



creating a better life  
for children and young  
people in care

# Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory

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## About CREATE Foundation

CREATE Foundation (CREATE) is the peak consumer body representing the voices of all children and young people in out-of-home care. CREATE is a national organisation with offices across Australia's states and territories. As the national consumer body advocating for children and young people with a care experience, CREATE seeks to provide opportunities for children and young people to have a voice and be heard.

CREATE's mission is to create a better life for children and young people in care, including both those who are, or have been, the subject of care and protection orders. CREATE achieves its mission by **connecting** children and young people with a care experience to each other and their community to **empower** them to develop in order that they may realise their potential to **change** the care system, in consultation with children and young people through advocacy, to improve policies, practices, and services.

CREATE engages with children and young people at fun events, holds regular Youth Advisory Group meetings to discuss ideas and issues generated by children and young people, conducts formal consultations with children and young people to aid the development of resources, programs, and policies, and trains young people to be advocates for themselves and others within the child protection systems.

CREATE has a national research program, informed by the views of children and young people in out-of-home care (OOHC), which drives its advocacy work. CREATE's research projects are national studies conducted every one to two years focussing on issues facing children and young people in care. CREATE's research provides an opportunity for children and young people to give their views on how they are faring and how the state and territory child protection systems are working.

CREATE also conducts consultations at a state level. Most recently, CREATE consulted with 202 young people aged between 18 to 25 years with a care experience in relation to their experiences with the justice system whilst in care, 25 of the participants were from the Northern Territory (NT). As well as this consultation CREATE spoke one-on-one to five young people to seek their views and experiences in relation to the Royal Commission into the Protection and Detention of Children in the Northern Territory (the Commission).

## Royal Commission into the Protection and Detention of Children in the Northern Territory (the Commission)

CREATE welcomes the establishment of the Commission and congratulates the NT government and the Commission for investigating allegations of mistreatment of young people in detention at the Don Dale Youth Detention Centre. We also commend the NT government and the Commission for extending the terms of reference for the investigation to include the child protection system in the NT.

The Commission has been asked to examine the following:

- Failings in the child protection and youth detention systems of the Government of the Northern Territory;
- The effectiveness of any oversight mechanisms and safeguards to ensure the treatment of detainees was appropriate;



- Cultural and management issues that may exist within the Northern Territory youth detention system;
- Whether the treatment of detainees breached laws or the detainees’ human rights;
- Whether more should have been done by the Government of the Northern Territory to take appropriate measures to prevent the recurrence of inappropriate treatment, given recommendations from previous reports and reviews.

CREATE has chosen to respond to the first point of the Terms of Reference (TOR) : *the failings in the child protection and youth detention systems of the Government of the Northern Territory*, as it falls specifically within our area of expertise. This submission will not address the other areas of the TOR as they are outside CREATE’s knowledge and purview.

CREATE’s response is focused on the issues specific to children and young people with a lived experience of both the child protection and justice systems as a whole. Sadly, it is CREATE’s observation that despite international and national research and discussion, there continues to be limited opportunities for children and young people to contribute to decision-making processes which impact upon their lives. CREATE commends the Commission for allowing the voices of children and young people to be heard in this process.

CREATE makes specific reference to the Australian Institute of Health and Welfare (2016) data which illustrates the high numbers of children and young people living in both the NT justice and OOHC systems, and notes that there are clear linkages and critical concerns within both systems.

CREATE acknowledges that there has been a plethora of government and non-government reports, policy documents, and legislation developed in order to protect the rights and wellbeing of children and young people in OOHC and the justice system. CREATE has chosen to concentrate on a number of these documents as well as rights-based legislation to demonstrate the research and ethos which underpins the best-interest principles for children and young people and to serve as context for the comments we wish to make in this submission.

## Child rights-based legislation and policies

### United Nations Convention the Rights of the Child

The United Nations Convention on the Rights of the Child (1989) includes a requirement that children and young people have the right to have a say in decisions that impact their lives. Australia’s support for the UNCROC (1989) is asserted in National Standard 2 of the National Standards for Out-of-Home Care (FaHCSIA, 2011).

**Table 1 National Standard relevant to participation National Standard**

National Standards	Measures
2. Children and young people participate in decisions that have impact on their lives.	2.1 The proportion of children and young people who report that they have opportunities to have a say in relation to decisions that have impact on their lives and that they feel listened to.



The UNCROC guarantees basic, fundamental human rights to children and young people throughout Australia; these rights include, among others, the right to:

- have their best interests taken into account when decisions are made about all areas of their lives;
- special measures to protect them if they are in conflict with the law;
- have an opinion and for that opinion to be heard;
- be informed about, and participate in achieving their rights;
- special measures to protect them if they belonging to minority groups.

As a territory of Australia, the NT is bound to recognise and enact the principles contained within the UNCROC (1989). However, CREATE is concerned that many of the issues raised by young people detained in the Don Dale Youth Detention Centre question the Territory's commitment to upholding and implementing these basic child rights principles. The behaviour of staff from the Don Dale Youth Detention Centre, to restrict and confine young people both individually and spatially, seems at odds with the abovementioned articles. The UNCROC (1989) rights also apply to children and young people within the OOHC system, with research indicating that children and young people within the OOHC system often struggle to develop in healthy ways. This includes emotional difficulties, poor psychosocial outcomes, and poor academic performance (AIFS, 2016).

Further, children and young people within these systems report low levels of happiness and of feeling loved, feel unprotected and unsupported in their dealings with the justice system, and struggle to find a mechanism by which they can voice their concerns. Due to these feelings of isolation, loneliness, and dislocation, many children and young people feel that they are unable to participate in processes that might ensure their rights (Office of the Children Commissioner [NT], 2015b).

## Out of Home Care and Youth Detention Background Issues

### Northern Territory Out of Home Care

In 2013, CREATE Foundation conducted a national survey of 1069 young people aged 8 to 17 years nationally about their views and understanding of out of home care. A total of 67 respondents were from the NT. Compared with the other jurisdictions the NT was ahead with the levels of siblings placed together, in that 71% of children and young people were living with some of their siblings. However, at the time the NT was the most challenging jurisdiction from which to obtain permission to undertake activities and a critical issue noted in the findings of the survey, was that the NT had a large number of unstable placements in OOHC. The average child or young person had 6–7 placements while in care, and placements tended to be of a shorter duration than other jurisdictions (McDowall, 2013). Further, the results also noted:

- 26% of respondents had attended three or more primary schools;
- 21% of placements had six or more children in one household;
- 42% of children and young people in placements, (primarily residential placements) had no internet access;
- only 53% of children and young people in care reported being able to see a caseworker when needed;
- young people reported that they did not perceive their carer to be as concerned with the wellbeing of young people, (compared with caseworkers, parents and family) as in other jurisdictions;
- Only 30% of children and young people knew about their case plan;
- only 2% of Indigenous respondents knew about a Cultural Support Plan;
- children and young people in NT had the lowest level of understanding of why they were in care; and



- preventative health services tended to be difficult to access.

Instability in placements is widely recognised in literature as a precipitating factor for young people entering the Youth Justice system (Sarri, Stoffregen, & Ryan, 2016), while care leavers are over-represented in justice systems (Mendes, Baidawi, & Snow, 2014).

### Northern Territory youth detention: Unacceptable rate of imprisonment and Indigenous incarceration

The AIHW (2016) data indicates that the rates of young people aged 10–17 under community-based supervision was highest in the NT, with (39 per 10,000) and in detention (16 per 10,000). The national average is 18 per 10,000 and 3 per 10,000 respectively.

Historically the NT justice system has had a punitive response to youth and adult crime leading to higher rates of imprisonment, including comparatively lengthy sentences. Factors contributing to the increase in detention rates include changes to justice policies and practices such as mandatory sentencing and more stringent bail conditions. The Parliamentary Business Committee noted that the criminal justice system in Australia is becoming more punitive. It also notes that social and economic factors are bringing young people into this system more and more (Legal and Constitutional Affairs References Committee, 2013).

There are many different factors that influence whether a particular person will commit crimes; however, there is general consensus in the research literature that child neglect is one of the strongest factors that increases the risk of involvement in crime (Currie & Tekin, 2012). There is strong evidence that early intervention programs targeting at-risk children and young people are cost effective ways to reduce crime and research indicates that reducing disadvantage and increasing income quality will reduce crime (Federation of Community Legal Centres [VIC], 2016).

CREATE suggests that a focus on programmes of prevention such as parental support programmes, diversion, anti-bullying in schools, post-natal support, and other early intervention strategies would substantially reduce the number of offences committed and the number of detentions recorded. This pro-active approach is supported by the findings of the Federation of Community Legal Centres which notes that justice solutions should focus on:

*“tackling underlying factors that contribute to offending through increased investment in child protection, family support, housing, employment, education, mental health and drug and alcohol programs”*

(Federation of Community Legal Centres [VIC], , 2016).

Aboriginal and Torres Strait Islander young people have a long history of over-representation in both the youth and adult justice systems in Australia. Data indicates that Indigenous young people in the NT constitute 45% of the population aged 10–17 but make up 92% of those aged 10–17 years under supervision on an average day during 2014–15 (AIHW, 2016). In addition, Indigenous young people made up 91% of those subject to community-based supervision, and 95% of those in detention in the Northern Territory (AIHW, 2016).

Indigenous young people detained in the NT, , were 17 times more likely than non-Indigenous young people to be under supervision in the NT (AIHW, 2016). This is higher than the national rate, where Indigenous young people are 15 times more likely than non-Indigenous young people to be subject to community-based supervision. Federation of Community Legal Centres suggests that a range of strategies will be required to address this over-representation. (Federation of Community Legal Centres [VIC], , 2015).



Indigenous people are consistently over-represented in the justice system as well as the OOHC systems. CREATE believes that the imbalance lies in the lack of prevention and an early intervention support for Indigenous children, their families, organisations, and government in both remote and urban settings.

### The relationships between abuse or neglect and criminal activity

CREATE acknowledges the extensive research indicating that children and young people who suffered abuse or neglect are more likely to engage in criminal activity than those who did not. As previously noted, Currie & Tekin (2012) found that experiencing maltreatment can double the probability of committing a crime, while others note that placement instability and simply having a care experience, are strong indicators of a potential youth justice involvement (Mendes, Baidawi, & Snow, 2014; Sarri, Stoffregen, & Ryan, 2016).

CREATE is aware that many young people in the justice system, particularly in detention, are likely to have had a history of abuse and/or neglect. A survey of young people in detention in New South Wales found that 81% of young women and 57% of young men had been abused or neglected, while 49% and 19%, respectively, had suffered 'severe' abuse or neglect (Indig et al., 2011).

Stewart, Allard, and Dennison (2011) discussed the factors which can be predictive of involvement in the justice system, including the age of abuse and the direct linkage to later offending behaviour. Where abuse occurred in childhood, and persisted into adolescence, the young person was more likely to offend. This demonstrates clear linkages between abuse and neglect and subsequent engagement in the justice system. In addition, this also reflects CREATE's experience with children and young people and the over-representation in the justice system of young people who have also spent substantial time in OOHC.

The OOHC system in the NT continues to struggle with the ever-increasing numbers of children and young people entering care. CREATE believes that whilst Territory Families has engaged in substantial work to ensure the best possible outcomes for children and young people in the care of the Minister, the scarcity of trained foster carers continues to be an issue of concern. This scarcity has led to a lack of placement options and appropriate carers. Many carers are often persuaded to take on more children and young people than they can effectively manage and this is reflected in the above noted CREATE report on the experiences of young people in care (McDowall, 2013).

Children and young people regularly report to CREATE they experience numerous placements during their time in care, often involving a separation of siblings. CREATE conducted research into the damaging effect on the emotional well-being of children and young people due to the separation from their siblings. McDowall (2013, 2015), found that one third of all children and young people have had five or more caseworkers during their time in care, and that an average of 36% of children and young people were separated from their brothers and sisters. However, and as previously noted, the same report noted that 71% of children surveyed in the NT were placed with some siblings, (McDowall, 2013).

The NT OOHC system continues to struggle to recruit and maintain appropriate carers, as do all governments across Australia, leading to a re-evaluation of the OOHC system and its long-term viability. As Brown (2013) states,

*the rationale for removing a child from his or her natural parents is that the child is likely to be better off in life if he or she is protected from experiencing abuse and/or neglect during childhood. However, unfortunately, the long-term outcomes for children and young people who have spent time in OOHC does not convincingly demonstrate that they are in fact better off as a result of the state's early intervention. (Brown, 2013, p. 3)*



CREATE supports the research conducted by Brown who reports that,

*The evidence clearly shows that children who have spent time in foster care are over-represented in unemployment, homelessness, teenage pregnancies, disabilities, lack of formal qualifications and imprisonments. It is therefore imperative that Child Safety review the experience of children in foster care, identify the reasons for the systemic shortfalls and undertake whatever reform is necessary to improve the prospects of our most vulnerable children.* (Brown, 2013, pp. 17–18).

This issue has been raised by CREATE previously, and reflects that children in the NT reported that they do not feel carers are as concerned about their wellbeing as in other jurisdictions, and that placement instability has a direct and negative effect in this regard as well (McDowall, 2013).

## Standards of Out of Home Care for children and young people in the Northern Territory

The current Out-of-Home Care (OOHC) standards in the NT state that children and young people in care must be looked after in a way that ensures the following:

- their dignity and rights are respected at all times;
- their needs for physical care are met, including adequate food, clothing and shelter;
- they will receive emotional care, which allows them to experience being liked, cared about, and valued, all of which contribute to their positive self-regard;
- they will be encouraged to maintain family and other significant personal relationships;
- their needs relating to their culture and ethnicity will be met;
- they will receive education, training, or employment opportunities according to their age and ability;
- they will receive positive guidance when necessary to help them to change harmful or inappropriate behaviours; and
- they will be given the opportunity to participate in positive social and recreational activities appropriate to their developmental level and age.

*(Care and Protection of Children Act NT., 2007)*

In talking with children and young people with a care an OOHC experience, CREATE has heard that many of the standards echoed above are not being enacted nor implemented on a day to day basis for them within the OOHC environment. CREATE believes that a key outcome from the Commission's inquiry may be that greater emphasis is placed upon hearing the voices of children and young people in the OOHC, and that justice systems ensure that these standards and the child rights legislation is enacted and implemented.


### Placement instability in the Northern Territory

Placement stability has declined during recent years for all children and young people in care in the NT, but particularly for Indigenous children and young people who are over-represented at all levels of the out-of-home care system, and who have more placements than non-Indigenous children and young people (AIFS, 2015; AIHW, 2015; Mendes, Saunders, & Baidawi, 2016; McDowall, 2013).

Impacts of placement instability include:

- disrupted schooling experiences for children and young people;
- a lack of transitional and continuing support for young people exiting care;



- 
- poor longitudinal planning for young people in preparation for exiting care; and
  - cultural issues with indigenous children and young people reporting more placements than other children, less stability, and less engagement in decision-making. (Hermeston, McDougall, Burton, Smith, & Sydenham, 2016; Mendes, et al., 2016).

The NT Council of Social Services reported that children and young people in the OOHC system in the NT are further disadvantaged by the high level of turnover of both foster care placements and caseworkers:

*...the NT Child Protection system has struggled for many years to cope with the workload pressures of placed on it. The socio-economic context, the geographic and demographic context, poor cultural knowledge, and poor procedures and practices, have resulted in the (a range of) consequences... (including) very high staff turnover, which when combined with lack of case planning, leads to discontinuities in cases and at best ad hoc decision making. (Morton, 2010, p. 4).*

The large turnover of caseworkers and care placements contributes to inconsistent planning, insecurity for the young person, heightened risk of exposure to abusive carers, a feeling of worthlessness amongst children and young people, and ultimately reduced life chances when exiting care. This disengagement can ultimately lead to a high number of young people finding themselves in detention or under supervision orders. In CREATE's (2013) Report Card it was observed that there was a high turnover of care providers for children and young people in the Northern Territory, with an average of about six placements per person. The research also indicated a high turnover of caseworkers for children and young people in care in across Australia with one third of all the children and young people surveyed having had five or more caseworkers during their time in care (McDowall, 2013).

The CREATE Report Card 2013 found that:

- The mean number of placements varied across jurisdictions; however, young people reported their satisfaction with the care system is directly related to the number of placements they have had while in care;
- Children and young people report that their placement satisfaction was greatest when they were resided in kinship or foster care, and least when in residential care;
- Indigenous children and young people reported having more placements, and therefore, less placement stability. In addition, significant risks to cultural connection exist where Indigenous children and young people are placed in culturally inappropriate care environments, (McDowall, 2013)

A consistent finding from the literature is that unstable care environments have detrimental effects on children and young people as they grow. As Jackson and Cameron (2012, p. 1107) have emphasised:

*People who have been in out-of-home care and in unstable placements have the highest risk of social exclusion as adults, and are over represented on every measure of social pathology and disadvantage.*

Instability in care contributes to a multiplicity of social and emotional difficulties for children and young people both during and after their time in care.



## Transitioning from Care

CREATE's research into young people's outcomes post leaving care found:

- 35% were homeless in the first year of leaving care;
- 46% of boys were involved in the juvenile justice system;
- 35% completed Year 12 (compared to that of the general population);
- 29% were unemployed (compared to the national average which is 9.7%); and
- 28% were already parents themselves.

(McDowall, 2009)

Quality transition from care is critical to healthy outcomes for children and young people. Robust exit planning in which the young person has actively participated, support from external agencies, departmental support and the capacity to return to care if needed are all factors which characterise a healthy transition (McDowall, 2009, 2013, 2016; Mendes, Johnson, & Moslehuddin, 2011; Osgood, Foster, & Courtney, 2010; Tweedle, 2007).

CREATE believes that the recognition of child rights and a reform of both the child protection and the justice systems will help to address many of the concerns raised above.

## The need to allow the voices of children and young people to be heard

CREATE supports the child participation principles enshrined in the *Care and Protection of Children Act Northern Territory, 2007*. This Act governs the work of child protection agencies for the NT; in particular, CREATE wishes to draw specific attention to principle 11 which states that:

*When a decision involving a child is made:*

*(a) The child:*

*(i) Should be given adequate information and explanation in a way that the child can understand; and*

*(ii) Should be given the opportunity to respond to the proposed decision; and*

*(iii) Should be given the opportunity to express the child's wishes and views freely;*

*and*

*(iv) Should be given assistance in expressing those wishes and views; and*

*(b) Those wishes and views should be taken into account, having regard to the child's maturity and understanding.*

*(Care and Protection of Children Act NT, 2007. Part 2.2, Division 2 Care Plans, 72)*

As previously noted, when children and young people are living in a home that is not their own, participation in decision-making is essential. An inability to participate in decision-making on important matters in their lives can compound their sense of powerlessness, loss of control, and abandonment. This can and often does lead to long-term psychological and emotional consequences.

For several years CREATE has conducted research into the OOHHC system and the needs of children and young people via both research projects and consultations. Key findings of this research is that across all jurisdictions there is a consistent pattern of government agencies failing to engage with, listen to, or seek the opinions of, children and young people in OOHHC. CREATE illustrated in its 2013 Report Card that, when children and young people were asked about their opportunities to contribute to these sorts of decisions, 63% said they were able to have a say reasonably often. However, the numbers were lower in NT and TAS and for those in residential care. (McDowall, 2013).

CREATE's findings are consistent with what children and young people tell us when we meet with them face to face. Often they are unaware of their case plans, lack regular access to their case workers, do not have education plans in place and exit care with limited support or exit planning process and



minimal post-care support (McDowall, 2013, 2016). Coupled with this, children and young people tell CREATE that there are insufficient mechanisms available for children and young people to report concerns or even matters involving abuse in care. This is especially evident in institutional care settings such as the Don Dale Centre.

### Complaint processes and support mechanisms for children and young people

CREATE is aware of the difficulties children and young people face when they wish to lodge a complaint regarding their treatment in OOHHC or the justice system.

CREATE is concerned that there are still barriers in place which impede access to investigative and protective authorities regarding young persons' concerns for personal safety in institutional care. For example, on admission to the detention centre, children and young people are to be informed of the Office of the Children's Commissioner and the ways in which they can make contact or lodge a complaint. CREATE is unsure how the children and young people in isolation and lock down as viewed on *4 Corners* (Meldrum-Hanna, Fallon, & Worthington, 2016) are able to access staff and services in order to seek support or make a complaint.

The NT Children's Commissioner *Own Initiative Report* (2015) expressed similar concerns. Due to the behaviour of some young people, they are precluded from direct telephone access for safety and security reasons. This clearly limits a child or young person from having direct contact with anyone outside of the detention centre and therefore limits access to complaint and support mechanisms.

These findings are supported by recent research conducted as part of the national Royal Commission into Institutional Responses to Child Sexual Abuse (2014) which recommends that, in relation to institutional care, the following policies must be in place (along with mechanisms to ensure their application) in order to ensure that children remain safe and that systemic failures are identified by the people who are likely to suffer most from such failures:

- children and young people can participate in decisions affecting them and their concerns are taken seriously;
- children are able to express their views and opportunities are provided to participate in decisions that affect their lives;
- friendships and support from peers should be encouraged, in helping children feel safe and be less isolated;
- children need to be able to access sexual abuse prevention programs and information;
- children need child friendly ways to communicate and raise their concerns;
- information to support complaints processes must be accessible; and
- processes must be established to respond to complaints of child sexual abuse that are child focussed.

The National Royal Commission (2014) also recommends a series of complaint handling policies that seek to ensure child safety via the improvement of systemic process:

- establish complaint handling policies which clearly outline roles and responsibilities, and approaches to dealing with different types of complaints and obligations to act and report;
- develop effective complaint handling processes which can be understood by children, staff, families and volunteers; and
- ensure that complaints are taken seriously, responded to promptly and thoroughly, and reporting, privacy and employment law obligations are met.

(Royal Commission into Institutional Responses to Child Sexual Abuse, 2014)



CREATE supports all of the above recommendations from the National Royal Commission, noting that the recognition of the importance of allowing children to participate in decision making in institutional care is a recurring recommendation from several reports and research papers across the sector (Royal Commission into Institutional Responses to Child Sexual Abuse, 2014).

CREATE believes that it is crucial that the voices of young people within the OOHC and justice systems are heard and reported. CREATE argues that an independent organisation with expertise in communicating with children and young people (similar to other Community Visitor and Public Advocate programs in other jurisdictions) should be employed and resourced to talk independently with children and young people in both systems with the purpose of:

- identifying systemic and procedural issues that may compromise the welfare of children and young people;
- identifying young people who may be victims of abuse or at risk of becoming victims of abuse within those systems;
- providing expert advice to the Executive Directors of the relevant Departments;
- providing expert advice to the Minister responsible for the relevant Departments; and
- reporting, as needed, on the concerns and needs expressed by children and young people within those systems.

CREATE recently conducted an Australia-wide consultation with 202 young people aged 18–25 years of age, who were in care and have had previous interactions (including detention) with the justice system. While the data are currently being analysed from this consultation, the following are quotes from young people in the NT. These quotes speak to their experiences of not being able to communicate or participate in decision-making with their carers, caseworkers, and staff whilst in the justice system.

*A lot more communication with me. Let me know what's going to happen. That didn't really happen to me. I had no guidance. (Female, 18 years)*

*They didn't really care. (Male, 18 years)*

*She made it difficult for me to trust her because she was controlling and had a bad attitude. (Female, 18 years)*

*The lack of support, communication, education on how the system works. (Female, 19 years)*

*Kids in care don't really have say. (Female, 21 years)*

*Maybe if the process went a little bit faster and if anyone could have explained to me what was happening at the time. (Male, 21 years)*

*The kids should be supported more in the justice system. (Female, 21 years)*

*The justice system should be more supportive and show more sympathy. (Male, 18 years)*

*My case manager could have been more involved. Supporting me. (Male, 18 years)*

*The case manager could have been more involved. I didn't even know her name... My case manager was only there to fill out paper work. I had a high turnover of case managers. (Female, 20 years)*



These quotes from young people show that they feel unsupported, uninformed, and unable to communicate or participate in decisions related to either their care situation or their experiences with justice. It is important to note that these quotes were not handpicked but are a representation of some of the responses in the NT (25 young people). CREATE's ongoing research indicates that young people will have better outcomes when they are supported, given clear information about their circumstances, and given the opportunity to participate in decision-making regarding their future both in care and in the justice system (McDowall, 2009, 2011, 2013, 2016).

## Ensuring the safety of children and young people in care and detention

CREATE is aware that the work conducted by staff within the Don Dale Detention Centre is governed by the *Youth Justice Act 2005* (the Act). CREATE draws specific attention to the principles in the Act which state that:

*(n) Punishment of a youth must be designed to give him or her an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways.*

Additionally, and specifically related to Aboriginal young people, it states in principles O and P that:

*(o) If practicable, an Aboriginal youth should be dealt with in a way that involves the youth's community;*

*(p) Programs and services established under this Act should:*

- (i) be culturally appropriate; and*
- (ii) promote their health and self-respect; and*
- (iii) foster their sense of responsibility; and*
- (iv) encourage attitudes and the development of skills that will help them to develop their potential as members of society.*

(Northern Territory Government, 2005)

Whilst CREATE is aware of these critical principles within the Act, we believe that if the principles were enacted and implemented appropriately, the safety and wellbeing of children and young within the justice system would be further strengthened. CREATE was concerned to see the behaviour of staff from the detention centre (in the 4 Corners program aired on the ABC, July 2016) clearly demonstrating the staffs' lack of knowledge, commitment, and adherence to the principles expressed in the Act.

## Models of care for children and young people

CREATE is aware of work already being conducted by the NT Children's Commissioner to review detention practices and provide direction to improve outcomes for these young people. CREATE acknowledges and appreciates the work of the NT Children's Commissioner in reviewing the Don Dale Detention Centre. The 2015 Children's Commission report was comprehensive and highlights a broad range of correctional service and procedural issues that required immediate attention. CREATE notes with disappointment that two years on, few recommendations appear to have been implemented and detail on what recommendations have been implemented is difficult to locate.

CREATE is unsure and remains concerned as to why these recommendations have not yet been fully implemented, when concerns for young people's safety continues to rise. Whilst CREATE does not comment directly on the specific operational failures which may have led to the mistreatment of young people in the detention centre, it is our view that these matters had been previously



investigated by the Children's Commissioner, and a comprehensive series of recommendations were proposed. As yet, many of the large number of concerns are still to be addressed.

CREATE draws attention to several points within the 2015 Children's Commissioners Report and raises concern as to why these have not been addressed. CREATE's concerns include that:

- the Commissioner has reported significant resistance to a full and open investigation into the centre;
- the mistreatment of young people within the detention centre appears to have been culturally entrenched in the institution for many years; however, it has only recently come to light (suggesting that there is a systemic failure in the organisation's complaints process, which silences young people when they wish to make complaints or report their concerns); and there still exists no clear mechanism for ensuring that an independent organisation is able to communicate freely with the young people to identify areas of welfare concern.

(Commissioner [NT], 2015).

## Conclusion

### A way forward: Hearing the voices of children and young people

CREATE believes that the voices of children and young people in care should be integral to inquiries and systemic reform processes of both the child protection and youth justice systems. As such, this submission has been informed by the views and opinions of children and young people. This submission has outlined the key issues and factors that impact children and young people living in out-of-home care in the Northern Territory. Instability, high levels of over-representation of Aboriginal children and young people living in OOHC and in detention, and poor information and communication underpin the priority areas to be addressed to deliver a system that is safe for all children and young people living in OOHC and in youth detention in the Northern Territory.

CREATE's recommendations have been developed to help promote the voice of children and young people in care as crucial players in the NT's systemic reform processes of the detention centres, and the OOHC and the youth justice systems more broadly. CREATE contends that issues associated with the Don Dale Detention Centre can be linked to issues associated with the OOHC system for survivors of abuse and neglect and that by attending to issues within the OOHC system, many young people may be better supported and ultimately, be diverted from the justice system.

In making this submission CREATE acknowledges that while previous governments have made efforts to address the issues associated with young people in the justice system, and some of their programmes have met with some success, others have not. CREATE is unaware of any distinct long-term programmes which recognise and respond to the connection between child abuse, neglect, and subsequent detention.

CREATE believes that a holistic approach, which ensures that the voices of young people involved in both the OOHC and justice system are listened to and responded to, can bring about positive change for children and young people.

From the above discussion, CREATE presents the following recommendations for consideration:

- ***The NT child protection system, (including the OOHC system), requires immediate and ongoing reform in order to improve the life outcomes of children and young people in care. To be fully informed, the Northern Territory, Territory Families must develop systemic***





***procedures that allow the experiences of children and young people in care to play a significant role in informing the on-going review of their policy and practice.***

CREATE acknowledges that a great deal of good work has already been conducted by both the Territory Families and other partner organisations concerned with the welfare of children and young people. However, CREATE's research and engagement with children and young people indicate that there is still a long way to go before outcomes for children and young people are consistently positive. Hearing and acting on the voices of children and young people is CREATE's primary recommendation.

- ***Territory Families and the Department of Correctional Services should develop and invest in alternative approaches that divert young people from the justice system, promote best practice, and reduce punitive remedial measures.***

There is compelling evidence that when children and young people are engaged in the child protection system this significantly increases the likelihood that they will also engage with the justice system, including sentencing which may involve detention. Departmental (Corrections and Child and Families) strategic plans must show a commitment to increasing efforts to identify and develop social strategies which involve prevention and early intervention in relation to young families who may be struggling, or children and young people in need of diversion and support. Punitive approaches to justice in the NT have historically led to unacceptably high levels of incarceration, relatively high levels of detention for children and young people, and (overwhelmingly) an over-representation of Indigenous young people. This approach should be reconsidered as the recidivism rates for young people who are incarcerated are very high and alternative approaches must be sought.

- ***Develop uncompromised regulatory mechanisms to ensure that children and young people in the care of government departments (Correctional Services and Territory Families) have the ability to communicate with independent third parties in relation to issues of safety and potential violations of their rights. This mechanism ought to extend to complaints, advocacy, monitoring, and advice.***

Despite clear legislation, guidelines, reform processes, and high-level recommendations, it appears that children and young people in government care in the NT continue to suffer as a result of a lack of reliable mechanisms which enable them to speak to, and lodge complaints regarding their treatment and/ or conditions. CREATE believes that this issue must be addressed at the highest level with immediate changes put in place. Silencing the voices of children and young people in detention and in the OOHC systems is clearly against Australia's ratification of the UNCROC. Mechanisms must be put in place from both a child-safety perspective and a rights-based approach, to enable children and young people to participate and be heard.

A suggested mechanism could take the form of an independent non-government organisation tasked to communicate regularly with children and young people in the OOHC system and the justice system. This agency could report to Territory Families, the Department of Correctional Services, the Children's Commissioner and directly to government. However, clear policy and procedures would be required to ensure the unhindered access of such an agency to children and young people, as well as the capacity for it to advocate and report without hindrance or



repercussion. Such a service could work along the lines of the existing Community Visitors programme but would hold expertise in the care needs of children and young people. The role would encompass complaints, advocacy, monitoring, and inspection. Importantly it should report directly to parliament.

- ***CREATE believes that a formal mechanism for communicating care issues directly from children and young people in care, to Territory Families would greatly assist the Department in their work to improve safety and life outcomes for these young Territorians.***

This mechanism could take the form of a panel or round table of representative young people who advocate for, and on behalf of children and young people to a representative panel from Territory Families. Meetings could be quarterly with resources made available for the young people to research care issues in between.

CREATE thanks the Royal Commission for the opportunity to provide comment and evidence to this important process. For any questions or further information about this submission please contact Mike Campbell, State Coordinator (Northern Territory) on (08) 8945 9993 or at [mike.campbell@create.org.au](mailto:mike.campbell@create.org.au) or Noelle Hudson, National Policy and Advocacy Manager on (07) 3062 4860 or at [noelle.hudson@create.org.au](mailto:noelle.hudson@create.org.au)





## References

- Australian Institute of Family Studies (AIFS). (2016). Children in care. CFCS Resource Sheet. Melbourne: AIFS. Retrieved from <https://aifs.gov.au/cfca/publications/children-care>
- Australian Institute of Health and Welfare. (2015). *Developing a linked data collection to report on the relationships between child protection and youth justice supervision*. Data linkage series no. 20. Cat.no. CWS 55. Canberra: AIHW. Retrieved from [www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129553376](http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129553376)
- Australian Institute of Health and Welfare (2016). *Northern Territory: Youth justice supervision in 2014–15*. Youth justice fact sheet, no. 58. Cat. no. JUV 78. Canberra: AIHW. Retrieved from [www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554891](http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554891)
- Brown, S. (2013). *Ending the lottery of foster care in Queensland*. Retrieved from [www.childprotectioninquiry.qld.gov.au/data/assets/pdf\\_file/0007/177460/Brown,-Sonia.pdf](http://www.childprotectioninquiry.qld.gov.au/data/assets/pdf_file/0007/177460/Brown,-Sonia.pdf)
- Currie J., & Tekin, E. (2012). Understanding the cycle: Childhood maltreatment and future crime. *The Journal of Human Resources*, 47 (2), 509–549.
- Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). (2011). *An outline of National Standards for out-of-home care*. Canberra: Commonwealth of Australia.
- Federation of Community Legal Centres [VIC] (2015). Fact Sheet. “Ending over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system”. Retrieved from [http://www.smartjustice.org.au/resources/SJ\\_OverRepresentation.pdf](http://www.smartjustice.org.au/resources/SJ_OverRepresentation.pdf)
- Federation of Community Legal Centres [VIC] (2014)., “More Prisons are not the answer to reducing crime”. Fact Sheet. Retrieved from [http://www.smartjustice.org.au/cb\\_pages/files/SMART\\_MorePrisons%20Final%20Revised%202014.pdf](http://www.smartjustice.org.au/cb_pages/files/SMART_MorePrisons%20Final%20Revised%202014.pdf)
- Hermeston, W., McDougall, J., Burton, J., Smith, F., & Sydenham, E. (2016). *Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care*. SNAICC Position Policy Statement. Retrieved from [http://www.snaicc.org.au/wp-content/uploads/2016/07/SNAICC-Achieving\\_stability-1.pdf](http://www.snaicc.org.au/wp-content/uploads/2016/07/SNAICC-Achieving_stability-1.pdf)
- Indig, D., Vecchiato, C., Haysom, L., Beilby, R., Carter, J., Champion, U., & Whitton, G. (2011). *2009 NSW young people in custody health survey: Full report*. Sydney: Justice Health and Juvenile Justice. Retrieved from [www.justicehealth.nsw.gov.au/publications/ypichs-full.pdf](http://www.justicehealth.nsw.gov.au/publications/ypichs-full.pdf)
- Jackson, J., & Cameron, J. (2012). Leaving care: Looking ahead and aiming higher. *Children and Youth Service Review*, 34, pp.1107– 1114
- Legal and Constitutional Affairs References Committee. (2013). *Value of a justice reinvestment approach to criminal justice in Australia*. Canberra: Commonwealth of Australia. Retrieved from [www.justreinvest.org.au/wp-content/uploads/2016/02/report.pdf](http://www.justreinvest.org.au/wp-content/uploads/2016/02/report.pdf)
- McDowall, J. J. (2009). CREATE Report Card 2009 - *Transitioning from Care: Tracking Progress*. Sydney: CREATE Foundation. Retrieved from <http://create.org.au/publications/research-reports/>



- McDowall, J. J. (2013). *Experiencing out-of-home care in Australia: The views of children and young people* (CREATE Report Card 2013). Sydney: CREATE Foundation. Retrieved from <http://create.org.au/publications/research-reports/>
- McDowall, J. J. (2015). *Sibling placement and contact in out-of-home care*. Sydney: CREATE Foundation. Retrieved from <http://create.org.au/publications/research-reports/>
- McDowall, J. J. (2016). *CREATE's Go Your Own Way resource for young people transitioning from care in Australia: An evaluation*. Sydney: CREATE Foundation. Retrieved from <http://create.org.au/publications/research-reports/>
- Meldrum-Hanna, C., Fallon, M. & Worthington, W. (2015) *Australia's Shame*. 4 Corners. Australian Broadcasting Corporation, Sydney.
- Mendes, P., Baidawi, S., & Snow, P. C. (2014). *Good practice in reducing the over-representation of care leavers in the Youth Justice system*. Melbourne: Monash University.
- Mendes, P., Johnson, G., & Moslehuddin, B. (2011). *Young people leaving state out-of-home care: Australian policy and practice*. Melbourne: Australian Scholarly Publishing.
- Mendes, P., Saunders, B., & Baidawi, S. (2016). *Indigenous care leavers in Victoria: Final Report*. Melbourne: Social Inclusion and Social Policy Research Unit, Department of Social Work, Monash University.
- Morton, W. (2010). Northern Territory Council of Social Services Submission to the *Inquiry into the Child Protection System in the Northern Territory*. Retrieved from <https://www.ntcoss.org.au/wp-content/uploads/2014/10/NTCOSS-Submission-to-the-Inquiry-into-the-Child-Protection-System-in-the-Northern-Territory-2010.pdf>
- Northern Territory Government (2007). *Care and Protection of Children Act NT*. s70, 71 and 74, (No. 37 of 2007)
- Office of the Children's Commissioner (NT). (2015a). *Annual Report 2014-2015*. Darwin.
- Office of the Children's Commissioner (NT). (2015b). *Own initiative investigation report. Services provided by the Department of Correctional Services at the Don Dale Youth Detention Centre*. Darwin.
- Osgood, D. W., Foster, E. M., & Courtney, M. E. (2010). Vulnerable populations and the transition to adulthood. *The Future of Children: Transition to Adulthood*, 20(1), 209–229.
- Royal Commission into Institutional Responses to Child Sexual Abuse. (2014). *Creating Child Safe Institutions*. Sydney.
- Sarri, R. C., Stoffregen, E., & Ryan, J. P. (2016). Running away from child welfare placements: Justice System Entry Risk. *Children and youth services review*, 67, 191-197.
- Stewart, A., Allard, T., & Dennison, S. (Editors) (2011) *Evidence Based Policy and Practice in Youth Justice*. Federation Press.



Tweedle, A. (2007). Youth leaving care: How do they fare? *New Directions for Youth Development*, 113(1), 15–31. doi:10.1002/yd

The United Nations. 1989. "Convention on the Rights of the Child." Treaty Series 1577 (November): 3.

Federation of Community Legal Centres (Victoria). (2011). *Smart justice*. Retrieved from [http://www.fclc.org.au/cb\\_pages/smart\\_justice.php](http://www.fclc.org.au/cb_pages/smart_justice.php)