a licensee may be having on the community and, in particular, the Aboriginal community.

Some communities the Inquiry visited were described as being akin to “war zones” due to easy access to vast quantities of alcohol. The Inquiry notes the incredible impact that the Borroloola Hotel had on that community

and the extremely positive impact that has occurred following the suspension of that licence.

The Inquiry understands some of its suggestions may be seen to have a negative impact on commercial enterprises. In particular, the recommendation for the Liquor Commission to review licences at any time may impact on commercial security.

However, the Inquiry does not envisage a situation where a licence could be reviewed for no good reason. The Inquiry envisages that a licence would only be reviewed in circumstances where certain bodies (Police, DHCS, Aboriginal Councils) have made strong submissions that the licence is having a significantly negative social impact on the community.

It is envisaged that, where this is established, the Licensing Commission would have the power to either modify or revoke the licence. If, for example, DHCS made a submission to the Licensing Commission that lunchtime drinking was impacting heavily on health, employment and child safety, then the commission could review that licence and decide to limit drinking hours to outside of normal work hours.

In essence, the Inquiry sees this power as a safeguard for Aboriginal communities and, in particular, Aboriginal children.

The Inquiry believes that licensees must be much more pro-active in preventing excessive alcohol consumption. This is an essential part of their “social licence” to operate.

The Inquiry is of the view that there needs to be an improved collection of data relating to alcohol by bodies such as health clinics, hospitals and the Police. The Licensing Commission needs to have easy and prompt access to that data.

The Inquiry believes that by giving wider powers to the Licensing Commission and by encouraging more involvement by the Police and DHCS, an opportunity exists to develop a much more responsible “culture” among licensees, particularly when it comes to Aboriginal people.

Recommendation

67. That the new liquor legislation currently under consideration by government include the following features:
- a. significantly increase the ability of the Licensing Commission to take into account the social impact of granting a liquor licence
 - b. require the Licensing Commission to give substantial consideration to both the social impact and the economic benefits of granting the licence
 - c. require the Licensing Commission to take into account a wide variety of views when considering whether to grant, or when reviewing, a licence including those:
 - i. of the Police
 - ii. of the Department of Health and Community Services
 - iii. reflected in submissions from any community or sector of the community that may be affected by the grant of a licence
 - iv. reflected in community and child impact statements relating to any significant negative impact on children by the grant of a licence
 - d. make it mandatory for both the Police and DHCS to provide input to the Licensing Commission in relation to the granting of and the review of a licence
 - e. significantly increase the ability of the Licensing Commission to review liquor licences at any time on any reasonable grounds with potential reasons for such review to be broader than a breach of the licensee’s conditions and to include evidence of any significant negative social impact or any significant negative impact on children

- f. allow the Police, DHCS, the Department of Justice or any Aboriginal community governing body to recommend to the Licensing Commission that they conduct a review of a liquor licence
- g. provide for clear guidelines for reviewing licences, including that the Licensing Commission must consider:
 - i. the social impact on the community
 - ii. the impact upon children
 - iii. the effect on the drinking patterns of the community and consequences of those drinking patterns
- h. significantly increase the power of the Licensing Commission to revoke or modify licences following a review.

Education

The Inquiry recognises the importance of education as part of an overall alcohol strategy. However, the Inquiry was told that, on its own, education is ineffective and that it must be specifically tailored and delivered if it is to impact on Aboriginal people.

The Inquiry was also told that alcohol has such a foothold that education will never penetrate without there first being a serious reduction in consumption and intoxication.

The Inquiry believes that a significant and lengthy educational campaign aimed at changing the culture surrounding and attitude towards alcohol is an important part of an alcohol strategy but it must be combined with several other measures.

Recommendation

68. That, in consultation with Aboriginal communities, a significant media campaign for Aboriginal communities be designed to both promote healthy alternatives to drinking alcohol and to convey information about the negative impact of alcohol with an emphasis on the relationship between excessive consumption and the increased incidence of child abuse and other family violence.

Rehabilitation

The Inquiry considers rehabilitation services a most important part of an overall strategy. However, unless overall consumption is reduced rehabilitation is only going to have a minimal effect.

It was pointed out to the Inquiry that the rehabilitation service in Tennant Creek has worked hard for more than 10 years but has not made a significant impact into that town's drinking problem. The difficulty is that people are released back into an environment where excessive consumption is endemic.

The Inquiry was told that unless the drinking culture changes then rehabilitation will only ever be successful in about 10% of cases.

Recommendation

69. That options for delivering alcohol counselling to Aboriginal communities be explored and implemented including consideration of visiting counsellors for smaller communities and resident counsellors and local rehabilitation centres for larger communities.

Financial Measures

The Inquiry believes that mechanisms need to be explored for getting the alcohol industry to contribute financially to the prevention of alcohol harm.

Vouchers

The Inquiry was told by some people that they would like to see at least 50%, if not all, of the total sum of individuals' "welfare" (Centrelink) payments made in the form of food vouchers. The view was expressed that this may impact positively on alcohol consumption. The Inquiry believes it is worth investigating.

However, the Inquiry notes the provision of vouchers has also been criticised by some because it encourages dependency and can be seen as a return to paternalism.

Law enforcement

The Inquiry heard from many people who advocated stricter penalties for those who supply alcohol to children or who bring alcohol into dry communities.

The Inquiry was also told of a general failure to enforce laws regulating underage drinking. This failure not only enables young people to drink but communicates a general indifference. Consideration should be given to an enforcement strategy.

A common view expressed to the Inquiry was that the existing “2km law” was not well enforced.

The Inquiry was also told that there needs to be more constant and vigilant monitoring of the actions of licensed premises. It was noted that the Northern Territory effectively has 900 liquor inspectors, namely police officers. No doubt there would be considerable debate as to whether such inspections should form a core component of Police duties.

Monitoring and evaluating

The Inquiry is of the view that there needs to be one well-resourced body responsible for formulating alcohol policy, collecting and updating alcohol information, coordinating a whole-of-government approach and monitoring the effectiveness of action taken.

Alcohol is such a significant issue in the Northern Territory that the government must give serious consideration to properly resourcing a single body as suggested above.

As a final note, the Inquiry points out that the Australian Government receives about \$6 billion a year in alcohol tax, yet many successful alcohol programs in the Territory are running on very modest budgets, and some are in danger of being de-funded.

It is time that the Australian Government, with encouragement from the Northern Territory Government, recognised the seriousness of the problem and committed some serious money to dealing with it.



19. Other substance abuse

First there was the stolen generation when the people were taken away from their mothers. This one coming up is the lost generation.

Makinti Minutjukur, Ernabella, AP Lands, South Australia in Delahunty, B and Putt, J 2006a.

The Inquiry found that cannabis has been a significant issue identified at nearly every community meeting it has held. Participants in these meetings identified that cannabis is present in their community and they believe it is having negative effects on community and family life and, in particular, consequential effects on the care and protection of children.

These views were supported in submissions to the Inquiry. Concerns about cannabis put to the Inquiry included that:

- the price paid for cannabis means there is a reduced amount of money available to purchase food and other necessities

Lots of money being spent on kava and cannabis (\$100) for small deal bag of cannabis and similar price for small amount of kava.

Comment from a meeting with Top End community members

- it causes fighting when a person humbugs family members for money to buy cannabis
- there is fighting when people become agitated because they cannot get cannabis
- it is often used in conjunction with other substances like alcohol
- many young people are using cannabis
- it may lead to suppliers introducing more harmful drugs into the community

The men were very concerned about the amount of cannabis coming into the community. They mentioned that "speed" has potentially already been distributed within the community.

Comments from a meeting at a community in Central Australia

- a person's mental health is affected as a result of chronic smoking of cannabis
- there are not enough services to prevent cannabis use or get people off using cannabis
- children and young people are unable to go to school and learn
- non-users encourage some young people to use cannabis because it keeps them quiet and the community calmer

They said that there was not a lot of alcohol or marijuana in the community, however, they did voice the opinion that marijuana keeps the young people quiet.

Comment from a meeting with men at a Top End community

- children not fed, supervised or cared for as their parents are too busy smoking, affected by smoking or trying to find/buy cannabis
- cannabis users are negative role models for children who are observing their behaviours
- cannabis is used to attract young girls
- children/young people will trade sex for cannabis

The group agreed that some older men are taking advantage of younger girls by supplying them with alcohol and drugs exchanged for sex. They said that this is done not only by Indigenous members of the community but also outsiders who come in late at night to prey on the young women.

Comment from service providers in a community in central Australia

- cannabis use removes sexual inhibitions that may constrain inappropriate sexual behaviours.

Based on the information from community meetings, submissions and other interviews with individuals and agencies, the Inquiry formed a view that the use of cannabis in Indigenous communities is widespread, particularly among young people, with first-time users apparently becoming younger. This is of great concern because of the harms associated with its use.

.....

The Inquiry was also mindful that in a number of recent cases of sexual assault of Indigenous children, there was anecdotal evidence that cannabis was a factor present in the cases. Cannabis was mentioned as either affecting the alleged perpetrator's behaviour and actions or was supplied to victims prior to the assault taking place. While the Inquiry could not find any research that explores the prevalence or nature of this co-occurrence, it was a matter of concern to the Inquiry.

In identifying how to best respond to the problems of illicit drug use, and of cannabis in particular, the Inquiry acknowledges the need for action in three areas - prevention, intervention and enforcement. The Inquiry noted the comments of Dr Alan Clough, based on his research and quoted in a submission to the Inquiry from the NT Police:

... policing efforts, including the Remote Community Drug Desk, have clearly had an impact on reducing the availability of illicit drugs in Arnhem Land and have probably inhibited the further expansion of trafficking and the diversification of the drug trade to include harder drugs ... from a public health and harm reduction perspective, since remote communities have none of the drug and alcohol education, prevention and treatment services normally available elsewhere in Australia, and since the harmful consequences of drug and alcohol misuse remain serious problems in many remote Indigenous communities, vigorous enforcement to control supply is the only feasible and practicable arm of harm reduction available in these settings.

There appears to be an overall lack of culturally appropriate drug treatment services for Aboriginal people. This is exacerbated in remote areas where treatment and diversion options for illicit drug use are extremely limited.

Many of the effects of cannabis identified by community members are supported by the observations and results of the limited research undertaken in relation to cannabis use in Indigenous communities. The literature regarding this is discussed in Part Two of this report.

Recommendation

70. That government develop and implement a multi-faceted approach to address the abuse of illicit substances in Aboriginal communities, in particular cannabis abuse, including prevention, intervention and enforcement strategies which recognise:
- a. the geographic context of substance abuse, that is, urban and remote locations and the implications this has for effective prevention, intervention and enforcement
 - b. population-based, youth-focused prevention and intervention strategies that integrate substance abuse, mental health, and other health and welfare concerns into youth programs.



20. Community justice

20.1 Dialogue and Aboriginal law

There needs to be a real dialogue between these two systems of law so we can move away from the colonial mud slinging and find some real answers to real problems. Of course this will mean that there needs to be some true communication between these two systems of law. That is the real Aboriginal Traditional Law and the NT legal system...We are ready to live with one foot in both systems of law; can we find others on the other side who are ready to stand and work with us for the good of this country?

Rev. Djiniyini Gondarra – press release 19 May 2006

The Inquiry believes an opportunity exists in the Northern Territory for mainstream law and culture to work together with Aboriginal law and culture to create a unique, prosperous and positive living environment for all Territorians.

The Inquiry is of the view that government and mainstream lawmakers should begin meaningful dialogue with Aboriginal law-men and law-women as soon as possible.

The Inquiry was told that many of the problems that presently exist in Aboriginal communities, including the sexual abuse of children, are a result of a breakdown of law and order. During consultations, it was a regular and consistent complaint and observation that many people were not respecting either Aboriginal law or Australian law.

The Yolngu people want more control in the way that the justice system is delivered. They want more community involvement. At present a lot of people do not take the white fella law seriously. At the same time many people, particularly the young, do not respect the Yolngu law. We have a situation close to anarchy where neither law is followed.

Yolngu Elder

During community consultations, there was an overwhelming request from both men and women, for Aboriginal law and Australian law to work together instead of the present situation of misunderstanding and confusion.

We need to stop looking at the differences in the two laws and look at where they meet one another.

Burarra Elder

We want our Yolngu law to be written alongside the mainstream law so that everyone knows where they stand and it is clear.

Yolngu Elder

As a result of its consultations, the Inquiry is of the view that Aboriginal law is a key component in successfully preventing the sexual abuse of children.

The rationale behind this conclusion is that it is much more likely that Aboriginal people will respond positively to their own law and culture. They will not respond as positively to a law and culture imposed upon them. Most Aboriginal people spoken to by the Inquiry still viewed Aboriginal law as being at the core of their identity (this included urban-based Aboriginal people who felt a similar sentiment but in a modified context). They see it as a vital key to restoring law and order within their communities. There is still extremely strong resistance to a wholesale acceptance of Australian law at the expense of Aboriginal law.

The Yolngu have a law to which every member of that society has assented to. The colonial system is something that is coming at them externally and something that they have never assented to. There is still to this day a very strong resistance to this external law.

Yolngu Elder

The Inquiry was told that, at present, Aboriginal law and culture is breaking down. The lack of support from mainstream law and culture means that it is constantly misunderstood, disrespected, over-ridden and undermined. Consequently, Aboriginal people feel disempowered and powerless to deal with “new” problems such as family violence and the sexual abuse of children.

Community Elders want to sit down with the Australian Law lawmakers and find a way that they can reassert their traditional laws with the backing of the Australian Law. Attitudes would change to abuse and violence. At present everyone just accepts it because

.....

they feel powerless to do anything about it. If this power is restored then there will be a snowball effect and soon attitudes will change.

Walpiri Elder

Australian law has knocked us out.

Western Arrente Elder

The Inquiry has heard and seen enough to confidently assert that there can be no genuine and lasting success in dealing with the dysfunction in Aboriginal communities (including child sexual abuse) unless Aboriginal law is utilised and incorporated as an integral part of the solution.

We need to breathe life back into the old ways.

Anindilyakwa female Elder

This can only be done through ongoing dialogue between the lawmakers of the two systems.

The Inquiry acknowledges that a stumbling block to this dialogue occurring is a general misunderstanding and misapprehension about Aboriginal law. While an analysis of the complexities, intricacies and deeper meanings of Aboriginal law are beyond the scope of this report, the Inquiry has, through its consultations and research, been able to glean some understanding of what Aboriginal law is and what it is not.

The Inquiry believes there is a misapprehension that the present violence and abuse existing in Aboriginal communities has a pathological connection to Aboriginal law.

These views are rejected by the people consulted by the Inquiry and by other authoritative sources. (Gordon et al, 2002; LCRWA 2006; HREOC 2006)

Based on its own consultations and research, the Inquiry rejects the notion that Aboriginal law itself is connected to causing, promoting or allowing family violence or child sexual abuse.

The Inquiry's experience was that there was generally more overall dysfunction in urban centres and those communities where Aboriginal law had significantly broken down. In the more remote, "traditional" communities, there was still dysfunction but often on a lesser scale.

The Inquiry was told that the foundation of Aboriginal law is "natural law". That is, law that exists in nature and is not made by man. The "natural law" is permanent and unchanging. The practical devotion to this "natural law" constitutes the foundation for Aboriginal law.

When the earth came into form and was created the Madayin (law) was there at the same time.

When humans first breathed, the Madayin was there already. The Madayin tells us who we are at law, who belongs to which estate, who has the right to resources on each estate, and it tells us our rights and obligations and the way we should live. This is not something man has made up.

Yolngu Elder

The majority of the Aboriginal people consulted by the Inquiry understood that it is impossible to restore Aboriginal law to the way it was in pre-colonisation times. However, Aboriginal law is clearly not confined to pre-colonisation times. While the "natural law" itself exists as a *solid unchanged table over which the tablecloth of whitefella law has been thrown*⁶¹ and cannot be changed, the Inquiry was told that the Aboriginal law that ensures compliance with this "natural law" has changed and can continue to change to reflect the changing world. The only requirements of "new law" are that:

- it is consistent with the "natural law"
- it creates a state of peace, harmony and tranquillity among the community
- it is assented to by the members of the community.

The Inquiry was told that while Aboriginal law can change, it had not been given the support or opportunity to appropriately evolve or adapt to deal with "new" problems, such as family violence and child sexual abuse that did not exist in pre-colonisation times.

It is in assisting and supporting the adaptation, modification and evolution of existing Aboriginal laws and the development of new laws that meaningful dialogue between the two systems of law is so vital.

The traditional fences have broken down and we need to repair them.

Gunbalunya Elder

61 From a Western Arrente Elder

.....

The Inquiry observed that many Aboriginal people are struggling to understand the “mainstream” modern world and law. They therefore do not know how to change Aboriginal law so that it works positively within the framework of the modern “mainstream” world.

In the old days we were going in a straight line, now we turning around and going in different directions.

Burarra Elder

Whitefella law is very slippery, like a fish.

Anindilyakwa Elder

Many of the Aboriginal people consulted by the Inquiry want to engage in dialogue with the “mainstream” lawmakers to work out how Aboriginal law can be adapted, changed or made so that it still respects the “natural law”, but also works smoothly within the mainstream system and does not conflict with it nor with International human rights standards.

The Inquiry understands that such an exercise in “legal development” has never been seriously attempted in post-colonisation Australia.

The Inquiry believes that in recent times any discussion about Aboriginal law has focused only on where it conflicts with mainstream law in the areas of “payback” and “traditional marriage”. Many Aboriginal people consulted by the Inquiry stated that their law had become weak as their sanctions were not supported by the mainstream law. The Inquiry adopts a position that any sanction that is inconsistent with international human rights cannot be supported by the mainstream law.

However, as the LRCWA (2006) pointed out in its report, some traditional physical punishments will not be unlawful. The LRCWA reached a conclusion that the lawfulness or otherwise of traditional physical punishments must be determined on a case-by-case basis. They also noted that such practices, if conducted for overall cultural benefit, do not necessarily conflict with international human rights (pages 137-148 LRCWA Report).

While not advocating violent punishment, clearly there is a need for dialogue between the two systems of law with a view to developing guidelines about the use of some (agreed) traditional punishments. Such dialogue may lead to a situation where modified traditional sanctions could be legally exercised for breaches of Aboriginal Law. It could

also mean that, in certain circumstances, courts could lawfully bail offenders to undergo sanctions for breaching the Aboriginal Law. Such dialogue could have a focus on the adoption of non-physical sanctions.

While these issues are generally ignored by the mainstream law, the Inquiry gained the impression that they are extremely important to Aboriginal people. The Inquiry notes that the *Northern Territory Law Reform Committee’s Report on Aboriginal Customary Law* reached the same conclusion and recommended in 2004 that the government establish an inquiry with a view to formally recognising certain traditional sanctions.

The Inquiry does not suggest an inquiry is necessary but is strongly of the view that there needs to be dialogue in relation to the issue.

The same can be said for “traditional marriages”. Provided such “marriages” are entered into by consent and that there is no sexual contact until after the “wife” is 16 and sexual contact is with consent, then there is no unlawful activity. Many of the Aboriginal people spoken to by the Inquiry were not aware of legal issues such as “age of consent” and “consent” generally.⁶² Dialogue is needed in relation to this issue.

One positive initiative where Aboriginal and non-Aboriginal lawmakers have had dialogue and combined the two laws is the *Mawul Rom Project*.⁶³

The *Mawul Rom Project* is named after an Aboriginal conciliation ceremony. The project involves a training program designed to teach people mediation and leadership skills from both an Aboriginal and mainstream cultural perspective.

The project is relatively new but is exceptionally well run by a knowledgeable group of people. The Inquiry considers this project to be an extremely valuable resource and perhaps one that could be utilised by government agencies such as FACS and the Police to develop protocols for the mediation that is invariably necessary when allegations of child sexual abuse are made within a

62 The Inquiry notes that it took Yolngu language experts three years to accurately translate the legal concept of “consent” into Yolngu – The agreed translation used more than one word – (*galanga* (skin) *nayathama* (take) *jalmaru* (without someone’s desire).

63 The *Mawul Rom Project* has a comprehensive website at www.mawul.com

community. The project could also provide or recommend trained, culturally appropriate mediators to assist with this task.

This example only touches the surface of what positive initiatives are possible if dialogue is begun.

The LRCWA formed an ultimate view that the continuing existence and practice of Aboriginal law in Western Australia should be recognised, with such recognition to occur within the existing framework of the Western Australian legal system.

This was termed “functional recognition”, which is recognition of Aboriginal law for particular purposes in defined areas of law. This approach allows for a variety of methods for recognition. The LRCWA identified two broad categories of recognition, affirmative and reconciliatory.

In the affirmative category, the objectives of the LRCWA’s proposals are the empowerment of Aboriginal people, the reduction of Aboriginal disadvantage, and the resolution of problems and injustice caused by the non-recognition of Aboriginal law in the Western Australian legal system.

In the reconciliatory category, the objectives of the LRCWA’s proposals are the promotion of reconciliation and of pride in Aboriginal culture, heritage and identity. This would primarily be encouraged by “constitutional recognition”. The Inquiry understands that the Northern Territory Statehood Steering Committee is giving consideration to this and commends such an approach.

It must be recognised that the intent of the LRCWA Report is not to restore Aboriginal law structures, systems and methods to the state they were in prior to colonisation. The intent of that report is to encourage the searching out of and the recognition of the several positive strengths in Aboriginal law and utilising those strengths to achieve successful outcomes.

One of the LRCWA Report’s primary recommendations is that any recognition and application of Aboriginal law must be consistent with international human rights standards. The Inquiry agrees with this recommendation.

The LRCWA Report also goes to great lengths to explain that the acknowledgment, recognition and application of Aboriginal law structures, systems and methods does not create a separate system of law. The report’s recommendations enable Aboriginal law and culture to be recognised *within* the Australian legal system:

because recognition is demanded under general principles of fairness and justice and in order to achieve substantive equality for Indigenous Western Australians.

LRCWA Report – page 13

The Inquiry agrees with this approach and it is consistent with the approach being sought by Aboriginal people during the Inquiry’s consultations.

The ideal would be to take the positive aspects of culture and reaffirm and strengthen them and combine them with those aspects of the dominant culture that can be readily and positively adopted by Aboriginal people

Alyawerre Elder

The Inquiry notes that the present perception of many Aboriginal people is that the media and the government are always making assumptions about Aboriginal law that are disrespectful and rooted in ignorance.

The LRCWA Report notes that its recommendations:

seek not only to empower Aboriginal people by creating an environment where Aboriginal people can build and exercise their capacity to make decisions that affect their everyday lives, but also to bring respect to Aboriginal people, law and culture.

LRCWA Report – page 38

The LRCWA recognised that the only way to achieve this goal was to:

- *acknowledge that Aboriginal people were ruled by a complex system of laws at the time of colonisation and give appropriate respect and recognition to those laws within the mainstream legal system*
- *introduce statutory provisions and guidelines requiring courts and government agencies to take account of Aboriginal law in the exercise of their discretions where circumstances require*
- *encourage the institution of community-based and community-owned processes and programs that can more effectively respond to local cultural dynamics and needs*
- *institute substantially self-determining governance structures, such as community justice groups, that are empowered to play an active role in the mainstream justice system, as well as create*

community rules and sanctions to deal with law and order problems on communities

- establish Aboriginal courts which encourage respect for Elders by involving them in the justice process
- encourage the involvement of Aboriginal people in decision-making on matters that affect their lives and livelihoods
- ensure constitutional recognition to accord Aboriginal people respect at the very foundation of the law
- remove bias and cultural disadvantage within the mainstream legal system.

LRCWA Report – pages 37-38, 72

Given the uniqueness of the Northern Territory, particularly its large Aboriginal population and the strength of culture that has survived, there is potential for it to become a world leader in achieving these goals, developing new structures, methods and systems that see Aboriginal law and mainstream law successfully combined and bringing a newfound strong respect to Aboriginal people, law and culture that will benefit the whole of the Territory.

The Inquiry believes that the first step is for the government, along with members of the legal profession and broader social justice system, to identify the relevant law-men and law-women in each region (including those in urban areas). A framework and forum for regular ongoing discussion with these Aboriginal lawmakers, with the assistance of interpreters and “cultural brokers”, needs to be established.

The Inquiry believes that these small steps, which create the space for dialogue, will ultimately have a positive impact on the Northern Territory. This includes restoring law and order and reducing child sexual abuse in Aboriginal communities.

In addition to this dialogue, the development of Community Justice Groups and Aboriginal Courts provides mechanisms to put that dialogue into action.

Recommendations

71. That, as soon as possible, the government facilitate dialogue between the Aboriginal law-men and law-women of the Northern Territory and senior members of the legal profession and broader social justice system of the Northern Territory. That such dialogue be aimed at establishing an ongoing, patient and committed discourse as to how Aboriginal law and Northern Territory law can strengthen, support and enhance one another for the benefit of the Northern Territory and with a specific emphasis on maintaining law and order within Aboriginal communities and the protection of Aboriginal children from sexual abuse.
72. That, based on the dialogue described in the Recommendation above, the government gives consideration to recognising and incorporating into Northern Territory law aspects of Aboriginal law that effectively contribute to the restoration of law and order within Aboriginal communities and in particular effectively contribute to the protection of Aboriginal children from sexual abuse.

20.2 Community Justice Groups

It became clear during the Inquiry’s consultations (and based on what the Inquiry learnt about *Law and Justice Committees*) that some headway might be made in relation to reducing criminal behaviour in Aboriginal communities, including the sexual abuse of children and the over-representation of Aboriginal people in the criminal justice system, if there was:

- increased Aboriginal participation in the operation of the criminal justice system
- development of community owned justice processes.

The LRCWA reached the same conclusion in its report following its six-year inquiry. The LRCWA’s primary response to this was to recommend the establishment of *Community Justice Groups*. The Inquiry agrees with this response.

It is also noted that the Northern Territory Law Reform Committee's *Report on Aboriginal Customary Law* made the following recommendation in 2004:

Recommendation 4: Law and justice plans

Aboriginal communities should be assisted by government to develop law and justice plans which appropriately incorporate or recognise Aboriginal customary law as a method in dealing with issues of concern to the community or to assist or enhance the application of Australian law within the community.

Law and justice committees

Community Justice Groups presently operate successfully in Queensland. They have existed previously in the Northern Territory as Law and Justice Committees. It is relevant to examine the history of these committees as it provides some valuable lessons for future efforts to establish similar bodies.

In 1995, the Northern Territory Government initiated a strategy called the Aboriginal Law and Justice Strategy (ALJS). This strategy was a response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The ALJS was run from the Office of Aboriginal Development.

The ALJS was designed to achieve the following:

- at a community level, the strategy would invest in Aboriginal social and community development and building of local strengths to address community concerns. The strategy would also formalise community justice plans
- at a regional level, the strategy would establish a participatory decision making arrangement
- at a Territory level, the strategy would develop policies for priority and emerging issues affecting Aboriginal people.

The ALJS commenced in practical terms in 1995 in the community of Ali Curung. The ALJS was introduced in Lajamanu in 2000 then in Yuendumu in 2002. The connection between Ali Curung, Lajamanu and Yuendumu is that they are all Walpiri communities.

The key objectives of the ALJS were:

- to increase community accountability and responsibility

- to establish a community justice framework at community level
- to maximise community participation in the administration of justice
- to reduce the over-representation of Aboriginal people in the criminal justice system
- to have a structure that could interface with government and to coordinate services.

The Inquiry was told that the practical operation of the ALJS involved a government employed facilitator (known as a "cultural broker" or "external planner") who would work on the ground assisting the community to achieve the above objectives. This would involve:

- assisting the community to appoint a law and justice committee
- facilitating regular meetings of the committee
- facilitating quarterly workshops between the committee and government (NT and Australian) and non-government organisation representatives. These workshops were the only forums that brought disparate community groups and residents face to face with a coordinated group of Australian and NT Government representatives and NGOs
- assisting the committee with drafting documents
- acting as a resource for the committee
- reporting community concerns to government.

The Inquiry was told that the ALJS was instrumental in:

- establishing men's and women's night patrols, safe houses, dispute resolution practices, role and peer modelling programs, diversionary programs and protocol agreements between the relevant communities and government and non-government agencies and organisations
- conducting research into Aboriginal views, understandings and perspectives of government structures, policies and actions. This provided vital information for government to recognise areas that needed to be addressed
- establishing a wider committee, the Kurduju Committee, that was formed from representatives of all three of the participating communities. This allowed a forum for the sharing of information and a wider support base.

Significantly, the Inquiry was told that the ALJS was responsible for breaking down many of the barriers that existed in relation to the effective delivery of services and in relation to the interaction of Aboriginal people with the dominant culture. This included:

- greater community understanding and confidence in the administration of justice
- greater rapport and relationships with government agencies
- a greater voice for women's issues.

The Inquiry was particularly interested in a workshop that took place on 25-26 November 2003 involving the Yuendumu Law and Justice Committee, Australian and NT Government representatives (including representatives from FACS) and NGOs.

The Inquiry was informed that, during the course of that workshop, the Yuendumu participants (of which there were 20, including both men and women) raised the issue of child protection. This was not on the official agenda but the Yuendumu participants were concerned due to a recent episode of child sexual abuse coming to light that had been a shock to the community. The Inquiry notes that it is significant that the Yuendumu participants were comfortable in raising this issue within this forum. By the end of the forum the Yuendumu participants had indicated that:

- there was a general lack of awareness among Yuendumu residents of how local residents should or could respond to child sex abuse
- the practices of FACS at community level were perceived as secretive
- the community wanted a role in addressing, in partnership with FACS, the issue of child protection
- the community wanted direction and assistance from the government as to how it could address the issue of child protection and child sex abuse.

The Inquiry was told (and also viewed minutes from the workshop) that it was agreed by all present that a dedicated "Youth Committee" should be set up to tackle these issues. The "Youth Committee" was to include community and government representatives. A meeting was scheduled for this sub-committee in February 2004. However, the nominated government representatives do not appear to have followed through with this meeting,

the committee never got off the ground and the issue was not raised again.

The Inquiry notes that this appears to be a missed opportunity for developing a body that could have raised awareness of child sex abuse and developed ways, at the community level, to prevent and deal with it. On a positive note, this story indicates that given the appropriate forums, structures and support, Aboriginal communities are capable of raising and dealing with serious issues such as child sex abuse.

In 2005, the ALJS was discontinued. This was still a sore point for many people at the relevant communities when the Inquiry visited. Many people were confused as to why the ALJS stopped, particularly when, from their perspective, it was working well and achieving positive outcomes.

The Law & Justice Committee brought back the law and was running very strong. We met every Monday and Friday us men and women. We met once a month with Jackie or Peter [the government officers supporting the program]. We got the school involved and also the Council, shop and police. We had a good relationship with police and the court. We stopped the violence in the community. There was still a little bit but it was dealt with straight away. The night patrol was strong and the parents in the community were getting stronger because they knew we could really support them and back them up. We liked that committee because it let us match them two laws together. Then one day government said that we had no right to mix the two laws together and the committee was finished up. They just took Jackie and Peter away from us and we don't know why. Now things are getting worse out here.

Walpiri Elder

The Inquiry found it difficult to ascertain precisely why the ALJS had ceased. Of particular concern to the Inquiry was that it appeared to have ceased without any notice, any independent evaluation of its success or otherwise, or any consultation with the communities concerned. Whatever the reason, the result has been further disempowerment and disillusionment for those communities.

When the Law and Justice Committee fell over it broke people's spirits, disempowered them further and brought shame in the eyes of the community.

Walpiri male Elder.

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The Inquiry's concern is amplified on the basis of its understanding that the Yuendumu program was aiming for 10-year outcomes which would have taken it to 2012.

Some representations have been made to the Inquiry as to why the ALJS may have been discontinued. These are important to consider as they may assist in guiding future efforts to establish a similar strategy. These representations include:

- an attitude of the bureaucracy to not support participatory projects
- a belief that the project was too resource intensive
- a failure to develop an intended legislative framework for the strategy
- a belief that the strategy was slow and had limited outcomes
- the “handballing” of the strategy to different departments
- inter-clan favouritism emerging in the court process
- a belief that the ALJS had done its job and communities should be able to run it themselves without government support.

The overwhelming weight of evidence received by the Inquiry is that the ALJS was working well, was embraced by the community, was on target to deliver many positive outcomes and was wanted in many other communities.

The ALJS was also considered by many external sources as being “innovative” and of “national value”:

The Northern Territory has also been innovative in supporting grass roots Indigenous community justice initiatives, a number of which are developing local strategies to deal with family violence issues. For example, the Lajamanu and Ali Curung communities have both developed Law and Justice Plans which extend the powers of Tribal Councils to resolve family violence disputes. Lajamanu has plans to expand the use of outstations for offenders a part of a diversionary program and has been chosen to participate in the development of a National Strategy under MCATSIA. (Blagg, 2000)

The reliance on a holistic approach, coordination and the development of partnerships are themes now common to most federal, state and territory programs

and services. But these issues are generally considered from the perspective of the government agency, not from the perspective of the Indigenous community. Each government agency and program has its own conditions and terms. The complexity at the community level can be overwhelming. Northern Territory practice in the field of law and justice participatory planning, at an appropriate pace, culminating in the signing of a formal agreement between all government, non-government and community agencies (exemplified by the Ali Curung and Lajamanu Law and Justice Plans) may offer some precise planning principles of national value. (The Allen Report, 2001)

Community Justice Groups

The proposed Community Justice Groups would possess much the same features as the former Law and Justice Committees. Specifically, groups should:

- have the support of all relevant government departments and all government departments to coordinate their input to ensure the support is effective
- be developed through effective, comprehensive and ongoing consultation with the community
- be established voluntarily and not super-imposed on the community
- have flexibility so that the functions, roles, processes and procedures can be determined by each individual community
- be owned and driven primarily by the community
- respect and work with, not against, traditional structures and leaders
- have balanced gender, family and skin group representation
- have adequate ongoing funding and resources.

The program will require monitoring to ensure that it is developed in each community and, once established across the Territory, it needs to be subject to ongoing and independent evaluation.

In practical terms, the Inquiry believes that what is first required is at least six “cultural-brokers/external planners” to cover the various regions in the Territory. The Inquiry envisages that this would tie in with the shire system.

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These “cultural-brokers/external planners” would be centrally based in their relevant region and would be responsible for all of the communities in that region.

The role of the “cultural-brokers/external planners” would be similar to that seen in operation with the Law and Justice Committees. They would facilitate the development of each community’s Community Justice Group, deal with issues that members of the group may not be equipped to deal with, provide ongoing motivation and support, provide administrative support, assist the community to identify their strengths and encourage them to build on those strengths. They would also identify problems or deficiencies, organise necessary skills training for the group and provide an interface between the group and government departments and NGOs.

The key to creating effective structures is significant Aboriginal input and ongoing government support, as the following statements indicate:

We want a model that is not going to be another exercise in taking away more of our traditional structures power and authority. We want substantial input.

Yolngu Elder

While Community Justice Groups in each community would have their differences, the principles underpinning them would be the same.

The Inquiry suggests that over time the government should consider providing statutory backing to Community Justice Groups.

One concern expressed to the Inquiry about Community Justice Groups was that they may be dominated by a particular person or family to the exclusion of others and that they may include sexual offenders. The Inquiry’s answer to this is that group membership must be subject to criminal history checks that exclude persons who have offences of violence within the five-year period preceding the check. Group membership must also provide for equal representation of both men and women from all relevant family, clan or skin groups.

It will be a role of the “cultural-brokers/external planners” to ensure that the group is a properly representative one.

The role of government will be to assist the establishment of these groups and provide them with ongoing support. It is not to control these groups or dictate their roles.

The potential role for Community Justice Groups is multi-faceted and will depend on each individual community. Among other things, the group would be able to:

- set community rules and sanctions (this could cover things such as school attendance, youth curfews, rules as to appropriate sexual behaviour, Aboriginal laws etc with sanctions including fines, banishment etc)
- work with government departments and NGOs in relation to identifying community needs and implementing programs, infrastructure or providing resources to address those needs
- assist in establishing Aboriginal Courts and provide a panel from which Elders could be chosen to sit with the Magistrate
- develop diversionary programs and participate in the supervision of offenders
- develop mediation, dispute resolution and healing programs
- present information to courts for sentencing and bail purposes
- ensure cultural learning is maintained and progressed
- provide a “first stop” and interface for government departments and NGOs
- act as a conduit for information and education coming in to the community.

The Inquiry refers to other potential roles of Community Justice Groups throughout this report. The Inquiry also notes that Community Justice Groups go well beyond a simple advocacy of a return to “Aboriginal ways”. It provides a mechanism for community control and input.⁶⁴

Existing NT Groups and Programs

In developing Community Justice Groups, an awareness of groups and programs that already exist in communities, and which are aimed at developing communities’ capacity to deal with law and justice issues, is helpful. These “resources” should be utilised to develop Community Justice Groups and should work in conjunction with the groups.

⁶⁴ For more information on Community Justice Groups see pages 97 to 123 of the LRCWA report on “The Interaction of Western Australian Law with Aboriginal Law and Culture”.

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The Inquiry commends two such programs that it believes are either having or are capable of having significant success. It is of interest to note that these programs operate on the same principles that underpin the previously existing Law and Justice Committees and the proposed Community Justice Groups. However, their role is much more limited.

The Maningrida Community Action Plan Project

The Maningrida Community Action Plan Project (MCAPP) commenced around September 2006. It is funded by DHCS and was initially given nine months of funding with a report due every three months.

The purpose of the project is twofold:

- Firstly, it is to assist with the response to, and recovery from, the recent well-publicised sexual assault case that occurred at Maningrida. The Inquiry has become aware that this particular case has had an enormous impact on the community of Maningrida. This impact demonstrates the need for these types of case to be handled sensitively and with an awareness of the cultural, family and general community ramifications.
- Secondly, the project is involving community members to develop an overall plan for the protection of children in Maningrida.

A key ingredient of the MCAPP is that it involves Aboriginal locals working in tandem with a non-Aboriginal project officer who has a long-standing relationship of trust with the community.

The two key principles of the MCAPP are that:

- change is only sustainable if community members are the primary designers of the solution
- the solutions must have both a cultural and “mainstream” element.

The Inquiry was told that the MCAPP works by encouraging community members to begin dialogue in relation to the issue of child sexual abuse. Through dialogue, the community’s perspective on the issue is established and areas of concern identified. The community is then encouraged to recognise its strengths and those who have the confidence to act on these strengths. Plans and timeframes are then developed and action is supported by the project.

This process is similar to that followed in relation to the Aboriginal Law and Justice Strategy.

The Inquiry was told that the MCAPP has so far determined the following things:

- There is limited knowledge and understanding in the community as to the nature of child sexual abuse, the effect it could have on children and the laws surrounding it.
- There is much confusion and misunderstanding as to the “mainstream” legal process.
- There is a strong need for family mediation to help work through the distribution of blame and feelings of shame that are exacerbated by the cultural complexities of family relationships.
- There needs to be a better process that gives people confidence in the response to the making of child sexual abuse allegations.

The Inquiry regards the MCAPP as an extremely valuable project and one that can be utilised to both establish a Community Justice Group and help guide reform in relation to the mainstream response to child sexual abuse in Aboriginal communities.

The Raypirri Rom Project

Raypirri has many meanings but, in essence, means self-discipline and self-respect. Rom means “law”. Raypirri Rom teaches cultural respect for people, land, rules and responsibilities.

The Raypirri Rom Project (RRP) is an 18-month pilot program funded through a bi-lateral agreement. It is based on a report prepared by the late Mr Djerrkura.⁶⁵

It is a community-driven program and, like the MCAPP, it has a number of similarities with the ALJS. It involves a non-Aboriginal project officer who facilitates workshops in the communities. The aim of these workshops is to bring people together, encourage dialogue and identify strengths, and to make the cultural “glue” of the community stronger.

From these workshops, each community will identify a community coordinator who will further appoint

⁶⁵ Mr Djerrkura OAM was a senior elder of the Wangurri Aboriginal clan of the Yolngu people.

community facilitators. The community coordinators and facilitators will be used to sort out community issues in a way that is culturally appropriate to that community.

The Inquiry was informed that the key strength of this program is that its roots lie in community-based ownership. The key idea of the program is to use a holistic and traditional health approach to solve community issues.

Again, the Inquiry believes this is a valuable project and one that works with a Community Justice Group. The concept of having community-based local coordinators and facilitators is a good one provided they are supported by a central non-Aboriginal “cultural-broker”.

Many of the communities the Inquiry visited noted the importance of having a non-Aboriginal external person involved in these projects as they were able to operate outside of any family or cultural constraints and could act as an intermediary and mediator in circumstances where locals may be precluded from doing so.

Recommendations

73. That the government commit to the establishment and ongoing support of Community Justice Groups in all those Aboriginal communities which wish to participate, such groups to be developed following consultation with communities and to have the following role and features:

Role of Community Justice Groups

- a. Set community rules and community sanctions provided they are consistent with Northern Territory law (including rules as to appropriate sexual behaviour by both children and adults)
- b. Present information to courts for sentencing and bail purposes about an accused who is a member of their community and provide information or evidence about Aboriginal law and culture
- c. Be involved in diversionary programs and participate in the supervision of offenders
- d. Assist in any establishment of Aboriginal Courts and provide a suitable panel from which Elders could be chosen to sit with the magistrate

- e. Be involved in mediation, conciliation and other forms of dispute resolution
- f. Assist in the development of protocols between the community and Government departments, agencies and NGOs
- g. Act as a conduit for relevant information and programs coming into the community
- h. Assist government departments, agencies and NGOs in developing and administering culturally appropriate local programs and infrastructure for dealing with social and justice issues, particularly child sexual abuse
- i. Any other role that the group deems necessary to deal with social and justice issues affecting the community providing that role is consistent with Northern Territory law.

Features of Community Justice Groups

- a. Group membership that:
 - i. provides for equal representation of all relevant family, clan or skin groups in the community and equal representation of both men and women from each relevant family, clan or skin group
 - ii. reflects, as far as possible, the traditional authority of male and female Aboriginal Elders
 - iii. is subject to screening and a criminal history check.
- b. Flexibility to develop its own structures, functions, processes and procedures to deal with social and justice issues provided these allow and encourage input from the rest of the community
- c. The ongoing assistance of a government resourced “cultural broker” to facilitate meetings, assist with administration and provide general advice.

20.3 Aboriginal courts

Most jurisdictions in Australia now have exclusive Aboriginal courts. The Northern Territory is an obvious exception.

The Inquiry is aware that some will regard this as somewhat controversial. However, from the Inquiry's perspective an important issue is to provide a more comfortable setting for the victim. Aboriginal courts achieve this by being less formal and more culturally appropriate. They also encourage family support for the victim.

As is noted later in this section, the victim (or her or his representative) should be a party to the decision on whether the Aboriginal court should have jurisdiction in the particular case. It is acknowledged that, subject to appropriate legislation, only sexual assault cases at the lower end of the spectrum may be dealt with by such a court.

Other significant advantages of Aboriginal courts include the potential for reducing recidivism and gaining better outcomes for victims, families and communities.

In other states, it is noted that there has been a wider acceptance of services within the adult criminal justice system which are more culturally appropriate for Aboriginal offenders.

The LRCWA Report is enthusiastic about Aboriginal courts and makes the establishment of such courts in Western Australia one of its key recommendations. In support of this recommendation, the report quotes from an evaluation of the "Koori Courts" in Victoria. The evaluation identified the following achievements:

- The Koori courts have experienced reduced levels of recidivism.
- The rate at which defendants appear in court has improved.
- The breach rate for community-based orders has been reduced.
- The Koori community's involvement in the criminal justice system has increased.
- The Koori courts provide a less alienating court process for participants

- The Koori courts encourage cultural matters to be taken into account during sentencing
- The cultural authority of Elders and respected persons, and the Koori community in general has been strengthened.

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The Inquiry was told that the attendance rate of Aboriginal people at the *Nunga Court* in Port Adelaide was 80% compared with a below 50% attendance rate by Aboriginal people in other courts.

The LRCWA (2006) also commissioned a cost benefit analysis that found that for every dollar spent on an Aboriginal court in Western Australia there would be a saving of \$2.50 in the broader criminal justice system.

It was a common theme in the Inquiry's consultations that Aboriginal people wanted some ownership of, and greater involvement in, the court process. The Inquiry was told that when the NT Law and Justice Committees were operating, the committees would meet regularly before court and go through the court list. They would then sit in court and make recommendations to the magistrate. The Inquiry was told that this often resulted in more effective sentences.

In its written submission to the Inquiry, the Central Australian Aboriginal Congress Inc. stated that there:

needs to be a specialist magistrates court that deals with interpersonal violence, including sexual abuse. The court should be assisted by a sentencing circle in most cases made of senior Aboriginal leaders, both male and female, who would participate with the magistrate in sentencing and play a key role in determine acceptable standards and norms for the Aboriginal community through their deliberations. This court should have the discretion to either send a perpetrator to jail or to sentence the perpetrator to mandatory treatment in the community based specialist treatment service.

The key features of an Aboriginal court, as recognised in the LRCWA Report (2006), are as follows:

- Aboriginal courts adopt a different physical layout to mainstream courts. Proceedings are informal and the use of legal jargon is discouraged. The aim is to encourage better communication between the judicial officer, the offender and other parties involved in the process.

- Elders and respected persons have a vital role in all Aboriginal courts. Some speak directly to the offenders, while in other courts Elders and respected persons provide advice to the magistrate. The presence of Elders or respected persons in court can be effective in imparting a positive and constructive notion of shame. As well, Elders can provide valuable information to the judicial officer about the offender and relevant cultural matters.
- In most jurisdictions, Aboriginal courts employ an Aboriginal court worker, project officer or justice officer. This role provides an effective link between the general criminal justice system and the Aboriginal community.
- Each different Aboriginal court is developed in consultation with the relevant Aboriginal community and is reflective of their individual needs and views.

The Inquiry acknowledges that Aboriginal courts are more resource intensive than mainstream courts and can deal with fewer matters. The Inquiry also acknowledges that the success of any Aboriginal court also hinges on the availability of appropriate counselling and rehabilitative programs and services for Aboriginal offenders. However, the Inquiry believes that these issues can be overcome through sensible utilisation of resources, the cooperation of government departments (particularly Correctional Services) and NGOs, and effective dialogue with the Aboriginal people of the relevant community.

Another issue brought to the Inquiry's attention was the potential for Elders to have a conflict of interest. These issues are minimised by having more than one Elder or respected person sitting for each case and by having both a male and female Elder or respected person present. The Aboriginal justice officer also has a role to play in considering the suitability of particular Elders and respected persons for specific cases. The fact that the ultimate sentencing authority is retained by the magistrate also provides protection in these circumstances.

If a Community Justice Group was established in the relevant Aboriginal community, the requirement for equal representation from all family and other social groupings would provide a suitable pool from which Elders and respected persons could be chosen.

The Inquiry is also of the view that there would need to be ongoing evaluation and monitoring of Aboriginal Courts. This evaluation should be independent and consideration would need to be given to whether any legislative changes are required.

Community courts

The Inquiry acknowledges that the Northern Territory presently has what are called community courts operating in a limited sense.

A recent review of the community court program demonstrates that the process is effective (and often the sentences are tougher and the process "harder" for offenders), but that it is under-resourced and under-promoted. Present problems are that:

- it only operates when offender requests it
- the Elders selection process is not comprehensive
- there is no clear process for conducting a community court
- there is no proper training for participants
- there is not enough promotion of the court and encouragement for people to become involved
- interpreters are not used enough
- there is no clarity of roles (for example, who is responsible for ensuring participants attend)
- the process is not adequately supported by all members of the magistracy and by all service providers.

Not many of the Aboriginal people with whom the Inquiry consulted across the Northern Territory were aware of the existence of the community court. Many wanted their own court in which their Elders could participate on a regular, and not an ad hoc, basis.

The Inquiry is of the view that there could be specific Aboriginal courts that are named appropriately depending on the community in which they sit (for example, The Yolngu Court, or the Walpiri Court etc.).

The importance of naming the court in this way is that it gives the Aboriginal community some "ownership" of the court. It is also important that the court sit in the relevant community (for example, submissions received from people in Yirrkala said they wanted court in their community and not at Nhulunbuy).

The Inquiry believes it is crucial that any such courts sit on a regular, and not an ad hoc, basis. In this way, the traditional authority of the Elders of the community will be built back to a position of strength.

The Aboriginal courts in the major centres should be constituted by Elders drawn from the language group on whose land the court sits, e.g. the “Larrakia Court” in Darwin.

The Inquiry suggests that it should be the victim’s choice as to whether a matter is dealt with by the Aboriginal court. This empowers the victim but it does not require them to participate in the process. The victim’s participation should be voluntary.

The Community Justice Group of each community would be able to provide a panel of Elders for the Aboriginal court. There needs to be an Aboriginal court liaison officer responsible for organising the participants of the court. The court needs to be supported by *all* members of the magistracy and by relevant service providers.

The Inquiry also notes the need for court reform in the following areas to assist the operation of Aboriginal courts.

At present, the law is such that most ‘sexual offences’ are dealt with by the Supreme Court. There needs to be reform so that “sexual offences” of low to mid level seriousness can be dealt with in the Magistrates Court and, ideally, in an Aboriginal court.

There also needs to be legislative mechanisms that allow courts to have specific regard to traditional processes in a broader context than just sentencing, and power for courts to order persons to undergo traditional processes.

The Inquiry acknowledges that there is much work required before Aboriginal courts will be established. For this reason, the Inquiry has recommended that the process of dialogue with Aboriginal communities start, with a view to developing resource efficient, empowering and effective Aboriginal courts as soon as practicable. The Inquiry notes that the positive outcomes from the Community Court are an encouraging sign. However, the Community Court does not go far enough.

The Inquiry notes the positive outcomes experienced by Aboriginal courts in other jurisdictions and in particular notes the cost benefit analysis conducted in Western Australia as being strong support for this recommendation.

Recommendation

74. That, having regard to the success of Aboriginal courts in other jurisdictions in Australia, the government commence dialogue with Aboriginal communities aimed at developing language group-specific Aboriginal courts in the Northern Territory.



21. The role of communities

21.1 Introduction

A theme of this Inquiry has been that “child protection is everybody’s business” and that Aboriginal people have a vital role to play in creating positive and safe social environments for their children and young people. A range of roles have been proposed for Aboriginal women and men to assist them to determine the future of their communities.

These have included the development of (and participation in) community justice groups, the identification of community “champions” who can stand up for children and work to educate the community on the protection of children from harm, the employment of community members as “brokers” who can provide a tangible communication and facilitation link between professional services and the wider community, and the development of paid employment for community people in health, welfare and education - essentially creating a local Aboriginal workforce that is educated and supported to work to improve child, family and community wellbeing.

In the next sections, the Inquiry describes a model for community to promote children’s safety and protection.

21.2 Child safety and protection plans

A higher order means of creating a plan for action is the development of local child safety and protection plans in communities. These would provide an opportunity for the community to come together to discuss the issues of child safety and wellbeing that are specific to their community and develop a local plan to address these issues. In this regard, these plans would be as much about the process of engaging in a dialogue about the issue, as they would be about producing a community plan.

When the Inquiry visited communities and held meetings with men, women and service providers, it was impressed with the willingness of people to discuss the issue of child sexual abuse, even though it was acknowledged as a difficult subject to talk about. At many meetings, both men and women expressed a desire to continue

discussions about this issue and what they could do in their community about it. It was a frequent comment that up until now, nobody had come to sit down and talk with them about these types of issues. It would seem both timely and appropriate to build on this good will, enthusiasm and energy by a continued engagement in dialogue and assisting communities to develop their own child safety and protection plans.

They said that it was the first time that they ever been consulted as a group of men and that in past meetings with government representatives the meeting was either confined to the council office or involved a mixed group of men and women. The men were quite vocal and said that they really needed more education and information on the subject. They said that while they appreciated this meeting they saw it as being the first one and they wanted to have further sessions like this to discuss various issues....They said that the government must believe that they are capable and that they are a strong community who can do things themselves if given the necessary skills and opportunity.

From a men’s meeting with men in a Katherine district community

At an international level, the Inquiry is aware of the United Nations “Building Child Friendly Cities” strategy and the success of the Victoria’s Greater City of Bendigo being recognised by the United Nations as a Child Friendly City. Being declared a child friendly city requires a process of gradual improvement by the local community to respond to the needs and rights of children. It is a commitment by everyone to embrace the vision of children and strive to achieve a sustainable urban future for the city. At a national level, the Inquiry was made aware of the work of NAPCAN and its national *Child Friendly Communities* strategy, which incorporates the development of community action plans for the wellbeing and safety of children and youth. Under the strategy, local community members are supported to come together and develop their own local plans and actions.

In the Territory, an example of this was the Binjari Kids R Sacred Community Action Plan where a resource for the community was developed through workshops, meetings

and consultations within the community. The resource identified what the community saw as issues impacting on kids in their community - supervision, school, food, media, pornography, play, reading, positive discipline, alcohol and more. It came up with some strategies to address the negative ones and strengthen the positive ones. Action on the plan was sustained until the community council was dissolved.

The Inquiry was made aware of plans associated with issues such as alcohol management, volatile substances and crime prevention. However, the Inquiry could not locate anything that resembled a plan to address issues of child safety and wellbeing, formulated at a local community level and representative of the needs and strengths of a specific community. The only exceptions to this were the Binjari plan mentioned previously, and the FACS-funded Community Action Plan project underway in Maningrida. In regard to this, the Inquiry was impressed with the energy and enthusiasm of the community to develop its own action plan to address community issues of child safety and wellbeing when given appropriate resources and time.

The Inquiry formed the view that the development of local child safety and protection plans provide a mechanism for demonstrating that child protection is “everybody’s business”, are community-owned and controlled and can assist in identifying community strengths. They can also identify service needs and ensure the provision of more coordinated and appropriate service provision at a community level.

Responding to family violence

Within a child safety and protection plan, more direct consideration would need to be given to child protection.

The Inquiry acknowledges the inter-relatedness of the different forms of family violence. Child sexual abuse often occurs in a family beset by other violence issues, such as domestic violence and child physical abuse. A number of communities noted the need for adequate programs and resources to assist children and women (predominantly) who have to flee violent situations – either temporarily or permanently. They were clear that these programs should be culturally appropriate and involve the active participation of the local community if they are to succeed.

It was also clear from submissions and through consultations that the two main program responses on communities are safe houses and night patrols, and that these programs are tailored to local community need. However, these are not always effective as violence prevention approaches, despite general perceptions (by some areas of the government and NGO service sector) that this is what they are designed to do. It became apparent that assessment was necessary to determine which sorts of programs are effective at preventing family violence and what the key elements of such programs are, and to develop well-documented service models that can be adopted as part of comprehensive community violence management strategies. That is, to define what works and to incorporate successful models into “core service” agendas for violence prevention in urban, rural and remote Aboriginal communities.

Safe houses

Safe places for women and children (and sometimes men) fleeing violence are generally viewed as a critical part of a violence management strategy for many communities. In many of the communities visited by the Inquiry, and at the regional forums, the need for safe houses was consistently identified as a key service for keeping women and children safe from violence.

A number of community representatives suggested that there is, in fact, a need for three safe places in a community - one for women and children, one for men and, in the middle, a mediating place where the issues can be addressed, punishment decided and strategies put in place to help the perpetrator address their issues, heal the victim, and re-unite the family.

Concerns were expressed in many communities that, at present, the mother goes to the safe house and the father goes to jail and the family is split. Some communities noted that the safe house program is only effective if there is a strong person managing the facility – i.e. strong enough to resist spousal and community pressure about who gains access to the safe place.

One community representative at a regional forum commented that if they ever asked for money for such things as safe houses, they were given inch-thick application documents. The question was asked “Why can’t this be made simpler?”

Some communities have functioning safe houses or safe places, others have a designated place but it is no longer physically safe or suitable, or there is no one to manage it. Many communities have no safe place at all. While safe places should form part of a community violence strategy and to protect people from the threat of violence, it appears there is a need to evaluate these approaches to determine “what works”.

Night patrol

Night patrol services were seen as essential by many of the Aboriginal persons with whom the Inquiry consulted.

It was the Inquiry’s experience that a number of the night patrol services had ceased due to a lack of funding, resources and support. This included not only services in remote communities but the Darwin based service.

The Inquiry was informed that, at present, the Tangentyere Council in Alice Springs is the only body in the Northern Territory that is providing ongoing support to night patrols. The Inquiry was advised, however, that some night patrols had continued in the absence of external funding and support due to the dedication of volunteers (some of whom used their own vehicle to provide this service). This situation is unacceptable.

The Inquiry was told that night patrol is seen as important as it provides a culturally appropriate mobile service that can respond quickly to problems in the community in a culturally appropriate manner.

In many communities that the Inquiry visited, the night patrol had previously been extremely effective in maintaining law and order. The Inquiry was told that in one community when the night patrol fell over, the amount of alcohol consumption in the community ‘skyrocketed’, as did family violence.

The Inquiry believes that night patrol services are an important preventative measure in relation to child sexual abuse. This is because they are a “frontline” force that can protect children from risky behaviour and deter potential offenders. They are also an integral part of overall community justice strategies.

The Inquiry was told that, ideally, there would be a night patrol service for each clan in a community. The Inquiry

realises that this would be costly and difficult. At the least, however, the Inquiry believes that there should be a well-resourced and supported men’s and women’s night patrol service in those communities that express a need for such a service. It is anticipated that there could be a pool of potential night patrol workers that includes representatives from each of the relevant clans in a community. This is something with which a Community Justice Group could assist.

There was a concern expressed to the Inquiry that if night patrol services were to be properly established then they needed to be “real” jobs with proper pay and proper training. The Inquiry sees night patrols as an important avenue for employment in remote Aboriginal communities.

It was also suggested that the effectiveness of night patrols would be enhanced if there was a stronger working relationship with the police and better support from the police. Some communities were enthusiastic with the idea of police officers spending one day a week with the night patrol and vice-versa as part of a cross-cultural exchange of knowledge and understanding.

Recommendations

75. That the government actively encourage, support and resource the development of community-based and community-owned Aboriginal family violence intervention and treatment programs and any other programs that meet the needs of children and are designed to respond to the particular conditions and cultural dynamics of each community and commit to ongoing resourcing of such programs.
76. That the government, in conjunction with communities, develop violence management strategies for each Territory community, with a core services model to be developed based around the existing services and infrastructure available to run night patrols, safe houses and other related services available to Territory communities.

Recommendations (continued)

77. That, following on from Recommendation 76, a plan be developed to:
- a. assess the quality of current family violence approaches and safe place approaches in the Territory
 - b. increase the number of communities with safe house/places for women and children fleeing violence.

The Overarching Agreement between the Australian and Northern Territory Governments may be an avenue for funding the construction of safe places.

78. That the government support community efforts to establish men's and women's night patrols in those communities which identify a need for these services.
79. That each city, town, region and community through an appropriate body develop a local child safety and protection plan to address indicators of high risk in the area of child sexual abuse, prevention of child abuse generally and sexual abuse specifically. Such plans could be incorporated into community plans developed by local Boards established by the new local government shires and monitored through the Shire Plan, or alternatively in remote communities these plans might be prepared by the local community justice group.



22. Employment

Of greatest concern is the contribution unemployment makes to the general malaise and hopelessness experienced by Indigenous people in some communities.

The Inquiry found that an issue raised in a number of communities and in some of the submissions, was a lack of employment opportunities that provided real wages. The high rates of unemployment impacted on individual self esteem, disposable income, personal relationships and created a social environment of boredom and hopelessness. This environment did not encourage children to attend school. There was little motivation for parents to ensure their children attended school as the link between education and securing a better future through employment was no longer demonstrated.

In some community meetings, a comparison was made between the “old days” of the mission where everyone was engaged in productive work, and the modern day where few real wage-paying jobs existed for Aboriginal people.

Everywhere is white faces, in the old days all Yolgnu had jobs.

Comment from a meeting at a Top End community

In many communities, non-Aboriginal people were employed in positions such as teachers, doctors, nurses, police, council manager, community services managers, housing and maintenance managers, store managers. Apart from some exceptions where Aboriginal people were employed as health workers, education officers or Aboriginal Community Police Officers, most Aboriginal people who had employment, often part-time, were on the Community Development Employment Program (CDEP).

CDEP employment was not seen as a “real job” by most communities, but a number of activities or services would not be provided if CDEP did not exist, as it is relied upon to provide some sort of subsidised labour force. For example, many positions in stores, child care centres and community services rely on CDEP.

“There is a desperate need for real jobs and real wages, not just CDEP.”

“There is no motivation to work, CDEP kills people’s motivation, we would rather work and get proper pay.”

Comments from community meetings in two Katherine district communities

A further problem noted by the Inquiry was the impact of various “pilot programs”, or programs with short term funding. Some of these programs relied on local people to be trained and employed, usually with a contribution from CDEP, in order to deliver the programs on the ground in the community. They were often programs that were trying to intervene in, and provide services to address, social problems, e.g. family violence or substance abuse. These positions had the potential to cause stress to the employee because of the nature of community life and family relationships. This tended to contribute to feelings of hopelessness because people saw no point in being employed in a position that was personally stressful and had no security through a long-term funding commitment.

The Inquiry did note that in some communities concerted efforts were being made to employ Aboriginal people in real jobs. In one community the Inquiry visited, 100 non-CDEP jobs existed and were filled by local Indigenous people. This community was trying to develop strategies to increase the number of these real jobs. One area of potential work identified in a number of communities was that of community mediator/monitor, where Elders and other identified people would be employed in such positions because of their standing and cultural knowledge. An added benefit of this employment would be the reinforcement of the status of the Elders and culture.

In another community, the Inquiry met with a representative of a large mining company. As part of its “social licence to operate”, this company has a commitment to the employment of local Aboriginal people. An ongoing issue which compromises the employment of local young people is their poor educational outcomes. Although they may have completed Year 12, their studies often focussed on art or music, and their literacy and numeracy skills were not at a level that allowed them to be employed. To address

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this issue, the company is partnering with an Aboriginal organisation to develop their own training centre which will provide training and education in life skills, literacy and numeracy, as well as financial literacy and then specific job training skills. They hope to have 100 local Aboriginal people trained through the centre over the next three years. This partnership between private enterprise and local Aboriginal organisations seems to be a model that may have some success. The Inquiry has a view that a government agency (either Territory or Federal) should facilitate such links between the private sector, Aboriginal organisations and communities where they presently do not exist.

While the Inquiry was able to gain some insight into the problems of unemployment in remote communities, it was more difficult to identify the situation in urban environments.

The NT Government is a significant employer in the Territory. However, although there has been an *Indigenous Public Sector Employment and Career Development Strategy*⁶⁶ this appears to have delivered little in terms of significant increases in the proportion of Aboriginal people employed in the NT Public Sector (NTPS). Between 2002 and 2005, the number of Aboriginal people employed in the NTPS increased from 732 (4.6%) to 1156 (6.9%)⁶⁷. Given that Aboriginal people make up nearly 30% of the NT population, they are significantly under-represented in the NTPS. The number of senior and executive level positions held by Aboriginal people in the NTPS has only increased by 2.6% to 64 positions since 2002⁶⁸.

In its recent *Agenda for Action – A Whole of Government approach to Indigenous Affairs in the Northern Territory* (NTG:2005), the NT Government identifies a range of actions aimed at increasing Aboriginal economic participation and development. One such strategy is the *Indigenous Employment and Career Development Strategy 2002-2006*. It is the Inquiry's view that there will need to be a rethink of this strategy and a renewed effort to increase Aboriginal NTPS employees.

66 OCEP 2006, Northern Territory Public Sector Indigenous Employment and Career Development Strategy 2002-2006, Darwin: NTG.

67 OCEP 2006, Northern Territory Public Sector Indigenous Employment and Career Development Strategy 2002-2006 Progress Report for the period July 2005 to December 2005, Darwin: NTG, p.6.

68 Ibid.,p.7.

Underpinning the issue of employment is the need for Aboriginal people to receive an education that equips them with the literacy and numeracy skills that are basic to succeeding in real jobs. This issue has been discussed previously in the Education Chapter of this report.

The following recommendations reflect the Inquiry's view that what is needed is creative training and employment options; links with the private sector; the development of a supported local community workforce in the areas of health, welfare, community development, cultural mediators and brokers, as well as traditional trades, administration and management; and increasing the proportion of Aboriginal people in the public sector.

Recommendations

80. That further work be undertaken by DEET in regard to the development of innovative employment training options for Aboriginal communities in such areas as the creation and support of local industries, use of cultural skills and knowledge, community leader roles, and brokerage/liaison with external agencies, and that this be supported through adequately resourced adult education and training.
81. That efforts be made to develop a local workforce to address health and welfare issues within communities to provide a base of continuity for more transient professional responses, and linking professionals to mentor and support these workers.
82. That Government provide support for the development of Aboriginal people as local community development workers (with either defined or generic roles) to improve capacity, problem-solving and administrative self-sufficiency within communities.
83. That the NT Public Sector, led by the Office of the Commissioner for Public Employment and DEET, make renewed efforts to increase the level of Indigenous employment in the Northern Territory Public Sector and in the non-government and private sector respectively.



23. Housing

The shortage of Indigenous housing in remote, regional and urban parts of the Territory is nothing short of disastrous and desperate. The present level of overcrowding in houses has a direct impact on family and sexual violence, substance abuse and chronic illness, and results in devastating outcomes in terms of education and employment.

It is estimated that the Territory needs a further 4000 dwellings to adequately house its present population. Into the future, more than 400 houses will be needed each year for 20 years to keep pace with the demand. The increased funding commitments from the Northern Territory and Australian Governments will provide for 500 new houses per year for up to five years.

The waiting time for a house on the Tiwi Islands is 50 years – the average life expectancy of a Tiwi man is 48 years. So you can die waiting for a house.

Tiwi man

The NT Minister for Housing, Mr Elliot McAdam, noted in a ministerial statement delivered in June 2006, that the overcrowding in houses in Aboriginal communities is “strongly linked with massive exposure to substance abuse and household violence – not to mention sexual abuse and other violence directed against children.” The Minister went on to say that the “mathematics of the housing equation are that not only are we failing to meet needs – we are indeed falling behind. This is not a truth that has suddenly fallen from the sky; but a social reality that has been gathering pace for decades.”

At the invitation of the Australian Government, the UN Special Rapporteur on Adequate Housing, Mr Miloon Kothari, visited Australia in August 2006. He visited various locations across Australia, including Darwin, Alice Springs and Santa Teresa. In his preliminary report, Mr Kothari spoke of being “particularly disturbed by the adverse housing conditions in the Indigenous communities” he visited. He went on to say:

The Indigenous communities in both urban and rural areas in all States visited, are facing a severe housing crisis. This is occurring with respect to the unaffordability,

the lack of appropriate support services, the significant levels of poverty and the underlying discrimination. Most disturbing is the absence of adequate and comprehensive participation processes for Indigenous communities in decision-making forums, resulting in some cases in culturally inadequate solutions.

United Nations Special Rapporteur on adequate housing Mission to Australia, 2006 – Preliminary observations p7 www.ohchr.org/english/issues/housing/docs/preliminary_observations

Wherever the Inquiry travelled throughout the Territory, people would tell us the same story – lack of housing, inadequate housing, 10-20 people living in many homes, no privacy, families relegated to a single room in a house shared with several other families, toilets and showers not working due to excessive use, security issues, very young children being exposed to adult sexual behaviour, children exposed to pornographic magazines, videos and television, and vulnerable children living in close proximity to adults who are often intoxicated or violent or both.

In the words of a written submission from one non-government organisation involved in service delivery to Aboriginal people in the Top End:

Many sites struggle with both community and family violence issues. Children and families are living in often overcrowded, under-resourced housing that does not provide safety or protection to children. There are often no lockable rooms in housing and the overcrowding results in children being exposed to violence with no respite. Many children have told us about their inability to go to sleep due to being concerned for their safety. The community have also raised this issue detailing that even if violence is not occurring in their home they have limited protection from community violence due to the lack of security in their homes.

The present estimate of unmet housing need in the Northern Territory is \$1.2 billion – up from \$800 million six years ago. This represents 4000 dwellings and even this would only achieve an average occupancy rate of seven people per dwelling.

To exacerbate this situation, the population in these communities is expected to double over the next 25 years.

At the present rate of construction, it will take some 33 years to meet the existing unmet need; and by that stage, the increase in population will mean we are still 33 years behind demand.

Overcrowding is so bad there is no privacy in people's homes, and girls have to shower in their clothes. They then walk around in wet clothes and they get fungal skin infections.

Top End community resident

Snapshot of Indigenous Housing in the Northern Territory

According to the ABS Census of Population and Housing (2001), there are about 9,500 Indigenous households in the Territory – with only 25% in the process of being purchased or already owned outright, by the residents (see Part II). The majority of Indigenous people are renting their dwellings from private or public landlords.

The recent review of the Commonwealth Community Housing and Infrastructure Program (CHIP) (February 2007) found in respect of the Territory that:

- there are many different cultural sub-groups which should not necessarily be treated as one
- distinct wet seasons affect everything and limit the window for activity such as building to six months of the year
- despite exponential population growth (population has doubled in 25 years), there has been no major increase in funding to the Territory
- CHIP funding provides housing, but only maintains the status quo. It isn't enough to help the emerging disadvantaged
- insufficient focus on repairs and maintenance means that houses and infrastructure are often substandard, and do not maintain their original condition
- overcrowding, health and educational needs are not being met
- provision of housing and infrastructure (roads, water and power) is not increasing with population growth
- difficulties arise with budgeting across the 12 month CHIP cycle

- there is no direct correlation between CHIP and outcomes
- Indigenous Community Housing Organisations (ICHOs) have insufficient funding and skills to be able to fulfil reporting requirements (they require IT systems, business training etc).

The CHIP Report went on to identify a long list of future needs in the Territory including:

- increased focus on infrastructure development and maintenance
- culturally appropriate housing, including consideration of the needs of a transitional population
- increased access to mainstream funding e.g. Commonwealth Rent Assistance, which is presently unavailable to those in public or community housing
- improved service and infrastructure for the aged and disabled into the future as demand increases
- a focus on training and employment of local community to provide stable local workforce to help with repairs and maintenance, and also to target some possible income streams for community members
- provision of training in home maintenance and living skills to elevate quality of life, and ease transition into private tenancy
- planning of bulk construction to maximise potential for economies of scale.

Cost of construction

Between 1996 and 2006, funding for the provision of Indigenous community housing services in remote communities remained the same. However, the cost of constructing new dwellings rose over this period from an average of \$120,000 per home to an average of \$330,000 per home.

More specifically, it is presently costing \$280,000 – \$330,000 per house in Central Australia, depending on remoteness, and \$450,000 – \$470,000 per house in the Top End.

Construction costs are rising due to changes in the requirements of the Building Code of Australia and Environmental Health Standards, skill shortages within the construction industry, rising fuel and transport

costs and rising material costs, especially for steel. On the upside, it is anticipated that improvements in construction design, materials and health hardware will contribute to healthy living, and ensure houses require less maintenance in the future.

Additional financial commitments

In October 2006, the Chief Minister announced that the NT Government will invest a further \$100 million over five years for housing in remote areas, as part of a package of measures to improve housing outcomes for Aboriginal Territorians. This is on top of its existing annual commitment of \$32 million.

The Chief Minister also announced that Territory Housing would assume responsibility for existing remote housing programs, as well as for new funding.

It is noted that the key objectives of these initiatives are to:

- deliver more housing at less cost
- manage housing better
- support more Indigenous employment.

The other key element of the reform package announced by the Chief Minister is a new local government model designed to improve governance and service delivery.

The Australian Government has also committed \$140 million for expenditure on housing in the Territory in the next few years.

A new housing system

It is obvious that it is necessary to deliver more, lower cost houses that must also meet the needs of Aboriginal families. The government has also accepted the need for initiatives to support more local Aboriginal employment at every stage of the housing system. How the employment initiatives will work in practice remains to be seen and the Inquiry urges the government to ensure that local employment opportunities are genuine and backed by proper training and pay.

It is understood that the new Construction and Renovation Program is a larger, more long-term program focussed on some key target communities where the need is particularly acute. The program is intended to provide economies of scale, cost effectiveness and employment

and training opportunities for Aboriginal people because of the larger program and longer term commitments. It is intended to provide new housing, renovation of existing housing, and land servicing. Some houses will be provided to people who have jobs so they support the employment opportunities generated.

It is noted that the existing commitments will continue to be introduced so communities that are already on the program will still see work going on.

The new construction and renovation approach will consist of testing and trialling new products, new construction/assembly and manufacturing methods and a strategic repairs and maintenance approach.

All new housing will be “owned” by Territory Housing (under secure leases). This will rely on tenure being established or some form of agreement with communities.

This all indicates that governments are doing something, but not enough, and not fast enough. So much more needs to be done.

Indigenous employment through the accelerated housing program (and beyond)

Given the challenge of adequate employment for Aboriginal people in remote communities, the Inquiry notes the opportunities offered in the area of housing construction, maintenance and management. Accordingly, the Inquiry urges the government to ensure the creation of genuine employment and training opportunities for Aboriginal people, both locally and more broadly in areas such as:

- manufacturing, transporting and assembly or construction of housing components
- housing repairs and maintenance programs
- tenancy management
- property management
- support services.

Innovative housing approaches

Some communities noted that the past approach to residential construction of “straight lines” or rows of housing did not reflect traditional ways of living where extended family tended to live in groups. It was suggested that housing clusters be considered as a more culturally appropriate form of housing.

Similarly, communities told the Inquiry that housing is needed not just for family units, but for singles and older people, so grown children can still live in the community but independent of their parents, and grandparents can likewise have suitable accommodation for their needs. This would help to eliminate overcrowding in family homes.

The Department of Local Government, Housing and Sport advised the Inquiry that some work is being done in regard to these types of approaches to community housing. The Inquiry encourages further investigation of how this format of housing might be delivered.

Recommendations

84. Given the extent of overcrowding in houses in Aboriginal communities and the fact this has a direct impact on family and sexual violence, the Inquiry strongly endorses the government's reform strategy of critical mass construction in targeted communities, and recommends the government take steps to expand the number of communities on the target list for both new housing and essential repairs and maintenance in light of the fact that every community needs better housing urgently.
85. That, in recognition of the importance of community employment in addressing the existing dysfunction, and the need for more community housing, an intensive effort be made in the area of training and employment of local Aboriginal people in the construction and repair and maintenance of houses in Aboriginal communities, with input from DEET as appropriate.
86. That further consideration be given to:
 - a. the concept of cluster housing in communities to accommodate extended family groupings as a culturally functional living arrangement
 - b. flexible accommodation options for single men, single women and older people where this concept is needed and desired by communities.



24. Pornography

The issue of children's and the community's exposure to pornography was raised regularly in submissions and consultations with the Inquiry. The use of pornography as a way to encourage or prepare children for sex ("grooming") has featured heavily in recent prominent cases.

In written submissions to the Inquiry from community groups and individuals, concern was expressed about the availability of pornography in communities and children's exposure to pornographic material, in particular videos and DVDs. This was as a result of poor supervision, overcrowding in houses and acceptance or normalisation of this material⁶⁹.

It was subsequently confirmed at the regional meetings conducted by the Inquiry in February and March 2007, that pornography was a major factor in communities and that it should be stopped. The daily diet of sexually explicit material has had a major impact, presenting young and adolescent Aboriginals with a view of mainstream sexual practice and behaviour which is jaundiced. It encourages them to act out the fantasies they see on screen or in magazines. Exposure to pornography was also blamed for the sexualised behaviour evident in quite young children⁷⁰. It was recommended that possible strategies to restrict access to this material, generally and by children in particular, be investigated.

Normalising violence

The issue raised in some submissions was that violence, including both physical and sexual violence, has become such an accepted behaviour in Aboriginal communities that it is now an integral part of children's socialisation and this acceptance has now been normalised and crossed generations. That this violence exists within a context of alcohol abuse, cannabis misuse and gambling is also accepted as normal.

69 Many Aboriginal people were also concerned with the effect of the dominant culture generally, particularly through television.

70 Similar comments were made in respect to violence, both physical and sexual, seen in films (and of course the violence to which children are exposed in their lives).

One submission suggested that in environments where violence was not prevalent intervention was more likely when there was a concern about a child. However, where violence was seen as normal, intervention was less likely. This may occur because services also adjust to the behaviour and start to make judgments based on this *normality*.

Pay television

The evidence appears to be that the Austar Pay TV service is readily available in communities. There was some suggestion of concentrated selling of subscriptions in those communities. The Inquiry was advised by Austar representatives that there was no "outbound" selling in the remote parts of the Territory, either by telephone or personal visits. It was said that there were simply no sales staff available for that work. All subscriptions were purchased "inbound", that is, by customers contacting Austar. Austar noted that, in regard to sexually explicit programming, blocking devices were available which can be applied to particular film classifications (e.g. to bar access to R-rated programs), but it was conceded that none of the instructions for these were in languages other than English.

Pornography is an issue as are music film clips and various television programs.

Central Australian community

Porn is available in the community – SBS and Austar are probably the main sources.

Service Providers at a Central Australian community

We are worried about the influence of television and magazines. In particular, pornographic videos and music video clips.

East Arnhem community

There is too much cannabis and too many blue movies coming in to the community and that it was often white fellas who would come in and sell the pornographic DVDs.

Community – Central Desert region

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They said that they are not aware of pornography being a big problem but they were aware of American movies, in particular violent and gangster movies, having an influence and they said that the kids in the community were constantly using the term, “mother fucker”.

Men’s meeting – Katherine Region.

Community environment

The other difficulty relates to overcrowding in houses and poor general care, discipline and management of children. Because of overcrowding, drinking, gambling and the like, children are often left to entertain themselves. It is almost inevitable that in those circumstances there could be substantial exposure to sexually explicit material. For that matter, because of the overcrowding, it is more than likely that children would be exposed to adults, and others, engaging in sexual activities within the household.

It is an offence under the *Criminal Code* to intentionally expose children to indecent material. In the usual household, it might be hard to establish such an intention. However, it is suggested that bringing the existence of this legal provision to the attention of community members might focus their minds on the real problem to be resolved. Section 132 (2)(e) provides :

Any person who without legitimate reason, intentionally exposes a child under the age of 16 years to an indecent object or indecent film, video tape, audio tape, photograph or book; is guilty of a crime and is liable to imprisonment for 10 years.

Once again, education is required. It is unlikely that access to pornography itself or violence in movies and other material can be effectively prevented.

Recommendation

87. That an education campaign be conducted to inform communities of:
 - a. the meaning of and rationale for film and television show classifications
 - b. the prohibition contained in the *Criminal Code* making it an offence to intentionally expose a child under the age of 16 years to an indecent object or film, video or audio tape or photograph or book and the implications generally for a child’s wellbeing of permitting them to watch or see such sexually explicit material..



25. Gambling

Gambling was seen by many to be an associated problem which severely impacted on children.

Gambling is a big problem and that kids are not being fed because of it. Meetings could not be called when there is a card game going on.

Service providers - Tiwi Islands

Cards and gambling are big issues particularly among the women - a lot of the money that should be spent on children is being spent on gambling.

Men's meeting – Katherine region

They also expressed concern about mothers, in particular, gambling and neglecting their children. In fact, from where we were sitting, we could see at least two large groups of mainly women playing cards.

Women's meeting – Central Australia

The Inquiry was told anecdotally of instances where young mothers, when collecting their Centrelink payments, were “hugged” by older women or men seeking money for gambling. Gambling was not regarded as such a problem in communities where the winnings were in, any event, divided up among the players and used for food shared out.

A women's meeting in Central Australia expressed concern about some of the mothers who were gambling and neglecting their children. The Inquiry members could in fact see, from where they were sitting, at least two large groups of mainly women, playing cards.

Nowadays, however, it appears that the winnings are often taken to town and put through the poker machines. The net result is no money for food for the family; and while the game continues, the children remain unsupervised with no care or attention – essentially, the children may be neglected in terms of their physical, safety and emotional needs.

The Inquiry is aware of incidents where inadequate supervision of children by parents who are inebriated and/or gambling, has increased a child's vulnerability to being sexually abused by an opportunistic offender. The Inquiry was also told of a small number of incidents where

parents or family members had allowed a child to be used for sex in exchange for cash or goods.

Finally, it is also recognised that emotional neglect by caregivers may lead children to seek the attention and love they need from other sources. Such children are often targeted by offenders, with the children's desire for affection used to facilitate sexual assault.

Clearly, communities need to be educated on the detrimental effects for children that can result from an obsessive focus on gambling by parents or other caregivers. In cases where parents or others have a gambling addiction, the Inquiry recommends access to gambling addiction counselling services. These should recognise the impact on children as a key element of the therapeutic response.

Finally, further research is needed on the effects of gambling on child safety and wellbeing. The regulation of gambling may also require consideration as part of the development of community safety plans.

Recommendations

88. That an education campaign be conducted to target gambling in Aboriginal communities, showing the impacts of gambling and especially the risk posed to children who are unsupervised while parents are gambling.
89. That options for delivering gambling counselling to Aboriginal communities be explored and implemented including consideration of visiting counsellors for smaller communities and resident counsellors for larger communities.
90. That further research be carried out on the effects of gambling on child safety and wellbeing, and that consideration be given to the enactment of local laws to regulate gambling as part of the community safety plans to be developed pursuant to recommendation 79.



26. Cross-cultural practice

26.1 Government employees generally

The Inquiry was repeatedly told by Aboriginal people during consultations that government employees did not understand their culture or their “world view”. The Inquiry was told that this lack of understanding or knowledge about Aboriginal people and culture has resulted in limited engagement and poor outcomes, and is often the foundation of prejudice against Aboriginal people.

The Inquiry takes the view that an understanding of Aboriginal culture and “world view” is an essential prerequisite to being able to work with Aboriginal people to achieve successful outcomes.

The Inquiry acknowledges present efforts by government agencies that focus on cultural awareness training, but is concerned these tend to be on an *ad hoc* basis. The Inquiry takes the view that these efforts do not go far enough. The cultural differences between Aboriginal and non-Aboriginal people are significant and complex, and a deep understanding is integral to bridging the “cultural gap”. At present, many government employees do not have the skills to really hear and understand what Aboriginal people are saying. The Inquiry believes that the best way to start to develop this understanding is through intensive and ongoing cultural awareness training.

The LRCWA Report (2006) notes that it is crucial that cultural awareness programs deliver real cultural respect outcomes for Aboriginal people.

The Inquiry believes that it is essential that any cross-cultural training results in an increased understanding and respect for Aboriginal people and culture. Further, it is hoped that such training would increase the competence and capability of government employees to know, understand and incorporate Aboriginal cultural values in the design, delivery and evaluation of programs and services that affect their communities.

The Inquiry believes that, to achieve these goals, such training should:

- be designed and/or developed in consultation with local Aboriginal people, in particular traditional owners

- draw upon existing local Aboriginal resources, networks and skills
- be conducted or include presentations by Aboriginal people
- be delivered at the regional or local level to allow programs to be appropriately adapted to take account of regional cultural differences, customs and concerns of local Aboriginal communities
- include protocols and information specific to the role or position of the individual undertaking the training
- be sufficiently long and detailed to meaningfully inform participants of matters necessary to the delivery of programs and services to Aboriginal clients
- be evaluated, updated and reinforced on a regular basis.

The Inquiry takes the view that, given that one-third of the Territory population is Aboriginal, basic cultural awareness should be compulsory for all government staff. The intensity of this training should be increased significantly for those who are involved in service delivery and policy development in respect of Aboriginal people.

The Inquiry takes the view that non-government personnel should also undergo such training. For example, where any contractors or sub-contractors are engaged by government to work with Aboriginal people, then participation in government-organised cultural awareness training could be a condition of the contract.

The Inquiry has already mentioned the importance of language. The Inquiry believes that those who work closely with Aboriginal people should be encouraged to undertake at least a basic level of language training. Such training would not only benefit the community but also the employee because it would facilitate better communication and engagement.

The Inquiry observed, during the course of its consultations, that non-Aboriginal people who had learnt the relevant language were much more effective in engaging with the Aboriginal community and in achieving successful outcomes.

The Inquiry believes that such training is not impractical because there are only 13 “regional” languages that cover the language-learning needs of the whole of the Northern Territory.

We know it is our very different languages and history that keep us apart, so we have only a little understanding of each other. Those sent to “help” have little encouragement from government to learn our language. We just get more white fella excuses that there are too many languages. Rubbish. We have regional languages that can be used and they are rich teaching languages.

Rev. Djiniyini Gondarra

The Inquiry has been told that it is not so much fluency of language that is important but an appreciation of the importance of language and the different ways in which concepts are understood and expressed.

26.2 Teachers

The Inquiry believes that a special approach is required in relation to school teachers. Given the importance of education, the Inquiry believes it is crucial that every possible measure be taken to make the school experience more appealing to Aboriginal children. The Inquiry’s experience is that teachers who are more culturally aware and tuned in to Aboriginal children’s cultural needs have more successful educational outcomes than those who don’t. This is because the teacher is better able to engage the children and the children feel much more comfortable.

The Inquiry also notes that school teachers are on the “frontline”, so to speak, when it comes to dealing with the mental, emotional and physical health of children. An understanding of language, culture and “world-view” will lead to teachers being more effectively able to understand and deal with problems affecting Aboriginal children. It will also lead to a better understanding of, and interaction with, Aboriginal family members.

The induction program recommended for teachers taking up positions in remote schools should include aspects and material specific to the district of their appointment.

Recommendations

91. That compulsory cross-cultural training for all government personnel be introduced, with more intensive cross-cultural capability training for those officers who are involved in service delivery and policy development in respect of Aboriginal people. Specifically, government to introduce:
 - a. a comprehensive Aboriginal culture induction program for all new teachers to the Territory and for existing teachers about to take up positions in remote schools (it is recommended this program run for three weeks full time)
 - b. training in Aboriginal language concepts for those teachers already teaching in or about to commence at remote schools to promote an understanding of the nuances of Aboriginal society.
92. That government personnel who are working closely with Aboriginal people be encouraged to undertake relevant language training and such encouragement should be accompanied by appropriate incentives.



27. Implementation of the Report

Wherever the Inquiry has gone, its team has been well received by local people. In some rare cases, proper notice has not been distributed or sorry business or road and weather conditions have limited the response in terms of numbers. However, community members have welcomed the opportunity to discuss the issues. The notion of child sexual abuse is unpleasant and discussion of it is embarrassing and sensitive, nevertheless, women and men were willing to sit down with us. The entire world still regards children as sacred, and those children we spoke to were anxious that they be protected. So, to a large extent, the welcome we received was an acknowledgement that a problem existed that had to be confronted. The first step, therefore, was taken and the relief, or so it seemed to us, was palpable.

Other points might be made about our visits:

- Although communities have recently become used to hordes descending upon them from the skies (on all kinds of issues), they have had no sense of participation in what was happening or control over these events. From their perspective, there was neither communication nor dialogue.
- The Inquiry set out – and it is perhaps for others to judge how well we succeeded – to have communication and dialogue, NOT monologue. We went there to listen as well as talk. We sat down with the people and shared information. We talked about sensitive and grim matters. We engaged with them.
- The Inquiry was told in many places that this had not happened before. That is, that no senior people had gone out to them and sought their views. We were thanked for coming.
- A rapport was developed between the Inquiry members and the communities. A certain expectation has been raised that this kind of dialogue will continue and that the leaders of the communities will be able to take their rightful positions as spokesmen and women and deal directly with senior mainstream people. (It follows that in our view the expectation of the people in this regard should not be disappointed).
- In many places, there was an initial scepticism about our visits and the sincerity with which the

NT Government had embarked upon this exercise (mirroring, to some extent, what has appeared in the political arena and in the media) “What will happen to your report?” “What will happen after you have gone?” were questions frequently asked at gatherings (at all levels of meetings, incidentally) “Will you come back afterwards and, in effect, report to us your findings and what the government will do?”.

The Inquiry, of course, could give no undertakings about the implementation of its report and its recommendations. We were not able to assure those to whom we spoke that it would be made public. We do recommend that it be made public in its entirety.

The Inquiry believes that an extremely important aspect of the process which now takes place will include full access to our report by all stakeholders; in effect, every member of the Northern Territory population.

They write these great reports: the Royal Commission into Aboriginal Deaths in Custody, Social Justice Reports, and the Bringing them Home report on the stolen generations, the National Aboriginal and Torres Strait Islander Health Strategy. What do they do with them? Jack up their bed, put them on the cupboard so that it looks ok! These things have to be implemented and until they do it's no good talking to us Aboriginals about another plan because they haven't actually implemented all these things along the way, and we're talking about "It's time for our conscience to get another prick again – we better go and do another report" – and that's the sad part about it (Puggy Hunter 1999 cited in Ministerial Council on Drug Strategy 2006).

We have sought to demonstrate our view that partnership with Aboriginal people is essential to success. It is necessary to ensure awareness of what the Inquiry has been told and to ensure the channels of communication are opened and maintained.

It is not always clear how best to take the message to communities and we, therefore, make recommendations that advice be sought. We were exposed to the Yolgnu radio network operating in Arnhem Land and were impressed with its capacity to educate, entertain and interest its listening public (and, of course, in language!)

.....

We need to keep before the public eye and on its conscience, the tragedies and traumas experienced by child victims of sexual abuse and the need to protect them. It is everybody's business.

We need to keep before the public eye and on its conscience, the tragedies and traumas experienced by child victims of sexual abuse and the need to protect them. It is everybody's business. To that end, the Inquiry has made a number of recommendations regarding the need for child sexual abuse community education strategies. As part of this, the government should work to better educate the whole community about the trauma and impact experienced by the victims of sexual assault, particularly child victims, and their families.

Such a campaign should include information on the means of identifying such cases and the necessity to report such cases. The Inquiry recognises that a greater focus on this issue is likely to increase the reporting of abuse and impact on FACS, Police and sexual assault services. Such a campaign should, therefore, be complemented with additional resourcing of FACS and other services to enable them to cope with demand.

We have previously recommended that the Children's Commissioner, envisaged in draft legislation presently being considered by government, be responsible for monitoring and promoting the implementation of this report's recommendations. In the event that this appointment is delayed, we recommend – to ensure the matters continue to be accorded proper significance – that this responsibility be given to the Deputy Chief Executive of the Department of the Chief Minister.

Recommendations

93. That the Chief Minister to release forthwith for public scrutiny and consideration this report in its entirety, subject only to the time taken for its printing and publication, and that the Overview section be translated into the nine main Aboriginal languages in the Northern Territory, published in an appropriate format and distributed to communities throughout the Territory.

94. That a public awareness campaign for Aboriginal people be introduced forthwith to build on the goodwill, rapport, and awareness of the problem of child sexual abuse which now exists in Aboriginal communities, and that this campaign:

- a. include public contact, meetings and dialogue with the communities and service providers with the government to be represented by a suitably senior officer or officers
- b. acquaint leaders of communities and, as far as possible, all members of those communities with the key elements of mainstream law in relation to such issues as the age of consent, traditional or promised brides, rights of the parties within marriage, individual rights of men, women and children generally, rights of parents and/or guardians to discipline children, and of the recommendations contained in this report and the proposed implementation of it
- c. be conducted with advice being sought from community leaders as to the most effective and culturally appropriate manner in which to convey the messages, utilising local languages wherever appropriate.

95. That the government promote a vigorous campaign to educate and alert the general public to the tragedies and traumas experienced by victims of sexual assault, particularly children, the means of identifying such cases and the necessity to report such cases.

96. That the Commissioner for Children and Young People as proposed in Recommendation 9 be given responsibility and resources to monitor and report six monthly on progress made in implementing the findings and recommendations of this Inquiry.

97. That in respect of monitoring and reporting on the implementation of this report, as an interim measure until the proposed Care and Protection of Children Bill is enacted and the Commissioner for Children and Young People is appointed, that the Deputy Chief Executive of the Department of the Chief Minister assume responsibility for monitoring and reporting to government on the implementation of the report.





PART II

SUPPORTING RESEARCH



1. Introduction

Part II of the report provides:

- a literature review of some of the evidence base regarding child sexual abuse, and in particular, how the sexual abuse of Aboriginal children can be conceptualised
- a review of current thinking regarding the most effective ways to prevent the occurrence (and recurrence) of sexual abuse – including an analysis of the structural societal and community-level factors that impact on the prevention of sexual abuse
- a range of socio-demographic data which provide a context to the report. This includes an estimate of the prevalence of child sexual abuse in Australian, Territory and Aboriginal communities based on published child protection, criminal justice and other data
- a summary of recent trends in child protection reform.



2. Child sexual abuse: the nature of the problem¹

Child sexual abuse is not a new problem. The sexual abuse and exploitation of children – females and males – has occurred throughout history (Tower 1989), yet it was not until the 16th century that the first legislation was enacted in England that began the process of legally protecting children from sexual abuse - boys were protected from forced sodomy, and girls under the age of ten years from forcible rape.

By the late 1900s, welfare groups in the western democracies were familiar with child sexual abuse and knew that, in its most common form, it involved assaults committed by children's family members (Wurtele & Miller-Perrin 1993). However, most societies continued to turn a "blind eye" to child sexual abuse until after the societal "re-discovery" of child maltreatment in the early 1960s by Kempe and his colleagues in the United States (Kempe, Silverman, Steele, Droegemuller & Silver 1962).

Why wasn't child sexual abuse widely identified as a significant social issue prior to the 1960s? Leaving aside the lack of a focus on the rights of children and recognition of the deleterious effects of child sexual abuse on victims, Oates (1990) states, while society could cope with "stranger danger" and the threat of the stereotypical child molester assaulting children, it was much more threatening to acknowledge that sexual abuse was frequently occurring within the family, committed by family members upon whom children depended and should have been able to trust. The acknowledgement of sexual abuse was therefore a threat to the structure of the family. It has been contended that some researchers, for example Kinsey and Associates (1953, as cited in Goddard & Carew 1993), "minimised" or played down the sexual abuse of children because they felt society had not reached a point where it was able to acknowledge intra-familial sexual abuse.

Child sexual abuse was defined in Part I of this report. Put simply, child sexual abuse is the use of a child for sexual gratification by an adult or significantly older child/adolescent (Tower 1989). It may involve activities

ranging from exposing the child to sexually explicit materials or behaviours, taking visual images of the child for pornographic purposes, touching, fondling and/or masturbation of the child, having the child touch, fondle or masturbate the abuser, oral sex performed by the child, or on the child by the abuser, and anal or vaginal penetration of the child (or penetration of the perpetrator by the child). Sexual abuse has been documented as occurring on children of all ages and both sexes, and is committed predominantly by men who are commonly members of the child's family, family friends or other trusted adults in positions of authority (Tomison 1995b).

2.1 Exposure to Pornography

One presently controversial element regarding the nature of sex offending is whether a link exists between offending and the use of pornography. Determining the nature of this relationship is becoming increasingly important because of the proliferation of pornographic materials, assisted substantially by internet technology (Stanley 2001).

Although researchers like Marshall (1988) have found that up to one-third of child sex offenders said they had viewed pornography prior to offending, there appears to be little evidence to show a causal link between pornography and offending (Howitt 1995; Queensland Crime Commission and Queensland Police Services 2000; Seto et al. 2001, as cited in Brown 2005, and Wortley & Smallbone 2006). However, exposure could be linked to other measures of sexual aggression, such as belief in rape myths, the increased acceptance of the use of physical force in sexual relations and a lessening of compassion for child victims.

Overall, the general view appears to be that while pornography may play an important function for an offender in facilitating his offending (this may include the use of pornography to "groom" children; Wortley & Smallbone 2006), it does not directly *cause* offending. It may, however, lower inhibitions around offending and increase the likelihood of an assault (National Research Council 1993; Gee et al. 2003, as cited in Brown 2005).

¹ The following sections draw heavily on published papers authored by A.M. Tomison – used with permission.

Effect on children

Child pornography relayed through the Internet is “regularly” used as a means of desensitising children and normalising sexual activity between adults and children (Feather 1999:6; Stanley 2001). With regard to the effects on children, however, **there is also little** direct evidence (partly because of the ethical difficulties of doing this sort of research with young people; Flood & Hamilton 2003). Yet, as with offender-related studies, some research has pointed to a link between exposure to pornography and an association with having a supportive attitude for coercive or aggressive sexual practice, belief in rape myths etc.

In a recent US study (Finkelhor et al. 2000), the majority of the children (aged 10-17 years) stated that they were not very upset or afraid when exposed to unwanted sexual material on the Internet (“normal” and offensive material were not differentiated). Yet a sizeable proportion (23%) actually reported being extremely, upset by the exposure. The majority of these upset children (20% of the total) reported at least one symptom of stress in the form of avoidance behaviours, intrusive thoughts, or physical symptoms.

Overall, it is likely that the impact of the viewing will depend, in part, on the age, maturity and other personal characteristics of the viewer, as well as on the nature and duration of the material (Flood & Hamilton 2003). What is required is research to more fully investigate the impact of exposure to sexually explicit and/or offensive material, and the relationship between viewing pornography and offending.



3. The perpetrators of sexual abuse

The image of sex offenders portrayed by the media is of lonely, isolated men who offend in this way because they are “evil”, “sick” or “mad” and ultimately different in some way from “normal” members of society (Brown 2005:5)

While the quote from Brown aptly encapsulates society’s view of the child sex offender, traditionally, studies have indicated that while the majority of sex offenders have been men (Leventhal 1990; Finkelhor 1994b), there is no consistent profile of child sex offenders (Oates 1990; Brown 2005).

To date, work with perpetrators and research studies have failed to typify offenders by class², profession, wealth or family status (Willis 1993; Brown 2005), race or religion (Wurtele & Miller-Perrin 1993; Brown 2005). Neither has a psychological profile of a typical offender been able to be constructed – perpetrators of child sex assault “constitute a markedly heterogeneous group” (Wurtele & Miller-Perrin 1993:16).

In fact, “the available research suggests greater similarities than differences between sexual offenders and other people” (Marshall 1996:322).

Advocates of offender relapse prevention approaches to sex offender treatment argue that offending occurs only when opportunities to offend are created or taken advantage of by the offender, and when the offender is in the “right frame of mind” to offend (Marshall et al. 2006). It is argued that there are some stable dispositional traits that may influence an offender to abuse, (and which are distinct from more transitory factors).

Marshall et al. (2006) identified some of the more stable enduring traits that may increase the risk of sex offending. They include a limited capacity for intimacy or a dysfunctional attachment style. A lack of intimacy may lead to chronic emotional loneliness which may dis-inhibit aggression and trigger deviant fantasies in sex offenders. Further, non-normal attachment styles (and/or disrupted attachment in childhood) may generate different patterns

² However, offenders from lower socio-economic groups are more likely to be identified and processed by the criminal justice system (Howard League 1985).

of attachment, and problems with emotional and sexual self-regulation (almost by definition you might expect this). They may also generate dysfunctional coping styles, chronic low self-esteem, and a range of cognitive attributes that can include deeply held schemas about women, children, sex and the world, as well as issues of self and a *sense of entitlement* – which may be triggered by circumstance to lead to offending.

With regard to the “sense of entitlement”, it was noted in Part I that, above all else, perpetrators have “a willingness to exploit the child’s trust for (their) own gratification, profit, or selfish purposes” (Wurtele & Miller-Perrin 1993:20).

3.1 Relationship to victims

From a review of North American sexual abuse prevalence studies (see below), Finkelhor (1994a) confirmed the generally accepted (professional) view that in most cases the child will know the perpetrator(s). Finkelhor found that “strangers” constituted between 10-30% of offenders.

Although in terms of actual numbers, male biological family members account for the majority of perpetrators, non-biological male family members (stepfather or mother’s de facto partner) are disproportionately represented as sex offenders. For example, Finkelhor and Russell (1984) reported that girls living with stepfathers were at a markedly increased risk: 17% had been sexually abused compared with 2.3% of girls living with biological fathers.

3.2 Female offenders

Further, while males clearly constitute the majority of perpetrators, females do sexually abuse in a proportion of cases. Finkelhor and Russell (1984) estimated female sex offending to account for approximately 5% of the female victims, and 20% of the male victims experience. In 1994, in what is still considered a reasonable estimate of the size of the problem, Finkelhor estimated that women committed approximately 10% of all sexual offences. It should be noted that the prevalence of female sexual abusers may be underestimated because of society’s

general unwillingness to believe that women commit sexually abusive acts (Banning 1989, as cited in Wurtele & Miller-Perrin 1993).

Leventhal (1990) argued that women who fail to protect their child from sexual abuse may in some cases be seen as at least partly responsible. It has also been highlighted that often women who do sexually abuse children may do so at the instigation or encouragement of male abusers (Adams-Tucker 1982, as cited by Wurtele & Miller-Perrin 1993; Faller 1987).

The Board uncovered little evidence of women committing sexual offences against Aboriginal children, but was advised of a small number of cases where women were involved in, and at times entirely responsible for, prostituting their child to males for financial or other reward (e.g. alcohol or drugs).

3.3 Child and adolescent offenders

Finally, it has only relatively recently been acknowledged that children and adolescents may also commit acts of sexual abuse (Vizard, Monck & Misch 1995; Brown 2005). The National Children's Home (1992, as cited in Masson 1995) estimated that between one-quarter to one-third of sexual abuse cases in the UK were perpetrated by a child or young person.

Some estimates put juvenile sex offenders accounting for 30-50% of child sexual abuse matters and 20% of all rapes (see Brown 2005). Further, approximately half of all known adult sex offenders report that they commenced their offending during adolescence (Davis & Leitenberg 1987). Davis and Leitenberg determined that in two-thirds of known cases involving a juvenile offender, the victims were children aged younger than the offender, and that the offences committed were:

advanced beyond those expected for the age (of the offender) (and) ... often included oral and vaginal intercourse and forcible penetration of the anus or vagina with fingers or other objects (Davis & Leitenberg 1987:1598).

In one of the first Australian government reviews that addressed the issue of juvenile sex offending, the Victorian Parliamentary Crime Prevention Committee Report (1995) noted that adolescents displaying the early

signs of sex offending tended to grow up and commit sex offences unless they were provided with treatment.

Since then, the need to break the *cycle of offending* at an early stage has been echoed by many professionals and has resulted in the targeting of young sex offenders as a special population for rehabilitation. In the last decade, a number of programs have been set up to deal with sexually aggressive young children and juvenile sex offenders who have been convicted of sex offences (e.g. Children's Protection Society 1995; Curnow, Streker & Williams 1998). However, to date no such program has operated in the Northern Territory.

3.4 Offender rehabilitation

Sex offenders are typically seen as being among the most dangerous kinds of offenders - in terms of both the impact that their offending has on victims' lives and because of concerns that they will re-offend (Gelb 2007). Yet most serious crimes against the person are committed by offenders who have *not* previously been convicted of a violent offence, and most of the convicted offenders will *not* go on to be convicted for further violent offences (Walker 1996; Brown 2005). It is also important to recognise that only a small proportion of offenders are ever convicted and sentenced to imprisonment, and virtually all of them will be returned to society (Crime Prevention Committee 1995; Brown 2005).

Further,

the community must accept that incarceration in, and of itself, will not achieve a single thing, other than the protection of the community for that time which an offender is incarcerated (Crime Prevention Committee 1995:230).

The primary concerns then are:

- in terms of convicted offenders - identifying accurately and reducing the risk of re-offending by the small number of offenders who pose a real danger of inflicting serious harm on others, and from whom the community rightly expects protection
- in terms of the majority of unidentified, or known but non-convicted, offenders - developing programs or interventions that both encourage them to participate and reduces the likelihood of any subsequent offending (Chalk & King 1998; Brown 2005).

Offender treatment programs

In the late 1930s in many parts of the United States, legislation was enacted that provided for involuntary civil commitment of sex offenders (Brown 2005). Since then, many countries have introduced legislation that aims to protect the community through continued detention or ongoing intensive supervision of these most dangerous offenders (Gelb 2007).

At the same time (1930s), treatment programs were developed which, over time, took as an objective the prevention of further offending. The precise nature of the “treatment” programs being used was not always clear, and often their “success” could not be determined. By the 1970s, “rehabilitation” appeared to have been tried and deemed a failure, and Martinson (1974, as cited in Brown 2005) famously concluded that “nothing works” in sex offender rehabilitation. In reality, even if a program was successful, poor research approaches didn’t enable clear evidence to be produced (Brown 2005).

By the 1980s, behaviourist treatment approaches were being trialled with mixed success, but these rapidly refocused to have a greater emphasis on cognitive-behavioural therapy (CBT) and relapse prevention (Brown 2005; Gelb 2007). There has also been a rapid expansion in the number of treatment programs in operation, and adults (and juveniles) who sexually abuse children are now more likely to be offered treatment as part of, or in lieu, of other court sanctions (Chalk & King 1998). Although there is still no consensus as to the efficacy of offender programs (e.g. US General Accounting Office 1996, as cited in Chalk & King 1998), including CBT-based programs, they have become the common approach used in offender rehabilitation and over time have generally been able to demonstrate some success (see below).

Cognitive behavioural programs

The modern CBT programs have the objective of normalising sexual preferences and enhancing social functioning. This is based on the assumption that poor social skills and deviant sexuality would restrict access to appropriate partners and cause stress to the offender (Marshall & Barbaree 1988). Cognitive-behavioural therapy targets a range of criminogenic needs and teaches relevant skills in a manner tailored for the learning style and receptivity of the individual offender (Gelb 2007).

Current interventions are often held in group contexts, and address:

- denial and minimisation of offences, sexual motivation, harm to victims and need for treatment
- cognitive distortions about victims and offending behaviour
- lack of empathy for the victim or understanding about the effects of sexual offending on victims
- poor anger management, and a lack of social skills

A key focus of the programs is relapse prevention i.e. to educate offenders to recognise situations that present specific risks for re-offending. They are provided with coping, avoidance and escape strategies formulated specifically to meet each individual offender’s needs and self-esteem, and deficits in intimate relationships (Perkins et al. 1998:9).

3.5 Do CBT-based offender programs work?

These programs are now widely used and have been extensively reviewed over time by researchers. Yet reliable evaluation of the effect of the treatment programs on the *recidivism rates* of sex offenders remains difficult to achieve (statistically) (Chalk & King 1998; Brown 2005).

Firstly, reported (and recorded) recidivism rates for sex offenders are low even among untreated offenders. Secondly, most programs only support small numbers of offenders, which means that researchers may have to wait many years before any treatment effects can be detected with sufficient statistical power (Hanson et al. 2002). As Lievore notes, it is:

not clear whether low rates of sexual recidivism point to a lack of opportunity to re-offend, to rehabilitation, or to non-detection of subsequent sex crimes (2004:37).

She suggests, however, that the accumulation of evidence provides a “reasonable, if conservative”, estimate of recidivism (2004:37).

It has been determined that recidivism rates for sexual offences are likely to be found to be higher for offenders:

- with stable deviant sexual preferences
- with identifiable antisocial personality

- who have committed diverse sexual offences
- who committed non-contact sexual offences
- who have targeted extra-familial child victims
- who have targeted male child victims
- who have targeted strangers
- who began offending sexually at an early age
- who have never been married
- who have failed to complete (have dropped out of) a treatment program (Hanson & Bussière 1998).

While the research shows that such factors help to characterise further sex offending, the evidence is not sufficient to determine whether these offenders are qualitatively different from other types of repeat offenders and, therefore, whether they require the attention of separate, specific legal provisions.

Findings

Meta-analytic studies provide a standard of evidential assessment. To date, there have been only a handful of meta-analytic studies of the treatment outcome literature for sex offenders. A meta-analysis published in 2002 combined the findings from 43 studies of psychological treatment for adult male sex offenders that had been conducted in the US, Canada, the United Kingdom and New Zealand. Within the studies, a total of 5078 treated sex offenders and 4376 untreated sex offenders were assessed over an average follow-up period of 46 months (i.e. post-treatment).

Across the studies, recidivism was variously defined as re-arrest, re-conviction, parole violation or unofficial community reports, and was reported for both treatment and comparison groups (Hanson et al. 2002). When averaged across all types of treatment and all research designs, there was a small but statistically significant effect of treatment on recorded recidivism rates of sex offenders. The sexual offence recidivism rate was lower for the treatment groups (12.3%) than for the comparison groups (16.8%) (Hanson et al. 2002).

As noted in part I of this report, a recent evaluation of the *Kia Marama* individual sex offender treatment program in New Zealand found similar positive outcomes (Bakker et al. 2002). Thus, in spite of the difficulties, there is some evidence that these programs work.

Cost-Benefit analyses

Another important element of determining program effectiveness (particularly for funding agencies) is cost-benefits analysis. The Australian Institute of Criminology recently attempted to identify the costs of various crimes in terms of both direct costs such as medical costs associated with deaths and injuries, as well as indirect costs such as lost output of victims and intangible costs of pain, suffering and lost quality of life. Based on Australian figures from 2001, it was estimated that the total cost of sexual assault was \$230 million per year (Mayhew 2003).

While attempting to estimate the cost to victims' quality of life and feelings of safety – and those of their families – are impossible to measure adequately (Gelb 2007), it should be remembered that the savings in terms of human suffering resulting from a decrease in recidivism is a positive outcome regardless of economic cost. That said, do the offender programs deliver savings?

A recent meta-analysis by Aos et al. (1999, cited in Brown 2005) demonstrated that, based on tangible costs alone, every dollar spent on “human services-oriented correction services” saved the taxpayer about \$5.00, and the victim \$7.00. In contrast, punishment-oriented approaches produced savings in the order of \$0.50 and \$0.75 respectively. CBT programs generated savings ranging from \$2.54 to \$11.48.

There are not many cost benefit analyses and those that have been done have been criticised for being rather simplistic (Brown 2005). However, one Australian evaluation by Donato and Shanahan (2001) undertook a more rigorous cost benefit analysis of a “generic” prison-based program. This analysis was based on data from the New Zealand *Kia Marama* program and a number of Australian programs operating in Queensland, West Australia and Victoria.

Depending on the level at which tangible and intangible costs were calculated, and using recidivism rates that varied from between 2% and 14%, Donato and Shanahan calculated that the programs saved from \$62,000 to \$1.05 million if there was a decrease in the recidivism rate no lower than 6% to 8% and conservative estimates of intangible costs were used. While some programs have demonstrated a drop in recidivism rates much better than 6-8%, others have not. Overall, further work is needed to confirm these economic savings. It is also apparent that,

while a cost-benefits argument has been supported, the evidence indicates that to truly be effective, programs must aim for greater decreases in recidivism.

3.6 Offender programs in Australia

Although Australia has been relatively slow to embrace sex offender programs, some form of prison-based sex offender program is now operating in most jurisdictions (Lievore 2004)³.

Participation in sex offender treatment programs is open to all eligible offenders and is voluntary in most jurisdictions (i.e. requires the prisoner's informed consent). Parole boards in some jurisdictions can insist on treatment, although informed consent is still desirable. Refusal to participate is taken into consideration when determining parole, and release authorities take a favourable view of program completion.

Although such a coercive approach may conflict with a motivational approach favoured by therapeutic staff and may have an anti-therapeutic effect, the harm inflicted by sexual assault is considered enough to justify mandated intervention. While it is the case that offenders are likely to be more receptive to interventions when they have volunteered to attend, group therapy aims to increase the offender's intrinsic motivation to stay in the program and to avoid relapse (Lievore 2004). One meta-analysis determined that there was little difference in recidivism rates between prisoners undergoing mandated (10%) and voluntary (12%) treatment (Birgden & Vincent 2000).

Prison-based and Community-based programs

Australasia has developed a strong interest in offering community-based sex offender programs. Most jurisdictions are presently offering different types of programs and, in particular, will often offer community-based as well as prison-based programs. It could be assumed that more serious offenders would be referred to prison-based programs.

Offenders who are referred to community-based treatment programs (as distinct from maintenance

programs) are assumed to have committed relatively non-serious principal offences, such as indecent assault. However, this may not always be the case, given the practice of downgrading charges due to plea-bargaining and the fact that many sex offenders are convicted of ancillary sex offences, and some will have previous convictions for sexual and violent offences (Lievore 2004).

Gelb (2007) describes the findings of recent outcome evaluations of three community child sex offender treatment programs in New Zealand, which examined differences in recidivism between 175 treated offenders and 28 controls who also had a history of child sexual offending and had been assessed by the programs, but who had not actually participated in the treatment program; and a second group of 186 offenders who had received "no treatment" and were released on probation.

Recidivism was defined as a further recorded conviction for a sexual offence. The evaluation found that the recorded sexual offence recidivism rate for offenders who had completed a program was 5.2%, with an overall rate of 8.1% for offenders who had participated in at least some of the program.

In comparison, the recidivism rates were much higher for those who had not participated in the program. The sex offence recidivism rate was 21% for those who were assessed only and 16% among the probation group (Lambie & Stewart, 2003, as cited in Gelb 2007). Essentially, recidivism occurred less and later in the treatment group. It was concluded that these community-based programs were having a significant effect on reducing recidivism rates among treated offenders.

Community-based programs

Given the apparent high rate of child sex offending in Northern Territory communities, and the likelihood that most offenders will not be reported and convicted, the Inquiry has been particularly interested in community-based programs. The Inquiry has advocated for the introduction of culturally appropriate community-based offender programs in the Territory, with reference to successful international programs, such as Hollow Water in Canada and the New Zealand programs noted above. Programs such as Hollow Water, that facilitate non-convicted, self-identified (or community-identified) offenders seeking treatment, are worth consideration for the Territory context.

³ As discussed in part I, the Territory currently has the SOTP program, but it appears to operate only intermittently.

Such programs demonstrate that it is possible, at least for some child sex offences, to encourage help-seeking while keeping some involvement by the criminal justice system, without hindering self-disclosures of offending. Essentially, Hollow Water has the status of a culturally-secure court-sanctioned rehabilitation program. Thus, while the offender remains on the program (and/or successfully completes it), no other criminal action is taken. The benefit is that the criminal justice system is aware of this offender and can monitor him, while offenders see the program as an alternative to significant jail-time and an opportunity to integrate back into their community. In cases where this approach fails, the offender is subsequently deemed no longer suitable for the program, or re-offends, the usual criminal justice response awaits.

Safe Care (Western Australia) have been using a program model since 1989 that avoids any initial reporting of self-identified offenders to the Police on the basis that the (incest) offender agrees to participate in an intensive program that will also involve support to the victim and other family members, does not re-offend and continues to adhere to a protection (relapse prevention) plan (Safe Care 2003). Although the program claims some success (600 families seen with a known recidivism rate of 2%), programs that involve the offender being assessed and monitored by the criminal justice system – even if from a distance (e.g. Hollow Water) - provide a degree of community safety that is generally perceived by the community (and much of the child protection sector) as preferable. Overall, it is concluded that there should be some consideration given to the creation of Territory-based, court-sanctioned alternatives to jail for some child sex offences, particularly where there is community support for a more therapeutic outcome.

Monitoring

A key element of relapse prevention is to ensure that there is adequate post-release supervision and that community-based maintenance programs are provided to reinforce treatment gains and establish support networks and supervision (Brown 2005). Community members, particularly in rural and remote locations, must play a key role in relapse prevention as they are best-placed to monitor (and support) an offender as he attempts to re-integrate into the community while ensuring children

are protected⁴. This monitoring is a key element of a “situational prevention” approach (see *Addressing the structural factors –Situational prevention* below).

3.7 Juvenile offenders

Given the apparent rate of juvenile offending across the western world, the professional child protection community has recognised the need to intervene early with young sex offenders, or potential offenders. Juvenile programs have been operating since the mid-1990s in some Australian jurisdictions (e.g. Children’s Protection Society 1995; Male Adolescent Program for Positive Sexuality (MAPPS)).

Studies of adult sex offenders in the United States indicated that many begin sexually deviant behaviour from the age of eight upwards (Brown 2005). Honey Knopp (1982) noted that *early intervention* is paramount in order to more easily disrupt deviant behavioural patterns; young people are still experimenting with a variety of sexual patterns, thus providing alternatives to offending behaviour; distorted or inappropriate cognitive patterns are less deeply entrenched and can be re-directed; and young people are better candidates to learn new, acceptable social skills. In summary, it is easier to prevent further abusive behaviour in offenders where the behaviour has not become a deeply ingrained pattern. It is also easier to prevent re-offending when the offender is young and has not reached maturation.

MAPPS Victoria

No juvenile sex offender program operates in the Northern Territory. In contrast, Victoria, (a much larger jurisdiction in terms of resources and population) has led the way in the development of a number of successful programs. One, the Male Adolescent Program for Positive Sexuality (MAPPS), was established by the Department of Human Services in 1993. It is a community-based intervention program for young males (aged 10-21 years) convicted for sexual offences.

The program was also intended to serve a secondary function: to provide consultation, education and information on the assessment and treatment of

4 It is recognised that sometimes a community will not want an offender to return, or to participate in his rehabilitation.

adolescents who sexually offend. The program is based on a model of behaviour change through responsibility-taking, awareness and empathy, and is designed as an alternative to incarceration.

Adolescents referred to the program have all been found guilty of committing a sexual offence. Most are aged 14 to 17 years, and all of the adolescents are required to participate as a condition of their court orders. The program usually consists of weekly group sessions that last about 11 months. A 1998 evaluation of the MAPPS program found that sexual recidivism rates in convicted adolescent sex offenders had declined following participation. Of the 138 offenders who completed the treatment between 1993 and 1998, only 5% committed further recorded sexual offences. Those who completed treatment were eight times less likely to re-offend than were adolescents who did not complete the program (Curnow et al. 1998).

It is believed that adolescent and youth treatment programs in Victoria will soon be expanding (Gelb 2007). In May 2006, the Attorney-General announced funding for the development of an early intervention program for 15 to 18-year-old alleged sex offenders, as well as additional funding for the development of programs for 10 to 14-year-old youths and children under 10 who are exhibiting concerning sexualised behaviour.

In summary, while further evidence of effectiveness is required to provide a definitive answer, the evidence appears to be that offender programs can reduce recidivism. As Gelb notes:

imprisonment can provide the impetus to encourage sex offenders to participate in treatment while delivering punishment for wrongdoing. Treatment programs that are available either in prison or in the community may aid in rehabilitation and may mitigate the effects of prolonged imprisonment. Although costly, successful treatment programs can reduce recidivism and help offenders return to the community (Inquiry's underlining) (2007:39).

With the Territory's estimated high prevalence of child sexual abuse, it is clear that further investment in a range of correctional and community-based programs is required. Further, these programs will need to

be culturally-appropriate and actively engage local communities in the post-release or post-program monitoring (and support) of offenders, particularly in rural and remote communities.



4. The effects of sexual abuse

The impact of child sexual abuse is extremely difficult to predict. The extent of the impact will be affected by the age and gender of the child, the child's maturity and intelligence, the nature and severity of the offence and the level of support the victim receives from her/his family, friends and professional supports.

Some of the more common effects of experiencing child sexual abuse are described below. Bear in mind that one form of child abuse does not often occur in isolation and a child may be affected by experiences of various forms of maltreatment. Many of the long term effects identified here will also apply to children who are maltreated in other ways.

Finally, it is important to note that the effects of abuse on victims may manifest themselves at different phases of the life cycle – some victims may not require, or have access to, mental health services they need before they reach adulthood (Walker et al. 1988, as cited in Goddard 1996; Chalk & King 1998). Some victims will manage their experience and not require any support. Forcing support in those circumstances may do more psychological damage than the actual abuse.

4.1 Medical/health problems

Sexual abuse that involves penetration can result in acute, immediate injuries such as genital trauma, and pregnancy among pubertal females. Ongoing effects may also include genital abnormalities and sexually transmitted diseases (National Research Council 1993; Trickett 1997).

4.2 Psychological problems

An association has been found between child sexual abuse and the development of mental health problems in later life. These may include: eating disorders, anxiety, depression, withdrawn behaviour, self-harm and suicide, low self esteem, psycho-physiological disorders, higher rates of dissociation and high rates of substance abuse (Walker et al. 1988, as cited in Goddard 1996). In addition, survivors of childhood sexual abuse often feel shame and guilt (Browne & Finkelhor 1986) and have also been found to be less trusting of others and have a tendency to

perceive sexual or exploitative motivation in the behaviour of others (Corby 2000).

One consistent finding is that sexually abused children from early ages can exhibit unusual and inappropriate sexual behaviour, sometimes known as “sexually acting out” (Corby 2000). Behaviours resulting from this include: increased sexual curiosity and frequent exposure of the genitals (Trickett 1997), simulated sexual acts with siblings and friends (Mian, Marton & LeBaron 1996), premature sexual knowledge and sexualised kissing of friends and parents (Oates 1996).

Childhood sexual abuse has also been linked to difficulties in adolescence and adulthood in interpersonal relationships and intimacy (Mullen & Fleming 1998). The experience of sexual abuse is associated with low rates of marriage, increased rates of relationship breakdown, an earlier age of entering the first cohabitation and first pregnancy, greater risk of sexually transmitted diseases, multiple sexual partnerships, and increased rates of sexual revictimisation in adulthood (Mullen & Fleming 1998).

Finally, being abused may lead to delayed intellectual development in young children, and generally poorer school performance by victims of sexual abuse (National Research Council 1993).

4.3 Inter-generational transmission of maltreatment

It is widely believed that children who have been maltreated are more likely to become abusive adults than children who have not been maltreated (Tomison 1996c) – although current evidence suggests that the majority of parents who have been maltreated as children do not become abusive or neglectful parents (Tomison 1996c).

Estimations of the rate of inter-generational transmission of child maltreatment have ranged from 7% (Gil, 1970) to 70 per cent (Egeland & Jacobvitz 1984, as cited in National Research Council 1993). The best estimates are that approximately 30% of maltreated children (plus or minus 5%) will go on to maltreat children in some way when they are adults (Kaufman

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& Zigler 1987). This figure needs to be approached with caution because of methodological issues.

Vondra and Toth (1989) contended that it is the *emotional suffering or trauma* underlying child maltreatment, not necessarily the actual type of maltreatment suffered by the parent in childhood that is passed down from parents to children in a significant proportion of families. This may explain why adults who have been maltreated as children may not necessarily have suffered the identical form of maltreatment they themselves perpetrate.

Sex offending

Some have argued that the inter-generational effect is generally not as strong for sexual abuse as it is for other types of maltreatment. This may be caused, in part, by an adult's reticence to disclose such abuse due to the perceived stigma of being sexually abused. Given the added stigma for many males of having to deal with the homosexual nature of sexual abuse, (the vast majority of abusers are male) this is perhaps understandable (Tomison 1999).

Clinical and empirical studies of incestuous families have indicated that both parents, mother and usually the father/perpetrator, frequently report growing up in a chaotic, dysfunctional family often described as involving substance misuse, marital conflict, parental divorce and childhood sexual abuse (Hanson, Lipovsky & Saunders 1994). The individual effects of a childhood history of sexual abuse and the other family characteristics on the potential to offend have not been clearly delineated to date (Tomison 1996c).

Incarcerated sex offenders

Fattah (1992, as cited in Briggs and Hawkins 1996) noted the failure of researchers to take account of the effects that a childhood history of sexual abuse may have in later sex offending. Fattah contended that the search for a typical sex offender profile has been a futile exercise because of the failure to recognise that the profile of a typical offender is identical to that of a typical victim. That is, victim and offender populations are not mutually exclusive, but rather are homogenous populations which overlap to a large extent (Fattah 1992, as cited in Briggs and Hawkins 1996).

Most studies of the inter-generational transmission of sex offending have limited their investigations to the study of incarcerated sex offenders. This is problematic given that convicted sex offenders are a minority of all sexual offenders and are much more likely to represent the chronic, most severe forms of offending (Finkelhor 1984).

Acknowledging these concerns, investigations into the prior sexual abuse of identified sex offenders have estimated the rate of inter-generational transmission to be between 30% (Freeman-Longo 1986) and 100% (Briggs & Hawkins 1996)⁵. The latter developed an Australian sample of incarcerated sex offenders (compared with a sample of self-reported sexually abused, non-offending males). They found that 93% of the incarcerated offenders reported being sexually abused as children.

Briggs and Hawkins found that the sex abusers often regarded their own abuse as "normal" and, sometimes, enjoyable, and were abused by significantly more perpetrators than the non-offending sample. In contrast, non-offenders were more likely to report their own abuse as negative. Briggs and Hawkins speculated that men who normalised their own experience of sexual abuse may be more likely to perpetrate sexual abuse themselves. Ryan (1989, as cited in Briggs & Hawkins 1996) suggested that the normalisation of sexual abuse via denial or repression of the traumatic aspects and acceptance of the pleasurable aspects may enable the future denial of the harm caused by sexual abuse. Offenders who rationalise away the effects of the abuse they suffered may also rationalise away the damage they do when sexually abusing children (Briggs & Hawkins 1996).

Child and adolescent sex offenders

Estimations of the rate of sexual victimisation for young offenders have varied from 30-70% (Watkins & Bentovim 1992). The Victorian Parliamentary Crime Prevention Committee report (1995) noted that practitioners had reported that adolescents displaying the early signs of sex offending tended to grow up and commit sex offences unless they were provided with treatment. The need to break the cycle of offending at an early stage is echoed by many professionals and highlights the targeting of young sex offenders as a special population for intervention.

⁵ Anecdotal evidence considered by the Inquiry would support the strong intergenerational transmission of sexual abuse. A number of cases were highlighted in support of this point in Part I.



5. Causes of child sexual abuse

Why does child sexual abuse occur? O'Hagan (1989) summarised the two major theoretical perspectives for what has been one of the more significant controversies in the child maltreatment field (Goddard & Hiller 1993). The family therapy view contends that child sexual abuse occurs as a result of "family dysfunction". Also known as a family dysfunction model, the emphasis is on the role of sexual abuse as a means of maintaining equilibrium within the family system. Thus, each family member would be seen as having an interest in the continuation of the abuse (O'Hagan 1989).

In contrast, feminist theorists view child sexual abuse from a sociological, rather than a familial, perspective (Tower 1989), considering the sexual assault of children as an outcome of societal values. According to this view, women and children have inferior social status under the current patriarchal social structure and are subject to male dominance. Using such a "social power" framework, sexual abuse is seen merely as one part of the range of violence perpetrated by men against women and children (O'Hagan 1989).

Finkelhor (1984) has contributed to an understanding of why sexual abuse may occur, by proposing a four-part model – all of which, it is suggested, must occur for abuse of a child by an adult to eventuate:

- A potential offender must have some motivation to sexually abuse a child. The potential offender must feel some form of emotional congruence with the child, sexual arousal with the child must be a potential source of gratification, and alternative sources of gratification must be unavailable or less satisfying.
- Any internal inhibitions against acting on the motivation to engage in sexual assault must be overcome. For example, alcohol or drugs may be used in order to lower inhibitions against sexual offending. This may be combined with the knowledge that society often shows greater tolerance towards those who commit crimes while under the influence of substances (Goddard & Carew 1993).
- Any external impediments to acting on the impulse to abuse must be overcome. Inadequate care or supervision by a parent or guardian can provide an opportunity for an offender to act.

- Avoidance or resistance by the child must be overcome. This may involve enticing an emotionally deprived child into accepting inappropriate attention, or overt coercion to achieve domination of the relatively powerless child.

Finkelhor (1984) noted a number of risk factors which may increase the likelihood of sexual offending, specifically by overcoming internal inhibitions or external impediments to offending. These included: maternal illness or absence (providing greater opportunity for father–daughter incest), overcrowding and the concomitant lack of privacy which may lead to less inhibitions, unemployment and family stress, or emotional deprivation in the child who may then be more open to accepting inappropriate "affection" from an adult. Adults suffering from sexual role confusion, sexual frustration, and/or the need to dominate a child as a means of self-assurance/power, may also have an increased potential to offend against children. Finally, as previously mentioned, would-be abusers may use alcohol or drugs in order to overcome inhibitions towards sexual offending.

To date, there is a paucity of hard evidence to support either Finkelhor's model or the risk factors (Oates 1990). Oates believed that this can be used as an indication that child sexual abuse is a complicated phenomenon, with no simple solutions. Goddard and Carew (1993) contended that Finkelhor's model indicated more about how sexual abuse occurs rather than why it occurs. They argued that in order to understand sexual abuse, like other forms of child maltreatment, it is necessary to categorise and separate the various types of sexually abusive behaviour, given that different causative factors may be operating for each "type" of abuse (Tomison 1995b).

5.1 Sexual abuse and Aboriginal communities

The comparatively high prevalence of child sexual abuse in Aboriginal communities (see below) has reinforced the importance of considering a "community" dimension to theories of causation. Rather than viewing child sexual abuse as single isolated events, child sexual abuse in Aboriginal communities is viewed more as a "marker" of general dysfunction with explicit recognition given to the associations between different forms of child

abuse and other family violence. This then leads to the development of solutions that can address the structural and community issues that have created the dysfunction, in addition to specific strategies to address the prevalence of child sexual abuse. These issues are explored further, later in this section.

5.2 Child sexual abuse – links to other family violence

In taking an “holistic” view of family violence, consideration is given to the incidence of child sexual abuse and the co-occurrence of other forms of child maltreatment and family violence – and vice versa (Tomison 2000). Historically, research into child sexual abuse and other forms of family violence (particularly domestic violence) has been conducted in isolation (e.g. Straus & Smith 1990, as cited in Rosenberg & Sonkin 1992). However, a **growing body of evidence suggests** that different types of violence may occur simultaneously in the same family, and that the presence of one form of violence may be a strong predictor of the other (Goddard & Hiller 1993; James 1994; McKay 1994; Tomison 1995a; Edleson 1999; Tomison 2000).

In the 1980s and 1990s research began to be produced which provided support for the feminist assertion of a link between sexual and physical assault. There is now recognition not only of the association between child physical abuse and domestic violence, but also of the links between domestic violence and *child sexual abuse* (Truesdale et al. 1986; Goddard & Hiller 1993; Stermac et al. 1995; Tomison 1995a; 1999).

Until recently, few studies had examined the context under which child sexual abuse occurs, and the extent to which force, violence or coercion is used to produce a child’s acquiescence, mainly because of the common assumption that child sexual abuse is generally non-violent, and the use of force infrequent (Plummer 1981; West 1981; Goddard 1996; Tomison 1999).

Taking domestic violence as an overt expression of male domination and/or male power in the family unit, it can be argued that the abuse of children occurs within a coercive environment. The evidence presented from two Australian child abuse case tracking studies (Goddard & Hiller 1993; Tomison 1999) suggested that a violent, coercive environment is almost as likely for sexual abuse cases as it is for physical abuse cases, particularly with

the more severe cases of physical and sexual abuse. Thus, child sexual abuse may, like child physical abuse, occur as a function of the misuse of personal power, and is another example of male (or other adult) attempts to control others through the use of violence.

As Goddard and Hiller (1993:27) note:

the point, crudely stated, is this: children having witnessed the beating of their mothers need no further reminder of the possible consequences of their resistance to the wishes of their fathers (or, indeed, of older males in general).

Overall, Edleson (1999) has provided a useful “best estimate” of the extent of the overlap between child maltreatment and domestic violence. Reviewing 35 studies that had reported an overlap over the past 25 years, he concluded that in 30-60% of families where either child maltreatment or domestic violence was identified, the other form of violence was also identified. Given such a finding, it is vital that investigations into allegations of child sexual abuse consider the family context within which sexual abuse is occurring. Such an approach fits well with current holistic Aboriginal perspectives on family violence.

As noted in Part I, Australian Aboriginal and Torres Strait Islander communities often prefer to view the abuse or neglect of children within the broader frame of “family violence” (Atkinson 1990-1996; Cummings & Katona 1995; Bagshaw, Chung, Couch, Lilburn & Wadham 1999; Robertson 2000). The term, “family violence”, is often used by Indigenous people to refer to the broader experience of violence within extended families and inter-generational issues (Domestic Violence and Incest Resource Centre (DVIRC)) 1998; Bagshaw et al.1999; Gordon et al. 2002).

Indeed, the term often extends to encompass wider community violence, reflecting the fact that there is not a clear delineation between private and public spheres in many Aboriginal communities (DVIRC 1998). This broad perspective also reflects the preference within Indigenous groups for an holistic approach to addressing issues of violence, loss of cultural identity, substance abuse, and the needs and rights of Indigenous women and children (National Crime Prevention 1999). An holistic approach is supported by evidence as to the nature of family violence and its co-occurrence, and has been adopted by this Inquiry as a framework for investigating the sexual abuse of Aboriginal children in the Territory.



6. Explaining and responding to sexual abuse in Aboriginal communities

Children's social and economic rights to housing, education and a decent standard of living are central to the realisation of children's rights (Rayner 1995) and the prevention of child maltreatment. Families without adequate support, particularly in harsh economic times, cannot fulfil the requirement of the UN Convention on the Rights of the Child of providing "an atmosphere of love and understanding" (Rayner 1995).

The issue of child sexual abuse in Aboriginal and Torres Strait Islander communities is largely viewed from a different perspective to that taken in relation to child sexual abuse in Australian society generally. The dominant way of understanding child abuse and neglect identifies the cause as one of personal dysfunction where the maltreatment is caused by a child's carer (usually a parent). In contrast, Gil, a "pioneer" of the field, defined child abuse as:

inflicted gaps or deficits between circumstances of living which would facilitate the optimal development of children to which they should be entitled and their actual circumstances, irrespective of the sources or agents of the deficit (Gil 1975: 346).

Thus, Gil (1975) went beyond individual pathology to include societal commissions or omissions as a direct cause of child abuse and/or neglect. As he explained, this definition was intended to encompass abuse and neglect within the home, at an institutional level such as schools and child care centres, and at the societal level such as social policies resulting in the provision of substandard health and welfare services.

It has been argued that child maltreatment may, therefore, be a particularly sensitive marker of the strength of the social fabric, i.e. a high rate of child maltreatment may reflect negative social momentum, persistent economic decline and community disintegration (Melton & Flood 1994). Gil's model provides a foundation for understanding child abuse and neglect

within Indigenous communities, given the poor social and physical infrastructure in many communities.

Further, by blurring the boundaries between individual, family and community, such a perspective allows for the inclusion of child abuse and neglect as a result of past and present social policies, racism and disadvantage. Child sexual abuse (as one form of family violence) is, therefore, seen as arising from multiple causes, many of which relate to cultural disintegration, unresolved community trauma and racial abuse (Stanley et al. 2003).

6.1 Different ways of seeing

It is commonly believed that child abuse and neglect in Aboriginal communities is caused by a multitude of factors, as is believed to be the case for maltreatment occurring in non-Indigenous communities (Belsky 1980; Memmott et al. 2001). However, a comparison between the two bodies of literature (non-Indigenous and Indigenous) reveals a marked difference in the "ways of knowing". Academic discourse in Australia has been rightly criticised as constructing a Westernised perspective of Indigenous reality and as presenting racially biased constructions of the "truth" (Foley 2003). Although Indigenous communities are culturally and geographically diverse, Foley (2003:50) argues that an "Indigenous standpoint" can be reached.

Non-Indigenous knowledge is generally reported after (and only if) it has been acquired by a highly-structured and defined process of knowledge gathering, via the "research method". In contrast (and despite some public perceptions), an Indigenous perspective is rarely recorded in the academic literature. Further, much Indigenous knowledge is based on personal accounts and stories, a method which has Indigenous cultural integrity. Evidence of the validity of particular perspectives for Indigenous communities is achieved by the passing of information or stories, i.e. their repeated sharing and confirmation by

many people. Indeed, Indigenous perspectives can be seen as similar to the qualitative methodologies increasingly being used by some non-Indigenous researchers.

Despite the differences in gaining knowledge, it should be noted that there are strong parallels between the two bodies of literature. For example, Tomison (2000a) reports on research which has found that adults (particularly males) who were physically abused while an adolescent and/or who were exposed to domestic violence, were more likely to be involved in marital aggression themselves (Straus, Gelles & Steinmetz 1980; Rodgers 1994). Aboriginal writers and commentators also make this link (e.g. Hazelhurst 1994).

6.2 Addressing structural factors that impact on the prevalence of sexual abuse

While the impact played by societal and community factors on levels of child abuse and neglect is generally accepted, until recently researchers, policymakers and practitioners have viewed such structural conditions as being beyond the scope of child abuse prevention (Parton 1991; Garbarino 1995; Tomison 1997; Tomison & Wise 1999). Thus, most strategies to prevent child maltreatment have been focused on addressing child, parent and family-related factors that are associated with a greater propensity for child maltreatment. Scant attention has been paid to the societal and community factors that cause harm to children (Hay & Jones 1994; Korbin & Coulton 1996; Reppucci, Woolard & Fried 1999).

However, there has been increasing recognition that “programs focused solely on the individual seem destined to failure if they do not take into account community context” (Reppucci et al. 1999: 411), and that child abuse and neglect will not be overcome through “administrative, legal, technical and professional measures which leave social values, structures and dynamics unchanged” (Gil 1975:1).

As a consequence, governments and the health, child welfare and family support sectors have begun redesigning services to become more community-centred. Further, they have invested greater resources to the forging of alliances with local communities to help improve their physical and social environments (Cohen, Ooms & Hutchins 1995; Korbin & Coulton 1996; Argyle & Brown 1998).

Accepting the need to frame the prevention of child sexual abuse as an holistic multi-faceted strategy, the Inquiry has explicitly sought to investigate the structural forces or factors that impact on the incidence of child sexual abuse – and to consider the structural changes required to significantly reduce harm. This approach has been widely supported by government agencies, professionals in the NGO sector and by the wider community itself. A description of some of the constellation of factors that require some consideration in attempts to reduce social ills such as child abuse and neglect, are described below.

6.3 Structural factors

Garbarino (1995) identified a series of factors including high crime rates, poverty, unemployment, substance abuse, poor housing and an under-resourced education system, that may be presumed to lead to an increased potential for abusive or neglectful behaviour in families, or higher incidences of other social ills. Aboriginal and Torres Strait Islander people are disadvantaged across a range of socio-economic measures and are more likely than non-Indigenous Australians to live in a community with inadequate and poorly maintained infrastructure, and to be in poorer health.

Garbarino argued that the management of socially “toxic” environments should be analogous to the management of the physically toxic environment – receiving a similar, if not greater, level of perceived urgency by the public. It is clear that child abuse prevention strategies will not be truly effective without a consideration of the means to address the socially toxic factors that cause harm to children (Harrington & Dubowitz 1993; Rayner 1994).

Cunneen and Libesman (2000) similarly describe a range of factors that have increased the likelihood of sexual abuse and violence (and the greater involvement of Indigenous youth in the criminal justice system) - high levels of poverty, unemployment, homelessness, ill health and substance abuse found in Indigenous communities, much of which arises from previous government policies of assimilation, as well as Indigenous peoples’ experience of racism, dispossession and marginalisation.

Other important factors that should be considered relate to how a community perceives its children and young people (e.g. when will they be perceived as having reached “adulthood”; are children perceived to be innately good,

or in negative terms?), and the community's attitudes to (and tolerance of) violence and sexual abuse (Tomison 1997). Any revolutionary change in levels of child maltreatment and family violence can only be successful if the broader community acknowledges the level of violence in society and takes responsibility for the problem (Tomison 1997).

Socioeconomic disadvantage

A report (one of many) on the health and welfare of Indigenous Australians, documents that inadequate and poorly maintained infrastructure is a major problem for Indigenous communities, particularly those in rural and remote areas (Edwards & Madden 2001). For example, one-third of community-owned or managed permanent houses in discrete Indigenous communities (over 14,500 dwellings) were found to need major repairs or demolition (Australian Housing Survey 1999, reported in Edwards & Madden 2001). In addition, the quality of drinking water is poor and provisions for grey water are inadequate in many intact Indigenous communities.

Indigenous people continue to suffer from higher levels of ill health than the rest of the Australian population, as well as being more likely to smoke, consume alcohol at hazardous levels (binge-drinking), and be obese. Not surprisingly, life expectancy is significantly lower for Indigenous people compared other Australians (Edwards & Madden 2001; Jones et al. 2005; SGRGSP 2005). Overall, some Indigenous communities have been described as suffering from “dysfunctional community syndrome” (Memmott et al. 2001), i.e. they suffer from a “toxic” environment which, together with geographical and social isolation, is associated with the break-up of families (Garbarino & Abramowitz 1992). At times, this syndrome becomes a self-perpetuating process in Indigenous communities.

It is widely accepted that child maltreatment is disproportionately reported among poor families and, particularly in the case of neglect, is concentrated among the poorest of the poor (Wolock & Horowitz 1984). Thus, socio-economic disadvantage is closely entwined with family violence, being both a cause of child abuse in the traditional sense and a form of child abuse and neglect in itself (Pocock 2003).

Robertson (2000) highlights the impact of socio-economic disadvantage on female heads of households, who often care for large numbers of children (which may in itself

be due to family violence) and forced to live in derelict houses that cannot be adequately locked to prevent external intruders entering the house and assaulting residents (children or adults). To what extent should a caregiver be held accountable for abuse or neglect under such circumstances? Clearly, there is a need for some recognition of (and attempts to resolve) the environmental conditions affecting a caregiver's ability to adequately care for her children.

The past influencing the present

Cunneen and Libesman (2000) reported on the findings from the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (NISATSIC) (Human Rights and Equal Opportunity Commission [HREOC] 1997). That inquiry found that the past forced separation of Indigenous children from their families and communities has resulted in a loss of parenting skills, as well a range of other pervasive adverse impacts (HREOC 1997). This impact includes unresolved grief and loss, depression, violence, behavioural problems and mental illness. These issues also impact on parenting ability and in turn increase the likelihood of the involvement of child protection services.

Inter-generational transmission of violence

Hunter (1990) makes the connection between the greater access to alcohol that occurred in the 1970s and an increase in Indigenous violence, particularly increases in female homicide, suicide, para-suicide and self-mutilation in the 1980s. He notes that the children and young people who currently engage in self-destructive behaviour are the children of the generation who were young adults at the time of rapid change in the 1970s.

They are the first generation to have grown up in environments where heavy drinking and significant family violence are normal. Reflecting the inter-generational transmission of behaviour, Indigenous children in some communities are now using alcohol at a early age (Robertson 2000). Further, the inhalation of solvents (paints, glues and petroleum products) has become widespread in some Aboriginal communities (Moore 2002). Robertson notes that “having been socialised into a culture of alcohol, substance abuse, violence and anarchy, the crimes committed by some (of the current generation) offenders reflect those witnessed or experienced as a child” (Robertson 2000:31).

Substance abuse

Gelles (1993) cites William Hogarth's early 18th century etching entitled, *Gin Lane*, which portrays the maltreatment that may befall children reared by alcohol-abusing parents. A century later, social workers in the United States firmly believed that alcohol was the cause of child maltreatment, an assumption which, in part, led to the Prohibition Movement experienced by the United States in the 1920s (Gelles 1993).

In the decades since, the "demon rum" explanation for violence and abuse in the home has become one of the "most pervasive and widely believed explanations for family violence in the professional and popular literature" (Gelles 1993:182). There has been a lot of support for this contention, with research investigating homicide, assault, child maltreatment and domestic violence all producing substantial associations between alcohol abuse and violence (Gelles 1993). Similarly, as the popularity of alternatives to alcohol increased, other addictive, illicit drugs, such as cocaine, crack, heroin, marijuana and LSD, have also been considered to be causal agents in child abuse, domestic violence and other forms of family violence (Flanzer 1993).

How does alcohol or other drugs facilitate sexual abuse?

The key to the argument that alcohol or drugs cause child maltreatment and other family violence is the proposition that alcohol acts as a dis-inhibitor for the release of violent tendencies (Flanzer 1993). How is this dis-inhibition achieved?

Firstly, the use of alcohol and/or drugs may exacerbate any psychiatric or emotional instability in the user, including such conditions as poor impulse control, bipolar disorder, low frustration tolerance and tendencies towards violence (Curtis 1986; Cicchetti & Olsen 1990). Secondly, it has been contended that alcohol or other drugs lower the inhibitions that keep people from acting upon physically or sexually violent impulses (Araji & Finkelhor 1986). This may be achieved by a direct physiological dis-inhibition which enables the person to act out physically or sexually violent tendencies, or it may be that substance use enables an offender to disregard or disavow the societal taboos against child sexual abuse.

Furthermore, frustration tolerance may be lowered by alcohol or drugs, leaving a parent more likely to physically

abuse a child when under their influence. Substance abuse may also diminish or anaesthetise any shame or guilt a perpetrator feels after maltreating a child or another adult (Hayes & Emshoff 1993). The failure to experience negative emotions or inhibitors may perpetuate maltreatment as it minimises the negative consequences for the offender following an assault.

Finkelhor (1984) noted that substance abuse was one of a number of risk factors which may increase the likelihood of sexual offending, where would-be abusers use alcohol or drugs in order to overcome inhibitions towards sexual offending or the inhibitions of the victim. In addition, a child who is inadequately cared for or supervised by an intoxicated caregiver may provide a perpetrator with the opportunity to commit sexual assaults.

As mentioned previously, the use of alcohol, or alcoholism, is the most frequently reported and well-established method employed to lower inhibitions associated with sexual offending (National Research Council 1993). In the US, alcohol has been estimated to be used as a dis-inhibitor in between 19% and 70% of reported cases (National Research Council 1993).

However, it should also be noted that "the chronic use of alcohol or other drugs may so deplete a person's capacity for rational decision-making that all sorts of dysfunctional behaviour (including sexual offending) emerge" (Marshall et al. 2006:46). Here, the use of substances is not an active decision taken to support a desire to offend, but rather alcohol use in and of itself leads to offending. Classic Northern Territory examples of this, as described in part I of this report, are the severe offences (rape and murder) committed by those heavily affected by chronic inhalant use.

Smith and Kunjukrishnan (1985, as cited in Hayes & Emshoff 1993) reported that alcoholism was identified as a problem in 71% of families where sexual abuse was occurring, and in 56% of families where sexual and physical abuse was found. Many studies have shown that alcohol involvement accompanies sexual abuse, that is, involved an offender who was alcoholic and/or drinking at the time of the offence (Araji & Finkelhor 1986).

Other studies have reported that incest offenders were more likely to be characterised as alcoholics and to have used alcohol at the time of the offence, than were non-incestuous sex offenders. Indeed, incest offenders

appear to have the most extensive histories of alcohol involvement of all sex offenders (Aarens et al. 1978; Morgan 1982, both cited in Araji & Finkelhor 1986).

This finding has some face validity. It would seem likely that sexually abusing one's own child would require the breaking down of more inhibitions than the abusing of a child for which there was no existing familial bond, and less stringent social taboo.

In contrast, Hayes and Emshoff (1993) provided another way in which substance abuse in a family may result in the sexual and physical abuse of a child. Adult intimate relationships where one or both partners are a substance abuser are often characterised by distorted or dysfunctional communication patterns (Dulfano 1985, as cited in Hayes & Emshoff 1993). Closely related to such problems is the common occurrence of sexual problems due to the physical effects of substance abuse and the inability or unwillingness of a partner to respond to an addict's advances, leading to a sense of rejection and inadequacy in the addict. Hayes and Emshoff (1993) contended that the resultant stress and frustration may manifest itself as violence towards the spouse or children, and/or the sexual abuse of a child to fulfil adult sexual needs.

What are the implications for Aboriginal communities?

Alcohol abuse and Indigenous communities

The Royal Commission into Aboriginal Deaths in Custody (1991) identified a number of problems seriously affecting Aboriginal society, and their causes. Alcohol abuse was linked to family violence and Aboriginal deaths in custody (Sumner 1995). Though accurate estimations of the extent of alcohol or drug-related violence are unavailable, it appears that in a substantial proportion of cases, family violence has been committed by people under the influence of alcohol.

There is a strong, repeatedly documented association between substance abuse and violence in Indigenous communities (e.g. Atkinson 1991; Bolger 1991; Fitzgerald 2001; Robertson 2000). Pearson strongly stresses the link between alcohol and social problems. He says:

ours is one of the most dysfunctional societies on the planet today; surely the fact that the per capita consumption of alcohol in Cape York is the highest in the world says something about our dysfunction (cited in Robertson 2000:71).

It is interesting to note that in a national survey of alcohol consumption in Australia, fewer adult Indigenous people reported using alcohol in the previous week than did non-Indigenous Australians (ABS 1995, as cited in Edwards & Madden 2001). Unfortunately, the survey excluded people living in remote areas so may not be entirely accurate. Of those who reported drinking, however, twice as many Indigenous Australian males were drinking at what was judged to be a high-risk level, than non-Indigenous males.

While alcohol is often perceived to be a major "cause" of violence, the links between alcohol consumption and violence are complex and do not necessarily involve simple causality. Some commentators note that not all violence is connected with alcohol as there are some alcohol-free communities where violence occurs (Bolger 1991; Memmott et al. 2001). In addition, it is not known how many men who drink do not assault their wives. Robertson (2000) suggests that in some situations alcohol may facilitate or incite violence by providing a socially acceptable excuse for the negative behaviour.

The use of alcohol in particular as a way of coping with past traumas of colonisation and dispossession is a point made by virtually all commentators. However, this means of coping is, in turn, creating its own "dysfunction and despair" (Robertson 2000:30). For example, women interviewed for the Robertson Report spoke strongly about alcohol as a major cause of violence. It was seen as influencing all aspects of their lives and creating chaos even for those who didn't drink (Robertson 2000).

The literature refers to a number of compounding factors which relate to the use of alcohol in Indigenous communities and the association between substance abuse and family violence. These are briefly discussed.

Historical establishment and facilitation

There is a history of non-Indigenous Australians using alcohol as a means of manipulating or exploiting Indigenous people (Kahn et al. 1990; Robertson 2000). For example, alcohol was reportedly given to Indigenous workers in lieu of wages by some employers (Robertson 2000) and used as a bribe for sex and entertainment (Hunt 1986). In recent times, publicity has been given to publicans holding bank saving cards owned by Aborigines, a practice that is said to be widespread in the West Australian Goldfields (Martin 2002). This practice not only prevents the card being used for other needs but leads

to the high accessibility of alcohol. It is reported as being associated with an increase in alcohol-related incidents including domestic violence and assaults on young girls (Le Grand 2002).

Government policy

There have been contradictory attitudes by governments to Indigenous alcohol consumption (Robertson 2000), ranging from prohibition, to promotion, to benign neglect. In some communities, the local council appears to have become dependent on the revenue raised from the sale of alcohol. For example, the *Sunday* program (Channel 9, Victoria, 28 April 2002) reported that on Palm Island (Queensland), which has an unemployment rate of 95%, the ambulance service and most of the community services are funded by the “official” sale of alcohol.

In addition, there has been inadequate restriction of the “sly grog” trade, where alcohol is brought in illegally to Indigenous communities by both Indigenous and non-Indigenous people, exacerbating the alcohol problem, and consequently violence in the communities (Robertson 2000).

Alcohol use and traditional culture

Pearson (2000) identifies alcohol as corrupting some of the most basic laws and customs in Aboriginal communities, in particular the traditional obligations of sharing resources. For example, the traditional obligation to share food obtained from a hunting trip has been turned into an obligation to share alcohol. Other obligations and relationships are ignored or abused by those addicted to alcohol. He identifies a key issue surrounding the status of children in Indigenous families, when he raises the question of why the obligations to care for children are given lower priority than the “so called obligations” to share resources with cousins and uncles to enable them to drink. It is possible that this issue may be associated with the problem of the cultural exclusion of men from both the traditional and white culture, a factor which has led to expressions of helplessness and powerlessness among some Indigenous men (Hunter 1990; Memmott et al. 2001).

Substance abuse by children

In some communities, Indigenous children are using alcohol at an early age (Robertson 2000). More recently, the inhalation of solvents (paints, glues and petroleum

products) has become widespread in some Aboriginal communities (Moore 2002). While there is little information available on illicit drug use within the Aboriginal community, a recent study by the National Drug Research Institute and the Nyoongar Alcohol and Substance Abuse Service in WA (as cited by Watts 2002), has found that the injecting of drugs in Aboriginal communities has doubled since 1994, although no actual rates are given in the reporting of this by Watts. The problem was found to be largely associated with young, urban-based Aborigines who were also reported to frequently use cannabis and alcohol.

Cannabis

In Part One of this report, the Inquiry found that there was particular concern regarding the increased use and subsequent effects of cannabis - as expressed in community meetings and in submissions made to the Inquiry. In reviewing the available literature regarding cannabis use by Indigenous people, the Inquiry identified a number of national reports but relied mainly upon reports and studies relevant to the Northern Territory context. The former were perceived as likely to be biased towards urban settings and may not reflect with any accuracy the situation of Indigenous people in the Territory, who reside predominantly in remote and very remote locations.

The available literature supports the Inquiry’s concerns regarding an increased number of Indigenous people using cannabis. The Australian Institute of Health and Welfare (1995, 2005, 2007b) found that cannabis use by Indigenous people was higher than that of non-Indigenous people. However, research which focused on remote communities (where the population is nearly exclusively Indigenous) found that cannabis use by men, women and young people was disturbingly high.

Putt and Delahunty refer to a study conducted in Arnhem Land and noted that:

Surveys across the east Arnhem Land region show that cannabis use by males over 15 years quickly increased to 31% by the late 1990s, then to 55% in 1999. Female cannabis use jumped from 8% to 13% in 1999. In 2001-02 cannabis usage had surged to 62-76% of males and 35% of females aged 14-34 years (2006a:21).

.....

The Interim Report of the Northern Territory Select Committee on Substance Abuse in the Community (2003) referred to a 15-year longitudinal study on cannabis use in remote communities. This study found that while consumption of other substances in the period remained constant, cannabis use had increased in the six years to 2000 from 19% to 43% (Select Committee on Substance Abuse in the Community 2003:11).

It also referred to a snapshot of cannabis use in remote communities undertaken in April 2002 by the NT Department of Health and Community Services which revealed:

- widespread use in remote communities in the Alice Springs region
- increased use in larger communities in the Barkly region
- Katherine experiencing cannabis use in males as young as 12, with use by women also reported
- use increasing at an “alarming rate” in the Arnhem region, with youth as young as 10 involved (Select Committee on Substance Abuse in the Community 2003:11).

Putt and Delahunty (2006a, 2006b) conducted research into Indigenous cannabis use. This was based on the surveying of police officers in urban and remote locations, as well as extensive consultations with communities. They identified a number of individual and community harms linked to cannabis and other substance abuse including:

- exacerbation of many existing problems among local indigenous residents, especially family violence
- sexual exploitation and sexual favours being traded for money or drugs
- suicide and self harm
- friction and disputes stemming from users wanting money for drug use
- young people making demands for money and threatening violence if money is withheld, or threatening suicide
- negative impact on participation in work, school sports, culture and other aspects of community life

- child neglect- hunger and child neglect are recurring issues in households where one or more of the occupants divert money for binge drinking, cannabis or gambling⁶;
- vehicle and boating accidents
- mental health problems
- cannabis use was frequently blamed for compounding harms associated with excessive drinking, kava or inhalant abuse.

The Office of the Status of Women also reported a relationship between domestic violence and drug and alcohol use in Indigenous communities, with between 70% and 90% of assaults committed while under the influence of alcohol or drugs (Ministerial Council on Drug Strategy 2006:3).

How to respond

Literature on how best to respond to the problems of illicit drug use, in particular cannabis, by Aboriginal people generally, and young people in remote communities specifically, was difficult to locate. However, the reports and research that do exist identify the need for a number of strategies that will address control of supply, demand management, harm reduction, early intervention and treatment.

Reports specifically relating to the situation in the Northern Territory acknowledge that there is a dearth of services available for people living in more remote communities; that follow up, aftercare and relapse prevention services are limited; that better service co-ordination is necessary based on formal arrangements; that services need to be developed that are culturally appropriate, and that there needs to be better interaction between alcohol and other drug services and mental health services (Task Force on Illicit Drugs 2002; Select Committee on Substance Abuse in the Community 2003; Healthcare Management Advisers 2005). It was noted that the Territory does not appear to have a drug strategy specific to Aboriginal people (AIHW 2006). Such a strategy may assist in the development of an appropriate model of service delivery that addresses current gaps.

⁶ Women particularly commented on the stress of having a hungry cannabis user in the house.

.....

The National Drug Strategy Background Paper (Ministerial Council on Drug Strategy 2006) identifies a range of actions that could be considered for addressing drug misuse, they are:

- development of life or survival skills programs with cultural activities that teach morals, health, parenting skills, handling peer pressure, drug education, sex education, budgeting, cooking etc
- education for parents and the community
- healing services to deal with underlying problems
- youth diversionary activities
- training primary health care staff in screening and brief intervention techniques
- use of brief opportunistic interventions
- enhanced counselling services that are culturally appropriate
- support services for those who have stopped

Putt and Delahunty (2006b) identify a need for more flexible outreach services and more integrated alcohol, mental health and illicit drug services using brief interventions. In addition they recommend that Police work with local Aboriginal leaders to convene community forums and elicit recognition by the community of the harms associated with drug use.

6.4 Addressing other structural factors – situational prevention

A number of structural factors, such as unemployment, housing, gambling, impact on the prevalence of child sexual abuse, particularly when a community is also experiencing a range of other social concerns, such as alcohol abuse. It is sufficient to say that these factors can make it much easier for would-be offenders to abuse children.

In Part I, the Inquiry has described some of the information gathered regarding housing and gambling issues. A lack of housing or inadequate overcrowded housing; families relegated to a single room in a house shared with several other families; toilets and showers not working due to excessive use; security issues; children being exposed to adult sexual behaviour and/or

to pornographic magazines, videos and television; and vulnerable children living in close proximity to adults who are often intoxicated, violent or both, were all risks identified in consultations and in submissions received by the Inquiry.

Gambling was also identified as leading to the neglect of children (inadequate supervision, failure to feed etc). Failure to ensure a child is adequately supervised and/or to provide enough emotional attention to a child may increase the risk that an offender will be able to commit an assault.

What is situational prevention?

With regard to preventing sex offences, most of the focus is currently on offender treatment programs. “Situational crime prevention” is a relatively new criminological approach to crime prevention that shifts focus from the supposed deficits of offenders, to aspects of the immediate environment that may encourage or permit crime to occur (Wortley & Smallbone 2006)⁷.

The immediate environment is more than a passive backdrop against which action is played out; it plays a fundamental role in initiating and shaping that action (Wortley & Smallbone 2006:8).

The aim of a situational prevention approach is to change the community environment so that it will break the pattern of offending. Based on “rational choice” theory, situation prevention involves manipulating the immediate environment where crime is occurring in order to deter or lessen the probability of offending (known as “opportunity reduction”) (Clarke 1995, as cited in Wortley & Smallbone 2006), i.e. in order to have an offender decide not to offend when presented with an opportunity. The first step is to gather data on sex crimes to determine patterns of offending (who is offending, when, where, and the circumstances of how a crime has occurred).

It is apparent that child sex offenders gain access to children through a variety of means, creating opportunities to be alone with a child by forming friendships and intimate relationships with single parents, and via their employment (e.g. child care worker, teacher), or by participating in volunteer activities involving

⁷ It is beyond the scope of this Report to discuss situational prevention in detail, for further information see Wortley & Smallbone (2006).

children (e.g. sports club coach) (Marshall et al. 2006). The vast majority of offenders will attempt to lure a child away from the scrutiny of others – having a child stay overnight with an offender either in the offender’s home or elsewhere are key strategies (Sullivan & Beech 2004).

In general, the locations for child sexual abuse can be classified as either “domestic” (home of the perpetrator or victim, or someone else’s home), institutional (club, health centre, church or other agency where children congregate for some formal purpose) and public settings (e.g. parks, toilets, shopping centres)⁸. How can the probability of offending be reduced?

Communities (and professionals) can be taught to implement a range of means of reducing the risk of re-offending (Kaufman, Mosher, Carter & Estes 2006; Wortley & Smallbone 2006). Wortley and Smallbone (2006) identify a number of strategies that may assist in preventing opportunistic offending.

- *Controlling access to facilities*: Essentially, making it harder for would-be offenders to access children – mainly by reducing offender access to community facilities. For example, ensuring that no adult is allowed to wander around a school, but is required to report to reception on entering the school grounds. Ensuring children are supervised at all times while at school and when attending or using other facilities (e.g. sports clubs).
- *Target hardening*: The use of barriers to prevent access to children. These include providing locks and/or doors to provide a degree of safety for children. Second, teaching personal safety strategies that children have some ideas as to how they can avoid an abusive situation and to recognise “grooming” (Smallbone & Wortley 2001). A key element is ensuring children have access to someone they can trust who is prepared to support them if they have a concern regarding an individual, or disclose an assault. Finally, the nature of sex offending, modus operandi etc could also be explained to adults as a means of increasing their awareness of the nature of offending (Kaufman et al. 2006).

8 Domestic settings are where most intrafamilial and a lot of extrafamilial offending occurs. Homes are the most private of settings and the hardest of settings in which to prevent offending (Wortley & Smallbone 2006).

- *Controlling the “facilitators” of offending*: Reducing access to pornography via the introduction of community-sanctioned censorship and/or educating the community of the negative impact of such material on children and its link to offending. Similarly, control of alcohol and other drugs would go some way to changing the situations that may lead to offending.
- *Controlling prompts*: A proportion of potential or actual offenders will wish to seek help, if it is available, to prevent offending. It is important that helplines or other services (e.g. education campaigns) are available to counsel would-be offenders to prevent them from committing an assault. Where a person is a known offender, community members need to be educated to ensure that person is not put in a situation where they may be prompted to offend (e.g. asked to bathe a young child).
- *Reducing permissibility*: Challenging offenders’ excuses or attempts to minimise the criminality of their behaviour. This could be applied whole-of-community to ensure that everyone knows of the damage sexual abuse does, and to correct inappropriate views by other community members – including those who have not offended but may be prepared to support an offender (i.e. failure to report harm).
- Finally, *increasing the risk of detection*: Known offenders should be monitored by the community to ensure they do not have access to children. Conversely, providing proper supervision of children would also reduce the risk of someone harming a child. (Wortley & Smallbone 2006).

In addition, Kaufman et al. (2006) identify other things parents and communities can do to reduce the risk of sex offending. These include: encouraging family and other community members’ to monitor and actively intervene if children are at risk of harm, setting rules for children’s interactions with others (e.g. if a parent isn’t present, a child is not to go to a neighbour’s house or the local store at night).

Overall, situational prevention requires families and communities to be prepared to act to prevent abuse. It will require further work by some communities to reach an agreed position (a community plan) as to how they will respond to sexual abuse, particularly for small, close-knit communities where the ties that bind can both help and hinder the development of an effective response.



7. Setting the scene: the NT context

A number of reports produced by the Australian Bureau of Statistics Census publications in particular, and the NT Department of Health and Community Services (e.g. Jones et al. 2005), provide detailed reports on the socio-demographic characteristics of the NT population. The following sections provide an overview of some key demographics that impact on family and community functioning, and provide context for the response to child sexual abuse in the Territory.

7.1 Population

Nationally, 500,785 (2.5%) identify as Aboriginal or Torres Strait Islander (of 20 million Australians).

The Northern Territory comprises one-fifth of Australia's landmass (1,349,129 sq. km), and, as at June 2004, **199,913** people were living in the Territory (94,740 women and 105,173 men).

- Essentially, 1% of Australia's total population are living in one-fifth of Australia's land mass (Jones et al. 2005).
- Using the most recent available population breakdown by Indigenous status, in 2003 **29%** of the Territory's total population (56,581 of 198,358 people) identified as Aboriginal or Torres Strait Islander, compared with less than 4% in other Australian jurisdictions (NT Resident Population Estimated by Age Sex, Indigenous Status and Health Districts (2003), NT Government: <http://internal.health.nt.gov.au/healthplan/epi/epi.htm>).

Remoteness

- The NT is sparsely populated. In the 2001 census, there were 1139 remote Indigenous communities across Australia – and over half of these (55%) were located in the NT.
- In 2001, almost one in two people in the NT lived in either a remote (21%) or a very remote (25%) area (as defined under the ABS Australian Remoteness Index for Areas (ARIA+, ABS 2001).

Projected population

The ABS has published projections of the Northern Territory for the period 1999 to 2021 (ABS 2007, Cat. No.

3222.7). A combination of assumptions of future levels of births, deaths and migration is used to illustrate the possible size, structure and distribution of the population. Three series of population projections have been produced, based on different levels of the variables (births, deaths and migration).

The Territory population is expected to grow in all three series, increasing to between 227,700 and 308,700 by 2021.

While the Territory will continue to have the lowest median age of **approximately 32 years in 2021 (compared to the national median of 41 years)**, the proportion of the population aged over 65 years will double from 3% to 6%⁹.

In Part I of this report, a projection of the Indigenous population in the Territory for the period 2001 to 2031 was provided (Wilson & Condon 2006). They predicted that within that timeframe the annual number of Indigenous births will increase from around 1600 per year to around 2200 per year, as a part of a large increase in Indigenous people of all ages.

Age of the population

The NT has the youngest population of all states and territories in Australia. In June 2000, the NT population had a median age of 29.0 years, compared with 35 years nationally.

Of the states and territories, the NT had the highest proportion of people under 15 years of age, with **approximately one in four people falling into this age group (24.2%)**.

In 2003, Territorians under 25 years of age made up 41% of the total NT population compared with 44% in 1996. In 2003, the Indigenous population had a higher proportion of people under 25 years of age (55%) than did the non-Indigenous population (35%)(DHCS 2003).

⁹ Note that ABS warns that there is no certainty that any of the assumptions will or will not be realised.

Children

Children under the age of 15 make up 26% of the total population of the NT (N= 50,923) (ABS 2001 Census).

The NT, and Indigenous Territorians in particular, have a higher proportion of families in which a child under the age of 15 years is living with the family.

41.6% of the children in the NT under the age of 12 are of Indigenous background; and 60% of children under the age of 12 in the NT live in a rural or remote area.

Fertility rates

- Of the 3800 births registered to mothers usually resident in the Territory in 2001, 44% were Indigenous births and the average age of the mother was 24.2 years, considerably lower than the 28.0 years for all mothers in the Territory.
- Fertility rates for Indigenous women exceed those for all women in the Territory in the younger age groups (under-30 years). The peak age group for Indigenous women's fertility remains at 20-24 years (159.1 births per 1000 women).
- However, during 2001, the 25-29 age group has replaced women aged less than 20 years as the age group with the second highest fertility rate - but Indigenous teenagers have a fertility rate twice that of all teenage women in the Territory (146.1 compared to 70.0 births per thousand) (ABS 2001, cat. 3311.7).

Deaths

- Although the Northern Territory had the biggest decrease in the standardised death rate of all jurisdictions between 1995 and 2005, it still had the highest death rate in the country (ABS 2005).
- The Territory recorded the highest standardised death rates for both males and females. The Standard Death Rate (SDR; 10.2 deaths per 1000 standard population) for males in the Territory was 39.7% higher than for total males in Australia (7.3 deaths per 1000 standard population).
- The SDR (6.7 deaths per 1,000 standard population) for females in the Territory was 36.7% higher than for total females in Australia (4.9 deaths per 1000 standard population).

Child deaths

- Over the past 100 years, Australia's infant mortality has declined significantly. In 2005 there were 1300 infant deaths (deaths of children less than one year of age) registered in Australia.
- This was an increase of 120 infant deaths (or 10.0%) over the number registered in 2004. The infant mortality rate (IMR) of 5.0 infant deaths per 1000 live births in 2005 was higher than the 2004 rate (4.7) but 12.3% lower than in 1995 (5.7) and 49.5% lower than in 1985.
- The Northern Territory's IMR of 9.6 was the highest of the states and territories,
- The Territory had the highest rate of stillbirths and neonatal deaths – more than 14 deaths per 1000 births (ABS 2005, Cat no. 3302.0).

7.2 Educational attainment

The ABS 2001 Census reports that only a small proportion (0.7%) of NT non-Indigenous people had not received some school education. By contrast, 8.7% of the NT Indigenous population had never attended school.

Further:

- 20% of Indigenous males and Indigenous females had attended school but left by Year Nine.
- The ABS National Aboriginal and Torres Strait Islander Social Survey (2002) estimates that the proportion of NT Indigenous people (aged 15 years and over) with a non-school qualification (e.g. from university, TAFE, etc.) more than doubled between 1994 and 2002, from 6.0% to 13.0%.
- Yet, non-Indigenous males in the NT were 7.7 times more likely to have obtained a post-secondary school qualification than NT Indigenous males, while NT non-Indigenous females were 5.7 times more likely to have obtained a post-secondary school qualification than Indigenous females. Only 6.3% and 6.5% of Indigenous males and females respectively, achieved a post-secondary qualification.

7.3 Indigenous housing

The ABS Census of Population and Housing (2001) provides the following snapshot of Indigenous housing in the Northern Territory:

Total Indigenous population in the Northern Territory	50,790
Indigenous population residing in remote regions	41,204
Total Indigenous households	9748
Indigenous dwellings in community housing	4434
Indigenous dwellings owned outright	380
Mortgaged Indigenous dwellings	953
Privately rented Indigenous dwellings	847
Publicly rented Indigenous dwellings	1414

7.4 Index of social disadvantage

A broad measure of the socio-economic condition of different regions within Australia has been an area of substantial interest for many years and a number of socio-economic measures have been developed and used for various purposes. Where possible, the ABS has produced and disseminated Socio-Economic Indexes for Areas (SEIFA) values since the 1971 census, using the areas defined in the Australian Standard Geographical Classification (ASGC). This has included the presentation of data on Urban Centres/Localities (Chondur, Guthridge & Lee 2005). Essentially, SEIFA show the level of community affluence, disadvantage and a community's level of education and training¹⁰.

For the 2001 Census, SEIFA values were available for 337 (69%) of the total 489 Census collection districts (CDs) in the Northern Territory. Certain CDs were excluded because of a low population or because they had a low proportion of people responding to selected census questions. It should also be noted that in the Territory, nearly 36%

of remote CDs do not have SEIFA values, a problem compounded because most of the NT population with low socio-economic background lives in remote areas. This shortcoming has limited the wide application of SEIFA values across the Territory.

Where SEIFA can be calculated, the Northern Territory is distinctive for having the greater proportion of Collection Districts (CDs) with low SEIFA values (ABS, 2003; as cited in Chondur et al 2005).

- In 2001, there were 62 Urban Centres and Localities in the Northern Territory. Of these, 15 Urban Centres had populations of more than 1000 persons. The remaining 47 Localities have population ranges from 200 to 1000 persons. In the Territory, the SEIFA indexes were derived for 56 of the 62 Urban Centres and Localities.
- Further, the greater proportion of CDs with lower SEIFA values are in remote and very remote areas. There were also isolated CDs within Urban Centres with very low SEIFA values. The lower SEIFA CDs are characterised by a lower CD population and/or higher proportion of people with low socio-economic background.
- The East Arnhem, Alice Springs Rural, Darwin Rural, Barkly and Katherine districts have lower SEIFA values than the Northern Territory and Australian average. Relatively, East Arnhem district is the most disadvantaged district followed by Alice Springs Rural, Darwin Rural, Katherine and Barkly.

¹⁰ See Chondur, Guthridge & Lee (2005) for a more detailed analysis and description of the four SEIFA indices.



8. Determining the extent of child sexual abuse

As was noted in Part I of this report, the occurrence of violence in Indigenous communities and among Indigenous people “is disproportionately high in comparison to the rates of the same types of violence in the Australian population as a whole” (Memmott et al. 2001:6).

A common theme in much of the literature is the silence that has, until recently, surrounded the topic of violence in Indigenous communities. Dodson (2003) highlighted the need to acknowledge violence as a first step towards healing and resolution of the problem.

In spite of this, it is clear that Aboriginal children are over-represented as the victims of child abuse and neglect (see below). Three main sources of data provide an estimate of the extent of child abuse and neglect, and that can identify those who perpetrate it:

- annual child protection data from statutory child protection services
- prevalence studies (e.g. surveys of adults’ retrospective self-reports of their experiences of maltreatment in childhood and adolescence)
- criminal justice statistics of reported criminal offences and subsequent prosecutions relating to the physical and sexual assault of children and young people.

All three sources of information have weaknesses, but prevalence studies are generally considered to have the fewest limitations of the three. Further, it is the only method that attempts to determine the level of both detected and undetected maltreatment in the community.

There are a number of limitations associated with child protection and police statistics:

- Not all cases of child maltreatment are reported to child protection and police authorities – such statistics only provide information on the cases that are reported.
- Some cases where maltreatment is occurring cannot be formally substantiated, or result in criminal charges being laid, because of a lack of evidence. Thus, the data on the perpetrators of unreported or unsubstantiated cases remain unknown.

- The figures may also under-represent the extent to which child abuse is committed by biological parents (Tomison 1996a) because:
 - the closer the relationship between an abused child and a perpetrator, the less likely family members are to formally report the offender (Wallis 1992).
 - professionals may expect that non-biological parents are more likely to maltreat children in their care, and thus, injured children with a non-biological parent may be more likely to be diagnosed as being maltreated (Gelles & Harrop 1991).

However, given the absence of prevalence statistics on child abuse and neglect in Australia, it is common to rely on child protection statistics as a main data source.

8.1 Prevalence

From his review of North American sexual abuse prevalence studies, Finkelhor (1994a) reported that on average approximately *one in four girls* and *one in ten boys* experience sexual abuse – although the rate varied from 7% to 36% in women and 3% to 29% in men (Finkelhor 1994a). The proportion of children experiencing sexual abuse is smaller when consideration is given to serious contact offences (e.g. indecent assault, rape, sexual penetration) and larger when the full range of sexually abusive behaviours are considered (e.g. child is exposed to others’ sexual activity). The World Health Organisation (2003) presented similar findings when it investigated the extent of child sexual abuse, estimating that between:

- 7% and 36% of girls have been sexually abused
- 3% to 29% of boys have been sexually abused.

Clearly, the current rates for reported child sexual abuse are much lower than what would be expected from the prevalence studies evidence. The disparity may be due to the under-reporting of child sexual abuse owing to the young age of the child (i.e. young children may not be able to articulate that they have been abused), the reluctance to report what is illegal activity, the shame and secrecy

.....

which surround child sexual abuse, and the fact that the child may be a dependent of the abuser (Finkelhor 1994a). In an Australian study, Fleming (1997) found that only 10% of her sample of sexually abused women had reported the abuse.

Further, it is more difficult to confirm or substantiate cases of sexual abuse, partly because the assault is generally not witnessed by a third party, the younger the child the greater the difficulty in having the victim perceived as a credible source of information, and there is often no physical evidence to corroborate the allegations – particularly as disclosures can occur sometime after the abuse has happened (Oates 1996).

In 2000, the National Society for the Prevention of Cruelty to Children (NSPCC) conducted the first UK child maltreatment prevalence study. A telephone-based survey of 2869 randomly selected men and women aged 18-24 years from across the UK was undertaken, using measures based, in part, on successful US studies. While **approximately 24% of the sample reported** having experienced contact or non-contact sexually abusive behaviour (4% committed by a parent or close relative), only 6% of the sample assessed themselves as sexually abused, and only one-quarter of those who had experienced contact or non-contact offences had reported the incidents. The NSPCC concluded that *over 90% of all abuse goes unreported*.

Prevalence in Australia

Little information is available on the prevalence of child abuse in Australia generally, and no study has yet assessed specifically the prevalence of sexual abuse for Aboriginal and Torres Strait Islanders. **To date, despite lobbying from child protection academics and the non-government sector, no comprehensive child maltreatment prevalence study has been undertaken in Australia. For these reasons** crime statistics and child protection statistics are most commonly used to estimate child maltreatment in Australia (see below).

It should also be acknowledged that western approaches to research and data collection are often not appropriate for use with Indigenous peoples, and nor are they effective. Such difficulties, combined with the fact that Indigenous people are a minority in the population (constituting 3% of the total Australian population)

have further reduced the impetus to collect accurate prevalence data for Aboriginal and Torres Strait Islander peoples. None of the following prevalence studies have attempted to explore the prevalence of sexual abuse in Aboriginal populations.

The first Australian study to measure the extent of child sexual abuse in the population was conducted by Goldman and Goldman in 1988. Surveying Australian (Queensland) tertiary students using a modified version of a questionnaire developed by Finkelhor in 1979, Goldman and Goldman found that approximately one in four girls (28%) and one in 11 boys (9%) had been the victim of child sexual abuse by a male more than five years their senior. It was reported that, on average, the abuse occurred when the respondents were aged 10 years. These figures are comparable to a number of other prevalence studies conducted across a range of countries.

In 1997, Goldman and Padayachi conducted a second retrospective assessment of the sexual abuse experiences of Australian tertiary students in Queensland, Australia. Of the 427 respondents, 18.6% of the males and 44.6% of the females reported at least one unwanted sexual experience prior to them turning 17 years of age. When non-contact sexual experiences were not included, the prevalence rates dropped by **approximately 5% for both males and females**. The mean age at which the abuse began was 9.5 years. Unwanted hugging, kissing and fondling were the most common forms of sexual experiences reported in this study. However, 31% of the male victims and 43% of the female victims reported attempted or accomplished sexual intercourse.

In 2003, Dunne and colleagues examined age-cohort differences in the prevalence of self-reported child sexual abuse experiences by men and women aged 18-59 years in a community-based Australian sample. A cross-sectional, telephone-based survey of a randomly selected national sample of men and women in Australia (876 males, 908 females) was undertaken and involved volunteers answering a range of questions about health status and sexuality, including unwanted sexual experiences before the age of 16 years. It was found that non-penetrative child sexual abuse was twice as common among women (33.6%) than men (15.9%); with **approximately 12% of women and 4% of men reported** unwanted sexual penetration.

Further, Dunne et al. determined that sexual abuse was reported significantly less often by younger male respondents, with a linear decline from the oldest to the youngest men. Among all females who had intercourse before the age of 16, older women were much more likely than younger women to say they were an unwilling partner on the first occasion. Yet if first intercourse occurred at age 16 or later, there were no age-cohort differences in risk of first-time abuse. It was concluded that these population-based findings provided some evidence of a *decline* in the underlying rate of child sexual abuse in Australia.

Although the authors acknowledged that every measure of sexual abuse is inevitably flawed to some extent, these trends in self-reporting complemented a contention by Finkelhor and Jones (2004) who proposed that there has been a decline in sexual abuse in the United States. Given that more attention has been focused on child sexual abuse during the past two decades than on any other form of child maltreatment, Finkelhor and Jones argue that it is not surprising “that its decline would come before and be greater than that of other forms of maltreatment” (2004:10).

Tomison (2004a) reported a similar decline in Australian national child protection data when he compared substantiated cases classified as “sexual abuse” between 2002-03 and 1993-94. He reported that sexual abuse cases comprised 10% (N=4137) of 40,416 substantiated cases in 2002-03, compared with 19% (N=5360) of 28,711 substantiated cases in 1993-94. Thus, there appeared to be a 23% decline in the number of cases (such a decrease is not evident when looking at the physical abuse case data).

Leaving aside issues of the validity of this data as a representation of underlying levels of sexual abuse, it is contended that such evidence of a possible decline in the overall rate of reported child sexual abuse should not be applied to an assessment of sexual abuse in Aboriginal communities. This is because of the additional historical and ongoing difficulties in surveillance of the population, the development of accurate estimates of the prevalence of abuse, and in developing, implementing and measuring the impact of responses.

Telephone helplines

Another method of estimating the level of harm in communities is to assess the data collected by telephone helplines. During 2005, Kids Helpline received 674,530

telephone and online contacts from across the nation – responding to 49% of these contacts (332,840 calls). A summary of caller data indicated that about 5% of all calls from 2002-2005 (and 4.5% of online/email queries) were for child abuse issues, and one-third of the abuse calls/queries related to sexual abuse concerns (KHL 2005).

An analysis of Indigenous caller data from 2002-03 to 2005-06 indicated that a total of 2158 calls were made (given that cultural background was only recorded in 25% of cases, it was estimated that there had actually been 8000 calls from Indigenous callers). Approximately one-quarter of these (26%) were made from remote locations, with Indigenous callers 17% more likely to raise child abuse issues. Yet most of these calls were made from outside the Territory. In 2006, there were 103 Indigenous enquiries received from the Northern Territory, only one of which related to child sexual abuse (KHL personal communication, 2006).

Overall then, it should be emphasised that existing prevalence studies merely provide a wider population benchmark of the extent of sexual abuse. Similarly, some national datasets (such as hospital separations, injury deaths, helpline caller data) are either too broad in their analysis or have little applicability to estimating the prevalence of sexual abuse in Aboriginal communities in the Northern Territory. In the following section, information that can better assist in building a picture of child sexual abuse in the Territory population is presented.

Evidence of sexual activity in NT children and young people

In the general Australian population, 26% of Year 10 students (15-16 years) and 48% of Year 12 students (17-18 years) were sexually experienced (i.e. had had sexual intercourse). In the West Australian Aboriginal Child Health Survey (2002), 33% of 15-year-olds, 44% 16-year-olds and 74% of 17-year-olds had had sexual intercourse. Having had sexual intercourse was independently associated with having left school, drinking alcohol and using marijuana at least weekly (Blair, Zubrick & Cox 2005).

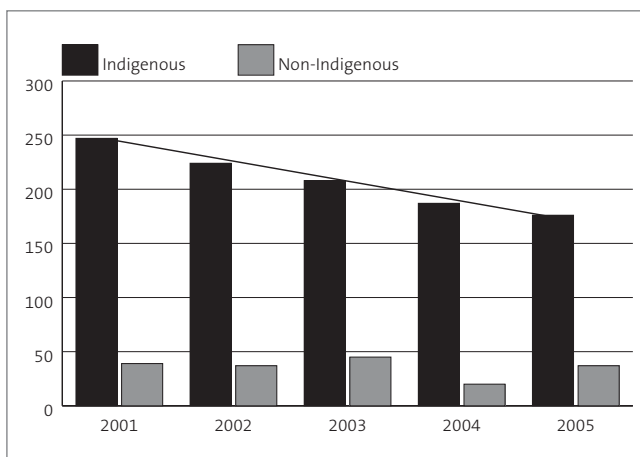
While no comparable NT data is available, there is an impression among many sexual health and primary care practitioners in the NT that young Aboriginal people in remote communities are beginning sexual activity earlier than their urban and non-Aboriginal peers (additional

information from DHCS, received 28 August 2006), as is evident from data on young mothers and sexually transmitted diseases.

Age of mothers

The majority of births to women aged under 18 years are to Indigenous women: 6.7% of all births in the NT from 2001-02 to 2005-06 were to mothers aged less than 18 years. The majority of these mothers were of Indigenous background (85%) – although the numbers of Indigenous women aged under 18 years giving birth is decreasing over time (see Figure 1).

Figure 1: Number of mothers aged under 18 years in the NT (2001-2005)



1. Data excludes the small numbers of women who have a planned homebirth or birth outside of hospital and do not subsequently transfer to an NT hospital for birth-related care.
2. The 2005 perinatal data is not yet fully validated – totals may change (DHCS communication)

The impact of the Australian Government “baby bonus”

In July 2004, the Australian Government introduced its new version of what became known as the “baby bonus”. This was a \$3000 payment to the mother on the birth of the child. In July 2006, this was increased to \$4000 and will further increase to \$5000 in July 2008. Some sections of the community believed that this payment would encourage young girls to become pregnant.

In a press release in November 2006, the Minister for Families, Community Services and Indigenous Affairs tried to dispel this myth and stated that ABS statistics indicated that there had been *no increase* in teenage pregnancies

that could be linked to the baby bonus. However he did indicate that there were real concerns that teenage mothers needed assistance in managing the baby bonus money because of their vulnerability and inexperience.

In the Northern Territory, concern had been expressed that the baby bonus was fuelling violence in Indigenous communities by providing more cash for alcohol and drugs (ABC 2004). In late 2006, the Australian Government advised that as of 1 January 2007 the bonus would not be paid as a lump sum to those mothers under 18 years but instead would be provided in 13 instalments over six months. In addition, an education campaign on the financial realities of parenthood would be carried out “to ensure that young people are not mistakenly attracted to parenthood by the prospect of short term financial gain.” (Minister for Families, Community Services and Indigenous Affairs 2006).

Contraceptive use

Little information is available specific to Indigenous girls under 18 years of age and their contraceptive use. National data for Indigenous women (aged 18 years and over) in remote areas shows that in 2004-05 the contraceptive injection (DepoProvera) and contraceptive implant (Implanon) were preferred over condoms or the pill. This compares to the 2001 data when Implanon was not available and DepoProvera was the preferred method (ABS 2006, cat. No.4715.0). In the Northern Territory in 2004, the preferences of Indigenous women in remote areas reflected the national data with the exception that Implanon was clearly the preferred form of contraception (ABS 2006, cat. No.4715.0).

Anecdotal information¹¹ indicates that Implanon is the preferred form of contraception for Indigenous girls under 18 years. Implanon is a small plastic rod containing the hormone, progestogen. This is inserted just beneath the skin of the upper arm and provides protection against pregnancy for the three years it is left in place. Implanon has been available for use since May 2001 and, in the first four years of its availability, more than 270,000 women have chosen it as a contraceptive (Kovacs 2005).

Its insertion and removal is carried out by a medical practitioner. For women generally, and Indigenous girls

¹¹ Derived from the Inquiry’s community meetings, where service providers and women in many communities referred regularly to the use of Implanon as a contraceptive for girls under 18 years.

and women in remote communities particularly, a contraceptive that is inserted once only and lasts for three years is a great advantage, especially when the person may be mobile and not have access to a secure place to store medicines. Unlike condoms though, it does not provide protection against sexually transmitted infections.

DHCS has developed and implemented *Guidelines on the Management of Sexual Health Issues in Children and Young People* (unpub.) to assist primary health care practitioners to respond appropriately to the contraceptive and other sexual health issues confronting Indigenous children and young people.

Sexually Transmitted Infections

The NT Centre for Disease Control (CDC) provided sexually transmitted infection (STI) data in children in the Territory for 2000-2005. This indicated that the per capita rate of STI infection among all Aboriginal people is between seven and 30 times greater than for non-Aboriginal people (additional information from DHCS, received 28 August 2006).

From 2001-2005, of all STIs diagnosed in Aboriginal people, 8% occurred in children under the age of 16 years compared with 3.2% for non-Aboriginal children. STIs are statistically more likely to be found in Aboriginal children. In actual terms, the number of STIs in young people in Alice Springs (particularly Alice-Rural) is particularly high, reflecting the high number of young Aboriginal people living in the region (see Figure 2 below).

From 2001-2005, an STD was identified in 64 children aged under 12 years. Some 54 of these children were identified as Aboriginal, five were identified as non-Aboriginal and the cultural identity for another five was not reported. The figures represented 0.3% of all Aboriginal and 0.15% of all non-Aboriginal STI cases.

The proportion of STIs occurring in young Aboriginals is similar across all regions – about 8% of all STI notifications are diagnosed in children aged under 16 years. The exception is East Arnhem where 10.6% of all STIs occurred in children under 16 years – significantly higher than the whole-of-Territory rate of 8%.

- The number of STIs in children under 12 years has varied from between 5% and 15% between 2000-2005. The numbers are small and no real trend in increased notifications is evident.

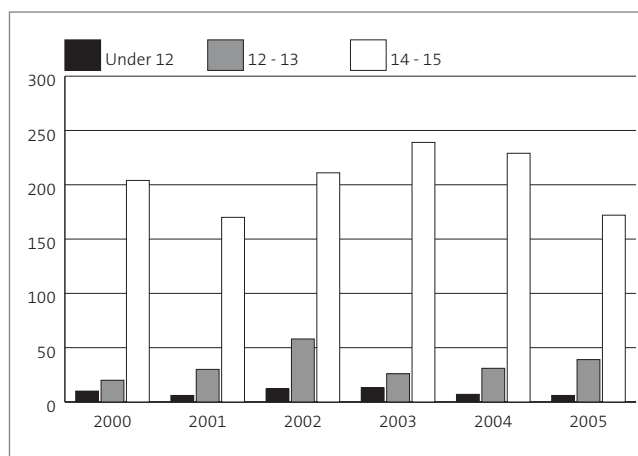
- In the 12-13 year age group the number of infections ranges from 11% to 52% per year between 2000-2005.
- In the 14-15 year age group, the number of infections ranges from 158 to 246 per year between 2000-2005. The notifications of STIs in young people aged 12-17 years is increasing in both the Aboriginal and non-Aboriginal population of the Territory.

It is probable for 12-13 year-olds, and certain for 14-17 year-olds in the NT, that there is an trend of increasing notifications over recent years – mainly related to increases in chlamydia and gonorrhoea in both Aboriginal and non-Aboriginal populations. It is noted that this is consistent with an increase in chlamydia infections over the past 10 years observed throughout Australia and much of the western world. While this may be due, in part, to the availability of minimally invasive and more sensitive tests (leading to increased detection), it is felt that the increase reflects *increased transmission*, not just increased detection.

On the basis of the available data, NT sexual health practitioners have developed the view that sexual activity:

- in a person under 12 years is highly likely to indicate abuse
- in a person aged 12-13 years is a “grey area” requiring close examination of the situation
- in a person 14 years or older is often consensual in nature, but may still indicate abuse (additional information from DHCS, received 28 August 2006).

Figure 2: STIs diagnosed in young Aboriginals (under 16 years) in the NT (2000-2005)



Because of a previous failure to report all cases where there is evidence of underage sexual activity (pregnancies and STIs) to FACS for investigation, and a lack of clarity around what needs to be reported, DHCS, in 2007, developed and implemented new *Guidelines on the Management of Sexual Health Issues in Children and Young People*. The guidelines direct clinical staff to report the following situations to the FACS Intake Team:

- when clear evidence of sexual abuse is present
- when a pregnancy has occurred in a person under 14 years
- when sexual activity is occurring in a person under 14
- when a sexually transmitted infection is diagnosed in a person under 14
- when sexual activity is occurring in any person under the age of 16 who is not considered mature enough to understand the concept of consent to sexual activity.

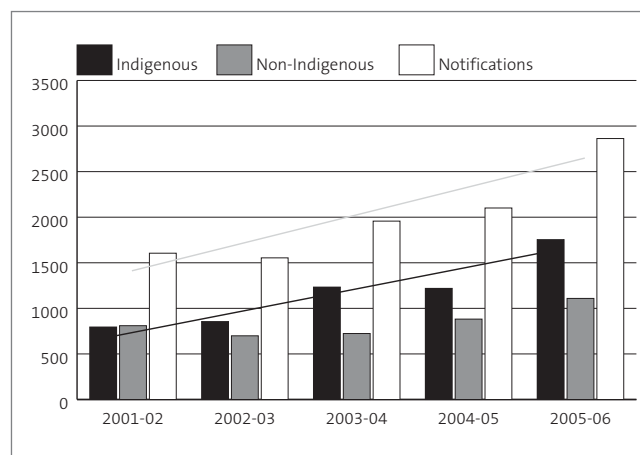
8.2 Child protection data

The evidence most commonly relied upon to estimate the extent of the sexual abuse problem in Australia is the national child protection data sets prepared by the Australian Institute of Health and Welfare. Over the last five years, the number of child protection notifications (i.e. reports to child protection services) in Australia has almost doubled from 137,938 in 2001-02 to 266,745 in 2005-06 (AIHW 2007a) – with an increase in notifications of 14,000 from 2004-05 to 2005-06 (5.5% increase).

Over the same five-year period, there was a 78% increase in the number of notifications (reports) received by NT Family and Children’s Services (FACS), with an average growth in notifications of 14% per year (see Figure 3)¹². Over the same timeframe, the NT rate of notification per 1000 children has increased from 29.3 to 59.9 per 1000 children. Thus, in 2005-06, 6% of children in the Territory were the subject of a child protection notification - twice as many children than were reported five years ago. Much of this increase is attributed to the rise in notifications for Indigenous children (a 121% increase c/f a 37% increase for non-Indigenous children).

12 From 2004/05 to 2005/06 there was a 36% increase in NT notifications.

Figure 3: Notifications to FACS 2000-01 to 2005-06



Who reports?

Reflecting the experience of most western child protection systems, government agencies and other professionals are the main sources of referral of suspected child maltreatment matters in the Territory. Significant sources of case referral in 2005-06 were:

- NT Police (28% of all reports)
- hospitals/health centres (15% of all reports)
- school personnel (11% of all reports)
- non-government agencies (10% of all reports)

Family members also play a significant role. In 2005-06, parents/guardians were responsible for 6% of all reports, with other family members contributing 9% of reports. Friends/neighbours were responsible for 7% of all reports.

Sexual abuse notifications

More detailed analyses of notifications by type of maltreatment is not provided in the published national datasets, but further analysis of the FACS data¹³ indicated that the proportion of notifications initially reported as “sexual abuse” has consistently been 10-11% each year (2002-03 to 2005-06). Indigenous children have been consistently over-represented as the subject of a sexual abuse notification (average of 53% of cases from 2002-03 to 2005-06).

13 In response to a request from the Board, FACS completed additional analyses based on the investigations that stem from notifications during each annual period. It should be noted that these analyses are not directly comparable to the nationally published AIHW or Report on Government Services child protection data.

Classification issues

It should be noted that, when creating child protection aggregate data sets, cases are routinely classified or “labelled” as one of four main maltreatment types (physical, sexual, emotional abuse and neglect). The label applied reflects the most serious concern able to be substantiated. This is open to bias and may also mask the range of maltreatment (including sexual abuse) present in a case – despite sexual abuse being given primacy in the labelling hierarchy (Tomison 1999). For example, a case labelled as “physical abuse” may include, in addition to a range of substantiated physical harms (hitting/kicking, threats to physically harm), neglect (child left without adequate supervision), and substantiated and unsubstantiated allegations of sexual fondling, deliberate exposure to the sexual abuse of others etc.

Further, in cases where the alleged sexual harm involves a non-familial perpetrator, child protection services consider the degree to which the family of the child has neglected to provide a safe place for the child and/or the degree of complicity with the alleged abuse. A failure to protect a child from risk may be classified as “neglectful” and therefore alleged incidents of sexual abuse may be formally classified by FACS as “neglect”. As a consequence, the sexual abuse data may under-represent the actual number of cases involving sexual abuse concerns that have been assessed by FACS.

FACS role

Finally, as noted in Part I, many reports of alleged sexual abuse involve perpetrators who are not part of the child’s immediate family, and where the family is prepared to ensure the child is protected from future harm. In those cases, there are no protective concerns and FACS is not required to undertake further investigations or statutory action to protect the child. Such cases are referred to the Police for criminal investigation, with the FACS role limited to providing referrals for the victim and their family for support.

In 2006 however, as part of the justification for the development of the Child Abuse Taskforce joint investigative Police-FACS team (see Child Abuse Taskforce, Part I), it was recognised that FACS could play an important role in interviewing and supporting victims. Further, it found that organising child, family (and at times whole-of-community) therapeutic responses following allegations

of child sexual abuse matters must be given greater prominence. As a result of the development of the CAT and the number of complex sexual abuse incidents that have been investigated in the last 12 months, FACS now takes a greater role in the investigatory process for all sexual abuse cases, including those where the protective concerns are minimal, including cases where the matter may not be able to be substantiated or criminal charges laid.

Investigations

Once they are received by FACS, all notifications in the Territory are initially assessed over the phone by qualified child protection staff. Previously, notifications were processed by intake teams in regional FACS offices, but from late 2006, a centralised intake team has been established to process all notifications¹⁴.

Approximately half of all notifications are usually assessed as requiring formal investigation^{15/16}. Many of the cases not proceeding to formal investigation are closed with no further action taken, though a proportion are dealt with by FACS as “family support” cases where vulnerable or “at risk” families (where maltreatment has not been substantiated) are provided with therapeutic and practical supports in order to prevent future risk of harm to a child. This support may be provided by FACS family support teams, or through formal or informal referral to the non-government sector.

Since 2001-02, the number of investigations commenced has increased by 53%, with most of this increase due to the increased reporting of concerns for Indigenous children. There has been a 72% increase in cases involving Indigenous children compared with only a 4% increase in cases involving non-Indigenous children (see Figure 4). While alarming, this has been perceived by the Northern Territory Government, FACS and a number of commentators as a positive development. It is contended that the increase in Indigenous cases is evidence that FACS is able to provide greater monitoring and surveillance of

14 At the time of publication this service was still being implemented across all Territory regions.

15 A ‘formal investigation’ will involve child protection workers conducting face-to-face interviews and assessments with the child and family.

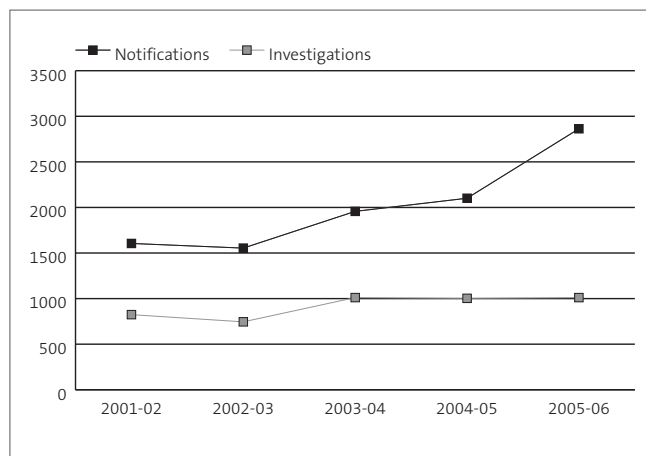
16 Significant (and increasing) differences between jurisdictions as to how they manage initial intake and assessment mean that it is not possible to undertake a meaningful cross-jurisdictional comparison of the proportion of notifications resulting in investigations across the nation.

Indigenous and remote Indigenous populations, and also reflects overdue recognition of the need to focus on the Territory's most vulnerable children - Indigenous children.

Sexual abuse investigations

On average, 10% of all notifications classified as involving "sexual abuse" concerns proceed to formal investigation (2002-03 to 2005-06), with Indigenous children again over-represented in investigated sexual abuse matters (average of 58% of cases from 2002-03 to 2005-06)¹⁷.

Figure 4: Notifications and Completed Investigations 2001-02 to 2005-06



An issue of capacity

Despite significant increases in demand (36% increase in notifications from 2004-05 to 2005-06), it is apparent that for 2004-05 and 2005-06 the number of FACS formal investigations levelled out. Further, while the overall number of investigations carried out has increased, proportionately fewer investigations have occurred.

Some 52% of all notifications proceeded to formal investigation in 2001-02, while only 42% proceeded to investigation in 2005-06. Similarly, while actual case numbers have gone up significantly, the proportion of cases involving Aboriginal children reaching formal investigation has decreased from 60% in 2001-02 to 47% in 2005-06.

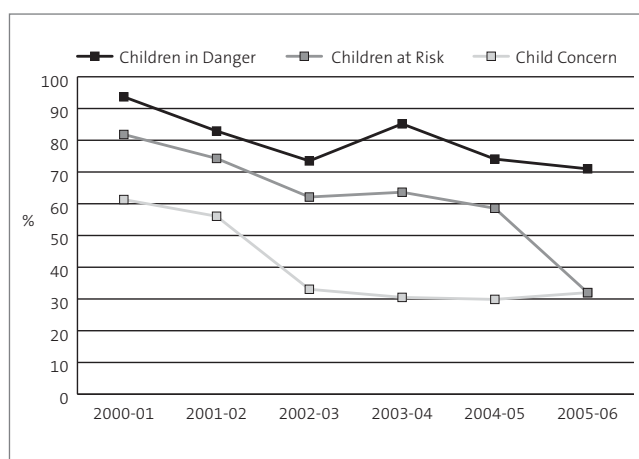
These decreases may be due to a higher proportion of notifications not requiring child protection intervention

(i.e. the proportion of inappropriate reports may have increased as the total number or notifications has increased). However, it may also mean that the system has reached its capacity and that FACS' current staffing and funding resources is inadequate to enable it to cope with the increasing numbers of cases requiring investigation. This would be exacerbated by higher numbers of complex sexual (and other) abuse cases that require significant resources to manage effectively.

Under current resourcing, it may therefore be that 1100-1200 investigations are all that can be undertaken in a year. If this is the case, it is likely that workers have raised the threshold for investigation such that case concerns must now be assessed as more severe to be allocated for investigation. Therefore, some cases that previously would have been seen as serious enough to require investigation will not have received a child protection response.

The difficulties faced by FACS in coping with existing demand is supported by FACS' compliance with the commencement of investigation practice standard (see Figure 5). It would appear that, as demand has grown, FACS' ability to meet the commencement standards has fallen to the extent that investigations of a proportion of the most serious cases are not able to be commenced within the required 24-hour period after a report is received.

Figure 5: Investigations commenced within timeframe (2001-02 to 2005-06)



Substantiations

Nationally, the number of substantiated cases rose to 55,921 in 2005-06, an increase of 84% since 2001-02 (AIHW 2007a) (see Figure 6, next page).

17 In response to a request from the Board, FACS completed additional analyses based on the investigations that stem from notifications during each annual period. It should be noted that these analyses are not directly comparable to the nationally published AIHW or Report on Government Services data.

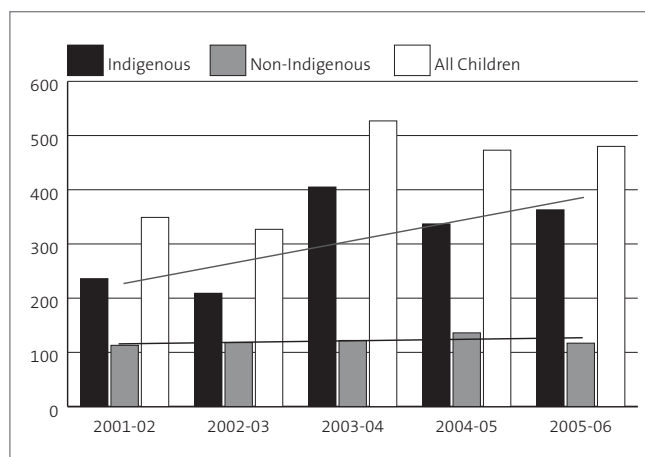
In the Territory, the proportion of investigated cases that are substantiated has remained at a consistent 40-41% from 2001-02 to 2005-06, although the proportion of *notifications* that are substantiated has fallen from 21% in 2001-02 to 17% in 05-06¹⁸.

The substantiation rate of 8.9 confirmed cases per 1000 children (c/f 5.7 in 2002-03) is the third highest national rate. Yet, with regard to Indigenous children, the Territory's substantiation rate is the third lowest for the nation, despite a doubling of the rate to 15.2 substantiations per 1000 children since 1999-2000, and Indigenous children being 3.5 times more likely than other children to be confirmed as experiencing child abuse or neglect.

Sexual abuse cases

The proportion of substantiated cases of "sexual abuse" has consistently been between 5% (2005-06) and 8% (2001-02) of all substantiations (25 of 464 in 2005-06). In regards to cases involving Indigenous children, 4% (15 of 356) of all substantiations in 2005-06 were classified as "sexual abuse". Sexual abuse cases make up similar proportions in other jurisdictions (AIHW 2007a) (with the exception of West Australia) where 16% of Indigenous cases were classified as sexual abuse in 2005-06.

Figure 6: Substantiated cases in the Northern Territory 2001-02 to 2005-06



18 The significant increase in child protection and sexual assault apprehensions by NT Police in 2003 occurred as a result of two proactive operations targeting child abuse. The level of publicity accompanied by targeted police activity resulted in a much higher proportion of victims coming forward (NT Police, Inquiry submission 21).

It is interesting (and concerning) to note that the present number of substantiated cases labelled as "sexual abuse" in the Territory has consistently been below 50 cases since 1997-98 – despite increased interest and awareness of the issues (ABS 2004).

The low proportion of substantiated cases may be due to:

- a generally low prevalence of sexual abuse in Australian communities (which this Inquiry and other sources would dispute)
- a reluctance to report (see Reporting)
- difficulties in obtaining concrete evidence of sexual abuse which limits the number of both Indigenous and non-Indigenous cases that are able to be substantiated.

However, it is generally acknowledged in all jurisdictions, and in the Territory (as supported by the Board's community consultations), that there is significant under-reporting and a failure of child protection systems to substantiate and adequately protect children (see Reporting Sexual Abuse of Aboriginal Children, Part I).

Children on care and protection orders

If a child has been the subject of a child protection substantiation, there is often a need for statutory child protection and family support services to have continued involvement with the family in order to monitor and improve the child's situation. In some situations where the concern for the child is significant and/or the family is non-compliant, child protection services may apply to the relevant court to place the child on a care and protection order.

Nationally, there has been a 73% increase in statutory care and protection orders -from 15,718 to 27,188 orders from 1997 to 2006. Over the same period there was a 294% increase in the Territory (111 to 437). Since 2001-02, the Territory has had a 125% increase in the number of orders taken out (average 31% annual growth) and there has been a 140% increase in orders for Indigenous children.

Children placed in out of home care

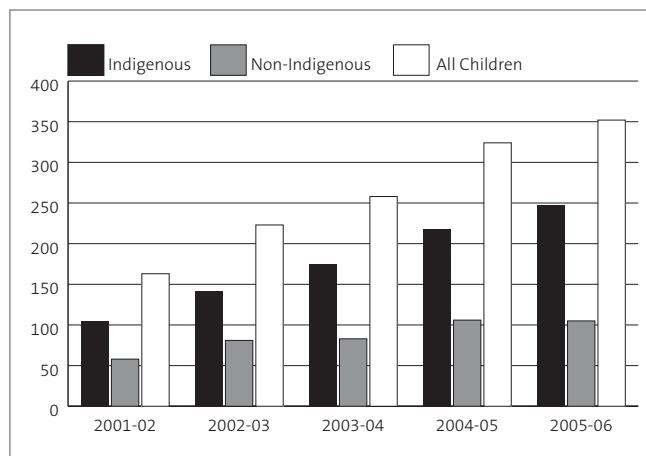
In general, children are removed temporarily or permanently from their parents' custody and are placed in out-of-home care because the child protection concerns are of such severity that the child requires a more protective environment. A child may also be placed in

out-of-home care because their parents are incapable of providing them with adequate care, or where alternative accommodation is needed during times of family conflict (AIHW 2007a). At present, most children who go to out-of-home care are placed in some form of family-based care, such as foster care or kinship care (the care of a relative), although some (few in the Territory) are placed in residential group home settings.

Nationally, there was an 82% increase in the number of children in care (from 13,979 in 1996 to 25,454 in 2006¹⁹), with Indigenous children significantly over-represented in the out-of-home population. Despite constituting only approximately 3% of the population, Aboriginal children comprise 26% of all those in care.

In the Territory, the number of children in care (as of 30 June 2006) had increased by 116% (from 163 to 352) since 2001-02 – with an average growth of 19% per annum. Indigenous children make up 29% of the NT population under the age of 18, but represent 78% of all children in care.

Figure 7: children in out of home care (at 30 June) 2001-2006



The number of Indigenous children in care has increased by 135% compared with an 81% increase for non-Indigenous children. The rate of children in care has doubled since 2002-02 (from 2.7 to 5.9 for all children; from 4.4 to 10.0 per 1000 Indigenous children) – which represents the highest increase in the rate of children in care across the nation.

19 There has been a 300% increase in Territory children in care since 1996 – from 88 to 352 children

Key trends in out-of-home care in the Territory include:

- a steady increase in the number of Aboriginal children and young people entering care. Aboriginal children consistently represent the greater proportion of children in out of home care in the Territory (see Figure 7)
- a growing complexity of the needs of children and young people entering care, many of whom present with difficult and challenging behaviours
- a widening disparity between the number of children and young people entering care, compared with the number of registered carers.

It is contended that a lack of adequate family support infrastructure across most of the Territory to which FACS could refer families identified as maltreating their child for assistance and support has meant that workers are left with little alternative in dealing with serious maltreatment cases but to place the child in out of home care. This issue is explored in Part 1.

Sexual abuse cases

Further analysis completed by FACS indicates that from 2002-03 to 2005-06, approximately 3% of children (N=31) in care were removed from their biological families because of sexual abuse concerns²⁰. Indigenous children accounted for 68% of all children in care (784 of 1157), and 61% of the children in care (19 of 31) because of sexual abuse concerns.

This small proportion is not surprising given that, in most sexual abuse cases, once the family is aware of the abuse, they will take action to protect the child and ensure there is no contact with the perpetrator – removing the need for statutory intervention.

Type of placement

The majority (88%) of Territory children in out-of-home care are placed in family-based care:

- 72% of children were placed in foster care
- 16% were placed with a relative or kin.

20 This data is indicative only. The reason for entry into out of home care is not used for routine reporting and thus caution should be used in interpreting the data. The data is not comparable with AIHW or RoGS child protection data reporting.

However, in 2005-06, 9% of children were placed in residential care. There has been increased use of residential care in the last two years as a number of children with complex needs have required the development of tailored placements.

Aboriginal Child Placement Principle

The Aboriginal Child Placement Principle has been adopted by all Australian jurisdictions either in legislation or policy. The principle sets out the right for Indigenous children to be brought up in their own family. It gives guidance for alternative placements and continuing family contact, and requirements for consultation with Indigenous agencies. The principle has the following order of preference for the placement of Aboriginal and Torres Strait Islander children:

- with the child's extended family
- within the child's Indigenous community
- with other Indigenous people
- with non-Indigenous carers.

In 2006, state/territory compliance with the principle ranged from 86% (NSW) to 33% (Tasmania). The NT compliance rate has been dropping since 2002 when 76% compliance was achieved - compliance in 2006 was 64%. It has been contended that the significant increase in the number of Indigenous children entering care since 2003 has hindered compliance by exhausting the supply of suitable Indigenous carers.

8.3 In summary

Aboriginal children now represent the majority of cases (actual children) dealt with by FACS and account for much of the growth in service delivery, while the number of cases involving non-Indigenous children has remained relatively stable. The contention is that the greater interest in addressing the high need of Aboriginal children and families, better surveillance of rural and remote populations, together with the NT Government's greater focus on child protection and child welfare policy (as demonstrated by the Caring for our Children reform process), is responsible for the majority of the increased demand.

However, it is the Inquiry's contention, based in part on the consultation process undertaken with the professional sector and Aboriginal communities, that

despite the efforts made to better monitor Indigenous children, geographical isolation, a lack of surveillance by professionals and some professional and community reluctance to report, that child sexual abuse remains significantly under-reported.

8.4 Criminal justice statistics

Despite a lack of quality information about the sexual assault of children due to the sensitivity in collecting such information, it is clear that children and young people are disproportionately over-represented as the victims of sexual assault (ABS 2004, cat No. 4523.0).

In the Recorded Crime Survey (ABS 2003, Cat. no.4510.0), 41% of all recorded sexual assault victims were children aged under 15 years (38% of all female victims and 56% of all male victims). It was also apparent that the recorded sexual assault prevalence rate for victims under 15 years of age has increased in recent years from 0.14% in 1999 to 0.19% in 2003. The numbers of recorded sexual assault victims aged under 15 years also increased - from 5425 in 1999 to 7502 in 2003. Of victims under 15 years of age recorded in 2003, 76% were female and 24% were male.

Although limited information is available which is directly relevant to repeat victimisation - i.e. where the same perpetrator(s) sexually assaulted the same victim on more than one occasion - the NSW *Initial Presentations* publication reported that in NSW between 1994-95 and 1997-98, between 26% and 29% of child sexual assault victims (under the age of 16 years) each year were recorded as having been previously assaulted by the same offender(s) responsible for the presenting assault²¹. Of these children, almost one-third had been assaulted over more than one year, one in four had been assaulted for up to one year, and one in 10 for up to one month. This provides further evidence that many assaults are not one-off events committed by "strangers" but involve known offenders who offend more than once over a period of time.

Northern Territory statistics

Two criminal justice data sources can be used to develop a picture of the criminal justice response to child sexual

21 Note that the period of previous assault history was 'unknown' for between one quarter and one third of the children.

offending in the Territory²². The first is the Police data on victim reports of sexual offences and subsequent apprehensions (charges laid) for sexual offences – Police Real-time Online Management Information System (PROMIS)²³.

The second is the analysis of sex offender data - from apprehension through to resolution in the judicial system – derived from the Integrated Justice Information System (IJIS). IJIS tracks cases that are proceeded with and finalised in the court system and for which there is a court outcome – including sentencing in cases where an offender pleaded guilty or is found guilty.

The PROMIS and IJIS databases are not linked, precluding attempts to link and track victims and their offenders through the criminal justice system, and thus, to comprehensively identify all child sex offences and outcomes. Further, neither database is linked to the CCIS child protection case database operated by DHCS. Linking these databases would significantly improve analyses of child sexual assaults (and other child-related violence offences) in the Territory.

Victims of Crime

The number of identified sexual assault victims identified to the NT Police each year has generally stayed quite constant since 2001 (with the exception of 2003-04 when there was increased identification of victims) – for both the Indigenous and non-Indigenous populations²⁴ (see Figure 8).

Nature of the Offences

From 2001 to 2006, a total of 889 individual offences were reported to Police for juvenile sexual assault victims

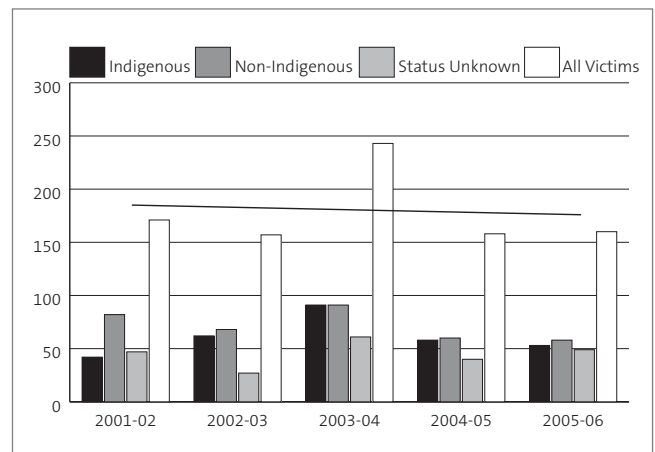
in the Northern Territory. Although the Indigenous status of victims was not reported for 25% of the 889 offences, when Indigenous status was known, 46% of the victims were identified as Indigenous (a significant over-representation). Approximately one-third of the offences were reported from remote areas of the Territory (i.e. outside of the major population centres).

The most frequently reported offences (more than 20 reports) could be broadly classified as sexual penetration or indecent assault offences. They were:

- sexual intercourse without consent (25% of all reported offences)
- sexual intercourse with a child under 16 years (2%)
- carnal knowledge involving a female under 16 years (9%)
- unlawfully and indecently deal with a child under 16 years (22%)
- unlawful and indecent assault (11%)
- indecently assault a woman or girl (7%)
- indecent dealing with a child under the age of 10 years (2%).

The increased number of incidents in 2003 was interpreted as resulting from two proactive Police operations targeting child abuse. The level of publicity associated with targeted police activity resulted in a much higher proportion of victims coming forward and impacted on both Police and FACS data (see above).

Figure 8: Recorded sexual assault victims (0-17 years) in the Northern Territory



22 The Board of Inquiry defined the set of child sex offences that were to be analysed by the NT Office of Crime Prevention, following consultation with the latter (see Appendix 5 for a list). The intention was to focus on all contact offences, exposure of children to sexual activity and child pornography-related offences.

23 Victim reporting and apprehensions data is derived from the Police PROMIS database. The Police have recently enacted further measures to ensure that the PROMIS system provides clearer information. These will include compulsory 'check box' fields in PROMIS to simplify some of the reporting requirements for police officers. The establishment of the CAT is also expected to address issues around investigative practice through the application of new quality assurance processes to reported incidents of child abuse (NT Police, Inquiry Submission 21).

24 Data extracted from PROMIS at 26 October 2006.

Geographical location of reports

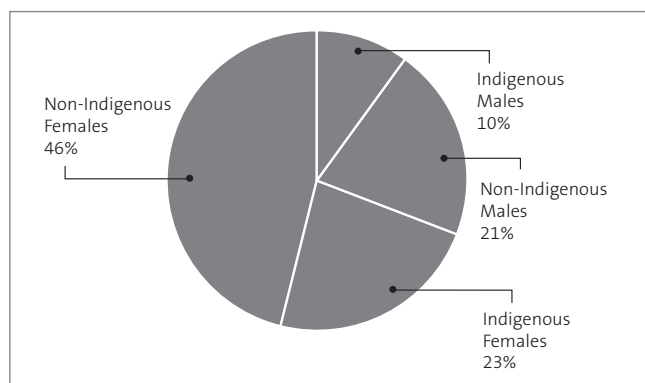
With regard to the more frequently reported offences (and where Indigenous children were over-represented as victims), it was apparent that most victims were reported in remote settings (i.e. outside the major population centres). In remote settings, Aboriginal victims were reported at twice the frequency as non-Aboriginal victims. On that basis, it is reasonable to assume that at least two-thirds of the 75 victims where Indigenous status was undetermined or unreported would also be of Aboriginal background.

Age, sex and Indigenous status of victims

As is typically found in analyses of sexual assault data, the majority of victims were female (67%), with non-Indigenous females accounting for almost half of all reports. Indigenous females, who account for 30% of the female population of the Territory (DHCS, 2007 online) accounted for 33% of female victims (23% of all victims). Aboriginal males, who make up 28% of the NT male population accounted for 32% of all male victims (10% of all victims) (see Figure 9).

The modal age (most common) for all victims was 10-14 years (42%). When broken down into gender, 10-14 years was the modal age for female victims, but the modal age for male victims was 5-9 years.

Figure 9: Reported sexual assault victims 2001-2006 – sex by Indigenous status

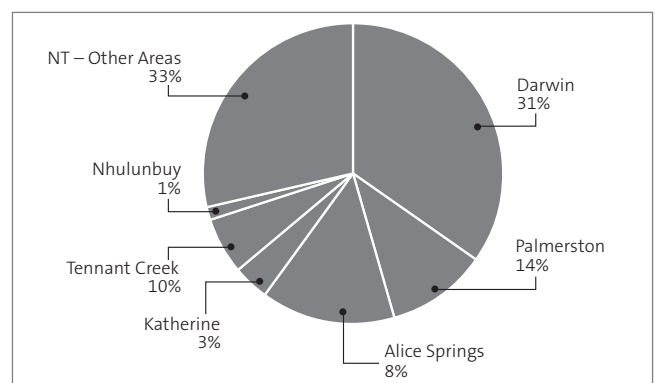


Geographical location of victims

In Figure 10 (see next page), data is provided regarding the region of the Territory where the victims were residing, when assaulted. Over half were living in the larger urban centres – Darwin, Palmerston and Alice Springs – although

Darwin and Alice Springs were under-represented while there was strong representation (33%) from victims living in remote areas. Tennant Creek (10% of reports) and Palmerston (14%) also appeared to account for more reports than would be expected, given they account for 1.5% and 11% of the population respectively.

Figure 10: Regional breakdown of sexual assault victims (2005-06)



From apprehensions to sentencing – child sex offenders

NT Police made 393 apprehensions for sexual assault/offences of child victims (aged less than 16 years) from 2001-2006²⁵. This represented 44% of the total number of sexual assault reports made by victims for the same period (see Figure 11).

Although the number of child sexual assault reports stayed relatively constant from 2001-2006, the number of apprehensions increased by 105% over this period, with the apprehensions of non-Indigenous offenders increasing by 105%, with an increase of 106% in the number of Indigenous offenders.

Nature of the Offences

Predominantly comprised of sexual penetration or indecent assault offences, the most frequently reported principal offences (more than 10 reports) from 2001-02 to 2005-06 were²⁶:

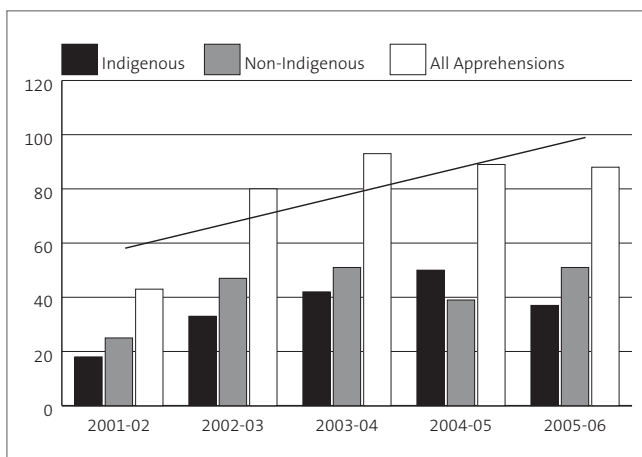
25 Data derived from IJIS Apprehensions data (at 30 June 2006).

26 Note 'principal offences' were derived from the Inquiry-compiled list of offences (as listed in Appendix 5) committed against child victims (under 16 years of age) and were determined according to ASOC NOI and ANCP rankings (Source: IJIS Apprehensions data 30 June 2006).

- adult attempted sexual intercourse of a child under 16 years without consent (4%)
- carnal knowledge involving a female under 14 years (7%)
- carnal knowledge involving a female under 16 years (15%)
- adult maintaining an unlawful sexual relationship with a child under 16 years (7%)
- sexual intercourse with a child under 16 years (3%)
- indecently deal with a child under 12 years (27%)
- exposing a child under 16 years to an indecent act (4%)
- aggravated unlawful assault (5%)
- indecent assaults a child under 16 years (4%)
- possessing file or photograph of a child under 16 years engaged in a sexual act or shown in an indecent manner (10%).

With the exception of the one non-contact offence, that being possession of child pornography, Indigenous males were over-represented as the offenders in all categories listed above.

Figure 11: Apprehensions for sexual offences of child victims (less than 16 years) 2001-02 to 2005-06

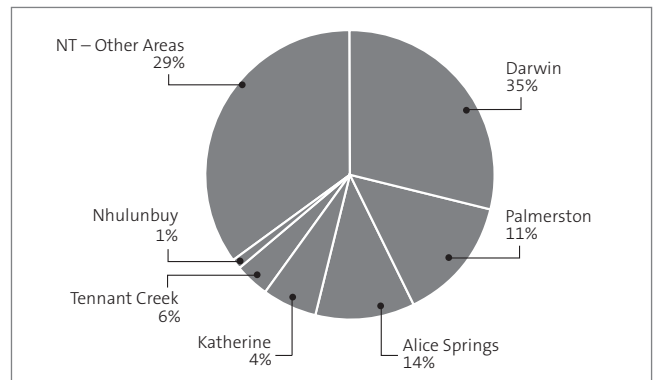


Geographical location of apprehensions

Figure 12 identifies the geographical location of the 393 apprehensions for child sex offences that were made from 2001/2002 to 2005/06. Over two-thirds of the total number of apprehensions were made in the larger urban centres – Darwin, Palmerston and Alice Springs.

Consistent with the sexual assault reports data, there was an under-representation of Darwin-based apprehensions (Darwin provides half of the NT population) and an over-representation of apprehensions in Tennant Creek.

Figure 12: Regional breakdown of Apprehensions for Sexual Offences of Child Victims (less than 16 years) 2001-02 to 2005-06



Age and sex and Indigenous status of perpetrators

Virtually all 393 alleged offenders apprehended for sexual assault/offences against child victims in the NT (2001-2006) were male²⁷. At the time of offence, 49 offenders were aged under 18 years, with 18 aged between 10-14 years.

Indigenous males were over-represented in the apprehensions data, with 46% (180) of all apprehensions from 2001 to 2006 involving an Indigenous offender. Further, with regard to offenders aged under 18 years of age, the majority (31) were identified as Indigenous, with 72% of the youngest offenders (13 of 18 offenders aged 10-14 years) identified as being Indigenous.

Background

The analysis was based on data extracted from the Integrated Justice Information System (IJIS) on 13 April 2006. The data included all prisoners (adult) and detainees (juvenile) in NTCS custodial centres as at 13 April 2006. Child sex offender status was based on IJIS court final orders implying conviction for at least one child sex offence.

²⁷ There were 2 non-Indigenous and 1 Indigenous female offenders from 2001-2006.

A snapshot of the Territory's sex offenders

The Office of Crime Prevention (DOJ) produced a snapshot of child sex offenders in custody (as of 13 April 2006). The data was derived from IJIS court final orders where it was implied there had been a conviction for at least one child sex offence. It includes all prisoners (adult and juvenile) in NTCS custodial centre as of 13 April 2006.

- There were 48 offenders in NTCS custodial centres with one or more conviction occasions²⁸ for a child sex offence.
- All the offenders were adult males.
- Thirty-one offenders (65%) were Indigenous.
- Thirty-three of the current episodes (69%) involved a conviction for at least one child sex offence.
- Thirty-five offenders (73%) had at least one prior custodial episode²⁹ and 22 offenders (54%) had received a custodial sentence for at least one prior episode. On average, the offenders had 3.5 prior episodes including 2.0 prior sentenced episodes.
- Seven offenders (15%) had more than one conviction occasion for child sex offences. On average, the offenders had 1.2 conviction occasions for child sex offences.

Perpetrator relationship to the victim

In terms of offender dynamics, a key element of sex offending is to determine whether the offences were committed by “strangers” not known to the victim (an incorrect assumption generally held by the wider community), or by family, friends or others known to the victim. As Figure 13 indicates, the data fits with other data sources, demonstrating again that most victims know their attacker. In this data, only 14% of all cases involved a perpetrator who was not known to the victim (when the cases where the relationship between victim and

28 A court appearance where an order implying conviction was given for a child sex offence. The conviction may not be directly related to the current custodial episode.

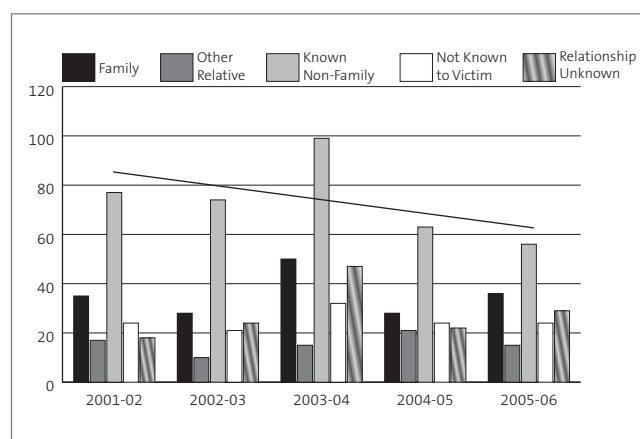
29 The episodes may not be associated with either remand or conviction for a child sex offence.

perpetrators was not reported are excluded, “strangers” constituted 17% of all perpetrators)³⁰.

With “relationship unknown” cases excluded, half of all cases were reported to involve someone known to the victim but who was not a family member³¹. Some 23% of perpetrators were close family members, with other relatives comprising another 10% of perpetrators. Thus, family members comprised one-third of all perpetrators.

People known to the victim, but who were not family members, were the only group of perpetrators that generally decreased from 2001-02 to 2005-06. There was no real change for the other categories of perpetrators.

Figure 13: Perpetrator relationship to the victim (aged 0-17 years)



Path analysis – from apprehension to sentencing

A key element of the criminal justice data is to determine what outcomes arise in cases involving the sexual assault of children. The Office of Crime Prevention (NT Department of Justice) undertook to map the criminal justice pathway for child sexual assault cases – from apprehension of an offender by the Police through the court system – in order to determine the outcomes for alleged child sex offenders in the Territory. As noted above,

30 Relationship is defined at the incident level for the primary offender and primary victim. Approximately one third of incidents each year involve multiple victims. There is some risk therefore, that the relationship between offender and victim may be incorrectly classified. The Office of Crime Prevention has undertaken an assessment and estimates this error to be in the vicinity of 5%.

31 Includes three cases where the perpetrator was an employer.

.....

the set of offences to be assessed was defined by the Board of Inquiry, in consultation with OCP.

Because there is no link between victims and offenders in the Integrated Justice Information System (IJIS), it was not possible to comprehensively identify all child sex offences. This report relies on the offence descriptions and text recorded in IJIS to identify offenders committing sex offences involving children aged under 16 years for the period 2001-02 to 2004-05. Apprehensions occurring after 30 June 2005 were excluded to allow for sufficient lead time to finalise the cases. Court orders handed down after 31 December 2006 were also excluded. Finally, sentencing outcomes data was provided in a separate analysis; note that there may be some missing data.

Terminology

The criminal justice pathway a case will follow after an offence has been committed is presented in Figure 14 (over page). It incorporates the various case outcomes that are possible once an offender has been apprehended (i.e. charges have been laid by Police) for one or more sex offences involving a child including:

Proceeded with – Apprehensions that have proceeded into the court system

Finalised apprehensions – At least one charge of the apprehension has been finalised. Those cases that do not proceed to “sentenced” (i.e. where the defendant has been found guilty of committing at least one offence) and have either been withdrawn by the Director of Public Prosecutions, or the defendant has been found “not guilty” of committing the offences.

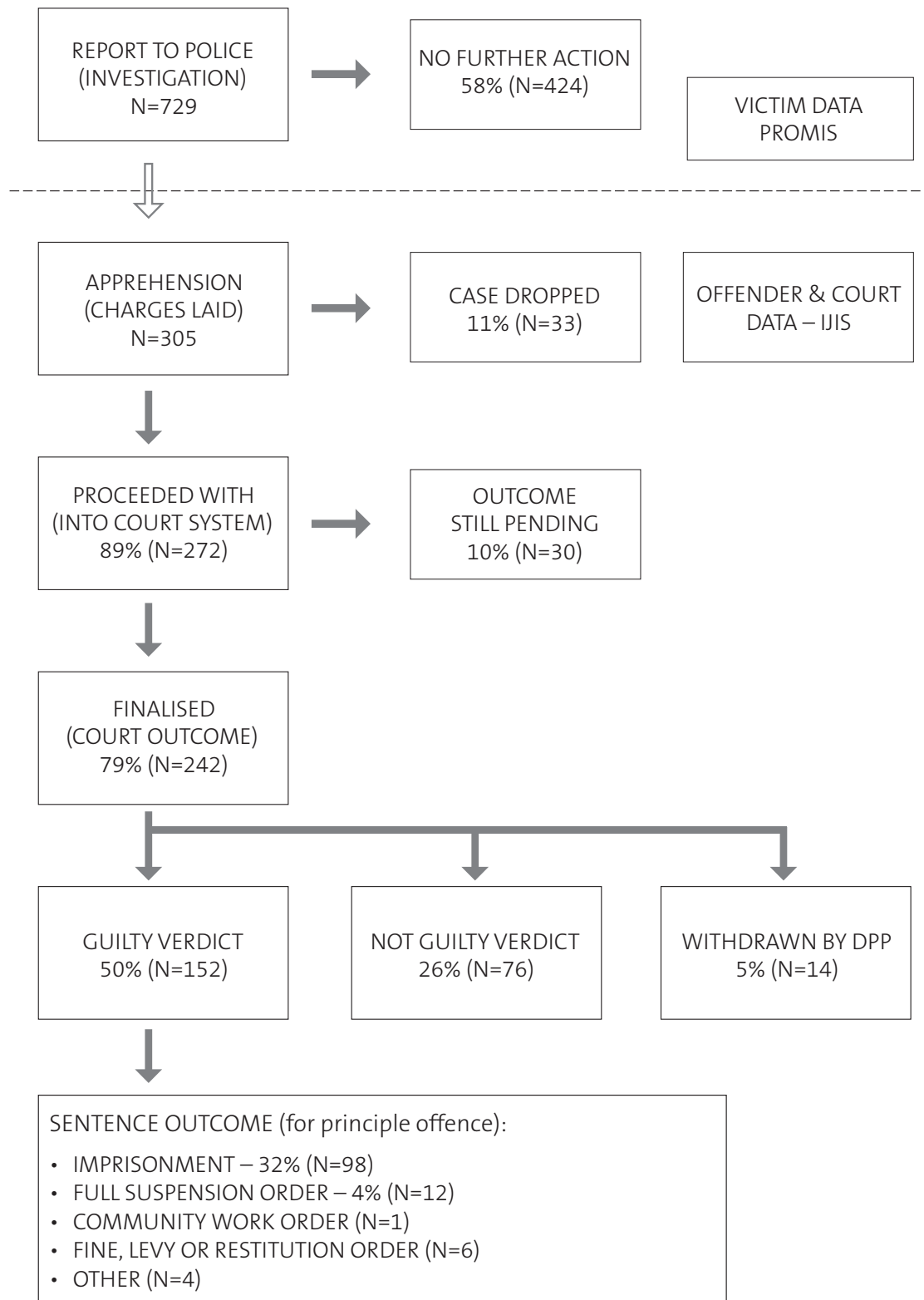
Sentenced – The offender has been found guilty of one or more offences – either as a result of making admissions and “pleading guilty”, or through being found guilty through the court process. As a result, the offender has received some kind of punitive order. In order of severity, these range from:

- imprisonment
- full Suspension order (suspended sentence)
- community work order
- fine, levy or restitution order
- other community corrections order.

It should be noted that cases that have been finalised but where the alleged offender has not been sentenced, are where the Director of Public Prosecutions has withdrawn the case, or where the defendant has been found “not guilty” of an offence.

Pending – None of the charges (for a particular alleged offender) have been finalised (i.e. the case is still in the criminal justice system). Most child sex offences are finalised by the criminal justice system in the Northern Territory within two years. The longer the time from apprehension, the smaller the proportion of cases remaining not yet finalised. Conversely, given that the 2004-05 data has only had 18 months to be completed (as of January 2007), it is not surprising that the finalisation rate is noticeably lower than for other years (20% not yet finalised).

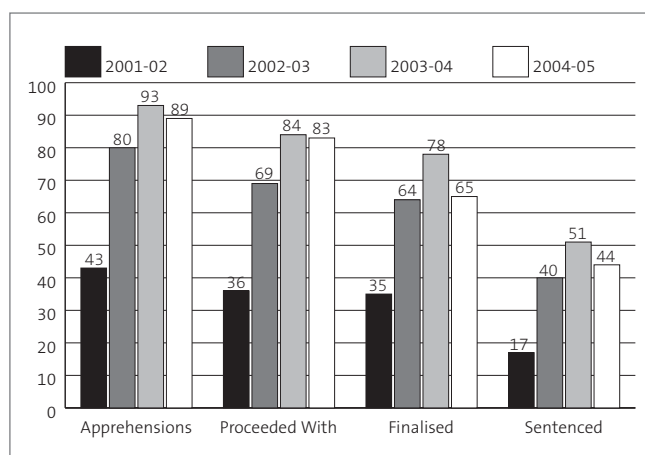
Figure 14: Child sex offences in the NT criminal justice system 2001-2005



Case outcomes

From 2001-02 to 2004-05, 50% of all apprehensions (152 of 305) resulted in the offender being convicted and sentenced for one or more offences. For 2001-02, 60% of alleged offenders were convicted and sentenced for at least one offence (driven by a significant over-representation of convicted Indigenous offenders in 2001-02). Over the four year period of interest, the number of apprehensions increased by 106% while the number of sentenced (convicted) offenders increased by 153%. Given that victim reports to Police remained static over the same period (see above), this would seem to indicate that the Police have significantly increased the rate of apprehending offenders and that the DPP has had similar increases in the successful prosecution of offenders (see Figure 15).

Figure 15: Apprehension to sentencing for all child sex offenders 2001-02 to 2004-05



Case outcomes – offender characteristics

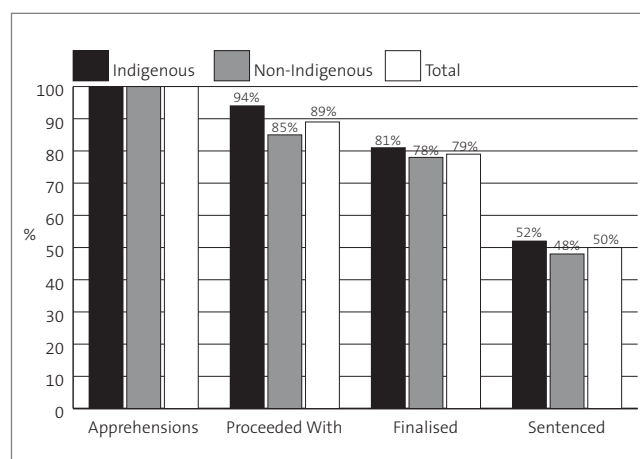
The vast majority of apprehended offenders were male – there were only three identified female offenders for the period 2001-02 to 2005-06.

With regard to Indigenous status, Indigenous males were significantly over-represented as offenders, constituting 28% of all Territory males (14% of total population) yet comprising 47% of all apprehensions, and 52% of all sentenced offenders³² (see Figure 16). It appears that at each stage of the court process Indigenous offenders were somewhat more likely to progress towards conviction

32 Indigenous status was derived from IJIS records.

(i.e. more likely to be involved in matters that were proceeded with, finalised and where a conviction resulted³³).

Figure 16: Apprehension to sentencing for all child sex offenders 2001-02 to 2004-05 by Indigenous status



Age of offender at time of offence

An assessment of the offenders age at time of the offence³⁴ indicated lower sentencing rates for juvenile offenders and, perhaps not surprisingly, a high rate of conviction for offenders who committed offences over time (i.e. at multiple ages):

- 19% of cases (7 of 37) involving an offender aged under 18 years resulted in a conviction
- 48% of cases (16 of 33) involving an 18-19 year old resulted in a conviction
- on average 52% of apprehensions for each 10-year age cohort from 25-34 to 65 years+ resulted in a conviction
- 83% (15 of 18) of those committing offences at different (multiple) ages were convicted of at least one offence.

Geographical location of apprehensions – court outcomes

On average, 89% of apprehensions were proceeded with from 2001-02 to 2004-05. Darwin and Palmerston (under-represented) had the lowest rates of cases proceeded with

33 Note that there were 12.5% of all apprehensions for Indigenous males still pending, compared with 7.5% of cases involving non-Indigenous males.

34 Apprehensions that contain offences committed over an extended period are classified as 'multiple age'. Data extracted from IJIS at 17 January 2007.

(albeit still high rates at 82% and 86% respectively). At least 95% of apprehensions in all other known locations were proceeded with at least 48% of apprehensions resulting in at least one conviction in all locations. The small numbers of cases involved preclude further analysis.

Nature of the Offence – flow data

From 2001 to 2006, only 30% of apprehensions involved only one charge/offence (88% of all apprehensions involving eight or less offences). However, there were some outlier cases where the perpetrator was charged with over 100 individual offences. Often these would involve possession of child pornography, where each item of pornography (tape, picture, book) may result in an individual charge. Typically, large numbers of charges in such cases would be withdrawn once the case entered the judicial system.

An analysis of individual child sex offences for 2001-02 to 2004-05 – rather than on apprehensions (each apprehension often involved charges being laid for multiple offences) is presented in Table 2, Appendix 5³⁵. It shows:

- Almost half of all offences (1121 of 2509) were for child pornography (where each piece of pornography possessed may result in a separate charge). Many of these charges are subsequently withdrawn with the result that only 17% of all child pornography charges result in a conviction.
- The charges where a failure to obtain consent has to be proved (gross indecency without consent and sexual intercourse without consent) proceeded at much lower rates (23% and 43% respectively) compared with an average of 68% of all offences are proceeded with.
- Indecent assault/dealings accounted for 33% of all offences – 19% of cases ending with a conviction.
- Sexual intercourse accounted for 18% of offences of which 19% of offences resulted in a conviction.
- 12% of all offences were still pending.

35 Note: consent is not a defence for the offence categories 'sexual intercourse' and 'gross indecency' (s.127-130, 134, NT Criminal Code) largely due to the victim being below the age of consent (16 years). These groupings are different to 'sexual intercourse without consent' and 'gross indecency without consent' (s.192 NT Criminal Code) where proof of non-consent is essential to a determination of guilt.

Finalised cases

An analysis of all finalised child sexual abuse offences between 2001-02 and 2005-06 found that 28% of all such offences resulted in a guilty verdict (419 of 1466 offences) and 47% were withdrawn by the DPP (686 offences), while defendants were found not guilty on another 25% of offences,³⁶ (see Figure 17).

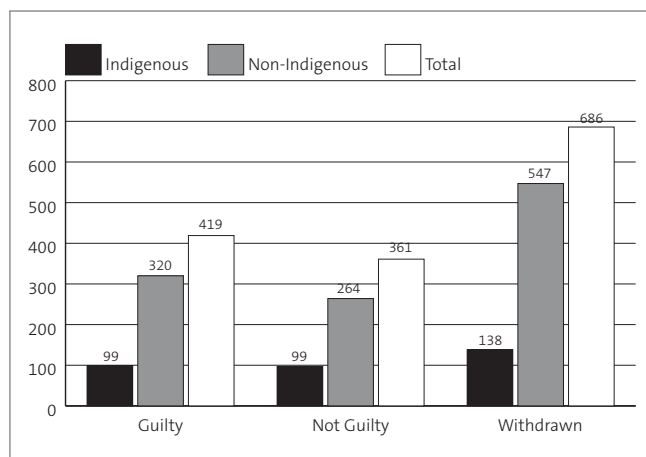
Of the guilty verdicts, the vast majority of offenders (96%) were found to have *pleaded guilty*. There was no difference in the rate of guilty pleas between Indigenous and non-Indigenous defendants. This may be a measure of the strength of the cases amassed by Police and the DPP where the defendant pled guilty on an assumption the outcome was a foregone conclusion. Alternatively, it may demonstrate that without admissions it is very difficult to obtain a conviction for child sex offences.

Indigenous defendants comprised 47% of all apprehensions (2001-02 to 2004-05), yet in an analysis of finalised offences (principal offences only), Indigenous representation had dropped to 23% of all finalised offences – an under-representation compared with the proportion of Indigenous males in the population (28%). This may be due to the high number of offences laid in cases of possession or manufacture of child pornography (although these are crimes committed predominantly by non-Indigenous males) – which could skew the distribution.

Indigenous defendants were also less likely to have the offence withdrawn than non-Indigenous offenders (42% c/f 48%), yet more likely to be found “not guilty” than non-Indigenous offenders (29% c/f 23%). This suggests that fewer non-Indigenous offences get to court because more are withdrawn (particularly in the case of child pornography offences). Offences committed by Indigenous offenders, though less likely to be withdrawn, also result in a “not guilty” verdict more frequently, suggesting a greater willingness (and/or better evidence) to “test” cases involving Aboriginal offenders in court.

36 Includes offences dismissed by the Courts

Figure 17: Finalised case outcomes 2001-02 to 2005-06



Sentencing

For 87% of all principal child sex offences, the principal penalty was for a custodial sentence (imprisonment order) (34 of 39 offenders). Somewhat surprisingly, in two cases of sexual intercourse the offender had fines imposed and no custodial sentence.

8.5 Conclusion – criminal justice statistics

In summary, while the number of reported sexual assaults has remained fairly static from 2001-02, Police appear to have made a significant increase in apprehending offenders and the DPP has had similar increases in the successful prosecution of offenders.

It was apparent that most reports (approximately 70%) made related to sexual penetration and indecent assault matters. Reports from remote communities were over-represented. Further, as would be expected from the literature, most victims knew their attacker. Indigenous females and males were both over-represented as the victims in reported sexual assault cases, but Indigenous males were also over-represented as perpetrators. This is perhaps not surprising given the geographical location of many reported offences (i.e. remote communities).

A criminal justice path analysis demonstrated that approximately 50% of all apprehensions from 2001-02 to 2003-04 resulted in a conviction for at least one child sex offence, and the convictions rate has risen over time. This compared favourably with other path analyses (e.g. ABS 2006, cited in Gelb 2007). Indigenous male offenders were

more likely to proceed through the criminal justice system and to have a conviction recorded against them.

Finally, it was interesting to note that while 28% of cases resulted in a guilty verdict, the vast majority of these verdicts (96%) resulted from a guilty plea by the offender. This may be a measure of the strength of the cases amassed by Police and the DPP where the defendant pleaded guilty on an assumption the outcome was a foregone conclusion. Alternatively, it may also demonstrate that without admissions it is very difficult to obtain a conviction for child sex offences. Overall, the Territory's conviction rate appeared to be extremely good in comparison with other jurisdictions.

8.6 Barriers to research and analysis

As no attempt has been made to create a national study of the prevalence of child sexual abuse in Australia, nor (more importantly for this Inquiry) to effectively estimate the extent of sexual abuse in Aboriginal communities, the Inquiry has had to rely on the national (and NT) child protection datasets and NT criminal justice statistics. These can only provide information on reported cases of sexual abuse and are not able to provide an in-depth analysis of the nature and extent of sexual abuse in the communities.

However, when taken together with the high rate of STIs in children, and the clear anecdotal evidence of children's early involvement in sexual activity and of sexual abuse in NT communities (see Part I), the Inquiry has concluded that the prevalence of sexual abuse in Aboriginal communities is a pressing problem that has been significantly under-estimated. However, a better estimate of the actual size of the problem is highly desirable.

Assessing the efficiency and effectiveness of the NT's child protection system is currently hampered by having data on child protection cases held in three major and separate IT systems. The Community Care Information System (CCIS), PROMIS and IJIS are owned and managed by DHCS, Police and the Department of Justice (DOJ) respectively. Each system can be interrogated for information on specific cases, but it is not presently possible to track one case between the systems. There is also presently no system for collecting, sharing and analysing core data to

assess and track performance of the total child protection system³⁷. Similar concerns have been raised by the Office of Crime Prevention (Department of Justice).

As well as the need to improve data analysis, linked information systems would ensure that child protection worker and police would have easy and complete access to information relevant to their investigations. This can only improve practice and has been a facet in the success of the Child Abuse Taskforce (see below) where workers can access information from both PROMIS and CCIS.

The Inquiry also recognises, however, that a range of issues related to protecting the confidentiality and integrity of data on the databases, would need to be considered. Given these issues, and as the Inquiry did not have an opportunity to discuss the link of databases with all relevant stakeholders, while supporting exploration of database links, the Inquiry has stopped short of making a formal recommendation that this should occur.

37 DHCS, Inquiry Submission 45



9. Child protection systems: an overview

In this section, an overview is provided of recent trends in Australian and other western child protection systems. Acknowledging that the Northern Territory has its own set of challenges and issues, it is contended that the broad trends in the nature of child maltreatment and child protection practice are still evident, and that the solutions that are being adopted as part of the present FACS child protection reform, have their roots in changes that have been enacted elsewhere.

9.1 Influences on child protection practice

In Australia, the earliest form of child protection developed within weeks of the first white settlements being established in New South Wales (Gandevia 1978), in response to what would be defined as neglect today. The settlement's abandoned and neglected children, or children whose parents were considered "socially inadequate", were boarded out with approved families, or later resided in orphanages, the first of which was established on Norfolk Island in 1795 (Liddell 1993).

Over the next century, a strong voluntary or "non-government" child welfare sector was developed in Australia (and overseas) (Picton & Boss 1981), with the Christian churches becoming involved in running orphanages and occupying prominent positions within the non-government child welfare system – positions that are still held today. However, it was not until after the modern "discovery" of child maltreatment, prompted by Kempe and colleagues (Kempe et al. 1962), that governments really began to take significant responsibility for looking after children's welfare. By the 1970s, statutory child protection services had been developed and were operational within the various Australian states and territories.

The 1970s and 1980s were characterised by the development and refinement of systems for investigating and managing child maltreatment cases (Liddell 1993) and the increased "professionalisation" of the child

protection response³⁸. In the 1980s and 1990s, the desire to enhance the professional response to child maltreatment, along with a strong desire for greater accountability, led to the widespread adoption (following a U.S. trend) of a variety of professional decision making aids, guides or checklists, commonly referred to as "risk assessment" measures. The intention was to provide child protection workers with more resources to use when assessing the risk of abuse or neglect to a child. Specifically, the aids could assist workers in determining: if abuse or neglect had occurred; the risk of further harm; and whether the child should be removed from her/his parents' care.

Economic rationalism

In harsh economic times, particularly in the early 1990s, an economic rationalist approach translated into the rationing of resources and increasing pressures and controls being applied to non-government family support and child welfare agencies. This forced some non-government agencies to close and others to amalgamate to survive. The non-government sector's ability to provide services and support for children and families was significantly hampered (Mitchell 1996). In practice, what this meant was that agencies' ability to provide support for families affected by social problems, but who were not actually maltreating their children (so-called "at risk" families), was severely reduced. These families were often not able to gain access to services, or were placed on long waiting lists as the depleted non-government system struggled to cope with the influx of clients referred by child protection services (Scott 1998).

It is argued that these forces have become more evident in the 21st century in the Northern Territory (a significant increase in child protection caseloads since 2001 is demonstrated in Child Protection Data above). The

38 Another significant change in the 1980s and 1990s, was the widespread adoption of mandatory reporting for various forms of suspected child abuse across the nation (until recently with the exception of Western Australia – although introduction of mandatory reporting was announced in 2007). The Northern Territory is the only jurisdiction to make reporting mandatory for all citizens.

Territory's family support infrastructure has always been of limited size. The increased child protection caseload has, however, made the deficits in infrastructure more evident.

Bureaucratisation of child protection practice

At the same time as the reductions in public spending on welfare and child protection began to take place in most jurisdictions, child protection work became increasingly driven by administrative requirements and the adherence to strict procedures ("bureaucratisation"). Management issues rather than professional practice became central to child protection practice, with efficiency, effectiveness and a focus on accountability overriding and conflicting with professionals' values and orientation towards the needs of children and their families (Lieberman 1994).

It has been argued that the bureaucratisation of child protection practice has led to workers' professional skills, knowledge, discretionary powers and decision-making, being replaced by standardised practice, developed without a clear understanding of the complexity of child protection practice or of the dilemmas and the moral and political factors that workers must take into consideration when making decisions (Howe 1996).

The legalisation of child protection practice

Concomitantly, a *legalistic framework* and "rules of evidence" were increasingly determining the facts of a case and whether abuse or neglect was serious enough to warrant protective intervention (Stanley 1997). Under a legalistic framework, developing a legal response pervaded child protection practice and usurped the therapeutic needs of the child and family. A consequence of the adoption of the legalistic framework has been that attempts have been made to restrict definitions of maltreatment in order to limit coercion and stigma. This has conflicted with the therapeutic need to widen definitions and to increase the identification of "at risk" or maltreating families in order to offer help (Hallett & Birchall 1992).

A further consequence of the law becoming the standard by which cases are judged and maltreatment defined, is that cases with legal consequences are, by definition, more likely to be singled out for attention (Lynch 1992). Emotional abuse or neglect, typically more difficult

to prove legally, may therefore be less likely to receive adequate attention. In addition, there is a danger that maltreated children may receive less care and protection as a function of a lack of evidence, or until the evidence is such that the case is able to be dealt with under the legal system (Stanley 1997). Finally, the evidential standards required by courts may permeate the work of non-judicial agencies, with evidential issues dominating case investigations, with child protection concerns being sub-sumed and therapeutic work hampered by a focus on criminal concerns (Mouzakitis & Varghese 1985).

9.2 Reforming child protection service provision: the shift to family support

In the 1990s, statutory child protection services in the Australian states/territories, like those in other Western countries, struggled to cope with ever-increasing numbers of reports of suspected child maltreatment and fewer resources (Tomison 1996b). These pressures, some caused or exacerbated by an over-emphasis on cost-effectiveness and bureaucratic structures at the expense of professional practice, led governments and child protection services to seek alternative approaches for managing child abuse and neglect. (Tomison 2004b).

It became apparent that a substantial proportion of the child maltreatment allegations referred to child protection services did not involve concerns deemed by the statutory services as requiring their involvement (Audit Commission 1994; Dartington Social Research Unit 1995; Tomison 1996b). Many reports involved families who had not maltreated their children but who had more generic problems, such as financial or housing difficulties, an incapacitated caregiver, or serious stress problems. Although such "at risk" families may require assistance, it has been argued (Tomison 1996b) that they do not require child protection intervention. Further, their labelling as cases of child abuse or neglect was placing an additional burden on what were generally limited child protection resources (Tomison 1996b).

Despite the fact that legal action was not taken for the majority of families with whom child protection services were involved, it was argued that the style of intervention for all families had become "forensically driven" (Tomison 1996b; Armytage, Boffa & Armitage 1998). This adoption

of a “forensic” or legalistic approach produced a number of negative consequences.

Firstly, it led to scarce child protection resources being shifted away from the provision of support to families where there was confirmed or “substantiated” child maltreatment (tertiary prevention) to enable the conduct of investigations. Similar problems were identified in the United Kingdom (Audit Commission 1994; Dartington Social Research Unit 1995) and the United States. The US Advisory Board on Child Abuse and Neglect (1993) concluded that the adoption of a forensic approach meant there was no realistic hope of meaningful treatment or family support to prevent a recurrence of child abuse and neglect, or to ameliorate its effects. As Kaufman and Zigler noted: “currently, investigation is the only ‘service’ provided in response to many child abuse and neglect reports” (1996:235).

Secondly, an under-resourced family support system was swamped by referrals from child protection services, effectively ending the bulk of the secondary prevention work that had been done with “at risk” families and creating substantial waiting lists for all but the most severe child abuse cases (Tomison 1996b; 1999). In effect, the focus on child protection investigations at the expense of prevention and treatment services was “the same as having a health system in which ambulances and casualty departments are increased while immunisation programs and surgical wards are closed” (Scott 1995:85).

Thirdly, there was an emphasis on child protection services as the “expert”, and an alienation of essential non-government family support agencies and professionals from a partnership approach with statutory services with regard to the prevention, support and protection of children (Armytage et al. 1998).

Finally, the shift to forensic investigation also raised general questions in relation both to child protection services’ screening or “gatekeeping practices” and the nature and availability of broader child welfare and family support services in the community. Within this, the dilemma was described as one of distinguishing child protection problems from broader welfare concerns and, in all instances, delivering an appropriate response matched to the needs of the client children and families.

In developing alternative service models as a response to these criticisms, attention therefore focused on the

operation of both child protection services *and* the broader child and family welfare system that statutory child protection services operate within (Dartington Social Research Unit 1995). Most Australian state and territory governments subsequently adopted “new” models of child protection and family support (Tomison 1996b), based predominantly on the recommendations proposed in the UK Department of Health’s *Child Protection: Messages from Research* report (Dartington Social Research Unit 1995).

Such approaches were often not new, but involved a revisiting or recapitulation of solutions previously tried and tested since the development of child protection services. One of the major differences was that there was now substantial formal recognition of the vital role played by the broader child and family welfare system in supporting families, and thus in preventing the occurrence and recurrence of child abuse and neglect. In this section, the intention is to explore a number of central themes in the development and provision of family support services, particularly as it applies to the prevention of child abuse and other family violence in the twenty-first century.

Integrating child protection services into a wider child and family support network

The increasing expansion and identification of social ills or issues (such as child abuse and parenting problems, youth suicide, bullying, domestic violence, substance abuse, relationship breakdown etc.), combined with a greater focus on the quality of family life and the health and wellbeing of family members (Tomison & Wise 1999), have produced significant demand from families and communities seeking external support to assist them in achieving and maintaining a “reasonable” standard of living, health and wellbeing. This has occurred as traditional forms of support provided by extended family and/or friends and neighbours appears to be decreasing (Bittman & Pixley 2000).

As a consequence, families have turned to governments and a range of family support services to assist them in dealing with the changing nature of society and the specific issues they may face. These “family support services” can be broadly defined as seeking “to benefit families by improving their capacity to care for children and/or strengthening family relationships” (AIHW 2001: xi). Typically, such services have focused on the provision of parent support, knowledge and skills development, and

have been provided via centre-based group programs and/or as home visitation services (e.g. Tomison & Poole 2000). (For an overview of parent education, see Tomison 1998; for good analyses of the effectiveness of such programs, see Chalk & King 1998, and Shonkoff & Phillips 2000.)

Throughout the 1970s and 1980s, a range of family support services provided a variety of therapeutic supports to families in need³⁹. These services included nurse-based home visiting services, where there was some recognition by governments and practitioners that infant welfare nurses could play a greater role in identifying and supporting “at risk” families. At this time, adequate resourcing and lower service demand meant that many services were able to counsel, treat or support not only statutory child protection clients, but many voluntary client families where identified child maltreatment concerns were deemed suitable for a community case plan (Tomison 1999). In addition, many families who voluntarily sought assistance for more general family dysfunctions or issues, and/or who were “at risk” of maltreating their children (that is, secondary prevention cases), were also able to be provided with supports, although these were often of a short-term nature (Tomison 1999).

Valuing family support

With the reframing of child protection service provision in the 1990s, there was now substantial recognition that statutory child protection services could not operate effectively in isolation; and of the vital role played by the broader child and family welfare system in supporting families, and thus in preventing the occurrence and recurrence of child abuse and neglect. As Scott noted:

child protection services are merely one component in a complex web of child and family services at the primary, secondary and tertiary levels of prevention. The child protection service is heavily dependent on this broader infrastructure of statutory and non-statutory services (1995:85).

Thus, in the last decade there has been a substantial reinvestment in a rapidly changing family support sector

³⁹ The benefits of preventative health and welfare services were more evident in larger jurisdictions where there were significant health and NGO family support infrastructure able to provide a range of services to children and families. Such effects were less evident in smaller, less well-resourced jurisdictions and particularly in rural and remote areas.

(Tomison 2001), and growing recognition of the need to work strategically to ensure the best response for families and improved societal health and wellbeing.

Family support in the 21st century

Notwithstanding the dramatic resurgence of interest in family support in the 1990s, focus on the *prevention* of child abuse and neglect has increased substantially over the past 20 years. This trend was boosted by recognition that the investigation-driven child protection response of the early 1990s would ultimately fail without adequate family support and other prevention services that could actually work with families to address their needs and to reduce any risks to children’s health and wellbeing. A small but growing body of evidence that prevention programs can produce greater social and economic benefits compared with crisis services gave impetus to a more prevention-focused service philosophy (e.g. Barnett 1993; Colorado Children’s Trust Fund 1995; Olds et al. 1997).

In the often-quoted Perry Preschool study, Barnett (1993) calculated that by the age of 27 years, for every dollar taxpayers spent on the preschool children enrolled in the Perry Preschool early intervention program (developed in the 1960s), there had been a subsequent saving of over seven dollars in health, welfare, criminal justice and social security expenditure. A more recent update indicated that by the time the children reached the age of 40, the cost-benefits were \$12.90 saving for every dollar spent on the program (Schweinhart 2005). Such cost-benefit analyses have resulted in a revitalised attitude towards the effectiveness of such early intervention programs, given that not only were they able to assist the nation to attain educational targets, but they were “lucrative social investments” (Zigler & Styfco 1996:144; Vimpani, Patton & Hayes 2002).

9.3 Key trends in prevention

In the last decade, in addition to the reinvestment in family support, three clear, interrelated prevention trends have become evident in policy and practice, with respect to the response to a number of social ills including crime, substance abuse, domestic violence and child maltreatment. These are: the renewed popularity of early intervention preventative approaches, particularly those targeting the first three years of life; the concomitant development of “health promotion” or “wellness”

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initiatives designed to enhance child and family health and wellbeing; and “whole-of-community” approaches.

Early intervention services

Early intervention initiatives are allied with the promotion of health and wellbeing. A range of early intervention strategies and programs have been developed to “create growth-promoting environments for young children whose development is threatened by biological vulnerability or adverse life circumstances” (Shonkoff & Phillips 2000:32).

The primary intention with an early intervention approach is to intervene to influence children’s, parents’ or families’ behaviours, in order to reduce the risk or to ameliorate the effects of less than optimal social and physical environments. The approach also aims to increase the chances of a:

more favorable developmental trajectory for each child. This is accomplished by attempting to identify and mitigate the influence of existing risk factors, as well as to identify and enhance the buffering capacity of available protective factors (Shonkoff & Phillips 2000:32).

Although early intervention approaches to prevent child maltreatment or other social ills may be beneficial from birth to adulthood, the early years of life in particular, have become the predominant focus for intervention. Infancy is a period of developmental transition that has been identified as providing an ideal opportunity to enhance parental competencies and to reduce risks that may have implications for the lifelong developmental processes of both children and parents (Holden, Willis & Corcoran 1992; Keating & Hertzman 1999; Shonkoff & Phillips 2000).

The Australian Research Alliance for Children and Youth (ARACY), led by Professor Fiona Stanley, has been one of Australia’s strongest proponents of early years research and investment in long-term early years programs. The interest in early intervention also led to the creation of the National Investment For The Early Years (NIFTeY) organisation (Vimpani 2000). NIFTeY is dedicated to promoting the development, implementation and evaluation of strategies in the early years of life that advance the health, development and wellbeing of all children in Australia.

Neural development

Interest in early intervention approaches has been strengthened by growing empirical evidence that early exposure to chronic violence, a lack of nurturing relationships and/or chaotic and cognitively “toxic” environments (Garbarino 1995), may significantly alter a child’s neural development and result in a failure to learn, emotional and relationship difficulties and a predisposition to violent and/or impulsive behaviour (e.g. Pynoos, Steinberg & Wraith 1995; Shore 1997; De Bellis et al. 1999). That is, if a child’s sensory, cognitive and affective experiences are significantly below those required for optimal development, such as may occur in a chronically violent environment, the brain may develop in ways that are maladaptive in the long term (see Shonkoff & Phillips 2000, for an excellent overview).

Specifically, the child may develop a chronic fear response, such that neural systems governing stress response will become overactive, leading the child to be hypersensitive to the presence of cues signalling a threat. Alternatively, a child experiencing a violent environment may become unresponsive and overly withdrawn. In either case, although this “survival” reaction may be an important adaptation for life in a violent home environment, it can be maladaptive in other environments, such as school, when the child needs to concentrate and make friends with peers.

Service delivery

When used as a preventative measure, early intervention approaches should incorporate both the promotion of health and wellbeing, and the prevention of social ills like child maltreatment (LeGreca & Varni 1993). It should be noted that there has been some recognition (e.g. Zigler & Styfco 1996; Tomison & Wise 1999; Brooks-Gunn 2003) that early intervention strategies, particularly if used in a limited way or in isolation, do not offer a “magic solution” to remedying the social problems that may impact on children, such as poverty.

However, early intervention approaches, closely linked with universal services, are generally perceived to be one of the most effective ways to ameliorate the effects of maltreatment (Widom 1992; Clark 1997; Tomison & Wise 1999). Maternal and child health services carrying out an early detection role, especially home visiting services, have been particularly noted for their success in identifying

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families at risk of maltreatment prior to the concerns reaching a level that would require protective intervention (Olds, Henderson, Chamberlin & Tatelbaum 1986a; Olds, Henderson, Tatelbaum & Chamberlin 1986b; Olds et al. 1997; Chalk & King 1998).

Whether they be similar to the home visitor service operating in the United Kingdom child protection system, the universal maternal and child health nurses of Scandinavia or Australia's infant welfare nurses, home-visiting programs are an important facet of a cohesive child abuse prevention strategy. Ideally, they offer a universal primary preventative service with the flexibility to cater for the needs of "at risk" or maltreating families (Vimpani et al. 1996). Where resources allow, such services are able to support and educate parents, and are more likely to detect problematic changes in family functioning (Drotar 1992). These services are also able to divert/refer families to the most appropriate support and can often alleviate the family situation without the necessity of statutory child protection services involvement.

The value of the preventative role played by the non-government sector, including early detection services, in preventing child abuse and neglect was relatively unacknowledged and undervalued during the recession of the late-1980s and early-1990s, particularly by governments intent on cost-cutting (Tomison 1999). It was not until the shift to a family support model of child protection practice in the mid- to late-1990s, and the publication of empirical evaluation studies, that the benefits of home visiting and other early intervention programs were recognised. Since then, governments have begun to reinvest in early intervention programs. However, while early intervention has been embraced to varying extents by the Australian jurisdictions, the significant investment undertaken by Canada and other European countries has generally not been realised in Australia.

Back to the future

Much of the present approach to child abuse prevention results from a revisitation and extension of the programs and tenets of early intervention programs that were first begun in the United States 30 years ago (Tomison & Wise 1999). The US Civil Rights movement provided the impetus to develop new ways of thinking and to overhaul the existing social structure. Education was seen as the key to eliminating social and economic class differences

(Zigler & Styfco 1996; Ochiltree 1999) and resulted in attempts to improve the cognitive and social competence of disadvantaged young children.

Early intervention programs like Perry Preschool (Barnett 1993; Zigler & Styfco 1996; Schweinhart 2005), Head Start (Zigler & Styfco 1996), and the Elmira Prenatal/Early Infancy Project (Olds et al. 1986a; Olds et al. 1986b; Olds et al. 1997) have demonstrated some improvement in disadvantaged children's lives and may reduce the number of "at risk" or maltreating families who will require more intensive support in order to reach an adequate level of parenting and overall functioning. Early intervention is therefore a vital, cost-effective component of any holistic approach to preventing social ills or promoting social competence (Barnett 1993; Emens et al. 1996; Zigler & Styfco 1996).

"Whole of community" approaches

The African proverb, "*It takes a village to raise a child*", is often used to epitomise the importance of the role of the wider community in raising children and young people. The larger socio-economic system in which child and family are embedded can influence family functioning, child development and the availability of helping resources, such as universal child and health services, within communities and neighbourhoods (Martin 1976; Garbarino 1977; US Advisory Board on Child Abuse and Neglect 1993; Hashima & Amato 1994).

This, in turn, has led to the adoption of holistic prevention strategies which focus on "whole-of-community" approaches and early intervention strategies designed to influence a broad network of relationships and processes within the family and across the wider community (Wachtel 1994; Hay & Jones 1994; US Advisory Board on Child Abuse and Neglect 1993; Tomison 1997; NSW Child Protection Council 1997; National Crime Prevention 1999).

The "whole-of-community" approach is clearly a strong theme of the Inquiry's report (see part I).

Strengthening families and communities – promoting resiliency

Strengthening families and communities has become a major component of efforts to prevent a variety of social ills, including child maltreatment. Researchers investigating the "risk factors" that may heighten

children's vulnerability to social ills such as child abuse and neglect, have consistently identified some children who are able to achieve positive outcomes in the face of adversity – children who are “resilient” despite facing stressful, high-risk situations (Kirby & Fraser 1997). Resilience appears to be determined by the presence of risk factors in combination or interaction with the positive forces (protective factors) that contribute to adaptive outcomes (Garmezy 1993).

The enhancement of protective factors or “strengths” has become a key facet of prevention strategies. Governments are now using it as the basis for Australian community-level interventions, and as a valued part of a policy of promoting family and community health and wellbeing. For example, the *Stronger Families and Communities Strategy* (Department of Family and Community Services 2000), (version one) announced by the Australian Government in April 2000, invested \$240 million to help support and strengthen Australian families and communities.

The strategy (versions I and II) has taken a prevention and early intervention approach to helping families and communities build resilience and a capacity to manage problems before they become severe. It recognises the importance of the local community and the wider social and economic environment for the wellbeing of citizens, the special protective role that strong communities can have for the very young, and the importance of supporting families to care for their members.

The strategy focuses on the importance of early childhood development, the needs of families with young children, improving marriage and family relationships, balancing work and family responsibilities and helping young people in positive ways. It also includes new initiatives to encourage potential community leaders to build up the skills of volunteer workers, and to help communities develop their own solutions to problems and promote a “can do” community spirit.

Overall, much of the present focus of family support services is on taking a whole-of-community approach to improving the health and wellbeing of children and families. The aim is to ensure that, when faced with adversity or stress, communities are better equipped to cope and respond in a non-destructive way. This approach goes beyond direct prevention of maltreatment

and is better described as a “wellness” or health promotion approach (Prilleltensky & Peirson 1999; Tomison & Poole 2000).

Solution-focused practice

It also appears that a similar trend has begun among professionals working in the child protection and child welfare arenas. In family support work, many agencies have begun to re-focus their work with families to empower clients, focusing on a family's potential for change and attempting to engage family members in a truly cooperative venture to find solutions to their issues (De Jong & Miller 1995).

Pioneered by Otto in the early 1960s, the underlying tenet of “solution focused” or a “strengths perspective” is that all families have strengths and capabilities (De Jong & Miller 1995). If practitioners take the time to identify and build on these qualities, rather than focusing on the correction of skills deficits or weaknesses, families are more likely to respond favourably to interventions and thus the likelihood of making a positive impact on the family unit is considerably enhanced (Dunst, Trivette & Deal 1988).

The overall objective is to develop a true partnership between family members and workers, involving the family as much as possible in case management decision-making and encouraging families both to set their own goals and to take responsibility for achieving them. Such competency-based, family-centred practice is not a denial of a family's problems or shortcomings but a focus on client strengths is perceived to be a more fruitful means to address issues and achieve positive change. As Durrant notes:

a focus on strengths does not deny shortcomings – it suggests that focusing on the shortcomings is often not a helpful way in which to address them (cited in Scott & O'Neill 1996:xiii)

Such an approach to working with families is presently quite common in Australian family support and child protection systems [e.g. Western Australia – the Signs of Safety approach (Turnell & Edwards 1999)].

Developmental prevention

Although significant benefits may accrue through the adoption of a health promotion approach, it is contended that in order to prevent child maltreatment and other social ills more effectively, strategies are required that

focus on both reducing risk factors and strengthening protective factors that foster resiliency (LeGreca & Varni 1993; Tremblay & Craig 1995; Cox 1997). As Cox (1997:253) notes:

truly ecological approaches that are developmentally attuned demand concurrent programs that work on protective as well as risk factors and that reflect and impact on processes working within and across various domains of the child's world.

Such an approach has already been adopted to prevent other social ills. For example, Tremblay and Craig (1995:156–57) describe *developmental prevention*, a key component of crime prevention strategies, as “interventions aiming to reduce risk factors and increase protective factors that are hypothesised to have a significant effect on an individual’s adjustment at later points of... development”.

9.4 Key issues in family support

With a few exceptions, such as the Australian national audit of child abuse prevention programs undertaken by the National Child Protection Clearinghouse (henceforth to be known as the “Australian Audit”) (Tomison & Poole 2000), a dearth of information has been available on the role and nature of family support services operating across the nation⁴⁰. In 2001, on behalf of the Australian Community Services Ministers’ Advisory Council (CSMAC), the Australian Institute of Health and Welfare (AIHW) published a report describing the family support services funded and/or delivered by the Australian and state/territory governments (AIHW 2001). A number of service trends were evident:

- As noted above, crisis services addressing issues such as family violence were increasingly being complemented by services that built on family strengths (capacity-building) and the creation of resiliency using a solution-focused approach (Dunst, Trivette & Deal 1988; De Jong & Miller 1995). This

approach was linked to the development of social capital (Coleman 1988) and creating family and community capacity to address and/or manage their own needs.

- There was a clear focus on the creation of innovative service solutions that were locally designed and delivered to meet the needs of specific communities. Further, services were being tailored to meet the needs of specific sections of the Australian population, including Indigenous Australians, culturally and linguistically diverse communities, people with disabilities or mental health issues, and rural and remote communities. Such services were set up to complement the more traditional generic family support services.
- Family support services were generally taking into account the wider community-level factors that might impact on service delivery, tailoring support programs to take into account the wider social and physical environmental context.
- A strong investment in early childhood and early intervention programs was evident.
- There was an increased focus on service integration or inter-agency coordination, and a greater focus on measuring outcomes and evaluating program impact or outcomes.
- Finally, there was recognition that to be effective, family support services must attempt to address holistically the needs of the family, including key members of the extended family.

In the following sections, building on the trends identified by AIHW (2001), some of the key issues or trends facing family support services in the 21st century are described.

A focus on voluntary engagement

It has been argued that there is a need to shift both research and service delivery away from determinations of “guilt” and “risk” to focus more on the development of comprehensive needs assessment and the provision of services to support children and families (Kaufman & Zigler 1996). The key issue for preventing child abuse is, therefore, not the achievement of legal sanctions, but the determination of what governments and the wider community may do to prevent or reduce the harm done to

⁴⁰ In the development of a Family Support Framework (DHCS 2005b), the NT Family and Children’s Services branch attempted to map NGO and government family support service provision across the Territory, taking into account the nature of the services being provided. This Framework is currently being updated and is expected to be used to inform investment in the NT NGO service sector as part of the current child protection reform agenda.

children (US Advisory Board on Child Abuse and Neglect 1993). The US Advisory Board on Child Abuse and Neglect concluded that:

the most serious shortcoming of the nation's system of intervention on behalf of children is that it depends upon a reporting and response process that has punitive connotations, and requires massive resources dedicated to the investigation of allegations. State and county child welfare programs have not been designed to get immediate help to families based on voluntary requests for assistance ... If the nation ultimately is to reduce the dollars and personnel needed for investigating reports, more resources must be allocated to establishing voluntary, non-punitive access to help (1990:80).

In recent times, by using differentiated child protection systems (see above), some evidence has emerged of a shift in practice such that the focus is on service delivery and, more particularly, the encouragement of “at risk” and non-statutory maltreating families to seek and accept assistance. Statutory intervention is, where possible, directed more towards families for whom family support, by itself, is inadequate and there is a need to intervene to ensure a child’s safety (Tomison 2004b). Many services have, therefore, adopted practice principles that promote cooperation between workers and families in order to achieve greater levels of parental cooperation and, subsequently, a better outcome for children and families (Tomison 1996b).

The importance of cooperation

The degree to which parents or caregivers cooperate with professionals has been identified as a factor affecting a variety of child protection case management decisions, such as whether to employ legal interventions in order to protect the child (e.g. Dalglish & Drew 1989; English et al. 1998; Karski 1999). That is, parents who fail to recognise that there is a problem in the family, who exhibit hostility and/or who hinder professional involvement represent a higher risk to the child, as do parents who lack potential or motivation for change (Tomison 1999).

Some studies have suggested that the proportion of cases involving cooperative parents and where legal protection is sought, is significantly smaller than the proportion where the parents are uncooperative (Craft & Clarkson 1985; Karski 1999). Other researchers have indicated that uncooperative parents fail to engage in therapeutic

interventions and thus are more likely to receive minimal intervention strategies (Goddard & Hiller 1992). Many child death inquiries have indicated that uncooperative parents have managed to avoid further protective investigations and professional case monitoring until after the child has died (e.g. Goddard & Hiller 1992; Reder, Duncan & Gray 1993).

From the findings of a large-scale tracking study of 295 suspected child abuse and neglect cases within a Victorian regional child protection network (Tomison 1999), it was apparent that the majority of substantiated cases and cases where legal action was taken involved parents whose level of cooperation was described as “ambivalent” at best. Further, families rated as “uncooperative” by workers, but who were engaged as voluntary clients, at times derailed case plans by failing to work with professionals and refusing referrals to services for assistance. As statutory intervention was generally considered to be inappropriate with these cases, the uncooperative or ambivalent caregivers were frequently left with the responsibility for their child’s care and protection, effectively without professional supervision or support. These “grey” cases (Jones et al. 1987; Dalglish et al. 1999) would be left to either improve to an adequate level of caregiving or to be renotified with similar or more serious concerns. Workers could perhaps then enforce cooperation through legal means.

The study, therefore, provides an insight into some of the difficulties faced by workers when attempting to work with families: in particular, the difficulties faced in relation to families for whom there is insufficient evidence to take statutory action, or where the maltreatment concerns have been deemed suitable for remedy via voluntary work with the wider family support sector. The findings also support the move of family support services to adopt strength-based or solution-focused approaches to casework. Under this approach, the positive engagement of families and a focus on pre-existing family strengths and capabilities would appear to offer a better chance of promoting family change and reducing the risk to the child (De Jong & Miller 1995; DePanfilis & Wilson 1997; Turnell & Edwards 1999).

Access to services

One area receiving increased attention in discussions is clients’ access to services. Why is it that those most in need of assistance often appear to fail to gain access to services?

Why do a proportion of the families with significant support and child safety needs, who manage to access services, disengage prior to completing the program?

Clearly, the demand for services by maltreating families (generally referred to by child protection services) or those in crisis, has often swamped services operating with a prevention/early intervention focus (see above). It is also apparent that this situation can create more, rather than less, demand, as “at risk” families unable to gain assistance when problems first arise may re-present with more serious child maltreatment concerns (Tomison 1996b).

Overall, there is growing recognition that to be truly effective, service sectors must investigate this issue and develop methods of enhancing accessibility. It is apparent that governments have moved to enhance accessibility as part of their efforts to develop family and community capacity-building. A range of funded community development projects incorporate attempts to engage with local communities and to provide families with the skills to recognise a need and to seek out services before their problems reach crisis point (e.g. the then Australian Government Department of Family and Community Services 2000).

Unfortunately, accessibility issues have not yet been explored fully, as research investigations of accessibility issues are still quite rare. The National Child Protection Clearinghouse undertook an exploratory study designed to gain further understanding of the issues around how families with a child at risk of being maltreated access programs designed to prevent maltreatment (Stanley & Kovacs 2003). The study investigated “at risk” children and families’ access to 32 centre-based parent education and home visitation services in urban and rural areas of New South Wales and Victoria. Stanley and Kovacs assessed: how program design and implementation impact on accessibility for the service user, factors associated with the service users, such as knowledge of a program’s existence and design, and the means by which identified barriers to accessibility may be overcome.

It was found that most services were operating in catchment areas rated by the service providers as having low numbers of child abuse prevention services, and relatively high service demands perceived by the service providers as outstripping service availability in 57% of areas. This was perhaps the key finding (and also one that might be expected) - that service accessibility and the nature of service provision itself, will be determined

largely by the availability of resources. A well-resourced sector is better able to meet demand for services, and to cater for a wider range of short and long term needs. Further, it enables services to devote resources to outreach work designed to ensure those most in need of assistance are able to be accessed and engaged for the purposes of providing support.

In the study, at least half of the services felt there was a lack of community awareness about their program, while about half recognised that those families most in need (at “high risk”) were not accessing their services (or in some cases, were accessing but dropping out of the program). Yet, few needed to formally advertise their services, or focus on targeting those most in need, because of generally high service usage by the local community (i.e. they were working to capacity).

Some studies have shown that traditional advertisements in print media are not particularly effective at encouraging service usage (Howard & Chaplin 1997). Rather, it is face-to-face contact, i.e. having a shopfront or display in local shopping centres and other public venues - Dumka et al 1997; Howard & Chaplin 1997) that is more likely to facilitate access to services. Further, Henricson et al. (2001.) contended that it is only by active or assertive engagement that families in need will be encouraged sufficiently to use services, i.e. by home visits, telephone or mail contacts designed to maintain families’ motivation to attend services.

Stanley and Kovacs (2003) identified a range of methods reportedly used by service providers to facilitate access to services. They included developing program content relevant to local families’ and communities’ needs, encouraging new family clients to attend the service via follow-up telephone or letter contact after they had enrolled in a service (assertive outreach), and by providing child care, transport (to agencies), social activities (including meals) where other family members could be included.

Tailoring support to family needs

Just as attempts to engage with the range of Australian families requires the development of tailored solutions, any understanding of family support needs to be:

informed by an awareness of the diversity of family forms and recognition of the different responses of family members to challenges along their life course (McGurk 1997:v).

It therefore follows that an effective family support system requires the flexibility to meet families' needs (both therapeutic and physical), particularly if a collaborative, solution-focused approach is to be effective. Further, the adoption of a systems approach to "family issues" needs to be balanced against meeting the needs both of individual families, and individuals *within* families. This is clearest when considering the provision of support to children and young people.

Addressing children's issues

A traditional assumption made in Western societies (and thus, in Western family policies) is that children's needs will be met as dependants within the family context, with adults mediating their needs (Makrinoti 1994). While this may broadly be a correct assumption, there will often be times when the needs of the individual child or young person will require a tailored response (e.g. child abuse trauma; bullying; post-family breakdown) (Tomison 1997).

A number of authors, such as Makrinoti (1994) and Mason and Steadman (1997), refer to the ideology of "familism" and its relationship to the oppression of children. The term "familism" is used to describe the ways by which policies targeting children are frequently subsumed under other policies (Mason & Steadman 1997). Childhood is fused with the institution of the family such that children and their needs cannot be defined independently of the family. Children, therefore, do not exist as a "distinct social entity", but are conceptualised as family dependants (Makrinoti 1994).

The question is, can children's needs be met via the provision of generalised support to parents or the family as a whole?

In the last decade, a range of "child focused" services have been identified (Tomison & Poole 2000), where the program is predominantly directed at children and young people without the involvement of, or with a minimal focus on, their families. Child-focused programs constituted 19% (342) of the 1814 programs identified in the Australian Audit, and consisted of:

- adolescent parent support programs (mainly for young mothers)
- respite and substitute care services for children and families requiring "time out" or emergency assistance

- generalist support and counselling programs for "at risk" and maltreated children and young people
- school-based health promotion and resiliency programs
- services for young people at risk of homelessness
- programs run in sexual assault centres or women's refuges for children who had "witnessed" domestic violence.

It should be noted that many of these programs were not designed to replace or supplant family-focused programs, i.e. in general they did not attempt to explicitly address children's needs as part of a wider parent or family-focused support program. Rather, the programs aimed to provide a specialist support service and/or support for children and young people estranged from their family. The general standard of the evaluations that were completed for the programs precluded a reliable assessment of their effectiveness (Tomison & Poole 2000). Overall then, is a child-focused approach effective? Does the adoption of a focus on an individual family member (child focus) preclude a family-centred focus? What is the impact on the provision of family support?

Wise has reported on an independent assessment, undertaken with colleagues, of an attempt to emphasise children's needs within family support programs. This was achieved via the trial implementation of the UK Children in Need approach (Department of Health (UK) 2000) within an Australian family support system. Designed for use by service providers in cases where statutory child protection intervention was not required, the Children in Need system comprises a conceptual framework and accompanying practice tools that assist family support staff to adopt a systematic "child-in-family" practice focus (Wise 2003).

Using worker feedback and other data sources, it was reported that some workers felt that a systematic child focus within the context of "family support" would undermine the family's trust (because of its similarity to child protection risk assessment processes), and thus negatively impact on engagement and service provision. However, it was also acknowledged by workers that careful practice would probably reduce the potential for family disengagement. Overall, Wise concluded that "it still needs to be determined whether more deliberate and systematic attention to individual children's needs within

family services leads to better outcomes for children and their families” (Wise 2003).

Yet, it was apparent that workers judged the Children in Need approach to be a useful framework for providing family support tailored to the needs of children and parents. What appeared to be required to adequately test the approach was the provision of better training for workers in child and family assessments, and appropriate service resourcing to permit smaller worker caseloads and enable workers to focus on the needs of children *and* families, rather than deal with parental needs in isolation.

Financial flexibility – “wrap-around” services

Restrictive funding practices, such as the traditional allocation of block funds for specific services and/or client groups, have been identified as impacting detrimentally on the ability to support what are often multi-problem families by constraining therapeutic action and reducing the effectiveness of cross-sectoral or inter-agency work (Coughlin 1984; Cocks 1993).

In recent years, the number of “wrap-around services” that tailor an individualised support package to a family’s needs has grown (Ainsworth 1999; Tomison, Burgell & Burgell 1998). Wrap-around services can be defined as services:

where the use of flexible funds allow service coordinators to wrap the services around children and their families, rather than forcing children into existing service programs (Karp 1996:299).

Under such an approach, funding is allocated on a per-client basis, enabling workers to develop a case plan and purchase a range of services or practical supports for children and families that are tailored to meet their individual needs (Audit Commission 1994; Dollard et al. 1994; Karp 1996; Tomison, Burgell & Burgell 1998; Edgar 1999). It should be noted that given the flexibility and potentially multi-faceted nature of the support package, intensive service coordination is an “essential ingredient to the success of individualized, wrap-around services” (Karp 1996:300–301). Further, that most “wrap-around” models are based on the adoption of solution-focused or strengths-based approaches to practice, where the client family is engaged in identifying needs and developing potential solutions (e.g. Dunst, Trivette & Deal 1988; De Jong & Miller 1995).

Adopting an holistic approach

In order to address the needs of what are often multi-problem, disadvantaged, dysfunctional families, effective family support requires the adoption of an holistic approach to assessment and service provision. It has been demonstrated that attempts focusing primarily on remedying a single family problem are often not as effective as approaches that utilise a multifaceted, holistic approach. Such programs target the influence of constellations of family factors and/or problems, often working in collaboration with other services (Tomison 1997; Durlak 1998).

Further, despite being able to make observable improvements to wellbeing and resiliency, it is important to recognise that no one *program* or *activity* has been entirely successful in enabling children and young people to develop optimally when the larger child rearing environment is not a conducive one. For example, in discussing the success of Head Start and the Perry Preschool program, Zigler and Styfco note that:

thirty years of experience with early intervention have yielded a clear but unwelcome truth: such programs cannot overpower poverty in shaping a child’s developmental outcome although children do better than they would have without the [preschool program experience] they still do not approach the achievements of middle-class students Such findings lead to the sobering conclusion that early childhood intervention alone cannot transform lives (1996:152).

Nor can it be expected that any program, in isolation, can deliver a “once-off inoculation” that ensures children’s healthy development (Brooks-Gunn 2003). To adequately prevent child maltreatment (or to effectively support families), it is important that a range of programs are instituted and coordinated under a comprehensive strategy. This strategy should be “comprehensive, child-centred, family-focused and neighborhood-based ... [and one which takes] ... children seriously as individuals” (US Advisory Board on Child Abuse and Neglect 1993:16-17).

The 1994 UK Audit Commission report identified the development of regional or area “strategic children’s services plans” as a key aspect of an effective family support system. Under this approach a range of coordinated, flexible, non-stigmatising services are developed that can make best use of limited resources.

Edgar (1999) proposed the development of similar “family resource zones” in Australia.

Child and Family Centres

At the service level, the adoption of an holistic, multidisciplinary approach is exemplified by the continued development and refinement of Child and Family Centres. Child and Family Centres, frequently referred to as “one-stop shops”, are multi-service community centres that adopt a holistic approach to preventing child maltreatment and promoting healthy communities, providing support to families on a number of dimensions (Tomison & Wise 1999).

Similar programs, known as Family Resource Centers in the United States, or “multi-component community-based programs” in Canada (Prilleltensky & Peirson 1999), have been operating for some time (Tomison & Wise 1999). Designed to be non-stigmatising and easily accessible, such “one-stop shops” offer highly integrated services that promote child and family wellbeing rather than allowing family problems to develop to the extent that secondary or tertiary prevention becomes the focus of centre activity.

The intention is to engage children and families in the local community, to promote health and wellbeing and to encourage families to proactively seek assistance in order to ameliorate a variety of family problems prior to the development of a crisis. While retaining the flexibility to cater for more traditional preventative strategies, the centres are ideally placed to take early intervention and health promotion approaches, underpinned by their holistic service philosophy. The centres are also well placed to facilitate a sense of community and the development of social support networks within neighbourhoods.

Involving the wider professional community – cross-sectoral partnerships

As noted above, a *developmental prevention* approach (the enhancement of protective factors in combination with a reduction in risks) (Tremblay & Craig 1995) has been adopted in order to prevent a variety of social ills. As part of a developmental preventative strategy, most sectors have adopted universal early intervention and health promotion approaches to prevent social ills, and many of these interventions and initiatives share the same underlying philosophy and constructs. It is becoming common for complex health and social issues to be managed by a number of professionals (Jones et al. 1987).

Within the Australian child welfare and family support systems, a variety of government and non-government agencies and professions are involved with different aspects of support and treatment.

Taking into account the need to consider and address a variety of sector-specific issues, what is apparent is the current high degree of congruence between the prevention of the various forms of violence and/or social ills, in terms of the priorities and strategies for action that have been proposed and undertaken. Thus, the prevention of a range of social ills and the promotion of health and wellbeing would appear to be facilitated by increased cross-sectoral collaboration and coordination from government, researchers and non-government agencies, from policy-level linkages down to the enhancement of relationships between sectors and agencies at the service provision level. As Durlak notes:

Those working with prevention in different fields must realize that the convergence of their approaches in targeting common risk and protective factors means that the results of their programs are likely to overlap ... We are just beginning to learn how this occurs. Categorical approaches to prevention that focus on single domains of functioning should be expanded to more comprehensive programs with multiple goals. Future prevention programs, therefore, will need to be more multidisciplinary and collaborative. Also needed are comprehensive process and outcome assessments of how risk and protective factors influence outcomes in multiple domains (Durlak 1998:518).

9.5 Inter-agency coordination and collaboration

Ensuring effective inter-agency and inter-professional coordination and collaboration⁴¹ has been a common theme and an ongoing, significant issue for the provision of both child protection and family support services for many years (e.g. Hallett & Birchall 1992; Morrison 1998). A coordinated response to the problem of child abuse and neglect can result in:

- more effective interventions
- greater efficiency in the use of resources

41 Inter-agency coordination can be defined as ‘different agencies working together at an organisational level’, while interprofessional collaboration is ‘committed individuals from different disciplines working together’ (Morrison 1998:6).

- improved service delivery by the avoidance of duplication and overlap between existing services
- the minimisation of gaps or discontinuity of services
- clarification of agency or professional roles and responsibilities in “frontier problems” and demarcation disputes
- the delivery of comprehensive services (Hallett & Birchall 1992; Morrison 1998).

Overall, the generally accepted objectives of a coordinated child protection response are to achieve: a comprehensive perspective in case assessment, comprehensive case plans or interventions, support and consultation for the workers involved in child protection, and the avoidance of duplication or gaps in service delivery (Hallett & Birchall 1992).

However, as Reid noted in 1969, inter-agency coordination is not a natural state of affairs and does not result merely from good intentions. While there would appear to be overall agreement that coordination in child protection (and family support) is a necessary and valuable practice, effective coordination is difficult to achieve (e.g. Jones et al. 1987; Morrison 1998). The desire for a coordinated response to child protection is often “asserted, rather than demonstrated, and [may be] taken to be self-evident” (Hallett & Birchall 1992:18).

Conversely, service coordination problems, especially where many services are involved, have often been cited in the literature as leading to less than optimal case management (Jones et al. 1987; Hallett & Birchall 1992; Morrison 1998; Tomison 1999). There is the potential for children and families to miss out on services or to become victims of duplicated services or incompatible treatments, potentially causing them more distress (Hallett & Birchall 1992). Poor coordination and cooperation have also been mentioned as contributing factors in a number of child abuse death inquiries (e.g. Goddard & Hiller 1992; Reder, Duncan & Gray 1993).

Inaccurate information, the failure to receive relevant case information, inter-agency disputes and/or ignorance of the role of other professionals involved in a case’s management, all reduce the ability of professionals to make informed decisions when dealing with suspected or substantiated child maltreatment cases. For these reasons, many social scientists have argued for a clearly structured “teamwork”

approach to child abuse case management (e.g. Jones et al. 1987; Tomison 1999), and stressed the importance of the participating services being coordinated by a designated key worker and/or agency.

The mechanisms of coordination

There is the potential for agencies to develop a large variety of inter-organisational (or interprofessional) links for the purpose of coordinated service delivery. These may range from low-key, unstructured, informal links between workers from different agencies, to the formalised interrelationships which may occur with agencies or professions in (and between) particular organisational networks, to highly formalised, centralised coordination structures (Challis et al. 1988; Hallett & Birchall 1992).

The formal structures or mechanisms that commonly facilitate inter-agency and inter-professional coordination are referral protocols, case conferencing, and the development of multidisciplinary teams. In Australia, formal referral protocols between statutory agencies, and mandatory reporting legislation (Goddard et al. 1996; Tomison 1999) are perhaps the primary formal means of communication in most States and Territories. In addition, although not mandated as they are in the United Kingdom, case conferencing is also a significant means of inter-agency coordination and communication in Australia.

However, a number of authors have highlighted the important role that *informal* professional relationships and communication paths can play in combination with formal child protection structures (e.g. Challis et al. 1988; Morrison 1998; Tomison 1999). Although an over-reliance on informal communication methods and the circumventing of formal coordination and communication mechanisms may lead to the variety of inter-agency communication problems identified above, strong informal linkages operating in *conjunction* with more formal communication structures appear to lead to a more effective inter-agency network (Morrison 1998; Tomison 1999). Thus:

to be effective, inter-agency and inter-professional communication and collaboration should be based on formal structures, such as referral protocols, case conferencing procedures and the placement of substantiated cases onto a central register. The

underlying formal structure can then be supplemented or enhanced by the development of informal links or 'working relationships' (Tomison 1999:353).

Inter-agency work in Australia

In the Australian Audit (Tomison & Poole 2000), service providers involved in **approximately one-quarter (450)** of the 1814 programs could be said to be working jointly or in partnership with another agency. These partnerships generally involved a generic family support agency working with another, more specialist agency (e.g. a drug rehabilitation service). However, in general, the partnerships involved only limited liaison between the agencies in order to refer cases and/or to share knowledge as a means of enhancing their service's response to particular groups of client families. Most of these arrangements did not appear to constitute cross-sectoral working arrangements.

For example, the providers of health education and a variety of universal, community development programs appeared to recognise and attempt to address a number of social ills and/or to promote general health and wellbeing. In general, these programs were not truly cross-sectoral in that they did not involve the pooling of shared resources or the collaborative development of programs by services from a variety of sectors. Given that most prevention work has traditionally been done by agencies (or sectors) in isolation, focusing primarily on addressing one form of violence or social ill (Rayner 1994), the lack of a truly cross-sectoral response is perhaps not entirely surprising.

Australian programs

In order to create an environment that enhances cross-sectoral, inter-agency or multidisciplinary work, some Australian states and territories have adopted some form of joint investigation or formal multidisciplinary teams approach to assessment and case planning. Some of the more important inter-agency structures (with most having a basis in family support rather than purely forensic investigation) are described here.

Suspected Child Abuse and Neglect (SCAN) Teams – Queensland

SCAN teams were developed in 1980 via the then Queensland Coordinating Committee on Child Abuse, in order to provide a formal mechanism to coordinate the activities of various government departments' responses

to child maltreatment. They have been described as a "best practice" model for the investigation, management, treatment and prevention of child abuse and neglect (Cameron, Roylance & Reilly 1999).

The statewide system of SCAN teams is designed to ensure an effective, coordinated, multidisciplinary response to notifications of suspected child maltreatment, particularly by the three government departments with statutory responsibility for child protection in Queensland (Department of Families; Queensland Police Service; Queensland Health), although a number of the teams have also permanently co-opted members from the education and mental health sectors.

SCAN teams are predominantly involved with the investigation and management phases of the child protection process, although they may be consulted about any aspect of child protection work.

SCAN teams undertake to provide an inter-agency forum for case discussion and planning to ensure:

- the safety of the child
- that assistance is available to the family and child
- that intervention is effective and coordinated. (Cameron, Roylance & Reilly 1999:8)

The teams also provide a forum for formulating recommendations for action, including actions to be undertaken by the three statutory departments, and have a review role such that the effectiveness of the SCAN team recommendations made are assessed in terms of meeting the needs of the child and family (Cameron, Roylance & Reilly 1999). In 1996–97, SCAN teams discussed **approximately half of all substantiated** child maltreatment cases in Queensland (one in six of all notifications received) (Cameron, Roylance & Reilly 1999).

The SCAN teams do not, however, have a formal role in monitoring or sanctioning the actions of the statutory departments; rather, the focus is on case planning and case coordination. The team determines the best course of action for each case via consensus, but individual agencies retain the statutory and/or professional responsibility for their own actions. Each agency is, however, obliged to report back on the outcomes of the actions taken. Further, if an agency decides not to implement a team plan, it is expected to refer the matter back to the SCAN team for further deliberation (Cameron, Roylance & Reilly 1999).

Why is the model effective?

- The SCAN teams have a focus on the holistic management of cases, not just the investigation process.
- They ensure information is shared between agencies in an effective manner.
- They are a professional forum, allowing all participants to voice their concerns and to hear others' perspectives.
- Each member is informed of the views and plans of other members.
- Each participant agency retains its statutory obligations and powers.

The teams also play a key role in identifying regional education and training needs, and initiating activities to meet those needs.

Joint Investigation Response Teams (JIRT) – New South Wales

Given the difficulties of coordinating inter-agency or inter-professional work for separate agencies and/or individual professionals, some attempts have been made to develop an integrated, co-located multi-disciplinary team. Many such attempts have focused on the creation of a combined child protection/police team for child protection investigations - the aim being to have all relevant, reported cases jointly assessed at intake by a social worker and a police officer. Such schemes have been operating in a number of jurisdictions overseas (e.g. in Scotland, Bowman 1992) and are reported to work well (McCarthy 1995). One such team's approach is currently being run successfully in New South Wales - the Joint Investigation Response Teams (JIRT) (Cosier & Fitzgerald 1999)⁴².

Since an initial pilot project begun in 1994-95, the NSW Department of Community Services and the NSW Police Service have implemented a statewide network of JIRT teams. These multi-agency investigation teams, made up of DoCS child protection workers and Police officers, are jointly responsible for the "investigation and management of serious child abuse notifications which

might constitute a criminal offence" (Cosier & Fitzgerald 1999:935), (generally physical and sexual abuse). JIRT teams are co-located in premises separate from both Police and DoCS offices and adopt a child-focused philosophy. The teams are jointly managed by a senior child protection worker (DoCS Assistant Manager) and a police sergeant. Once a referral is received, a police officer and child protection worker are assigned to the case.

The core business of JIRT is the investigative interview⁴³, where the child protection worker and police officer jointly interview the child (the primary interviewer role is determined by a number of factors, but typically it goes to the person who is best able to establish rapport with the child). Following the interview and other initial investigation tasks, the JIRT staff have a case debriefing with the team leaders. This session provides an opportunity for any differences of opinion to be raised and resolved, for team leaders to provide feedback and support to their staff, and for a plan of further action to be developed. If legal action is planned, the police member initiates criminal proceedings and the DoCS worker handles any protective intervention through the Children's Court. Following investigation, however, the case is referred back to DoCS and/or the Police for follow-up.

The benefits resulting from such an approach include a reduction in the emotional trauma experienced by victims and the eliciting of higher quality case information, leading to more effective investigations. This in turn has enhanced the decision-making process and enabled greater quality in planned interventions and a major increase in the number of prosecutions carried out. There has also been a higher degree of satisfaction by child protection workers, Police members and other agencies as to the protective and criminal casework that has been carried out. This has led to better inter-agency cooperation and the active support of the unit in its investigations (Bowman 1992; Cosier & Fitzgerald 1999). As Cosier and Fitzgerald note:

we have found that one of the significant advantages of joint work is being able to utilise the most appropriate and optimal forms of intervention from either Police or DoCS to provide protection or to ensure safety and wellbeing of the child. Police are able to apply for

⁴² The Inquiry was aware of another NSW specialist child sexual abuse taskforce, known as *Strike Force Kamiri*, which was showing some promise in working on sexual abuse involving Aboriginal children.

⁴³ Prior to conducting the investigation both DoCS and Police databases are searched to elicit any previous history of statutory involvement.

.....

apprehended violence orders, lay charges and request bail conditions to protect a child and to remove an offender from the home is a major step forward ... In our experience the joint investigative process provides a timely, coordinated and comprehensive service for children and their families and produces significantly better outcomes (1999:946).

Cosier and Fitzgerald also highlight some issues that have needed to be resolved in order to ensure JIRT has been effective. The development of a “shared understanding”, i.e. recognition and acceptance of other professional’s roles, duties and values, has been vital. To ensure the units are effective, case decisions are always made *jointly* by Police and DoCS staff. JIRT members are also required to participate in joint training to ensure the development of the skills required for the team and to facilitate shared understanding. The units also have a conflict resolution policy in place to ensure inter-professional disputes are able to be resolved in an effective manner.

New South Wales area child protection committees

A number of attempts have been made in various Australian jurisdictions (with and without government mandate) to promote inter-agency coordination and collaboration via the development of inter-agency area committees operated via government agencies or non-government professional forums.

NSW now has the strongest, legislated inter-agency coordination mechanisms. For more than a decade, the NSW Department of Community Services, which has the statutory responsibility for child protection, has been required to consult at the highest levels with the Police, Education and Health departments and peak family support and child welfare bodies when developing policies, contemplating changes to service delivery, in order to develop effective, coordinated cross-sectoral case practice (Tomison & Wise 1999).

In 1985, the government created the NSW Child Protection Council to coordinate its child protection response. As well as leading (or being the vehicle for) much of the senior inter-departmental contact, the council was also responsible for establishing formal inter-agency guidelines (updated regularly) and for developing and supporting a series of regional inter-agency Area Child Protection Committees, which were set up across the state. The NSW Child Protection Council provided

information, training and support to local agencies and professionals via Area Committees. These committees became a key mechanism for imparting knowledge and training, and for identifying local issues or needs that the council then attempted to respond to.

Through enactment of the *Children and Young Persons (Care and Protection) Act 1998*, the NSW Government legislated to strengthen inter-agency partnerships, developing a series of clauses specifying the mutual obligation of the government departments in responding to child abuse and neglect. The Act explicitly states that Health, Education, the Police and the non-government sector all share the responsibility for child protection and are expected to share some of the burden of responding to maltreating families.

In 1999, partly in response to the findings of the 1996 NSW Legislative Council Standing Committee on Social Issues’ Inquiry into Children’s Advocacy (Parliament of NSW, Legislative Council 1996), and the 1997 (Wood) Royal Commission Inquiry into Paedophilia (Wood & James 1997), the NSW Government set up a Commission for Children and Young People, which replaced the NSW Child Protection Council. The commission took on many of the duties of the council, including some responsibility for inter-agency coordination. The commission released an updated version of the *New South Wales Inter-agency Guidelines for Child Protection Intervention* (NSW Commission for Children and Young People 2006).

9.6 Responding to child abuse and neglect in Aboriginal and rural-remote communities

As is highlighted in this comment arising from the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (HREOC 1997), Aboriginal people do not see interventions from “welfare departments as an effective way of dealing with Indigenous child protection needs” (Cunneen & Libesman 2002: 21).

A number of broad principles for programs are repeatedly identified in the literature (and are picked up extensively in part I of this report). They include the need for major policy change which gives power and decision-making back to Aboriginal communities, together with financial resources adequate to make a change, and the provision of ongoing professional mentoring and support (Tomison 2004b).

Overseas models for child protection in Indigenous communities

Given that many overseas Indigenous peoples are also struggling with the aftermath of colonisation, overseas child protection models trialed in other Indigenous communities may provide possible solutions. However, while there is some literature available in regard to overseas models of child protection used with Indigenous communities, this literature is small and difficult to access.

Pellatt (1991) provides an overview of the position of child protection in relation to Indigenous communities in many countries. Although the information is somewhat dated, Pellatt records an overall world trend towards less intrusive child protection practice. She notes that Indigenous communities in Australia, Canada and the United States are all seeking legislative change. In addition, Sweeney (1995) gives some information on models of child protection services in Canada, New Zealand and the United States where part or all protective responsibilities have been transferred to the Indigenous population. Cunneen & Libesman (2002) also provide a useful summary of international trends. For this report, innovations in practice for Canadian First Nations peoples will be highlighted.

Canada

Hill (2000) provides an overview of Canada's First Nation tribes' history since colonisation by Europeans, a history that is remarkably similar to that of Australia's Indigenous peoples. It includes a period of the forced removal of children from their families (a "stolen generation"), and the continued high rates of children's removal on child protection grounds (four times higher than the wider community). Despite anecdotal evidence of some Aboriginal (First Nation) communities in Canada overcoming significant social dysfunction and enhancing the health and wellbeing of children and families, the development of healthy communities has not yet become the dominant pattern.

Since the late 1970s, attempts have been made to develop child protection and family support services run by (and for) the First Nations peoples. Hill (2000) outlines some key issues for consideration when developing services for the protection of children in Aboriginal communities. Underlying this approach was recognition of the "cycle of poverty and dependency perpetuated by the very

services designed to resolve the social ills of First Nations communities ...[and that] First Nations people [have] had to become active participants in the resolution of social problems that impacted them" (Hill 2000:163).

Subsequently, First Nation foster care programs and child protection services - staffed and run by the Indigenous community and operating with statutory authority⁴⁴ - have been provided in a way that recognises the cultural integrity of the people (e.g. the province of Manitoba set up three indigenous child protection services in 2004-05). The new services have been developed under the auspices of the non-Indigenous child protection agency, but are not a unit of that department. Underpinning the service development was the following:

- recognition of the need for formal training and professional education for Aboriginal workers (with significant investment by government in tertiary education programs for indigenous peoples)
- adoption of a "least intrusive" approach to child protection work (unless over-ridden by risk of harm) and a greater emphasis placed on seeking to work with extended family as an alternative to placement, thereby maintaining the child within the family and cultural community. "However, accepting these new opportunities also required First Nations to embrace the legal system in situations where involuntary interventions were necessary to protect a child" (Hill 2000:166)
- recognition of collective Aboriginal rights. If court intervention was necessary for the protection of a child, the child's tribe would be entitled to be notified and has the right to send a representative as a third party to the court proceedings.

A variety of family support programs was also developed, particularly culturally-appropriate parent education programs for Indigenous parents, and ancillary services such as an Indigenous cooperative day nursery. It is interesting to note that the development of all these

44 A key issue for negotiation has been for the provincial government to fund the First Nations agencies as independent services, while ensuring the agencies would take statutory action to protect children (i.e. remove children if there were no other means of keeping them safe). In other Canadian provinces the requirement that children would be taken into care where necessary (and placed with indigenous carers) has meant that indigenous services have refused to accept a statutory role.

services, including the statutory services, was not an easy process. In fact it was characterised as “conflictual”:

at every step . . . there emerged political clashes, formal and informal, for decision making power (Hill 2000:166).

While the implementation of such a model has not been easy, it has also not necessarily led to significant improvements in Canadian First Nation communities’ health and wellbeing and/or a reduction in violence. Although providing an example of how to move forward with more effective services, Hill’s model has some serious “gaps”.

It does not seem to address issues of how to place a child within their Indigenous community if the community is beset by familial violence, substance abuse and other social problems. Beyond maintaining ongoing dialogue and support in addressing such issues, it does not provide a solution to the non-Indigenous statutory authority’s (and/or First Nation’s authority’s) reluctance to intervene with Aboriginal families, which may leave children in serious harm. Finally, it does not address the issue of effective prevention and/or community development to minimise the removal of children and violence in the first place. Much of the investment has been focused on statutory investigatory functions, together with a significant investment in family re-unification when a child is re-integrated back into her/his family after a separation.

Many tenets of the approach described by Hill have now been embraced by Indigenous groups and agencies (and, to an extent, by government departments) in Australia. However, a statutory child protection service controlled and run by the Indigenous community has not been trialed yet.

Arguing for a radical policy change in Australia

Aboriginal and Torres Strait Islander communities have a clear preference for strategies that do not require the violent offender (domestic violence) to leave the family (Blagg 2000), and have a similar preference for strategies where children are not removed from their community. Yet Indigenous child welfare policy is still based on the premise that the government should decide what is best for Indigenous people (Sweeney 1995).

Sweeney draws on the report, *Learning from the Past*, which was commissioned by the NSW Department of Community Services and prepared by the Gungil Jindibhah Centre at Southern Cross University (undated). He notes that the report states that the legacy of the past is still overshadowing present intentions in relation to Indigenous policy. Similarly, it is argued that a legacy of past mistakes is currently producing a reluctance to intervene by statutory child protection staff/departments when an Indigenous child is at risk of harm.

There appears to be a fear of the community’s reactions and confusion about what action (or inaction) is in the best interests of Indigenous children. This conclusion is supported by a recent review of out-of-home care services for Victoria’s Aboriginal children and young people (Practice Leadership Unit 2000) (and highlighted in a number of media articles). The review identified a practice of minimisation of statutory involvements by DHS in cases where intervention was/is required to avoid significant harm to Aboriginal children.

Moving forward

In a similar vein to Canadian developments, the NISATSIC Inquiry recommended that new legislation be enacted, based on self-determination by Indigenous people, where far greater control over matters affecting young people is given to the Indigenous community (HREOC 1997; Cunneen & Libesman 2000)⁴⁵.

Further, it recommended that the Australian Government establish negotiations that would allow Indigenous people to formulate and negotiate an agreement, leading to legislation, on measures best suited to their needs. The inquiry also recommended that legislation set out minimum standards as a basis for future developments in relation to Indigenous children. The Australian Government has responded that such legislative change is a state/territory responsibility; and there has also been no indication that state/territory governments have moved towards law reform in order to transfer power to Indigenous communities (Cunneen & Libesman 2000).

Similarly, the authors of the *Learning from the Past* report recommended that state policies focus more on

⁴⁵ It should be noted however, that a major problem in relation to this recommendation may be the difficulty in locating (or developing) an Indigenous agency to undertake the task of protection in each major community.

developing collaboration and empowerment strategies for Indigenous peoples. Further, it recommended that counselling services and measures to reunify Indigenous families be undertaken by independent Indigenous organisations, with the statutory child protection service limiting its role to funding and referral only (Sweeney 1995). However, Sweeney believes that such recommendations do not go far enough and fail to adequately reflect the information contained in the report. He believes that control and responsibility for Indigenous child welfare and child protection should be given to the Indigenous communities themselves. He doubts whether the system is capable of real change, without this process.

Cunneen & Libesman (2000) have also argued for a complete revision of child protection services in relation to Indigenous Australians. They report that not one submission from an Indigenous organisation to the NISATSIC Inquiry found present interventions from child protection/welfare departments to be an effective response to their child protection needs. The general model of operation of child protection services, based on “individualising” and “pathologising” a particular family, is culturally suited to white Australian culture, not Indigenous culture (Cunneen & Libesman 2002).

Yet, there have been some attempts to advance Indigenous self-determination and empowerment, and to better acknowledge culture. For example, the Yaitya Tiramangkotti unit operating within the South Australian Department of Human Services is a central Aboriginal child protection consultation and response team. Staffed by Aboriginal people, Yaitya Tirimangkotti makes sure that everything is done to involve Aboriginal families and help them care for their children in ways that are culturally appropriate (Tomison & Poole 2000). In general, however, most efforts to date have tended to be tokenistic. Thus, although an Indigenous child protection worker may be employed, there are still interventions from other non-Indigenous professionals and organisations. In general, the key decision-making still remains with non-Indigenous officials.

Litwin (1997) noted that the NSW Department of Community Services had taken measures directed at advancing self-determination and acknowledging Indigenous culture. These have included: recruiting

Indigenous field officers and policy advisers, funding Indigenous organisations and establishing the Aboriginal Child Placement Principle within child protection legislation (Litwin 1997). These policies are based on the principles of self-determination and empowerment. However, she argues that the over-representation of Indigenous children in the out-of-home care system can be taken as a demonstration that these policies have not led to particularly successful outcomes.

Litwin (1997) also notes the paradox of child welfare bureaucracies providing a service to Indigenous peoples when they have contributed to the need for these services in the first place. She points out that Indigenous communities do not have a tradition of active involvement in child welfare policy, with their response, based on past history, being one of suspicion and resistance. Thus the administration of the self-determination policy has required an ever-increasing level of government intervention. Further, there has never been a precise definition of “self-determination” and what this means in practice, e.g., how is it to be negotiated? What are the constraints that may limit autonomy? How can competing interests be resolved?

Litwin also argues that the power imbalance between Indigenous communities and welfare bureaucracies is “overwhelming” (1997:331). Thus, even the attempt to make child welfare bureaucracies more attuned to Indigenous needs will be swamped by non-Indigenous culture and processes. Not only is it unrealistic to believe that the few Indigenous employees will be able to positively influence departmental policy and practice, but these workers are faced with the conflict that they are working within a child welfare system which:

has been implicated in the ongoing generation of profound social and cultural trauma for indigenous Australians (Litwin 1997:334).

Finally, Litwin (1997) contends that no attempt has been made by child welfare to understand the nature of the differences between the Indigenous and non-Indigenous concepts of child care. Without these major issues being addressed, and a determination of where the Indigenous culture is expected to fit in with the bureaucratic child welfare culture, “institutionalised racism” will continue (1997:337).

Service development and delivery

The literature offers a number of “best practice” suggestions for intervention into family violence in Indigenous communities (Stanley et al. 2003). It is commonly reported that effective intervention into family violence needs to address both the past traumas and present situational problems and health disadvantages of Indigenous communities. Almost without exception, the literature notes the need for inclusion/participation of the local community. Commentators provide a range of similar broad principles as a basis for all service provision in the Indigenous community. However, while a lot of criticism has been made of existing intervention models into family violence (Blagg 2000), few *fully developed* alternative models have been produced for Australian communities.

Similarly, and building on Sweeney (1995), Blagg (2000) provides a summary of what appear to be core tenets that should be considered when planning services:

- participation⁴⁶
- ownership/self-determination
- infrastructure (training and education)
- support services needed to support child protection function.

Blagg (2000) notes that the literature supports models of intervention that:

- are tailored to meet the needs of specific localities
- are based on community development principles of empowerment
- are linked to initiatives on health, alcohol abuse and similar problems in a holistic manner
- employ local people where feasible
- respect traditional law and customs where appropriate
- employ a multidisciplinary approach
- focus on partnership between agencies and community groups
- add value to existing community structures where possible

46 With regard to developing a participatory approach, the guide ‘Working with Indigenous Australians: A Handbook for Psychologists’ (Dudgeon, Garvey & Pickett 2000) provides some useful information and approaches to working with Aboriginal communities.

- place greater stress on the need to work with men
- place more emphasis on intervention that maintains family relationships and healing.

With specific regard to statutory child protection roles, SNAICC recommended the use of inclusive, participative processes to engage with Indigenous communities. It was noted that this should include the development of Elder councils that could make a contribution to policymaking, resource provision, program development and service delivery⁴⁷.

Service delivery issues

Access to services in rural and remote areas is often hampered by: a lack of available services; a lack of transport (Breton 1985); and families’ fear of the stigma attached to being identified using family support services. With regard to the latter, Breton (1985) identified the need to locate preventive or family support services near other facilities so that members of the community do not feel stigmatised when walking into the agency. The child and family centres, or “one stop shop” model, is an extension of this concept, where family support or specialist anti-violence services are located with more generic services. This model has been well-received in rural communities (Tomison & Poole 2000).

With regard to the statutory child protection response, as Ryan (1997) notes that child protection staff in rural Australia (where they are present) are often asked to deal with complex child protection issues in an environment where medical, legal and social work professionals lack experience in dealing with child abuse and neglect (Ryan 1997). However, in many remote communities, workers often have to contend with professional isolation, a range of service gaps in the local community (at times including an absence of a regular police and statutory child protection presence), and thus, the need to undertake roles or functions they would not usually perform.

For example, in small professional networks it is not uncommon for teachers and nursing staff to fulfil much more significant roles in areas of child protection, the

47 However, it should also be noted that elder groups or community councils have the potential to facilitate or to hinder efforts to create less violent, more positive communities. There is anecdotal evidence that some male elders, in particular, have hindered violence prevention initiatives because of their own involvement in family violence.

prevention of other family violence and other social concerns. For governments and policy-makers, the issues are therefore not just about the use of resources to better serve remote communities, but also about how to support existing professionals to provide an effective service in communities that may be suffering from significant social problems. As Jacobson has noted:

marginalised by distance and small numbers, rural human service workers face the challenge of adapting urban service models that support dominant theories and social problems definitions to fit local realities... [However] this “shrink to fit” approach ... falls short of adequately addressing the factors that complicate work in rural areas and has not proven to be effective (Jacobson 2002:738).

Rather, as Schorr notes, the most successful programs “grow deep roots in the community ... [and] cannot be imposed from without” (1997:7).

It is now recognised that when dealing with Indigenous communities there is a need to develop tailored, community-owned solutions rather than impose externally-developed plans. This is also the case with non-Indigenous rural and remote communities. Given the lack of professional infrastructure and limited resources, whatever support system is developed for remote communities needs to be accepted by the people and tailored to meet their needs. In this section, an attempt is made to highlight innovations in professional support and service provision in rural and remote communities, based on the premise that effective support must, by definition, be tailored to local needs.

Working together in remote areas

Much has been made already of the potential for the development of informal collaborative relationships between different agencies and professions for enhancing (or hindering) child protection and family support work (e.g. Tomison 1999). It is not uncommon in smaller rural networks for informal collaborative arrangements to result in a degree of role-blurring (Hallett & Birchall 1992; Tomison 1999), such that particular professions take on the role of other professions in order to facilitate an (hopefully) effective response for families.

In regions where no permanent child protection, and few other, services are provided, governments may wish to

formally recognise the child protection and family support work done by community-based professionals, such as medical staff, teachers or police officers. Such formal recognition should involve providing education, training *and support* to enable these workers to respond initially to protective concerns, with access to advice, supervision and a “backup” professional response from regional expert teams, as required. For example, Foreman (1996) reported that health professionals in rural NSW identified a dearth of appropriately-qualified workers in the Macquarie region. In response, some were reportedly willing to undergo specialist training (in addition to lobbying for funding of new specialist positions) in order to boost the region’s capacity to deal with child maltreatment concerns. Some programs already in operation in Australia and overseas are worth considering and adapting for other rural-remote areas.

Baker (2000) presents an overview of Queensland’s Workers with Families Project which operated as a child abuse prevention pilot project from July to December 1999 in Toowoomba and surrounding areas. The project was funded by the (then) Department of Family and Community Services. It set out to explore the possibilities for partnership between a specialist child protection agency and rural family support workers with the goal of extending effective early intervention responses to families where there were protective concerns (“at risk” families). Acknowledging the isolation faced by many rural workers in their professional practice, the project explored a number of strategies (depending on local needs). These included: the development of mentoring relationships, professional case supervision, peer supervision and support, collaborative casework practices, and training programs (individualised support plans). Participating workers received both face-to-face and telephone support and debriefing. It was concluded via:

the [action research] evaluation of the project ... that supporting rural workers in this flexible individualised manner has the potential to significantly expand local capacity to respond to the needs of vulnerable and at-risk families (Baker 2000:23).

Crocker (1996) describes an innovative, community-based response by child protection teams in rural Newfoundland and Labrador, Canada. Like the Northern Territory, the regions host small populations spread over a significant geographical area. The communities were described

as small and hampered by substantial gaps in support services. Child maltreatment issues (whose existence was often denied by the community) was strongly intertwined with poor socio-economic conditions. The communities were also characterised by a strong sense of family rights (and the right to privacy), which is common in rural areas (Sigurdson & Jones 1982, as cited in Crocker 1996). Further, the communities generally mistrusted the professionals who were working in their towns as they were generally not local people.

In Newfoundland and Labrador, a range of local or regional multi-disciplinary child protection teams had developed by the end of the 1980s. Traditionally, these teams were designed to enable a group of professionals dealing with specific cases of child abuse to run case conferences. However, over time it became apparent that the existing team structures and functions were no longer working. There were issues in the teams in terms of confidentiality and accountability. Some professionals involved in the teams were inappropriately being made privy to confidential information on families that they had no professional need to know about. There were concerns that the ability to keep families' issues confidential had been eroded, a serious issue in rural communities where information can often travel quickly through the population (Crocker 1996; Jacobson 2002). Overall, the existing team structures appeared to be atrophying, with some teams closing down entirely (Crocker 1996). Thus, there was a need for a new approach, one tailored for the local communities and their particular issues.

Firstly, the teams shifted focus mainly on prevention through public education and awareness, advocacy, and professional development. Many of the child protection teams have developed a two-tiered service model where the first tier of the team includes community representatives who participate in the preventative activities listed above⁴⁸. The second tier is composed only of professionals dealing directly with the cases of child abuse, who are brought together to hold case conferences on a "need to know" basis (in order to reduce the risks of breaches of children's and families' confidentiality).

48 One of the first community memberships was filled by local First Nations people. It was recognised that effective change could not take place without the indigenous peoples feeling able to contribute with an element of ownership and self-determination (Crocker 1996).

The expansion of the teams to include community members, had a number of positive benefits for the teams. Firstly, it strengthened the local community's trust of the professionals providing services. Secondly, the expanded membership ensured continuity of the team's community development and prevention activities, even when some professionals left the community. Overall, as Crocker notes:

the experience of child protection teams in this province demonstrates that by working together, rural [and remote] professionals and community people can develop appropriate responses to child abuse without depending on directions from government or any other agencies (1996:210).

9.7 Conclusion

Despite the development of a range of new service models, agencies across the western world still struggle to meet the demands of the complex and difficult job that is child protection. The significant increase in child abuse reports that has beset child protection services since the early 1990s (and only in the last 10 years in the Northern Territory) has resulted in development of a range of new services designed to better target the statutory child protection response to those families where there is serious risk or actual harm to a child.

It was noted earlier that the "new" "family support" models of child protection practice that developed in the mid-1990s, were really a revisiting or recapitulation of solutions previously tried and tested. Rather than continue to develop "new" versions of child protection case management systems, perhaps what is needed is greater recognition that the crux of effective child protection work is an adequately supported workforce, trained on a set of (clearly articulated) child protection "core competencies", such as those identified under the Victorian differentiated response approach (Armytage et al. 1998). The Territory has particular challenges to overcome – significant distances, a small workforce and significant child and family issues. These challenges will not be easily overcome, but it is contended that engaging in better partnerships between statutory child protection services and other government and non-government agencies is a crucial element of improving the Territory's response to child abuse and neglect.

It is clear that the historical pattern of change in child protection is for radical shifts driven by child abuse tragedies (e.g. Reder, Duncan & Gray 1993; Goddard 1996). It is noted that rather than engage in a further round of dramatic policy and practice changes, an investment in core child protection skills may provide a better return for governments, agencies, and most importantly children and their families, in the longer term. Such skills would involve risk assessment, inter-agency collaboration, and working effectively with children and families, along with the means to effectively monitor service provision.

Inter-agency coordination and collaboration

It is also apparent that for child protection interventions to be effective, it is vital that effort be put into developing clear, coordinated inter-agency and inter-professional practice. Unfortunately, effective inter-agency practice is difficult to achieve, particularly when the number of professionals or agencies involved is high. Regional coordinating mechanisms, such as the regional or area children's services plans proposed in the UK Audit Commission report (1994), is one model worth exploring further.

On the ground, the multi-disciplinary teams approach appears to be a promising development with the potential to reduce the chances of coordination and communication problems arising. To date, such teams have generally been developed as a police-child protection response, and the evidence of their effectiveness is still quite limited. It would therefore be useful to further develop the team concept by developing a co-located, permanent multi-disciplinary structure for a larger, more diverse group of professionals. A joint team for both investigation and subsequent professional intervention (even if only in the case-planning and service brokerage phase such as the SCAN Team model) may be a more effective way of working, and lead to better outcomes for children and their families. The Katherine-based Peace at Home program now being trialed, may offer a successful Territory model that can be implemented more widely.

In the general absence of such teams:

- Legislating for inter-departmental collaboration, in conjunction with formal and informal opportunities for workers to develop a "shared understanding" of key issues and the different professional ways of working, would appear to be desirable. Such work should be

(and usually is) supplemented with formal, mandated, mechanisms of case conferencing and/or referral protocols to ensure a degree of inter-agency work on a case-by-case basis.

- Service "gaps" in health and family support services mean that often whichever professionals and community workers are available "on the ground" will have to pick up some of the work associated with preventing and responding to child maltreatment. The integration of services in community "hubs" or "one stop shops" is advocated.
- Consideration should be given to formally recognising and supporting this work, as a means of enhancing services for children and families. A key aspect of such a response is to develop training and support structures for workers. Developments in information technology are already providing new and effective ways to support professional supervision and consultation by enhancing professionals' ability to communicate quickly and effectively over long distances.



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APPENDICES



Appendix 1: Call for submissions



Northern Territory Government

Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse

The Northern Territory Government's Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse has been established to find better ways to protect Aboriginal children from sexual abuse. Rex Wild QC and Ms Pat Anderson have been appointed Co-Chairmen of the Board.

In particular, the Board's task will be to:

- Examine the extent, nature and contributing factors to sexual abuse of Aboriginal children, with a particular focus on unreported incidences of such abuse.
- Identify barriers and issues associated with the provision of effective responses to and protection against sexual abuse for Aboriginal children.
- Consider practices, procedures and resources of NT Government agencies with direct responsibilities in this area (Family & Children's Services and Police), and also consider how all tiers of government and non-government agencies might contribute to a more effective protection and response network.
- Consider how the NT Government can help support communities to effectively prevent and tackle child sexual abuse.

Written submissions are sought from members of the public, non-government organisations, and interest groups by **Friday, 29 September 2006**. Submissions can be lodged with the Board's Secretariat by any of the following means:

By post: GPO Box 4396, Darwin NT 0801

By fax: 8999 5523

By email: inquiry.childprotection@nt.gov.au

The Board will also make arrangements for oral submissions in appropriate cases.

For further information, visit our website at www.inquirysaac.nt.gov.au or contact the Board's Secretariat on telephone 8999 5515 or freecall 1800 788 825.



Appendix 2: Inquiry processes

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 - 9.3. List of approved counselling agencies for respondents

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This document sets out the policy and procedures for the *NT Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*. It is designed to enable the Inquiry to collect material in an effective and sensitive manner while ensuring the safety of Inquiry staff⁴⁹, respondents and other affected parties.

1. Staffing

All staff assigned to the Inquiry, including interpreters, should be explicitly advised during recruitment, and upon beginning work with the Inquiry:

- (1) Of the type of violence and case-related material they may be exposed to during the Inquiry (within the boundaries of the role they will undertake) to ensure they fully understand the nature of the work prior to accepting their position.
- (2) That if they develop any trauma or unease during the Inquiry as a result of the material they are exposed to, that they should in the first instance seek support from Board members or other senior Inquiry staff. Further, staff should be advised that if required, resources (including access to trained counsellors) are available to support them to debrief and/or cope with issues the Inquiry may raise for them⁵⁰. In extreme cases, if a staff member is unwilling or unable to return to the Inquiry, advise that they will be returned to their home agency or supported to find another position, without prejudice.
- (3) That all staff taking statements or interviewing adults and/or children⁵¹ are required to submit to a criminal records check to ensure no history of physical or sexual violence⁵². Successfully passing

49 Unless otherwise defined, 'Inquiry staff' are defined as Board members and all other staff attached to the Inquiry.

50 The *Employee Assistance Scheme* has been contracted to provide support to all NTPS personnel, and are a suitable agency for this role. A multi-denominational pastoral care service is also operating in some departments and could be accessed, if required.

51 As per *NT Community Welfare Act 1983* and other relevant legislation, for the purposes of the Inquiry, a 'child' is defined as a person under the age of 18 years.

52 Apart from the need to ensure the psychological and physical safety of children and women, it is important that those doing the interviewing have not previously perpetrated some form of violence, and that they do not exhibit attitudes that excuse some forms of violence.

this process is a precondition of employment on the Inquiry.

- (4) Once criminal record checks have been sighted by a Board member, a notation that each staff-member has passed the check (i.e. that record sighted by Board member and there are no concerns regarding a history of violence) will be maintained in a confidential Inquiry register, signed off by the Board member. The criminal check records are to be released back to the staff-members.

2. Data collection

A range of data collection methods will be employed during the Inquiry.

2.1 Written Submissions

This will primarily be submissions invited through the Inquiry's call for submissions (via advertisements, press conferences etc.). Additional requests from the Inquiry for specific information/comment will be made to agencies, organisations, or individuals, as required [see *Data (Sourced)* below].

2.2 Data (Sourced)

This will consist of:

- data on associated violence and other social problems (including community demographics and profiles);
- aggregate case data (sourced from: NT Police; Courts; Department of Health and Community Services – FACS, SARC, Hospitals, Health centres, SAAP; NGOs; Department of Justice – Correctional Services); and
- individual case records (specific requests). At times, parent agencies will be requested to provide access to personnel who can interpret aggregated statistical information and/or cases provided.

Accessing aggregate case data from Government and non-Government agencies

When requesting aggregate data, the Inquiry should as a general rule request access to an appropriate member of the agency's staff who can assist with any interpretation and follow up matters that may arise.

Accessing case material from Government and non-Government agencies

While aggregated case data should be sought as a matter of course, access to individual casefiles should only be

sought when in-depth analysis is required of specific aspects of case handling/management (see *Information Storage* for the policy on data storage).

It should be noted that the Inquiry's power to request information (s.8-9, NT Inquiry Act) has been interpreted by some agencies as not overriding the privacy and confidentiality conditions of the NT Information Act 2006 or the NT Community Welfare Act 1983. Protocols have been negotiated to ensure the Inquiry has access to case material, when required (see below).

Considering the need for access to casefile material

Prior to making a request for access to casefiles, Inquiry staff should ensure there is a clear, specific purpose for accessing the files, i.e. what will be the result for the Inquiry of looking at individual cases? Other considerations will include:

- Is the intention to carry out an in-depth assessment of all cases relevant to a particular issue?
- Is it possible to restrict the request to specific types of cases, or only those cases from specific geographical areas, or involving specific age groups?
- Is the intention to find specific cases for illustrative purposes (in which case it may be possible to request the agency find these and submit only the subset of relevant cases to the Inquiry)?
- Consideration should be given to the Inquiry's resource capacity to use the material (i.e. do not make requests for information that is not able to be used).

Requesting case-related materials

Requests for case file material must be sent to the CEO of each respective agency or organisation. Where an information-sharing protocol has been agreed with an agency, the request will be sent to the person identified as the agency's primary contact point for Inquiry matters.

Where a protocol has been negotiated with an agency, the request should be presented as was agreed under the protocol. In all other cases, the request should be presented on the generic Inquiry request template.

The request should be clear, noting as precisely as possible what material is required (e.g. all STI cases involving children under 16 years across the Territory for the years 2000-2006).

The request should specify a time limit for receiving the material, and note that if this is not able to be met, that the CEO should contact the Inquiry at her/his earliest convenience to discuss a way forward.

3. Site visits

A standard set of questions has been developed for use by Inquiry staff when visiting agencies and/or communities (see Attachment 2). These should be supplemented with questions specific to each agency or community, as required.

Attempts should be made to liaise with key NT Government and other agencies⁵³ prior to making visits to communities or agencies in areas located outside of the Darwin region. This will enable the Inquiry to explore opportunities to link the Inquiry visit to other processes/ meetings that may also be taking place (and to avoid clashes with other activities that may detract from the Inquiry process). Contacting other agencies is also a key element of preparing for data collection in communities (see Safety Planning below).

Where possible, site visits and/or individual interviews should only be undertaken after the Inquiry has had access to policy and procedural information and/or agency statistics that can inform the Inquiry process. If this information is not available, Inquiry staff should indicate that follow up visits or further contact is likely after such material has been received and processed.

It is recommended that the Informed Consent materials (Attachment 1) and the set of questions (prompts) for communities (Attachment 2) be sent ahead to encourage the consideration of issues before the Board's visit.

Inquiry staff should offer to provide details of support services for those people who want to report a case, or who wish to obtain therapeutic advice and support (see Attachment 3)⁵⁴.

53 Liaison may include NT Government, Australian Government agencies and the non-government sector.

54 Staff from government agencies have access to EAS counselling services. Each government agency should be requested to provide this advice to staff attendees prior to the Inquiry's visit.

4. Individual interviews – professionals and community members

Rather than a formal Hearing process, the Inquiry will collect information (statements) from self-identified parties ‘in the field’, via telephone interview, or at the Inquiry’s offices. A range of Inquiry staff may therefore be involved in the collection of material from individuals and community groups. The following is to be considered where an interview is to occur:

- Information should only be collected by staff designated as an “appropriate interviewer”. That is, a person who: has been trained to elicit information; has a good understanding of the issues surrounding sexual and physical violence and Aboriginal communities; and has been vetted (i.e. criminal record check).
- Wherever possible, and taking into account Inquiry resources, respondents should have the option of being interviewed by Indigenous and/or non-Indigenous interviewers, and interviewers of either gender⁵⁵. Inquiry staff should also ensure that any interpreters (if needed) are also acceptable to the respondent.
- In cases where the respondent is not disclosing information about past or current abuse or violence, but is providing broader information about systemic issues, the need for an ‘appropriate interviewer’ to take the statement is less important but remains the preferred option⁵⁶.

55 While needing to take into account the cultural laws that affect who Aboriginal people are allowed to talk to, it is also important to take into account the needs of Territory respondents from other cultural backgrounds and/or those who have been assaulted, who may also have a preference for the gender of the interviewer (and/or interpreter). Apart from the need to reduce the stress associated with some disclosures, a failure to provide an appropriate interview situation will negatively impact on the ability to gather information – and in some cases is likely to result in respondents refusing to discuss issues.

56 The precise nature or content of a respondent’s statement will not always be clear, and the person’s intentions regarding making a disclosure may also change during the interview process. For those reasons, where possible, community members (laypeople) should be interviewed by an appropriate interviewer.

- While the Inquiry has the statutory power to force individuals and agencies to provide information to the Inquiry (s.9, Inquiry Act 1985), the preference, particularly with laypeople, is to facilitate and support voluntary submissions.
- There are currently no plans to use the Inquiry’s statutory powers in this manner; however it has been publicly acknowledged by the Board that a small number of witnesses may prefer to be summonsed and the Board will consider such requests.

4.1 Safety Planning (community settings)

It is important that consideration be given to the safety of Inquiry staff, community respondents and others as the Inquiry seeks information. This is particularly the case when operating in remote community settings, where providing information to the Inquiry may be viewed negatively by some sections of some communities.

For Inquiry staff

Inquiry staff are likely, from time-to-time, to be interviewing respondents in remote community settings. All staff (including Board members) should have continual access to a phone (if there is no other coverage, access to a satellite phone will be required). Other preparations and considerations include:

- Pre-visit check. Assess any risk to staff in conducting the visit (this should involve consulting with individuals and agencies who have an up-to-date knowledge of the community of interest. These will include: community members, police, professionals located on site, other key NTG and Australian Government agencies);
- Wherever possible, two staff members should be sent to conduct interviews with a range of respondents simultaneously;
- Police to be notified of the presence of Inquiry staff in the community (while staff should travel separately to NTG agency staff to avoid perceptions of bias, attempts should be made to coordinate visits when there is a police presence in the community, if possible);
- Seek assistance from elders (i.e. community members able to inform and support the information collection process, and assist with monitoring safety); and

- An exit strategy should be developed in case the situation in the community deteriorates.

For respondents:

Attempts to provide information to the Inquiry may be viewed negatively by some sections of some communities – as a result efforts must be made to protect those seeking to provide information to the Inquiry:

- Offer respondents the opportunity to meet on-site in communities, or at other safe off-community venues, as needed⁵⁷;
- Invite other family and community members to be present during the interview, if they would assist and/or are supporting the respondents;
- Enable material to be presented anonymously (and consider the need to maintain respondent confidentiality throughout the Inquiry and reporting process); and
- If necessary, liaise with Police and others who can assist with ensuring the safety of respondents. In extreme situations, consider the option of witness protection measures.

Other parties:

Consideration should be given to the impact of the Inquiry process on other parties, such as the children of interviewees, interviewees’ extended family, the wider community, and professionals working with the community (especially those living in remote communities):

- Consider interviewing off-site (i.e. away from communities or other settings).
- Enable material to be presented in camera, or on a confidential basis.
- If necessary, liaise with Police and others who can assist with ensuring the safety of respondents.

5. Information storage

All incoming and outgoing correspondence is to be registered and filed by the Inquiry’s Administrative Assistant.

5.1 Secure Storage of Case Material

The Inquiry Board has responsibility for ensuring that any material related to individual cases that is collected as part of the Inquiry is kept secret, stored securely and used in a manner that at all times preserves client confidentiality. The release of casefile material may result in criminal prosecution (for example, see section 97(5) *Community Welfare Act*).

Upon receipt of any case-related material (i.e. full casefiles; case summaries that disclose the identity of individuals; de-identified individual case summaries), the material is to be processed as follows:

- Assigned an Inquiry casefile number (by the Executive Officer or Administrative Assistant);
- Any identifying information not required is to be deleted from the material (to be determined by the Board and/or Director of Policy and Research);
- Stored (when not required) in a locked filing cabinet in a locked room – access to be provided through the Executive Officer or Administrative Assistant.
- The material is only to be accessed by designated Inquiry staff and only for Inquiry purposes. The material is not to leave the Inquiry offices, nor to be communicated to persons who are not part of the Inquiry.
- Any references to individual cases, for illustrative purposes, in any Inquiry presentations or publications must be de-identified and modified to preserve client confidentiality (undertaken in consultation with the Director – Policy and Research).
- At the end of the Inquiry, all casefile material is to be destroyed, returned to the agency of origin or archived with the Inquiry’s files with the highest level of confidentiality and access control and retained in maximum security storage.

⁵⁷ Consideration may need to be given to transporting respondents away from community to provide information and/or to ensure their safety.

6. Interviewing respondents

An informed consent (i.e. respondents' rights) information package has been developed (see Attachment 1)⁵⁸.

A set of standard questions has been developed as prompts for use by Inquiry staff when interviewing professionals and community members (see Attachment 2) – these will be supplemented as appropriate.

6.1 Conducting interviews

- Ensure that there is a safe process for collecting data (see *Safety Planning* above).
- Arrange for the use of an appropriate interpreter who is acceptable to the respondent(s).
- Ensure interviewees are fully informed of their rights with regard to providing information, how that information will be used by the Inquiry, their right to confidentiality (including the limits of confidentiality), the fact that any statement cannot be used as admissible evidence against the respondent in a court of law (section 13 of the *Inquiries Act*), and the processes that can be put in place to ensure their safety, or that of others (Informed consent package – Attachment 1). Obtain consent to take notes and, where applicable, to tape conversations.
- If a disclosure is made of child abuse, Inquiry staff should encourage the respondent to provide enough specific information to enable an investigation by statutory agencies⁵⁹. Further, respondents should be asked to consent to either Inquiry staff, (or preferably FACS or Police members), contacting them if there is a need to obtain more detailed information (see *Managing disclosures* below).

6.2 The role of Inquiry staff

It is **not** the role of Inquiry staff to provide counselling to respondents. If respondents are upset, or make a request for therapeutic support, Inquiry staff should refer them to an identified counselling service (see Attachment 3).

Inquiry staff should avoid giving advice on case matters. If necessary (and circumstances permit), staff should

58 Consideration to be given to developing a culturally appropriate set of materials/instructions to staff.

59 With regard to child abuse matters, the two statutory agencies are Family and Children's Services (DHCS) and NT Police

request that respondents allow them (the staff member) to seek further advice from senior Inquiry staff in order to better respond to a respondent's concerns.

One important aspect of the interview process is ascertaining if the respondent is disclosing either a child sexual abuse case and/or is seeking to formally complain about the professional or agency response to specific cases. If the person wants to make a formal notification or complaint, Inquiry staff can facilitate that process (see *Managing sexual and other child abuse disclosures and/or complaints*).

7. Interviewing children

Under section 9 of the *Inquiries Act*, the Chairman of a Board may summon any person to attend the Board to give evidence. The Board has indicated that it will not generally invoke this authority with regard to seeking to interview individual children, unless the consent of a parent or guardian has been sought and granted. The main exception to this policy is in those circumstances where a child has actively sought out an Inquiry staff member in order to provide information.

The primary means of seeking the views of children will be via group sessions⁶⁰, where a number of children are, as a group, asked to consider community issues around child sexual abuse, and to identify possible solutions. There will be no direct attempt to seek children's personal experiences of maltreatment. The intention would be to gain consent of parents or appropriate authorities prior to such sessions occurring.

7.1 Running children's sessions

It is expected that the adult leader of a children's group (e.g. youth leader, teacher, scout master) will assist Inquiry staff to access the children's group for the purposes of running an Inquiry session. The group process is outlined below:

Introduce the Inquiry

- Inquiry staff to discuss (in simple terms) the nature of the Inquiry and the need to gather children's views as to what the issues are, and what needs to be done.

60 'Groups' are defined as school classes and youth groups such as the NT Youth Roundtable, Create Foundation, Scouts etc.

- Make it clear that participation in the group is completely voluntary (even if the session is being held as part of a class, children should not be forced to attend).

Identify the role of the group

The objective is:

- To talk about child sexual abuse in Aboriginal communities;
- Why is it occurring;
- To talk about what needs to be done to stop the abuse; and
- To talk about what children and young people can do to prevent abuse.

Dealing with children who have been abused

- Acknowledge that some children in the group may have been sexually abused.
- Remind group members that participation in the session is voluntary.
- Make it clear that the group will be talking about broad issues, not an individual's experiences. If a child wants to talk about their own abuse – acknowledge that that's ok, but best dealt with outside of the group setting. If a child wants to disclose or report abuse, identify ways the Inquiry can assist.

Assistance for sexually abused children

- Identify what to do if you want to report sexual abuse – self-disclosure or report of other child's sexual abuse – to Police and FACS numbers (provide toll-free numbers).
- Identify the role the Inquiry staff can play in assisting a child to make a disclosure (i.e. through the Inquiry) acknowledging that Police or FACS would need to speak directly to the child at some point.
- Make it clear that if a child discloses that they have been sexually abused to Inquiry staff, then those staff have an obligation to report the matter to Police or FACS. Therefore, if a child does not wish to report the matter, it's best if they only disclose anonymously through the 'suggestions' box (see below).
- Provide details of support services for those people who want to report a case, or who wish to obtain therapeutic advice and support (see Attachment 3).

Group exercise

The session should begin by defining (in simple terms) child sexual abuse, its prevalence, and who may abuse children.

To initiate a discussion, draw prompts from standard set of questions (e.g. as per Attachment 2), such as, *do you think sexual abuse is occurring in your community; how could it be stopped* etc.

One successful method used when running sexual abuse prevention programs in school settings is, following a group discussion, to encourage the children to write down three things that could be done to prevent (or stop) sexual abuse, and why those three things are needed, or important.

The children should be encouraged to place their responses into an Inquiry 'suggestions' box. Rather than using their own names, it should be suggested that they use codenames (eg movie stars, football players, cartoons)⁶¹.

There is potential to use this exercise as part of the school class or youth group's own sexual abuse prevention (or sex education) classes. In that way, the anonymous responses provided to the inquiry could be passed back to the group leader (with the group's permission) to use as the basis for broader education⁶².

7.2 Managing sexual and other child abuse disclosures and/or complaints

Section 14 of the *Community Welfare Act* stipulates that all persons in the Northern Territory are mandated to report suspected child maltreatment (physical, sexual and emotional abuse and neglect) to FACS or the Police.

Inquiry staff are required to document the information provided regarding child abuse matters and/or complaints and to refer those matters (through the Board) to the relevant departments. It is **not** the role of Inquiry staff to

61 Apart from the entertainment value, it ensures children's comments are anonymous, unless they chose to identify themselves.

62 The Victorian-based Child Sexual Abuse Prevention Program (CSAPP) which uses a similar process, used to publish the children's responses in a magazine for the group participants. If the children had asked questions, they published the questions along with a CSAPP response, in a magazine for participants.

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‘investigate’ or question respondents or others with regard to child protection, criminal investigation or complaints about government agencies.

The Inquiry has negotiated separate processes with the NT Police and the Department of Health and Community Services (DHCS) for referring:

- all new cases of suspected maltreatment requiring protective and/or criminal investigation that arise through the Inquiry processes; and
- complaints regarding DHCS (with particular reference to FACS) and Police management of case matters that arise in the course of the Inquiry.

The Inquiry will request written advice from the statutory services as to the outcomes of all referred matters (new cases and/or complaints).

The respondent, or the Inquiry Board, also has the option of referring matters not satisfactorily dealt with by agencies, to external complaints bodies, such as the NT Ombudsman and the NT Health and Community Services Complaints Commission.

Complaints against other agencies will be managed in a similar manner, with the Inquiry referring the matter, in the first instance, to the CEO of the agency concerned.

8. Supporting statutory investigations

It is recognised that FACS or the Police may need to seek further information from Inquiry respondents who have reported a new case of child abuse, or made a complaint regarding prior cases. This would be for the purpose of:

- 1) ensuring accurate identification of the child of interest, their family and/or the alleged perpetrators; and
- 2) investigating matters thoroughly. For those reasons, any respondent seeking to disclose information on individual child abuse matters or case complaints, where the intention is to elicit a government response to the matter, will be asked to:
 1. provide basic identification of child, family, perpetrator and geographical location, if known, and a summary of the concerns; and

2. consent to being contacted by FACS or Police members in order to gather further information needed to enable identification or to progress investigation of the case. If the respondent is unwilling to meet with statutory services, Inquiry staff should seek consent for the Inquiry staff member to re-contact them in order to relay any Police/FACS information requests⁶³.

⁶³ Many reports of child abuse and sexual assault fail because of difficulties in tracking down the victims and/or perpetrators, and a lack of information specific enough to enable investigation.

9. Attachments

- 9.1. Informed consent
- 9.2. Prompt Questions for Community and Agency Visits
- 9.3. List of approved counselling agencies for respondents

Attachment 1: Informed consent

The *Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* has the purpose of finding better ways to protect Aboriginal children from sexual abuse. The key Inquiry tasks are to:

- examine the extent, nature and contributing factors to sexual abuse of Aboriginal children, with a particular focus on unreported incidences of such abuse;
- identify barriers and issues associated with the provision of effective responses to and protection against sexual abuse for Aboriginal children;
- consider practices, procedures and resources of NT Government agencies with direct responsibilities in this area (Family and Children's Services and Police), and also consider how all tiers of government and non-government agencies might contribute to a more effective protection and response network; and
- consider how the NT Government can help support communities to effectively prevent and tackle child sexual abuse.

The Inquiry will make recommendations to Government on these issues, with a report to the Chief Minister due by April 2007.

As part of the Inquiry process we will seek information from:

- Members of the community, including young people;
- Territory Government employees;
- Non-government organisations; and
- Independent experts.

Site visits and individual interviews

The Inquiry will collect information from communities and individuals by holding a series of group meetings in communities around the Northern Territory. The

Inquiry will also meet with individuals if they wish to make a statement.

The primary objective is to discuss the child sexual abuse problem and to gain community comment as to the nature of the problem and what can be done to reduce the incidence of sexual abuse in communities. There is no obligation for people to report individual cases or situations to the Inquiry. It should be noted that in cases where people do disclose details of individual cases, the matter may be reported to FACS or the Police (see *Reporting cases of child abuse* below).

At times, the Inquiry may wish to take photos during community visits. Persons depicted in Inquiry photos must have the opportunity to consent to being photographed (based on a clear understanding of how the Inquiry may use the photograph).

Protection for those giving information to the Inquiry

While the Inquiry has the power to force individuals and agencies to provide information to the Inquiry, the focus is on taking voluntary submissions. However, some witnesses may prefer to be summonsed, and the Board will consider such requests.

Under section 13 of the *Inquiries Act*, any statement or disclosure made to the Board of Inquiry cannot be used as evidence in any civil or criminal proceedings in any court. In other words, nothing said to the Inquiry can be used as evidence in Court.

Individuals who wish to speak to the Inquiry confidentially, on a one-to-one basis, are able to do so.

When information is used in the Inquiry's publications – it will be modified to ensure no one can determine who gave the information, or the identities of anyone else mentioned in the material.

Arrangements can be made for information to be given at the Inquiry's offices, or other locations where the respondent feels comfortable. It should be noted that the Inquiry is conducting a range of visits to NT communities.

Information can also be provided by telephone (freecall 1800 788 825) or by email (inquiry.childprotection@nt.gov.au)

Reporting cases of child abuse

In the Northern Territory everyone is required to report suspected child maltreatment (physical, sexual and emotional abuse and neglect) to FACS or the Police. Respondents should be advised that if they provided detailed information about a case to Inquiry staff, the Inquiry will:

- encourage the respondent to report the matter to FACS or the Police. The Inquiry can help them to do this if they wish, especially if the respondent is concerned for their safety; and
- if the respondent does not wish to report, then any information given to the Inquiry relating to specific cases of child abuse will be passed by the Inquiry to FACS or the Police.

For further information contact the Inquiry at:

Telephone: 8999 5515

Facsimile: 8999 5523

Freecall: 1800 788 825

Email: inquiry.childprotection@nt.gov.au

Postal address:

Secretariat

Board of Inquiry into the Protection of Aboriginal
Children from Sexual Abuse

GPO Box 4396

Darwin NT 0801

Attachment 2: Prompt Questions for Community and Agency Visits

Community visits

Defining the problem

- What do you understand to be 'child sexual abuse'?
- Do you think there is any relationship between sexual abuse and other forms of violence, such as the physical abuse (beating) of kids, and the violence and rape of adult women?

Prevalence

- How many kids do you think are being sexually abused in your community?
- Why do you suspect (or how do you know) sexual abuse is happening?
- When did you first notice sexual abuse occurring in your community?
- Are some kids more likely to be abused than others?

Perpetrators

- Why are people abusing kids?
- How does it (the sexual abuse) make you feel?
- What impact has it had on the community?
- What do you think should happen to perpetrators?

Response to sexual abuse

- What would you do if a member of your family was sexually abused?
- What has been the broader community response? What is the community doing about sexual abuse?
- If you knew/found out that a family member was abusing someone, what would you do?

Reporting

- Is sexual abuse being reported?
- Why aren't people reporting?
- What could be done to make it easier to report? Or safer to report?
- Who is reporting?

- Who is abuse reported to?
- If you made a report of sexual abuse that you had become aware of, what did you want to see happen when the report was made? Were you happy with what happened after the report was made? What were the positive/negative aspects of that response?
- Do you think that the Police and the courts can protect children, and those who report abuse? Do you think FACS can protect children, or those who report abuse?
- How else could sexual abuse be dealt with? Would you prefer for matters to be dealt with outside of the criminal justice system? Are there alternative or traditional ways of dealing with the matter that you believe would be successful?
- Can traditional methods be used to deal with the situation?

Family and community roles

- How can children be better protected?
- What do you think is the family's role when there's a case of sexual abuse?
- How can the community help prevent sexual abuse?
- Is the community already doing something to prevent abuse and other violence?
- What can government and non-government agencies do?
- How can agencies work better in partnership with communities?
- Are relationships between Indigenous men and women changing? What sort of changes do you think are necessary to prevent sexual abuse?

Exploring key risks

- What is the impact of substance abuse?
- Does the community have grog or drug issues? Is this leading to sexual abuse? How? What can be done?
- Offenders (and their rehabilitation – alternatives to sentencing): Can people who have abused children or others, be accepted by the community? Can offenders change their ways and help to reduce violence?

Agency meetings

Agency role

- What role does this agency play in responding to child sexual abuse? Detail any specific programs and services.
- What communities are serviced?
- Does your agency work in/with remote communities? How often? When?
- Describe the nature of the work undertaken by the agency.
- Does the agency have specific funding for responding to child abuse (child sexual abuse in particular)?
- Can you provide details of your staffing (involved in responding to sexual abuse)?
- Please provide your agencies child sexual abuse case statistics.
- How do you manage multi-problem cases (i.e. how is your role affected by the need to deal with sexually abused children where there are other presenting problems)?
- Are there any barriers for your agency affecting its response to child sexual abuse?
- In general, what are the barriers hindering the reporting of sexual abuse?
- What are the barriers to community action around sexual abuse issues?

Working together

- Who are your key partners when responding to sexual abuse?
- Working with other agencies: Detail any coordination and communication mechanisms.
- How can agencies work better in partnership with communities? What needs to change?
- Identify key service or system gaps for the NT (related to responding to/preventing sexual abuse).

Optional questions (for statutory agencies, and health services)

- Who is reporting? Provide 'source of referral' data (last 5 years if available).
- What could be done to make it easier to report? And **safer** to report?
- Should there be alternatives to formal reporting?
- Are there innovative service responses that could improve the response to sexual abuse in the NT? Describe what works (NT and elsewhere).
- What can government and non-government agencies do improve the response to sexual abuse?
- What role should the community's play when there's a case of sexual abuse?

Attachment 3: List of approved counselling agencies for respondents

TO REPORT CHILD ABUSE

Family and Children's Services

Freecall 1800 700 250 (24 hours)

NT Police

Phone 131 444 (24 hours)

Crimestoppers

[If you wish to make an anonymous report to Police]

Freecall 1800 333 000

COUNSELLING AND SUPPORT SERVICES

Telephone support services

Kids Help Line

Telephone counselling for children and young people. This service also provides email and online counselling. Check out their website for details (www.kidshelp.com.au)

Freecall 1800 551 800 (24 hours)

Life Line

General telephone counselling

Phone 131 114 (24 hours)

Crisis Line

General crisis counselling

Freecall 1800 019 116 (24 hours)

Parentline

Phone 1300 30 1300 (cost of a local call)

Website www.parentline.com.au

Sexual assault treatment and counselling services

Sexual Assault Referral Centre

Darwin

Phone 08 8922 7156 (24 hours)

Alice Springs

Phone 08 8951 5880 (office hours only)

Eurilpa House, Todd Mall

Ruby Gaea House

Sexual assault counselling service (Darwin – Palmerston)

Phone 08 8945 0155 (office hours only)

Central Australian Aboriginal Congress (Alice Springs)

Social and Emotional Health branch

Colocag Plaza

Shop 8, 74 Todd Street

Phone 08 8953 8988 Fax 08 8953 8399

Danila Dilba (Darwin)

Emotional and Social Wellbeing Centre

1/5 Bishop Street, Winnellie

Phone 08 8942 3144

Wurli Wurlinjang Health Service (Katherine)

25 Third Street (off Giles Street)

Phone 08 8971 0044

Centacare Family Link (Katherine)

Cnr Giles and First Street

Phone 08 8971 0777

Anyinginyi Congress Aboriginal Medical Service (Tennant Creek)

1 Irvine Street

Phone 08 8962 2385



Appendix 3: List of submissions received

Author / Organisation

Mr D. Baschiera

Ms M. Webb

Christine Bradley

Brian Erickson and Kadeja Sarah James, CD, Education, Training and Research Consultants

Ms J Walsh

The Smith Family

Lone Fathers' Association

Kakadu Health Service, Primary Health Care Team Members

Alistair Burns

Centacare

Dr Peter K Thorn

Leader of the Opposition, Ms J. Carney, MLA.

Sunrise Health Service Aboriginal Corporation

Anonymous

Anyinginyi Health Aboriginal Corporation

Family and Community Services Advisory Council Inc

Katherine High School Welfare Group

YWCA of Darwin

David Loadman, SM

Ruby Gaea - Darwin Centre Against Rape

NT Police

Department of Employment, Education and Training

NT Legal Aid Commission

Anglicare, Youth Inter-agency Network East Arnhem

Mr D Mitchell

Council of Remote Area Nurses Association

Royal Australasian College of Physicians (NT)

Australian Association of Social Workers (NT) (with addendum received 1/2/07)

Elliott Community

Elliott Response Group

Mr S. Ledeck

Central Australian Family Violence and Sexual Assault Network

North Australian Aboriginal Justice Agency



Mr D. Howard, Psychologist, Phoenix Consulting
Waltja Tjutangku Palyapayi Aboriginal Corporation
Eros Association
Name withheld at request of author
Name withheld at request of author
Rev EJP Collins
Bawinanga Aboriginal Corporation
Commonwealth Attorney-General's Department and FaCSIA
Domestic and Family Violence Advisory Council
Justice Sally Thomas
Director of Public Prosecutions (including the Witness Assistance Service)
Department of Health and Community Services
Crime Victims Advisory Committee
National Aboriginal and Torres Strait Island Health Council
National Association for Prevention of Child Abuse and Neglect
Ms R. Elliott
Anonymous group of women, Arnhemland community
Human Rights and Equal Opportunity Commission
Central Australian Aboriginal Congress
Dr R. Michaelson, Executive Director, Child Sexual Abuse Prevention Program
Sexual Assault Referral Centre
Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council (Aboriginal Corporation)
Dr G. Stewart
Ms J. Blokland, Chief Magistrate (personal submission)
Australian Education Union - NT Branch
Name withheld at request of author
Department of the Chief Minister
Australian Education Union - Federal Office
SNAICC (Secretariat National Aboriginal and Islander Child Care)
AMSANT
Save the Children and Larrakia Nation
Ms J. Tapp





Appendix 4: List of meetings held

1. Cathy Abbott, Cultural Healing Centre
2. Amoonguna Elders – Alice Springs
3. Margaret Banks, Chief Executive, John Glasby and Susan Bowden, Department of Employment, Education and Training
4. Alastair Byrnes, Remote Education (teleconference)
5. Peter Campos, Department of Health and Community Services
6. Jenny Cleary and Peter Skov, Department of Health and Community Services
7. Michelle Gavin, NT Police, Major Crime
8. Bill Griffiths and Helen Little, Catholic Education Office
9. Kevin Kitson, Director of Intelligence, Australian Crime Commission
10. Ken Langford-Smith, Principal Yipirinya College, Alice Springs
11. Kath Phelan, Association of Independent Schools
12. Paul Rajan, Director, Community Engagement, Department of the Chief Minister
13. Rose Rhodes, Department of Health and Community Services
14. David Ross, Cental Land Council
15. Jenny Scott, Director, Family and Community Services
16. Greg Shanahan, Chief Executive Officer, Department of Justice
17. Rod Wyber-Hughes, Remote Nurses Association
18. Vicki Taylor, Alice Springs Hospital
19. Nanette Rogers, Office of the Director of Public Prosecutions, Alice Springs
20. Name withheld
21. Jane Lloyd, Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women’s Council
22. Jens Tolstrup, Director, Correctional Services, Department of Justice
23. John Adams, Tangentyere Council, Alice Springs
24. Jodeen Carney MLA, Leader of the Opposition
25. Paul White, NT Police Commissioner
26. Robert Griew, Chief Executive Officer, Department of Health and Community Services
27. Richard Trudgen, Aboriginal Resource Development Service, Nhulunbuy
28. Vicki Taylor, Alice Springs Hospital
29. Mark Doecke, Principal, and senior staff, Yirara College, Alice Springs
30. Rita Henry, Assistant Secretary, Department of Employment, Education and Training Alice Springs
31. Alice Springs Men
32. Robert Griew, Chief Executive Officer, Department of Health and Community Services (second meeting)
33. Mandy Young, Attorney-General’s Department, New South Wales (NSW Taskforce)
34. Adam Blakester, National Director, National Association for Prevention of Child Abuse and Neglect
35. Jack Mechielsen, NT Christian Schools Association,
36. Alistair Milroy, Chief Executive Officer, Australian Crime Commission
37. Chairman of Milingimbi Community Council
38. Geoff Stewart (Senior Medical Advisor, Aboriginal Medical Service Alliance, NT)
39. Malcolm Pritchard, Principal, Kormilda College
40. Aboriginal Male Senior Students – St John College, Darwin
41. Jenny Scott, Family and Community Services Director
42. Aboriginal Female Senior Students – St John College, Darwin
43. Mutitjulu Men
44. Mutitjulu Clinic
45. Alex Brown, Centre for Remote Health, Alice Springs
46. Dan Lynch, Nyangatjatjara College, Yulara
47. Maningrida Service Providers
48. Milingimbi Service Providers

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49. Milingimbi Clinic
50. Mutitjulu Women
51. Mutitjulu Woman (Elder)
52. Papunya Men
53. Yuendumu Men
54. Kintore Men
55. Docker River Men
56. Karu Aboriginal Family Support Agency, Darwin
57. Family and Children's Services staff in Alice Springs
58. Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women – Alice Springs
59. Robin Smith, General Manager, and Lyn Lawrence, Director of Nursing, Katherine Hospital
60. Wurli Wurlinjang Health Service, Katherine
61. Sunrise Health Service, Katherine
62. Jawoyn Association, Katherine
63. Miatt Community – Timber Creek
64. Bulla Community – Timber Creek
65. Sexual Assault Referral Centre – Darwin
66. Papunya Police
67. Yuendumu Service Providers
68. Jackie Antoun, Department of Justice, Darwin
69. Docker River Clinic
70. Aboriginal Medical Service Alliance, NT
71. Central Australian Youth Link Up Service
72. Helen Little, Sexual Assault Referral Centre, Alice Springs
73. Central Australian Aboriginal Family Legal Unit, Alice Springs
74. Maningrida Men
75. Maningrida Women
76. Maningrida Service Providers
77. Elizabeth Morris, Director, Racing, Gaming and Licensing, NT Treasury
78. Paul White and Grahame Kelly, NT Police
79. Bill Somerville, CEO, Offenders Aid and Rehabilitation Services NT Inc.
80. Stephanie Bell, Central Australian Aboriginal Congress
81. Di Eades, Family and Children's Services
82. Nungalinga College – Galiwinku Men/Women
83. Gerry Wood, Member for Nelson
84. Peter Thorn
85. Department of Health and Community Services, presentation by executive group
86. Dawn Fleming, formerly employed in the Social and Wellbeing Program, Central Australian Aboriginal Congress
87. Greg Shanahan, Terry Dreier and Wendy Hunter, Department of Justice/Correctional Services
88. Nungalinga College – Men
89. Pauline Fietz, Youth Program, Docker River
90. Katherine West Health Board Clinic – Timber Creek
91. Milingimbi Men
92. Ramingining Men
93. Milingimbi Women
94. Ramingining Women
95. Yuendumu
96. Bronwyn Hendry and Rob Parker, Mental Health Services, Department of Health and Community Services
97. Cheryl McCoy, Office of Crime Prevention, Department of Justice
98. Milikapiti Men
99. Milikapiti Women
100. Milikapiti Service Providers
101. Crystal – Milikapiti
102. Pirlangimpi Women
103. Pirlangimpi Men
104. Pirlangimpi Service Providers
105. Nguiu Men
106. Nguiu Women
107. Sister Girls, Bathurst Island
108. Nguiu Service Providers
109. Gary Robinson, Charles Darwin University
110. Gary Lees
111. Kevin Doolan, Tiwi Islands
112. Harry Wilson, Billy Doyle - Peppimenarti
113. Jody Kenneally - Peppimenarti
114. John Chenoweth, Toni Pretlove - Palumpa
115. Sister Philippa Murphy, St Johns College
116. Nungalinga College - Galiwinku Women
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| 117. Aboriginal Education Workers – Department of Employment, Education and Training | 148. Kevin Kitson and John Pope – Australian Crime Commission |
| 118. Mutitjulu Women | 149. Docker River Women |
| 119. Wadeye Service Providers | 150. Debra Bird-Rose |
| 120. Papunya Aged Care Workers | 151. Kirsty Jones, Nurse, Ski Beach, Nhulunbuy |
| 121. Wadeye Women | 152. Angurugu Service Providers |
| 122. Nauiyu Service Providers, Daly River | 153. Various meetings with service providers and key contacts at Jabiru and Oenpelli by Inquiry staff member prior to formal visit by Co-Chairs |
| 123. Nauiyu Women, Daly River | 154. Nhulunbuy - 2 ladies, East Woody Community |
| 124. Yuendumu Women | 155. Nhulunbuy Service Providers |
| 125. Secretariat of National Aboriginal and Island Child Care | 156. Richard Humphries, Chief Executive Officer, Ski Beach Community |
| 126. Darwin Indigenous Organisations forum: Larrakia Nation, NLC, AMSANT, Karu, Darwin Aboriginal and Islander Women’s Shelter | 157. Umbakumba Service Providers and Community Members |
| 127. Nadine Williams, Australian Education Union (NT) | 158. Yirrkala Men and Women |
| 128. Nauiyu Men, Daly River | 159. Yvette Carolin - Mission Australia, Darwin |
| 129. David Woodroffe, North Australian Aboriginal Justice Agency | 160. Chris Lovatt and Kim Lisson, YWCA Children’s Workers, Darwin |
| 130. Jenny Scott, Director, Family and Children’s Services, Department of Health and Community Services | 161. Oenpelli Men |
| 131. Paediatricians, Royal Darwin Hospital | 162. Oenpelli Service Providers |
| 132. Kintore Women | 163. Jabiru Men |
| 133. Beswick Women | 164. Yarralin Men |
| 134. Beswick Service Providers | 165. Yarralin Clinic |
| 135. Barunga Women | 166. Lajamanu Men |
| 136. Katherine Family and Community Services staff | 167. Lajamanu Community Government Council |
| 137. Alexis Jackson, Peace at Home Program Manager (Katherine) | 168. Dagaragu/Kalkarindji Men |
| 138. Kalano Association, Katherine | 169. Kalkarindji Service Providers |
| 139. Nungalinga College, Darwin | 170. Yarralin Women |
| 140. Beswick Men | 171. Yarralin Aged Care Worker |
| 141. Barunga Men | 172. Yarralin Chief Executive Officer |
| 142. Barunga Service Providers | 173. Richard Trudgen (second meeting) |
| 143. Nyirranggulung Regional Council (Katherine region) | 174. Lajamanu Women |
| 144. Marie Allen - Flora River | 175. Lajamanu Service Providers |
| 145. Dominic McCormack | 176. Galiwinku Women |
| 146. Adam Blakester, National Director, NAPCAN and Lesley Taylor, NT President NAPCAN | 177. Gapuwiyak Council |
| 147. Sue Piening and Joanne Carbone – Piening Utopia | 178. Gapuwiyak Service Providers |
| | 179. Cheryl Foster and Erica Nixon, Indigenous Coordination Centre, Nhulunbuy |
| | 180. Charles Rue, Community Relations, ALCAN, Nhulunbuy |
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| 181. Gapuwiyak Women | 217. Ali Curung Men |
| 182. Angurugu Women | 218. Ski Beach Women |
| 183. David Mitchell, Nhulunbuy | 219. Name withheld |
| 184. East Arnhem Inter-agency Youth Network, Nhulunbuy | 220. Helen Little, Sexual Assault Referral Centre, Alice Springs, and Narelle Bremner (SARC Tennant Creek) and Hannah Moran (SARC Darwin) |
| 185. Maggie Bourke, Mission Australia, Nhulunbuy | 221. Ali Curung Safe House |
| 186. Numbulwar School | 222. Elliott Women |
| 187. Numbulwar Men | 223. Anyinginyi Corporation Women |
| 188. Galiwinku Men | 224. Members of the Barkly Regional Safety Consultative Committee, Tennant Creek |
| 189. Borrooloola Service Providers | 225. Jean Loke, Kalkarindji School Principal |
| 190. Ngukurr Men | 226. Borrooloola Women |
| 191. Ngukurr Service Providers | 227. Ngukurr Women |
| 192. Angurugu Men | 228. Numbulwar Health Clinic |
| 193. Angurugu Clinic | 229. NT Government Agency officers and NGO Service Providers – Tennant Creek |
| 194. Gapuwiyak Men | 230. Yirrkala Women |
| 195. Vicki Burbank, Anthropologist, Numbulwar | 231. Paul White, Commissioner for Police, and senior officers, NT Police |
| 196. Kate Halliday, Office of Crime Prevention, Department of Justice | 232. Paul Tyrrell, Chief Executive, and Graham Symons, Deputy Chief Executive, Department of the Chief Minister |
| 197. Richard Trudgen, Nhulunbuy (third meeting) | 233. Name withheld |
| 198. Yirrkala Service Providers | 234. Oenpelli Women |
| 199. Miwatj Health | 235. Rosalie Kunoth-Monks |
| 200. Ski Beach Men | 236. Name withheld |
| 201. Ski Beach Clinic | 237. Name withheld |
| 202. Nhulunbuy Police | 238. Family and Domestic Violence, Sexual Assault Network, Alice Springs |
| 203. Galiwinku Service Providers | 239. Lynette Keatch, Clinic Nurse, Binjari Health Centre, Katherine Region |
| 204. Ali Curung Women | 240. Felicity Douglas and Albert Mileran, Maningrida |
| 205. Ti Tree Women | 241. Name withheld |
| 206. Western Aranda Health Board | 242. Board Members, Central Australian Aboriginal Alcohol Programs Unit, Alice Springs |
| 207. Hermannsburg Service Providers | 243. Jabiru Service Providers |
| 208. Ti Tree Service Providers | 244. Malcolm Frost, Central Australian Aboriginal Congress |
| 209. Alan Benson and Patty LaBoucane-Benson, Hollow Water program, Canada | 245. Michelle Brown, Department of Employment, Education and Training, Barkly Region |
| 210. Ti Tree (Six Mile) Men | 246. Tricia Rushton, The Smith Family (NT Division) |
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247. AUSTAR Sydney (teleconference)
 248. Bagot Community Women
 249. Ray Dunne and Ewa Laydo, Life Without Barriers
 250. Officers of the Child Abuse Taskforce, NT Police
 251. Margaret Banks, Chief Executive, Susan Bowden and Janet Muirhead, Department of Employment, Education and Training
 252. Nadine Williams, Australian Education Union (NT), second meeting
 253. Dennis Bree and Peter Wellings, Department of the Chief Minister (Indigenous Affairs)
 254. Jo Sangster and Louise O'Shaunnesy – Australian Government's Indigenous Coordination Centre, Darwin
 255. Tom Calma, Aboriginal and Torres Strait Islander Commissioner, Human Rights and Equal Opportunity Commission
 256. Lisa Bennett, YWCA Young Parents Program
 257. Staff, Australian Government's Indigenous Coordination Centre, Darwin
 258. Brian Stacey, State Manager (NT), Family and Community Services and Indigenous Affairs, Australian Government
 259. Dr Reina Michaelson, Protective Behaviours Program consultant
 260. Elizabeth Morris and Ian Crundall, Office of Alcohol Policy, Department of Justice
 261. Jonathon Carapetis, Director, Menzies School of Health Research

The Inquiry also held regional forums in Katherine, Nhulunbuy, Darwin and Alice Springs, and a number of additional meetings in mid April 2007 with NT Public Sector Agency chief executives and senior staff to discuss the Inquiry's draft recommendations.



Appendix 5: List of sex offences used in offender data analysis

Table 1: Offences (selected by Inquiry) by offence grouping

Offence grouping	C_ACT	C_SECTION	Offence descriptions
Attempt sexual assault without consent	CC	192(3)(6)	136250_adult attempted to have sexual intercourse with a person without the consent of other person who is under 16 years
Attempt sexual assault without consent	CLCA	64	137145_attempt to carnally know a girl who is under the age of 12 years
Attempt sexual assault without consent	CC	192(1)	136010_Assault With The Intent To Have Carnal Knowledge
Attempt sexual assault without consent	CC	192(2)	136030_Assault By An Adult On A Person Under The Age Of 16 Years With The Intent To Have Carnal Knowledge
Child pornography and related offenses	CC	137A(1)	137085_possess a film or photograph of a child under the age of 16 years engaged in a sexual act or shown in an indecent manner
Child pornography and related offenses	CC	125B(1)(b)	137095_possess indecent article
Child pornography and related offenses	CC	125E	137410_person must not use/offer/procure a child for production of child abuse material/pornographic or abusive performance
Child pornography and related offenses	CC	125B(2)	571000_child pornography sell, offer or advertise for distribution or sale any child abuse material
Child pornography and related offenses	CC	125B(1)	571020_person must not possess distribute produce sell or offer or advertise for distribution or sale any child abuse material
Child pornography and related offenses	CC	125B(1)	571040_person must not possess distribute produce sell offer or advertise for distribution or sale any child abuse material
Child pornography and related offenses	CC	125B(1)	571050_person must not possess distribute produce sell offer or advertise for sale any child abuse material
Child pornography and related offenses	CC	125B(1)	571060_person must not possess distribute produce sell offer or advertise for distribution any child abuse material
Child pornography and related offenses	CCAC	474.19	571070_a person must not use a carriage service to access, transmit, make available, publish or distribute child pornography
Child pornography and related offenses	CCAC	474.20	571080_person must not possess, control, produce, supply or obtain child pornography material for use through carriage service
Child pornography and related offenses	CC	137	137075_Production of child pornography where the child depicted was under the age of 16 years
Gross indecency	CC	128(1)(b)	139040_being a male, did in private commit an act of gross indecency with a male who is not an adult
Gross indecency	CC	129(1)(b)	139070_commit an act of gross indecency on a female under the age of 16 years
Gross indecency	CC	129(2)	139080_unlawfully commit an act of gross indecency with a female who is under the age of 14 years
Gross indecency	CC	127(1)(b)	139260_commit an act of gross indecency with child under the age of 16 years
Gross indecency	CC	127(3)	139300_commit an act of gross indecency with child under the age of 10 years
Gross indecency	CC	127	139030_Male commit act gross indecency on another male where one of the males is under 14 years – in public or public place
Gross indecency	CC	128(1)(b)	Being an adult male, did in private, unlawfully commit an act of gross indecency with a male under the age of 14 years

Offence grouping	C_ACT	C_SECTION	Offence descriptions
Gross indecency without consent	CC	192(2)	136026_sexual assault commit act of gross indecency victim under 16 years
Gross indecency without consent	CC	192(4)	136230_commit an act of gross indecency upon another person without the consent of that person
Gross indecency without consent	CC	192(3)	136050_Assault with the intent to have carnal knowledge – commits an act of gross indecency
Gross indecency without consent	CC	192(3)	136110_Assault with intent to commit an act of gross indecency and did commit an act of gross indecency
Indecent assault/dealings	CC	188(3)	129170_any person who unlawfully indecently assaults a child under 16 years of age is guilty of an offence
Indecent assault/dealings	CLCA	66	136210_indecently assault a woman or girl
Indecent assault/dealings	CC	132	137060_indecent dealings with child under the age of 10 years
Indecent assault/dealings	CC	x	137070_indecent treatment child under 10 years
Indecent assault/dealings	CC	132	137081_indecent treatment child under 14 years
Indecent assault/dealings	CC	132(2)(a)	137160_unlawfully and indecently deal with a child under the age of 10 years
Indecent assault/dealings	CC	132(2)(b)	137165_did unlawfully expose a child under the age of 16 years to an indecent act
Indecent assault/dealings	CC	132(2)(c)	137170_unlawfully permit himself to be indecently dealt with by a child under the age of 16 years
Indecent assault/dealings	CC	132(2)(d)	137175_unlawfully procure a child under the age of 16 years to perform an indecent act
Indecent assault/dealings	CC	132(2)(e)	137180_without a legitimate reason, intentionally and unlawfully expose a child under the age of 16 to indecent material
Indecent assault/dealings	CC	132(2)(f)	137185_without a legitimate reason intentionally and unlawfully take or record an indecent image of a child under 16 years of age
Indecent assault/dealings	CC	132(4)	137400_indecent dealing with a child who is under the age of 10 years
Indecent assault/dealings	CC	132(1)	139165_indecent treatment of a child who is under 14 years
Indecent assault/dealings	CC	188(2)	129020_Unlawfully assaulted a person and that the said unlawful assault involved circumstances of aggravation
Indecent assault/dealings	CC	188(2)(k)	136200_Did unlawfully assault a person and that person was indecently assaulted
Indecent assault/dealings	CC	x	137080_INDECENT TREATMENT CHILD UNDER 14 YEARS
Other	CC	131(1)(a)	137200_person attempt to procure a child under 16 years to have unlawful sexual intercourse in the NT or elsewhere
Other	CC	131(1)(b)	139140_attempt to procure a child under the age of 16 years to unlawfully commit an act of gross indecency
Other	CC	131(1)(b)	139160_did attempt to procure a child under the age of 16 years to unlawfully engage in an act of gross indecency
Other	PR	13	595050_person shall not cause or induce an infant to take part in the provisions of prostitution services
Other	PR	15	595080_person receives a payment knowing that it or any part has been derived from prostitution services performed by infant
Other	PR	16	595090_person enters agreement or offers infant to provide prostitution for payment of dangerous drugs
Other	PR	14(1)	595060_PERSON WHO CARRIES OR MANAGES PROSTITUTION BUSINESS ALLOWS INFANT TO TAKE PART IN PROVISIONS OF SUCH SERVICE
Sexual intercourse without consent	CC	192(2)	136025_assault person and commit act of gross indecency and the victim was under 16 years of age (carnal knowledge)
Sexual intercourse without consent	CC	192(3)	136220_have sexual intercourse with a person without the consent of that person
Sexual intercourse without consent	CLCA	60	136280_rape
Sexual intercourse without consent	CC	192(1)(A)	137110_did with respect to a female who is under the age of 16 years have unlawful carnal knowledge of her

Offence grouping	C_ACT	C_SECTION	Offence descriptions
Sexual intercourse without consent	CLCA	63	137140_ carnal knowledge of a child under 12 years of age
Sexual intercourse without consent	CC	192(4)	136100_ASSAULT INTENT COMMIT ACT GROSS INDECENCY AND HAD CARNAL KNOWLEDGE
Sexual intercourse	CC	127(2)	137020_male have sexual intercourse of another male in public or public place where one of the males is under 14 years of age
Sexual intercourse	CC	128(1)(a)	137030_ being a male did have carnal knowledge in private of a male who is not an adult
Sexual intercourse	CC	128(1)(a)	137040_ being a male, did have carnal knowledge in private of a male who is not an adult and who is under 14 years of age
Sexual intercourse	CC	129(2)	137120_ have unlawful carnal knowledge with a female under the age of 14 years
Sexual intercourse	CC	129(1)(a)	137125_ carnal knowledge involving female under 16 years
Sexual intercourse	CC	130(1)(a)	137190_sexual intercourse involving mentally ill or handicapped person
Sexual intercourse	CC	134(3)	137390_sexual intercourse with close family member under the age of 10 years
Sexual intercourse	CC	127(1)(a)	139250_sexual intercourse with child under the age of 16 years
Sexual intercourse	CC	127(2)	139270_aggravated sexual intercourse with child under the age of 16 years but of or over the age of 10 years
Sexual intercourse	CC	127(3)	139290_sexual intercourse with child under the age of 10 years
Sexual relationship	CC	131A(2)	137150_ being an adult did maintain an unlawful relationship of a sexual nature with a child under the age of 16 years
Sexual relationship	CC	131A(4)	137350_ being adult maintained sexual relationship with child under 16 years old where aggravating offences with imp 7-20 years occurred
Sexual relationship	CC	131A(5)	137360_adult maintain sexual relationship with child under 16 years where coercion or aggravating offences (20 years imp) occurred

Table 2: Number of offences by apprehension 2001-2006

Number of Offences	Year of Apprehension						TOTAL
	2001	2002	2003	2004	2005	2006	
1	24	17	31	24	15	12	123
2	9	15	16	15	19	16	90
3	5	3	10	9	8	3	38
4	4	5	9	5	7	3	33
5	1	3	7	5	7	.	23
6	1	2	.	4	3	2	12
7	.	3	1	5	2	.	11
8	2	3	2	5	5	3	20
9	.	.	1	.	1	1	3
10	.	1	1	2	2	1	7
11	.	3	.	.	.	.	3
12	.	.	1	.	3	.	4
13	.	.	.	1	1	.	2
14	.	.	1	.	1	.	2
15	.	.	1	1	1	.	3
16	.	.	.	1	.	.	1
17	.	.	1	1	.	.	2
18	.	.	.	.	1	.	1
21	1	.	.	.	.	.	1
23	.	.	.	.	1	.	1
24	.	.	1	.	.	1	2
26	.	.	.	.	.	1	1
29	.	1	.	.	.	.	1
33	.	.	1	.	.	1	2
35	.	.	.	1	.	.	1
40	.	1	.	.	.	.	1
42	.	.	1	.	.	.	1
45	.	.	.	1	.	.	1
52	.	.	.	.	1	.	1
56	.	.	.	.	1	.	1
61	.	.	1	1	.	.	2
66	.	.	1	.	.	.	1
67	.	.	1	.	.	.	1
99	.	.	.	1	.	.	1
155	.	.	1	.	.	.	1
251	.	.	.	.	1	.	1
331	.	.	1	.	.	.	1
TOTAL	47	57	90	82	80	44	400

Footnotes:

- 1 A court appearance where an order implying conviction was given for a child sex offence. The conviction may not be directly related to the current custodial episode.
- 2 The episodes may not be associated with either remand or conviction for a child sex offence.



For more information contact

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