4 October 2017

Commissioner White and Commissioner Gooda
Northern Territory Royal Commission into the Protection and Detention of Children in the Northern Territory
By Email

Dear Commissioners

**Absolute prohibition on solitary confinement**

We write urging you to recommend an absolute prohibition on the use of solitary confinement on children in detention in your forthcoming report. Failing to do so risks exposing Northern Territory children to the same abuses that led to this Royal Commission.

International human rights law strictly prohibits the use of solitary confinement on children as evidence shows that this practice can have severe, long-term and irreversible effects on a child’s health and wellbeing.¹ Additionally, the Australian Children’s Commissioners and Guardians stated in 2016 that ‘solitary confinement constitutes cruel, inhuman or degrading treatment’ and therefore affirmed that ‘children should never be subjected to solitary confinement’.²

Prohibiting the use of solitary confinement does not undermine the safe operation of youth detention facilities, as it does not preclude appropriately separating children in limited circumstances to protect that child or another child. Indeed the safety and security of a facility are strengthened when a therapeutic rather than punitive approach to young people is embedded in the operation, culture, training and systems of the facility.

**Why solitary confinement should be prohibited**

Solitary confinement is the isolation of detainees for 22 hours or more a day without any meaningful human contact.³ It involves the involuntary placement of a child in a room (often

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² Australian Children’s Commissioners and Guardians, ‘Human rights standards in youth detention facilities in Australia: the use of restraints, disciplinary regimes and other specified practices’, April 2016, pp 63.
³ Mandela Rules, Rule 44.
with limited ventilation and natural light) from which they are unable to leave, denying the child meaningful contact with peers, therapeutic professionals or family.

In the Northern Territory and Australia more broadly, multiple terms are used to describe what can amount to solitary confinement, including: isolation, segregation, seclusion and separation. These terms are often used and confused to deny the existence of solitary confinement.

Solitary confinement should be prohibited because of the risk posed to the emotional, psychological and physical health and wellbeing of children. Proven negative effects include insomnia, confusion, compounded trauma, hallucinations and psychosis. Additionally, and as you are aware, many children in youth detention are survivors of abuse, trauma or neglect and may have a disability or mental health issue, which are exacerbated by solitary confinement.

Evidence shows that Aboriginal and Torres Strait Islander children are at increased risk of harm when subject to solitary confinement due to their deep need for connection to family, kin and culture. The Western Australian Independent Inspector of Custodial Services noted that ‘Aboriginal prisoners separated from family and kin suffer emotional and spiritual distress beyond that imposed upon non-Aboriginal prisoners’. This echoes the Royal Commission into Aboriginal Deaths in Custody finding that ‘it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention’.

Accordingly, the importance of a recommendation prohibiting solitary confinement is particularly pronounced in the Northern Territory given the exceptionally high number of Aboriginal and Torres Strait Islander children in the youth detention system.

**How solitary confinement has been used in the Northern Territory**

The Northern Territory Youth Justice Act specifically permits solitary confinement of a child - it allows for a detainee to be isolated for up to 24 hours, or with the approval of the Commissioner, for up to 72 hours, if the superintendent is of the opinion that isolation is required to protect the safety of another person or for the good order or security of the facility.

The Royal Commission has heard evidence of this law being inappropriately and unlawfully used. This has included:

- continuous ‘rolling’ orders, which have seen children isolated for days or even weeks, unable to socialise, communicate with family, obtain visits, or engage in recreational or educational activities;
- the use of solitary confinement for punishment and as a behaviour management tool;
- a reliance on solitary confinement to the exclusion of less restrictive practices, including de-escalation techniques and therapeutic interventions;
- the use of solitary confinement to manage staffing issues and shortages;\(^\text{12}\) and
- the use of solitary confinement on particularly vulnerable and distressed children who are considered ‘at risk’.\(^\text{13}\)

### How solitary confinement should be prohibited in law

The Northern Territory’s *Youth Justice Act* should be amended to strictly prohibit the use of solitary confinement.

This would not undermine the safe operation of youth detention facilities given a prohibition on solitary confinement does not restrict staff from separating children in strictly limited circumstances for the child or another child’s protection.

In their 2016 report, the Australian Children’s Commissioners and Guardians accepted that there will be circumstances in which a child may need to be separated ‘as a legitimate behaviour management tool or [as] an emergency safety measure provided it does not place restrictions on a child’s access to education, physical activity or family contact’.

Accordingly, in addition to the prohibition on solitary confinement, we recommend amending the *Youth Justice Act* to provide definitional clarity and strict safeguards to confine the circumstances in which separation can occur. Safeguards should include:

- clear preconditions for the use of separation, including that it can never be used for punishment and can only be used as an absolute last resort when all other measures to address a child’s behaviour or risk have been exhausted;
- non-extendable timeframes for how long a child can be separated;
- a requirement that a separated child still be provided with time outdoors, activities and meaningful human contact, including access to family, lawyers, therapeutic professionals, teachers and appropriate peers;
- a requirement that a separated child be seen by a health professional prior to their separation, or within a reasonable timeframe after separation;
- allowance for the child to have contact with a lawyer and the Children’s Commissioner before, during and after the period of separation; and
- a requirement that precise and transparent records and data be maintained and regularly published about the number of children separated and the circumstances surrounding their separation.

\(^{12}\) Children’s Commissioner NT, Don Dale Youth Detention Report to Minister, September 2015.

\(^{13}\) Children’s Commissioner NT, Own Initiative Investigation Report, Services Provided by the Northern Territory Department of Correctional Services to Don Dale Youth Detention Centre Alice Springs Youth Detention Centre (August 2016), 11.
How solitary confinement should be prohibited in practice

Beyond legislative reform, cultural and institutional change is critical for achieving a safe, human rights compliant and therapeutic youth detention environment.

Ensuring separation practices are only used in appropriate circumstances and as a last resort will require significant organisational, philosophical and cultural change flowing through ministerial, executive and departmental levels. Experience from the United States shows that this will require:

- the adoption of a mission statement and philosophy that reflects rehabilitative goals;
- the development of internal policies and procedures for the appropriate use and monitoring of separation;
- the collection of data to manage, monitor and hold institutions to account for the use of separation;
- the development and implementation of alternative behaviour management options and responses; and
- a commitment to training and development of staff with respect to mission, values, standards, goals, policies and procedures.¹⁴

Conclusion

We urge you to recommend the absolute prohibition of solitary confinement in your upcoming report. This would ensure the Royal Commission’s recommendations are consistent with human rights standards and best-practice principles.

A prohibition on solitary confinement will not undermine the safe operation of youth detention facilities. Rather, the limited practice of separation should be both clearly defined and restricted, and a therapeutic culture embedded in the facility.

Failing to clearly prohibit solitary confinement will mean that children in the Northern Territory remain at risk of the types of abuses that resulted in this Royal Commission.

We would be pleased to discuss this letter further.

Kind regards

Ruth Barson
Director of Legal Advocacy

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