

# Submission to the Inquiry into the Child Protection System in the Northern Territory

## Introduction

### Office of the Children's Commissioner

The Office of the Children's Commissioner was established pursuant to provisions contained in Part 5.1 of the *Care and Protection of Children Act* (the Act).

It has been almost three years since the Act was passed by the NT Legislative Assembly (November 2007), with the provisions relating to the Children's Commissioner commenced in May 2008.

The Commissioner's primary functions include ensuring the wellbeing of protected children, by investigating specific matters related to the provision of services to protected children and monitoring the administration of the Act, in so far as it relates to protected children. A protected child is considered to be a child who is subject to the performance of a function under Chapter 2 of the Act. The Commissioner also monitors the implementation of any government decision arising from the *'Inquiry into the Protection of Aboriginal Children from Sexual Abuse'*, also known as the *'Little Children are Sacred Report'*.

In August 2007, when the then Minister for Child Protection, the Honourable Marion Scrymgour MLA introduced the Act (the then *Care and Protection of Children Bill*) into the Legislative Assembly she made the following statement regarding the establishment of the Office of the Children's Commissioner:

*"Establishment of this role represents a maturing of the system we have in place for the care and protection of children. It is a significant step forward for the Northern Territory, one that brings us into line with national directions. Establishing the independent commissioner's position demonstrates that this government is not afraid to look into the mirror and address any problems with our child protection system. Nor is it afraid to have scrutiny of the responses that are being made to address the recommendations arising from the 'Little Children are Sacred Report'. Overall, it will make us better placed to tackle some of the underlying problems that contribute to poor outcomes and quality of life for some of the most vulnerable children growing up in the Territory"*

The Northern Territory along with the majority of other Australian jurisdictions have either reviewed or are in the process of reviewing their respective child protection systems, all with the aim of improving the outcomes for children. Given the current *'Inquiry into the Child Protection'* in the Northern Territory, it is timely to review the current functions of the Commissioner and make suggestions that may enhance the Commissioner's capacity to ensure the wellbeing of protected children and equate to more positive outcomes for children in the Northern Territory.

One of the key functions of the Children's Commissioner is to investigate complaints relating to protected children. A protected child is defined as 'a child who is the subject of the exercise of a power or performance of a function under Chapter 2 of the Act. Chapter 2 is essentially the part of the

Act which provides the legislative framework for safeguarding the protection of children.

In the eighteen months that the Children's Commissioner has been investigating complaints a number of themes and issues have been identified in relation to child protection and out of home care systems. The Children's Commissioner's Annual Report 2008 – 2009 provides a more in-depth overview of the main issues identified, however given the current environment it is timely to make comment for consideration by the Inquiry

## **Themes and Issues**

### **Issues relating to the Centralised Intake system.**

On 2 November 2009 the Children's Commissioner was requested to prepare a report in accordance with section 260(1)(e) of the *Care and Protection of Children Act*, by the then Minister for Child Protection, the Hon Malarandirri McCarthy MLA. The focus of this report was based on the responsiveness of Northern Territory Families and Children's (NTFC) Centralised Intake Team to child protection notifications reports made by medical professionals and others.

In December 2009, the new Minister for Child Protection, the Hon Kon Vatskalis MLA, advised the Children's Commissioner that in light of the broad-ranging '*Inquiry into Child Protection*' services that had been announced, he was considering a change to the due date for the report. On 5 January 2010 he wrote to the Commissioner requesting that an interim progress report be provided in January and that the final report be provided along with the full report of the '*Inquiry into Child Protection*'. The interim progress report was tabled in the February 2010 sittings of the Legislative Assembly. A copy of the Interim Progress Report into NTFC Intake and Response Processes is enclosed for your reference [Attachment A]. While this report provides a broad overview of some of the issues affecting the current Centralised Intake Team, some additional more specific concerns are worthy of consideration and in particular those notifications where an 'imminent' risk or danger is not identified.

Child protection notifications require an incident to be investigated and sufficient information is supplied to indicate that the child may be in need of care and protection. Under the current system child protection notifications that do not meet the threshold for proceeding will not be investigated unless they fall under a third report ruling. This rule can also be waived with managerial discretion.

Protective assessments were once used to assess a family's situation when a child may be at risk of harm due to a number of low level risk factors, even if the information provided to Central Intake did not contain any specific allegation/s that would meet the threshold of child abuse. Protective assessments are now only used when a referral is received from Centrelink or Youth Justice and therefore would not apply to younger children who may benefit from family assessment in order to identify risk factors. There needs to be an acceptance that some families may need assistance and support without an incident of maltreatment by a family member having occurred.

Intake workers have no capacity to open a 'family support case' without the agreement of the parents, therefore families are often found to be resistant to accepting support with their issues, which can mean the case is closed with no further action. In this instance, it is unlikely a referral would be sent to the local office for actioning as the family would not engage.

Additionally, there is a noted tendency for families to be referred for support services but there is no follow up by the child protection system to ensure that the families are engaging and benefiting from the support services. This appears to be partially due to the availability of appropriate family support services, difficulties in recruiting and retaining appropriately skilled workers and often family support is seen as having a much 'lower priority' in terms of allocation and intervening in such cases.

This unfortunate pattern often means that some children and families 'slip' through the system. For example, Intake workers appear to focus on alleged incidents of harm or the more 'forensic' type referrals rather than reviewing patterns within the recorded history and the environment to identify risk factors that are recognised as heightening the risk of harm to a child.

This becomes particularly relevant in relation to ongoing neglect and cumulative harm where there may not be a particular 'incident' and historical patterns may be the only basis on which the Intake worker can determine the level of risk to a child. Intake workers need to be educated in relation to cumulative harm and neglect and its long term consequences.

This trend is not only isolated to Intake workers, often once a referral is allocated to an office for intervention, family support referrals (and in some cases 'child concern' cases) are relegated to an 'unallocated list' for attention once a worker is available. This can often mean that a 'case' can go unallocated for many months and may actually never be actioned due to the length of time since the initial referral.

As part of informing the public and key stakeholders about the roles and functions of the Children's Commissioner, the Commissioner travelled to the majority of main centres in the Northern Territory. A common issue raised by personnel from the different centres relates to concerns about the 'workability' of the Centralised Intake Team which is based in Darwin. These concerns ranged from a belief that a Darwin based intake worker would not be familiar with the local demographics, issues, resources and 'town culture'. Many of the stakeholders advised that they would contact the local office directly, or contact a person within NTFC known to them or most concerning decide not to make the notification rather than deal with an unknown entity. This decision not to make a notification must be considered of major concern and may in fact leave a child in a situation that exposes him/her to harm and exploitation.

It was also reported that many Aboriginal people living in communities are not 'comfortable' phoning a centralised intake system but would rather make a notification in person to someone who is known to them and therefore holds a degree of trust. In many communities some people only have access to public telephones that are either damaged or not working. These difficulties often mean that Aboriginal people may well decide not to make a notification.

In the NTFC Care and Protection Policy and Procedures Manual (Section 7.1.1) there are provisions which allow for the regional offices to receive notifications. The worker in the regional office who has received the intake is required to inform the CIT as soon as practicable to ensure the details are recorded and appropriate action taken. The Office of the Children's Commissioner has on a number of occasions established that when notifications are made to the regional office they are not always passed on to the Central Intake Team or recorded on the client's file.

### **Cumulative Harm/Chronic Neglect**

It is recognised that chronic neglect and cumulative harm are not interchangeable terms, the high recurrence of neglect as an abuse type and its often silent co-existence with other identified abuse types, means that it is frequently a factor in causing cumulative harm to a child's development.

This means cumulative harm may be a factor in any protective concern, whether it is neglect, physical or sexual exploitation, exposure to domestic or family violence, or emotional abuse. Due to the fact that cumulative harm is the result of a pattern of harmful events, it is unlikely that the child protection intake system will receive a notification based solely on 'cumulative harm'. This of course means that in assessing notifications intake workers need to be alert to the possibility that multiple notifications and events recorded in relation to a child needs to be considered from a holistic perspective and not just the information presented in the current report. The past history of a child with the child protection system may well be indicative of cumulative harm.

The impact of cumulative harm can often affect the child's developmental growth. The main theories that have helped understand the impact of cumulative harm on a child include early brain development, trauma and attachment. Furthermore, researchers have used the term 'toxic stress' to describe the prolonged activation of stress management systems in the absence of support (*Every child every chance – A Victorian Government Initiative 2007*). The continuous exposure of a child to situations and conditions which are frightening and stressful for them is believed to disrupt the brain's architecture and stress management systems. In children 'toxic stress' can effect the developing brain (Shonkoff & Phillips, 2001 cited in *Every child every chance – A Victorian Government Initiative 2007*).

Chronic neglect refers to the persistent low level of care, or the failure to meet the needs of the child or to protect the child from harm. As the neglect becomes entrenched, it begins to arrest and impair all aspects of a child's growth and development, as well as a child's desire or ability to relate.

Neglect occurs when a child's basic needs, such as their developmental, emotional and physical wellbeing and safety, have not been met. Chronic neglect is an entrenched and multi-layered pattern of experience for the child and family (*Frederico, Jackson & Jones 2006*)

This failure to recognise that chronic neglect, while it may not cause death, does mean that a child's reality can be one where their basic needs are not met, including their developmental, psychological and physical wellbeing over a prolonged period of time.

In conducting a number of investigations over the past eighteen months this office has found that there are a number of children who are currently residing in communities where not only is their guardianship status unclear and often inadequate but also they are reportedly wandering from 'house to house' looking for food and a place to sleep. It is often the schools or health clinics that assist in providing these very basic needs of nutrition and hygiene to these children. The majority of the investigations relate to children who live in rural and remote communities and all lived with or had contact with members of their extended families. What the investigations established was that often the children either had no biological parent in their lives or else the parent was living away from the community. This often means that the child is vulnerable to abuse and exploitation. In the majority of these cases investigated it has been identified as occurring over a number of years and that there were multiple notifications to the child protection system. This suggests that there is a lack of understanding and knowledge by child protection workers as to the impact that cumulative harm and chronic neglect may have on the long term wellbeing of a child.

### **Placement issues**

In reviewing the files and interviewing child protection workers they appear to have concerns about removing a child from a 'risky' situation due to the lack of suitable placement options. This is not something that is unique to the Northern Territory, but rather a major problem faced by all jurisdictions. These concerns appear to be heightened in respect of removing an Indigenous child from their community, due to the fact that there are such a low number of registered carers in rural and remote communities. Should intervention occur and the child be removed as a consequence of statutory intervention from their family, it is not uncommon for children to be placed hundreds of kilometres from their community, culture, family, extended families and language. If a child has high medical needs that require ongoing treatment this is often the only option due to lack of medical services in remote areas.

Neither the option of removing children from dysfunctional communities and displacing them away from their family and culture or leaving a child in a dysfunctional community where they can retain their cultural and family ties demonstrates 'best practice'.

The Working Future's policies will help to address this issue in that there is a growing recognition that a child does not develop independently of the community in which they reside. Investment in communities' infrastructure will impact positively on the children residing within the communities identified in the policy. Indigenous parents can only do so much within the social disadvantage that surround them and addressing the external issues that impact on child development and providing family support services and community education into child wellbeing will assist the Indigenous population of the Northern Territory in ensuring they are able to meet the safety, wellbeing and developmental needs of their children.

## **Out of Home Care**

The development of a National Out of Home Care Framework is currently an initiative that is on the Australian Government's agenda. It is recognised that the life outcomes for children in the out of home care system means they are less likely to obtain a good standard of education or employment and more likely to enter the justice system than children who have not experienced out of home care. It is thought the development of a consistent and concerted national response across all levels of government will enhance the out of home care services offered by individual states and territories. These benchmarks will provide guidelines to governments and organisations to ensure children's needs are met whilst in care.

However, it can not be ignored that a shortage of foster carers and subsequently foster placements are placing enormous strains on out of home care systems across Australia, including the Northern Territory. The small numbers of volunteer foster carers in the Northern Territory has contributed to children often placed in unsuitable or unsatisfactory care arrangements where standards of care are unable to be met. Placement matching is unable to be in line with best practice and decisions in regard to placements are made in terms of availability rather than based on the principals of best practice. There is an urgent need for the child protection system to develop a broad range of placement options that will be flexible and responsive to the needs of the children in their care.

Carers who are capable of taking on additional foster children often find themselves overstretched and are left open to allegations of child maltreatment due to stresses within the foster placement. These stresses would be lessened with better placement matching and smaller numbers of children in placement. The apparent lack of support for carers who have experienced allegations of maltreatment of children in their care has serious implications for the foster care system, including the difficulty in retaining experienced carers and the subsequent outcomes for children in care. There also needs to be a greater level of transparency on the part of the child protection system in their dealings with carers, in order to ensure that the carers have a good understanding of the child's needs and requirements.

In conducting investigations relating to the services provided to children in the child protection system, investigators from the Office of the Children's Commissioner continuously hear from the carers that they feel unsupported, that their views and relationship with their foster children are not taken into account when formulating case plans and planning for court action. In several cases, investigations have revealed that some carers have not received the financial entitlements necessary to provide for the daily needs of the child in their care. This of course has the potential to impact on their capacity to provide adequately for the child and at times places a financial burden on the carer's family.

The wellbeing of children in care is of utmost concern to foster carers. Carers hold concerns in respect to their continuity of care and their foster children's ability to develop stable and enduring relationships. Carers report to the Children's Commissioner that they feel that 'reunification goals' are placed above any enduring stability for the children in their care. In addition, they feel

that the amount of time the children have spent in their care is not 'taken into account', respected or valued when deciding whether children should return home. At worst carers feel that the children are often taken from their foster placement, which is a place of safety and returned to ambivalent parents in the home environments from which the children were originally removed. Carers perceive that the children are returned home with little or no intervention having occurred with the maltreating parents and case plan directives not being met. The fact that many carers feel that they are not consulted, or provided with case plans increases their anxiety in relation to the future wellbeing of the children in their care.

Carers do become attached to the long term children in their care and there is currently little policy or procedural guidelines in place to support these relationships and their continuation. Models for permanency planning need to be more substantially developed and child protection workers educated about the damage caused to children by having unstable or multiple placements. Stability of care should be placed above the needs of parents who are at best unable to meet their children's ongoing care and emotional needs and worst maltreat their children again. Current NT child protection policy states 'that permanency plans should be developed after two years of a child being in care', however this does not appear to be the case in practise (NTFC Care and Protection Policy and Procedures Manual).

### **Independent Monitoring of the Out of Home Care System.**

The Australian Government in consultation with all of the other states and territories is in the process of establishing national out of home care standards aimed at ensuring children in the Australian out of home care system are safe and well. One of the major factors identified in the National Out of Home Care Consultation paper is the independent monitoring of the out of home care system and reporting processes where the monitoring body is independent from the Out of Home Care service providers.

This is considered a crucial aspect of the national standards as it allows for data to be verified, identifies gaps in the delivery of services and has the capacity to promote public confidence in a system that is regularly 'under fire' due to complaints and abuse of children in the system. The independent monitoring of the out of home system is more likely to produce reliable data and provide a useful evidence base for ongoing improvement. This will hopefully highlight where things are working well and allow for nation-wide sharing of successful practices that improve the experience for children who are involved in the out of home care system. In establishing an independent monitoring framework it is essential that the requirements for data collection do not impact adversely on the day to day operational activities related to out of home care by workers.

Later in this submission, the issue of introducing a Community Visitors Program for children in out of home care has been introduced as another form of monitoring the progress and wellbeing of children in the out of home care system. This is considered to be an important monitoring 'tool' as it is a way to establish whether the child is receiving adequate care, provides an advocate to act on their behalf in respect of concerns or grievances and offer support if required.



## **Proposed Legislative Reforms**

As a natural consequence of the Board of Inquiry's broad mandate to investigate the Child Protection System there maybe a need to review the statutory frame-work of that system. That would also include the provisions relating to the Commissioner's statutory office. This portion of the submission will focus on proposed legislative reform which the Board of Inquiry may want to consider which could improve the efficacy of this office's functions and guiding objectives and consequently the system as a whole.

Over recent years there has been a policy shift particularly at the national level towards focusing on targeted early intervention services and programs for vulnerable and at-risk children and families. The purpose of course is to limit the interaction that these children and families have with a child protection and out of home care system. However, there should be some consideration given to providing children who are in care the ability to engage someone who will represent them and educate them on their rights whilst in care. This regular monitoring and interaction with a child in care from an independent body may mitigate abuse within the child protection system and create a support basis to achieve more positive outcomes for children in care.

There are a number of jurisdictions that have the capacity to provide advocacy services to children who are either in care or are in some form of juvenile detention. In terms of its funding and legislative framework, Queensland has the most comprehensive program that provides these advocacy services to children who are in detention, a mental health facility or are in a out of home care situation, for example where they have been placed with an approved carer. Tasmania and South Australia also have a similar program but it is not as legislatively defined as Queensland's program which is also substantially funded to provide children in that jurisdiction to an effective and timely advocacy service which focuses specifically on issues concerning the individual child.

### **Brief Outline of Queensland's Statutory Framework for the Community Visitor Program**

Part 4 of the *Commission for Children and Young People and Child Guardian Act 2000 (QLD)* (the Qld Act) provides the framework for Community Visitors program. The program essentially provides children who are in detention, a mental health facility (known as a visitable site) or are in the care of the Chief Executive under the *Child Protection Act* and are accommodated with an approved carer or someone other than the parent of the child (known as a visitable home), with the ability to request via the Commissioner that they be represented by a Community Visitor. Staff members of visitable sites or carers are required to inform the Commissioner of a request from the child regarding representation by a Community Visitor. In any case the Commissioner is obliged to make arrangements for Community Visitors to regularly attend visitable sites and homes for the purposes of carrying out their functions. Community Visitors are appointed for two year terms on a full-time, part-time or casual basis. They must have appropriate skills and be reflective of the community's social and cultural diversity. There are provisions which restrict public sector employees employed in a children

protection agency, approved carers, police officers or corrections officers from being appointed.

As stated previously, the Community Visitor provides an advocacy service to the aforementioned children to help resolve concerns or grievances they may have particularly in relation to service providers regarding the appropriateness of services provided. They assess the general physical and emotional wellbeing of the child and determine if the child has enough information so that they can understand their rights. As far as visitable sites are concerned a Community Visitor can assess the appropriateness of the accommodation and its service delivery (for detention centres there is a focus on services delivered to assist the child for release), staff interaction with the children and the morale of those staff. For visitable homes the accommodation and care standards are observed and assessed. While executing these functions Community Visitors must always take into account the views of the child and take steps as practicably possible to preserve the privacy of the child. There are specific powers of access to the child, including the sites where the child is accommodated and information regarding the child. There are also provisions which make it an offence to prohibit or hinder a Community Visitor in carrying out their functions.

A Community Visitor must provide a report to the Commissioner after each visit regarding any relevant matters as a result of the visit. The Commissioner has the discretion to provide copies of those reports to any relevant entity including the government service provider, the person in charge of the site, the chief executive of a relevant department and the child concerned.

### **Addressing the Northern Territory's Uniqueness**

The Northern Territory is one of the most isolated jurisdictions in terms of its population spread throughout the jurisdiction. The Northern Territory also has the youngest population out of all the jurisdictions within Australia with an average age of 31.2 years which is 5.7 years younger than the national average of 36.9 years. People aged between 0-19 years of age represent 31.8% of the total population. Of that age bracket 44.5% are Indigenous. Approximately 63% of the Indigenous population that resides in the Northern Territory are considered to be located in very remote parts of Australia and a further 18% live in remote parts of Australia, the national average is 16% and 8% respectively (Australian Bureau of Statistics 2006). The Northern Territory also has the smallest population from which the ability to draw skilled workers is severely limited in fields such as child protection and community services. As well as this there is a high percentage of Indigenous people represented in general and an even higher percentage in the target age bracket population of whom a significant gap exists compared with the non-indigenous population in areas of health, education and employment outcomes. The combination of these two factors along with others represents an immense challenge for policy implementation and service delivery especially in the field of child protection in the Northern Territory.

The Queensland model outlined previously could provide a basis of which to form a program such as this in the Northern Territory. Identifying need and deficiency in systems of government and establishing legislative frame-work to address this deficiency are relatively straight forward. However, the hard

task, considering the unique situation that the Northern Territory is in would be to develop innovative implementation strategies to operationalise a program such as this in the Northern Territory.

It may not be possible to establish a program such as the one currently operating in Queensland without a method to integrate this program into the services already supplied to the remote Indigenous communities. It is quite well established that service delivery in these communities can be problematic for a number of reasons such as lack of administrative support, shortage of educated and skilled labour and accessibility. Some of the better established communities have councils which make child protection a priority and have established committees to address these issues with relative degrees of success. If these committees are in place it would be logical and complementary to create a synergy with the proposed program and these committees. Albeit, with adequate funding and specific education and monitoring mechanisms for at least one community council member to partake in an advocacy role for the program. A large majority of children in the out of home care system are situated in the larger urban centres such as Darwin, Alice Springs, Katherine or Tennant Creek. There are very few children in care who are situated in remote communities, so the employment of child advocates particularly in these remote communities will have to have an element of flexibility and would incorporate a part-time, casual and/or pro-rata basis to balance outcomes with input.

By integrating this program with local input it may enhance the advocate service as it might build up a communal sense of ownership, infuse a more trusting partnership with community and advocates and especially a better understanding of what the advocate is designed to do. Notwithstanding this there are over 1000 communities, homelands and outstations in the Northern Territory and those with the smaller groupings of people will face a more difficult time incorporating this strategy.

A more conventional program could be established in the main urban centres where there is the capacity to employ more permanent staff as well as a mixture of non-government persons to advocate for specific children. There will have to be an oversight body as part of this program to monitor the outcomes of the program in the urban and particularly remote areas of the Northern Territory.

### **Own Motion Powers**

The different Australian jurisdictions investigations and inquiries framework differ in construct and application. Most have the ability to review the incidence of specific interactions with children and child service providers including state and territory child protection services. Whereas, a number of other jurisdictions can only review matters at the systemic level and can not investigate into the particular instances regarding an individual child. Though, however constructed there is one theme that is common to essentially all the jurisdictions and that is the ability to launch an investigation/inquiry on the Commissioner's/Guardian's own resolution. The ability to initiate an investigation/inquiry provides the independent latitude for the Commissioner/Guardian to carry out their key objectives without relying on a third party to either complain or initiate these investigations/inquiries.

Currently, the Northern Territory Commissioner does not have the ability to investigate a matter on his/her own motion.

If the Children's Commissioner was given this legislative power to investigate matters on his/her own motion it would not only enforce the independent nature of the office but also improve the pro-active approach to child welfare review in the Northern Territory. For example if the Commissioner felt it appropriate to do so, it would enable the Commissioner to conduct an investigation into the out of home care system much like other entities can do in different jurisdictions.

### **Access to Information Powers**

The Children's Commissioner has a number of functions that will require him/her from time to time to obtain information so that those functions can be performed in a sufficient manner. A substantial amount of this information is derived from NTFC and other government entities, as part of the Commissioner's monitoring functions expressed in section 260 of the Act. Currently the Office of the Children's Commissioner has an established rapport with NTFC and other government entities in relation to its monitoring functions. However, there is no legislative basis that creates a positive power for the Children's Commissioner to require that information to be disclosed, it is up to that entity to decide on what information can/will be disclosed. This would become particularly problematic if non-government entities held information that is relevant to the Commissioner's monitoring functions.

A large portion of the different Australian jurisdictions have furnishing powers that are broad and relate to all of the Commissioner's or Guardian's functions rather than focusing on one particular function such as the investigations function as is the case in the Northern Territory.

### **Broadening of the Section 260(1)(d) Function**

Section 260(1)(d) of the *Care and Protection of Children Act* (the Act) specifies that the Commissioner is to monitor the implementation of any government decision from the '*Inquiry in the Protection of Aboriginal Children from Sexual Abuse*', known as the '*Little Children are Sacred*' report (the Implementation Function). This 2007 Inquiry focused on broad systems based review that encompassed key stakeholders and public submissions as well as a substantial consultative program designed to identify the major problems surrounding this issue. The findings of the 2007 Inquiry had a profound affect on the shaping of future Government policy towards the issue of sexual abuse towards Aboriginal Children and broader concepts of Indigenous disadvantage and child welfare in the broader community. The findings of the report were also the impetus for the Australian Government's intervention in the Northern Territory.

When introducing the Act into Parliament in 2007, the then Minister for Child Protection, the Hon Marion Scrymgour MLA made the following statement regarding the Office of the Children's Commissioner:

*"This is a statutory, independent role, equipped to keep a public eye out for the interests of children who have had contact with the child"*

*protection system and to ensure that services, systems, and policies serve them well.”*

The 2007 Inquiry identified issues and indeed made crucial recommendations that had substantial effect on the most vulnerable children in our communities, those who have and are experiencing interaction with our child protection system. This and the aforementioned statement certainly hold true as to why the Implementation Function was enacted as part of the legislative mandate of the Commissioner. If it was Parliament’s intention that an independent body be put in place to monitor actions taken by Government in light of recommendations in the 2007 Inquiry, it might be relevant to extend this monitoring capacity to include subsequent inquiries and their findings, which are somewhat similar in nature to the 2007 Inquiry. This would provide the Commissioner with the ability to not only monitor the implementation of findings in the 2007 Inquiry which are still quite relevant but also subsequently relevant inquiries which may also require the ability to be independently monitored. The Office of the Children’s Commissioner suggests that the Implementation Function be replaced with a clause that would give effect to the following, that the Commissioner is ‘to monitor the implementation of any government decision arising from

- (i) an Inquiry in relation to the Child Protection System or the wellbeing of children as constituted under the *Inquiries Act*; and
- (ii) a report or judicial recommendation that the Commissioner considers to be relevant to the wellbeing of protected children.’

This would also require consequential amendment to the objects of Part 5.1 of the Act.

## **Conclusion**

The Office of the Children’s Commissioner acknowledges the many difficulties and challenges currently facing the NT child protection system. The ever increasing number of notifications and children requiring out of home care, the uniqueness of the NT, the diversity of our population including difficulties in attracting and retaining services, and personnel contributes to a system under stress. This issue is not unique to the Territory but rather a national and international problem; of which no single jurisdiction appears to have a solution. This said however, the child protection system is tasked by the legislature and therefore the community to ensure the protection of Territory children from harm and exploitation.

The Office of the Children’s Commissioner was established with the objective of ensuring the wellbeing of ‘protected children’ – that is all children who are the subject of the exercise of a power or function under Chapter 2 of the Act. That means the Commissioner has an obligation to ensure that ‘protected children’s’ wellbeing is of the utmost priority not only for government but also the community. In this submission, the Children’s Commissioner has outlined a few of the issues that we have encountered in the course of conducting our main legislated function which requires this office to receive and investigate complaints about the services to protected children.

In conducting our investigations we have the luxury to review all the files and information relating to a complaint and are therefore able to identify what may be considered key gaps in case work (and intake) interventions.

Some of these issues relate to what can only be perceived as a lack of understanding by caseworkers as to the importance and contributions that foster carers make when caring for our most vulnerable children. This is often done regardless of the health of the child, the level of disability or behavioural issues. This important group of people have the capacity to be of great assistance to the 'overloaded' system given the right support, respect and consideration. This can especially be said about those carers who have looked after a child for a long period of time, and are in many cases the only parent the child has ever known. The failure to recognise the contribution and commitment made to the foster child, especially in decision making and long term planning means that a 'golden opportunity' is lost for a partnership to develop, aimed at achieving the best outcome for the child.

In a child protection system where the numbers of 'high priority' notifications are received often means that some of the 'lower priority' notifications are not able to be given the attention that is required. This often means that children in situations where there is ongoing neglect are either ignored or not able to be investigated and supported. In many situations a more intensive support to the family is needed to prevent the escalation of harm to the child and assist the family in providing an adequate level of care.

The Children's Commissioner's current functions go a long way to ensuring the wellbeing of protected children; however we believe that with increased legislative powers the functions of this Office could be expanded to allow us to meet the objectives of ensuring the wellbeing of protected children. The legislative reforms identified in our submission will go a long way to ensuring that these children not only have a voice but also someone to advocate on their behalf.

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