

Territory Opposition Submission to the Inquiry in to the Northern Territory's Child Protection System

Introduction

Child protection is about caring for, and protecting from harm, the most vulnerable and innocent – our children.

Child protection is not just a system or process but an environment designed to ensure that kids in care are provided with the love, affection and nurture that their peers receive.

No child should suffer abuse, harm or neglect. Yet, sadly the desire for a society that protects our children's innocence does not match reality.

The Territory Opposition believes it is incumbent on each and every one of us to accept our basic human and moral responsibility to protect children. In the case of Governments, that moral responsibility is also underpinned with statutory obligations to protect children from any form of abuse, harm or neglect.

The Northern Territory's child protection system is in crisis. The child protection system is failing children at risk.

When a child dies in care and in the most horrific circumstances just a day after a visit by NTFC, there is very clearly something wrong with the system.

When a formal notification by the Director of Paediatrics at Royal Darwin Hospital is ignored, there is very clearly something wrong with the system.

When a motherless child is placed into care without any formal assessment with a family member who had never cared for a baby before, there is very clearly something wrong with the system.

When cases have been written off without assessment and investigation because the system is backlogged, there is very clearly something wrong with the system.

When a Minister threatens to take action against child protection and social workers who have no other course of action to speak out publicly and risk their jobs after years of notifying management of failings in child protection, there is very clearly something wrong with the system.

And when the responsible Minister suggests that the child protection system is working fine in the face of damning evidence to the contrary, there is very clearly something fundamentally wrong.

Yet successive Territory Governments since 2001 have ignored these signals and report after horrific report which have indicated that the system was broken and needed fixing.

This Inquiry, like its predecessors, will provide recommendations that aim to fix the Territory's child protection system. The Opposition supports the ambitions of the Inquiry Board and eagerly awaits what will no doubt be a very long list of recommendations. We will play our part in ensuring that any recommendations are implemented with the expediency and commitment that is required.

At the core of this Inquiry is that unless and until we have a Government and Ministers in the Northern Territory prepared to accept responsibility to fix the system, address the culture of cover up and implement drastic and immediate changes, the child protection system in the Northern Territory will not protect children.

Origins

The Territory Opposition wishes to address two aspects of the origins of this Inquiry. Both aspects indicate an absence of political and administrative responsibility by successive Territory Labor Governments to address systemic problems in the child protection system.

The immediate impetus to this particular Inquiry were two deeply disturbing cases – the first resulting in the death of a child in care, the second, a motherless infant who was left permanently brain damaged after being placed in the care of a family member. Both cases became high profile examples of a child protection system in crisis.

The Territory Opposition first called for an Inquiry into the Child Protection System after media reports of the death of Deborah Melville in August 2007. That call was renewed on 28th October 2009 following the release of the Coroner's Report into the death of Deborah Melville and the failure by the then Minister for Families and Children, the Hon Malandirri McCarthy MLA, to respond to a series of questions regarding the response of NTFC to the case of a motherless child. In the latter case, the Minister failed to address concerns that this child was placed in care with a family member who had no experience with children and who had not been screened and assessed by the Department. The latter case indicates that recommendations in the 2007 High Risk Audit prepared by the Children's Commissioner Howard Bath in respect of the scrutiny of kinship carers had not been implemented by the Government.

The Minister's initial response failed to acknowledge that the child protection system had in any way failed the motherless child. After sustained pressure by the Opposition, the public and the media, the Minister announced that the Children's Commissioner would, "provide a report on recent issues". Such a response was deemed inadequate in the face of damning evidence from social workers, doctors and child protection workers that other children had been put at risk by the system. While initially attacking those who chose to speak out, the Minister finally succumbed to the relentless pressure and established the current inquiry.

It must be accepted that this inquiry was only established because the Minister and her Government's credibility had been seriously questioned. The Minister ignored clear evidence of a system in crisis for weeks. The Minister initially ignored the concerns of staff within the system, including the Senior Paediatrician at Royal Darwin Hospital.

The Government's response in this instance is telling but not isolated.

This Inquiry originates in almost ten years of successive Territory Labor Governments ignoring key internal indicators of a system in crisis.

The Opposition has used Parliament to highlight cases which have demonstrated systemic failings in child protection. The Government ignored these warnings.

Since 2001 the following reports into the Northern Territory's child protection system have been produced:-

- *Current issues in child protection policy and practice, Informing the NT Department of Health and Community Services child protection review, 2004, Prepared by Adam Tomison – National Child Protection Clearinghouse, Australian Institute of Family Studies*
- *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Child Abuse, 2007*
- *Northern Territory Community Services High Risk Audit Report, November 2007, Prepared by Dr Howard Bath*
- *Review Report of NTFC Intake Service, June 2009, Prepared by Jay Tolhurst*
- *Inquest into the death of Deborah Leanne Melville-Lothian, 19 January 2010, NT Coroner*
- *Interim Progress Report into Northern Territory Families and Children Intake and Response Processes, 2010, Prepared by Dr Howard Bath – Children's Commissioner*

The Northern Territory Ombudsman has also commented on problems within the Child Protection system.

Not one of these reports has been fully implemented. Many important recommendations contained in these reports have not been implemented despite time, opportunity and demand for Government to do so. This is a damning indictment on successive Territory Labor Governments.

That indictment is not confined to the Government's repeated failures to implement report recommendations.

The Territory Opposition further notes that any review of child protection by the Government has only been undertaken after substantial pressure was applied by the Opposition, media and public.

This situation is reprehensible and signals a Government that is not doing its job.

The Government must have in place internal processes that actively address any process that jeopardise the protection of children in care or in need of care. Anything less than this places serious question marks over the entire child protection system and the ongoing care of Territory children reliant on that system for their protection and welfare.

The Victorian Ombudsman noted in his 2009 Report into the Victorian Child Protection program that, 'often these reviews are prompted by a high profile case, rather than as an element of proactive, ongoing reform'.¹

The Ombudsman further noted that, 'despite the intermittent media attention, it is clear that most child protection cases receive limited if any external scrutiny. My investigation revealed instances where children have died, been seriously injured or allegedly assaulted by their carers. In other cases professionals failed to agree on how to proceed in a child's best interests. Yet, these cases have attracted little or no external scrutiny'.²

The Territory Opposition believe a Government focused more on its image than responding to internal signals of system failure jeopardises the safety of children.

¹ Victorian Ombudsman, '*Own motion investigation into the Department of Human Services Child Protection Program*', November 2009, 14.

Terms of Reference Considerations

The Territory Opposition has considered the Terms of Reference provided to the Committee.

We believe that the Inquiry must address the following matters:

1. The policies that underpin the child protection system in the Northern Territory.
2. Whether the current degree of tolerance of risk (the risk threshold) to children applied by the Department ensures that child at risk of harm are appropriately protected and whether the Department applies different risk thresholds to children due to geographic location.
3. Systemic failures within the Intake system known to Government for some time, including the timeliness of responding to notifications of risk and their investigation.
4. The capacity of the existing system to identify cumulative harm, or threats of cumulative harm.
5. The adequacy of existing legislation to provide effective child protection services, including IT systems.
6. The adequacy of resources in the child protection system, benchmarked against other like jurisdictions.
7. The impact of recruitment and retention problems on children in care and foster parents.
8. The adequacy of training provided for those charged with protecting children at risk, benchmarking training provided against other Australian jurisdictions.
9. The effectiveness of arrangements for inter-agency cooperation in child protection, including inter-agency cooperation between Government Departments and cooperation with non-government and community organisations.
10. The management of notifications of child abuse and neglect, with reference to investigation timeframes.

² Ibid 14.

11. The assessment of the suitability and provision of support for foster families and kinship carers with whom children at risk are placed.
12. The ongoing management of child protection cases.
13. An assessment of internal middle and senior management procedures, including responsiveness, to staff identification of persistent and systemic failures within any element of the child protection system.
14. Whether the size and complexity of the lines of reporting within the Department negatively impact on the delivery of child protection services.
15. An examination of all Coronial Inquests in the last 10 years involving the death of a child, and in particular an assessment of whether all recommendations have been implemented.
14. An examination of all reviews and reports into the NT child protection system in the last 10 years and in particular an assessment of whether all recommendations have been implemented.

Key concerns

The Opposition has consistently expressed concerns, over many years, with the operation of the Territory's child protection system. That concern has covered, and continues to cover a wide range of operational, statutory and managerial issues.

This submission will cover a number of those concerns but it should not be considered exhaustive nor reflect the entirety of Opposition principles and policies on child protection matters.

The Intake System

A responsive and effective central intake system is crucial.

A child's safety and wellbeing is placed a great risk if the intake system does not take the necessary critical protection action.

Two recent reports into the centralised intake System for NTFC undertaken by Dr Howard Bath³ and Mr Jay Tolhurst⁴ have highlighted significant problems in processing and investigating reports of child abuse or neglect.

These reports have noted critical failures in responding to reports of abuse and neglect including:-

- Substantial and systemic problems with the central intake process.
- Failure to meet response timelines including writing off of low priority case backlogs.
- A lack of responsiveness to notifications of harm which has led to notifiers making multiple notifications in the hope that such action will prompt an investigation.
- Failure to provide feedback to notifiers.
- The risk threshold for taking protective action has been getting higher and cumulative risk has tended to be minimised or ignored.
- Critical staff shortages and lack of experienced staff to undertake intake process.
- Substantial inadequacies in IT that has made the reporting, assessment and tracking of child abuse and neglect cases inconsistent.
- Technical problems with the incoming phone system that operates on just two phone lines.

The Government has suggested that these failures are largely the result of a system that has been unable to cope with the rising rate of notifications of abuse brought about by recent changes to mandatory reporting requirements.

The Territory Opposition does not support the Government's view, nor has the Government always held the same position. Mandatory reporting of abuse has long been a requirement in the Territory, first introduced by a Country Liberal Government in the 1980's. On the 6th July 2005 in an Estimates hearing, the then Minister for Families and Children Marion Scrymgour MLA acknowledged that reporting of abuse and neglected had been trending upwards prior to 2001 and the election of a Labor Government.

The Opposition has noted that since 2005-06 the proportion of investigated reports in the child protection area has decreased from 66.1% to 38.3% in 2008/09. 3820 notifications of abuse or neglect were ignored, closed off without action or passed off to other agencies. This is alarming.

The recent Bath Report provides more up to date data which shows that between 8 December 2008 and 31 October 2009, 1190 matters were not investigated within required timeframes between and that, 'there was a current backlog of 370 matters waiting a formal outcome. Even

³ Dr Howard Bath, '*Northern Territory Community Services High Risk Audit*', November 2007

⁴ Jay Tolhurst, '*Review Report of NTFC Intake Service*', June 2009

more alarming were indications in the Jay Tolhurst report that low priority cases had been "written off" without a formal outcome being recorded.

Given that the Department does not consider cumulative harm in its assessment of risk, it is of grave concern that many children have not been afforded appropriate protection.

Both the Bath and Tolhurst Reports made recommendations to improve the intake system. It is incumbent on the Government that these recommendations be implemented as a matter of urgency. The Opposition calls on the Inquiry Board to make the same recommendation.

Children in Care

A number of high profile cases have highlighted ongoing and systemic issues with the provision of case workers and the management of children in care.

The Opposition recognises the demanding and emotionally challenging work of the Territory's child protection workers. We recognise the very difficult circumstances in which these people work.

But we also recognise that the system is failing to support the efforts of child protection workers, the foster carers and most importantly, the children in care. Our view is supported by the Coroner's final damning comments in the Melville Inquest that, 'the chaotic and dysfunctional nature of the office environment and professional workings of FACS in this Inquest (and mirrored in the Johnston Inquest) must reflect adversely on the senior management of the Department of Health and Families'.⁵

The Opposition is concerned that recent Inquests, inquiries and reports have highlighted the following:-

- Failure to vet kinship carers, particularly in cases where the proposed family carer has had no experience of caring for children.
- Failure to provide the necessary level of support and assistance to foster parents.
- Lack of consistency for children and foster carers as a result of the revolving door of care workers.
- Lack of training provided to case workers resulting in large numbers of inexperienced case workers managing frontline work.

⁵ Northern Territory Coroner, '*Inquest into the death of Deborah Leanne Melville-Lothian*', 19 January 2010, 84.

- Lack of support for case workers to complete important administrative duties including updating of case files;
- Failure by senior management to ensure sufficient front line staffing to ensure that case worker loads are appropriate and not overwhelming. This failure has led to cases where children's care has not been reviewed within statutory timeframes.
- Persistent breaches of statutory requirements.
- Failure to remove children in care when NTFC has been notified that the carer, or partners of carers, of others residing with the carer have a history of child abuse or drinking or gambling problems.
- As noted in the Melville Inquest, an 'absence of any benchmarks by which case workers could determine whether a carer was providing an adequate standard of care to the children'.⁶
- Failure by the Government to provide the Children's Commissioner with powers commensurate with those of the Ombudsman to provide the necessary external scrutiny of NTFC decisions concerning the ongoing care of children.
- Significant shortcomings in the IT record keeping system so that information is not transferred automatically one notification or report to the next and therefore information is lost over time.

The Territory Opposition believes that the Inquiry must address each of these issues in depth and provide workable recommendations for immediate implementation if we are to see real improvements in the protection and care of children in the care of the state.

Transparency and Accountability

The accountability of the child protection system is critical to public confidence that children in care are being properly cared for and protected from harm. It also ensures that the Government of the day is complying with its statutory obligations.

The Coroner's report into the death of a 12 year old girl in Palmerston identified that the Department of Families and Children had not been meeting their statutory obligations. That is, the Henderson Labor Government had been in breach of its own laws in relation to the protection of children in care. There is no legal penalty for such breaches and it will be up to the voting public at the next Territory election to hold the Government to account.

⁶ Ibid 78.

Equally important is the capacity for child protection workers to speak out about problems in and obstacles to improving, welfare of children in state care. In the same case, a number of child protection and social workers choose to speak out about specific system failings that were preventing an adequate standard of care and protection for children. Yet in that case, rather than immediately seek to address those concerns, the Minister announced her own witch hunt to identify those workers. A Government focused on the child protection should be responsive to issues raised internally, not concerned about negative publicity about their performance. Child protection workers should not have to resort to using the media to inform Government and senior management about problems in their workplace.

The public's capacity to judge whether Territory children are receiving the care and protection they deserve is limited to a very small number of performance indicators released once a year in the Department of Health and Families Annual Report. The Victorian Ombudsman has noted the need for, 'a greater degree of public reporting by the department regarding the child protection system's performance in meeting its statutory obligations and delivering on critical policy initiatives'⁷, and 'informative measures of the Department's capacity to provide an appropriate and expected level of service to vulnerable children and young people'⁸. Such views apply to the Northern Territory context.

There is no ministerial accountability for the care and protection of children in the Northern Territory. In the nine years of the Territory Labor Government, there have been five Ministers for Families and Children and crises after crises within the Child Protection system. As described earlier in this submission, Minister after Minister has ignored warnings that the system was in crisis. When Ministers have been questioned on examples of systemic problems, their response has been weak at best, but most often deflected as not their responsibility. Confidentiality has been used as an excuse for a culture of cover up.

No ministerial accountability means any adequate and effective voice for our most vulnerable.

The Opposition has announced that if elected to Government, a Country Liberals Government will increase accountability and transparency in the area of child protection by:

- Establishing a separate Department of Child Protection.
- Appointing a Minister for Children whose portfolios will solely relate to children's issues.

⁷ Victorian Ombudsman, *Own motion investigation into the Department of Human Services Child Protection Program*, November 2009, 15

⁸ Victorian Ombudsman, *Own motion investigation into the Department of Human Services Child Protection Program*, November 2009, 126

- Reversing changes to the Care and Protection of Children Act and reinstating the Minister as responsible for children taken into care.
- Requiring the Minister for Children to provide the Chief Executive Officer of the Department with an annual Charter Letter setting out the Government's agenda for child protection for the year including specific issues that must be addressed.
- Requiring the responsible Minister for child protection to report to Parliament each six months on service and performance standards.
- Upholding the principle that Government's must meet their statutory obligations.
- Requiring Department's to report in relation to compliance with their statutory obligations and internal practice standards.
- Extending performance indicators to include case worker loads, processing and assessment of carer and kinship carer applications and other appropriate measures.
- Providing more detail about the delivery of child protection services on a region by region basis.

Conclusion

Without immediate reform, the Northern Territory's Child Protection system will continue to fail our most vulnerable. We do not accept the Government's position that it is inevitable that some children fall through the cracks nor is it right that the Government excuses its own performance in this area on the basis of problems in other state jurisdictions. Time can no longer stand still for Territory children in need of protection.

The Inquiry Board has an opportunity to provide effective solutions and remedies that will bring about better outcomes in child protection in the Northern Territory. On that score, the Territory Opposition notes the difficult and enormity of their task and wishes the members well in their deliberations. We look forward to receiving the Board's Report and discussing any recommendations with them as appropriate.

The Territory Opposition has already set out in public statements a number of measures that are required to improve accessibility, transparency and accountability of the child protection system.

The Territory Opposition will not be measuring the success of the Inquiry simply by receipt of the Inquiry Report. The Government has under duress undertaken reviews of the system previously with little or no positive impact on the system.

Ultimately the measure of success of this review is children not falling through the cracks. The Government must not resort to form and claim the report is the outcome. The real outcome will be the timetable of implementation, the resources required to fix what is a broken system and fundamental improvements in the care and protection of children across the Territory. We and the community will be holding the Government to account.

In return, the Territory Opposition will act responsibly and in the interests of Territorians in supporting the implementation of any recommendations of the Inquiry that result in better outcomes for children, foster carers, child protection, social and health workers and the system as a whole. We will also look to the body of work that has already been undertaken in previous reviews and reports, and work undertaken in other jurisdictions to guide our principles, policies and resourcing of child protection in the Northern Territory.