



# NORTHERN TERRITORY COUNCIL OF SOCIAL SERVICE

## SUBMISSION

FROM  
THE NORTHERN TERRITORY COUNCIL OF SOCIAL SERVICE

TO  
DEPARTMENT OF CHILDREN AND FAMILIES

SECURE CARE  
CARE AND PROTECTION (THERAPEUTIC ORDERS) AMENDMENT BILL 2012

JULY 2012

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*'Growing the NT fairly'*

## 1. INTRODUCTION

The Northern Territory Council of Social Service (NTCOSS) welcomes the opportunity to provide feedback to the Department of Children and Families ('the Department') on the subject of *The Care and Protection of Children (Therapeutic Orders) Amendment Bill*. Through this process, NTCOSS will also share broader concerns and solutions pertaining to the secure care facilities.

NTCOSS is a peak body for the community sector and an advocate for those most disadvantaged in the NT. In writing this submission, NTCOSS has consulted widely with non-Government community-based organisations, both in the NT and nationally. NTCOSS has also sought evidence and advice from secure therapeutic services in New Zealand, Scotland and Canada.

NTCOSS recognises the Department's willingness to engage with the non-Government sector on this topic and appreciates the space that has been given to openly discuss the challenges it raises. The long-term success of holistic and appropriate therapeutic interventions for the Territory's most disadvantaged children and young people relies on meaningful and valued collaboration between the Government and non-Government sectors. NTCOSS is committed to maintaining a strong working relationship with the Department for the wellbeing of our children and young people.

The protection of a young person's right to liberty is a key concern for NTCOSS, and as such the secure care facilities are deeply problematic. There are those children and young people who are at extreme risk of self-harm and harm to others, and addressing their needs in a safe and secure way is a complex space to navigate. However, NTCOSS does not support the Department's current approach to secure care.

Recommendation 66 of the *Growing them strong, together* report of the Board of Inquiry (BOI)<sup>1</sup>, called for the Department to develop and appropriately fund 'specifically therapeutic options for children and young people with high needs such as therapeutic residential care, secure care, therapeutic foster care and a range of therapeutic counselling and treatments services (including Tier 3 services).' The Northern Territory Government has committed to implementing these recommendations, in their entirety. Secure care is only one part and, arguably, the least crucial and potentially most detrimental element of this continuum.

**It is the position of NTCOSS that until a fully resourced continuum of therapeutic care exists in the NT, therapeutic orders administered by the Department must not be made, and secure care facilities should not be operational.**

Please see the addendum alongside this submission, which further details NTCOSS' concerns around the secure care facilities and issues outside of the legislation which require urgent attention from the Department.

NTCOSS looks forward to continued dialogue with the Department to identify better strategies to ensure the safety, wellbeing and appropriate treatment of all young people in the NT.

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<sup>1</sup> M. Bamblett, H. Bath, and R. Roseby, *Growing them strong, together*, Report of the Board of Inquiry into the Child Protection System in the Northern Territory 2010, Northern Territory Government, Darwin. Available at: [http://www.childprotectioninquiry.nt.gov.au/report\\_of\\_the\\_board\\_of\\_inquiry](http://www.childprotectioninquiry.nt.gov.au/report_of_the_board_of_inquiry)

## 2. SUMMARY OF RECOMMENDATIONS

**It is the position of NTCOSS that until a fully resourced continuum of therapeutic care exists in the NT, therapeutic orders administered by the Department must not be made, and that secure care facilities should not be operational.**

<p><b>RECOMMENDATION 1:</b> That the Bill should include a requirement that the Department be required to broadly consult with other local youth service practitioners to identify less restrictive placement options, prior to making an application for a Therapeutic Residential Order.</p>
<p><b>RECOMMENDATION 2:</b> That Section 223A (1)(a) of the Amendment Bill remove the words '<i>patterns of aggressive, irresponsible and high-risk behaviour</i>' and develop a set of admission criteria with tighter restrictions, in accordance with accepted international standards.</p>
<p><b>RECOMMENDATION 3:</b> That Section 223A(1)(b) be amended to stipulate that previous unsuccessful attempts to carry out an assessment or to provide treatment and care to a child must be the fault of the child.</p>
<p><b>RECOMMENDATION 4:</b> That the Amendment Bill should stipulate that a lack of accommodation is not a sufficient reason for placement of a young person in a secure care facility.</p>
<p><b>RECOMMENDATION 5:</b> That the Amendment Bill should cover what therapeutic treatment options are to be explored both before and after placement on an order.</p>
<p><b>RECOMMENDATION 6:</b> That the potential for Aboriginal Legal Services to be funded to establish appropriate practices, in order to provide representation to young Aboriginal people, be examined.</p>
<p><b>RECOMMENDATION 7:</b> That the successful completion of the Independent Children's Lawyer Training Program should be a pre-requisite for the appointment of a lawyer to be a children's representative under the Care and Protection of Children Act.</p>
<p><b>RECOMMENDATION 8:</b> That the Amendment Bill under Section 225H be altered to include an external review panel, and clear timeframes to ensure due process is followed for all therapeutic orders and care plans.</p>
<p><b>RECOMMENDATION 9:</b> That an independent, external review process be articulated in Subdivision 3 of the Amendment Bill, as detailed above (p.7).</p>
<p><b>RECOMMENDATION 10:</b> That the potential be explored for the Community Visitor Program, established under Part 14 of the <i>Mental Health and Related Services Act</i>, to extend service to the secure care facilities.</p>
<p><b>RECOMMENDATION 11:</b> That an independent Community Visitor Scheme for secure care facilities be included in the Amendment Bill.</p>
<p><b>RECOMMENDATION 12:</b> That the Amendment Bill better reflects the importance of links and retention to language, culture and identity of all young people, particularly Aboriginal people.</p>
<p><b>RECOMMENDATION 13:</b> That consultation with appropriate representatives from the child or young person's family, kinship group, representative organisation or community must be mandated in the Bill, in relation to secure care matters.</p>
<p><b>RECOMMENDATION 14:</b> That there be at least two specialist Aboriginal-identified roles (male and female) within the Department, made available to provide guidance on a child or young person's care plan, and that the legislation stipulates these staff members must be consulted regarding all secure care decisions.</p>
<p><b>RECOMMENDATION 15:</b> That the Amendment Bill consistently recognise and articulate the need for thorough explanation of the rationale and related concepts to the stakeholders impacted by a child or young person's therapeutic order and placement in a secure care facility, including the use of interpreters. This could be articulated similarly to the Youth Justice Act (NT) (as above).</p>
<p><b>RECOMMENDATION 16:</b> That a minimum age for therapeutic orders, no younger than 10 years of age, be articulated in the Amendment Bill.</p>
<p><b>RECOMMENDATION 17:</b> That the maximum duration of stay in secure care facilities should be further reduced to 3 months.</p>
<p><b>RECOMMENDATION 18:</b> That the Amendment Bill articulate the responsibility and approach of the Department when transitioning a child or young person out of a secure care facility.</p>
<p><b>RECOMMENDATION 19:</b> That the Amendment Bill include provisions to establish the circumstances under which the padded room in the facilities (and other forms of seclusion or restrain) may be adopted in Secure Care.</p>

## 2. DETAILS OF RECOMMENDATIONS FOR THE CARE AND PROTECTION OF CHILDREN ACT (THERAPEUTIC ORDERS) AMENDMENT BILL

### 3.1 ADMISSION CRITERIA

It is understood that following previous consultation processes the admission criteria in the current Amendment Bill have been tightened. However, NTCOSS still considers the admission criteria for therapeutic orders to be inappropriate.

In relation to Sections 223A (1)(a);

*'The child is likely to cause serious harm to himself or herself or someone else because of the child's patterns of aggressive, irresponsible or high-risk behaviour'*

While the difficulties around ensuring an appropriate amount of flexibility in legislation are understood, NTCOSS considers this statement to be too broad.

Some risks associated with this criterion are as follows:

- The reference to 'patterns of aggressive, irresponsible and high-risk behaviour' leaves the criterion open to moral and value judgments, not based in appropriate assessment.
- The terminology used leaves the legislation open to the risk of twice 'punishing' young people who have been victims of abuse and previously 'let down' by the system. Containing young people for their irresponsible behaviour would be more appropriate in a community-based therapeutic residential setting.
- That young people with diagnosed or non-diagnosed disabilities, such as autism and Foetal Alcohol Spectrum Disorder (FASD), will fall into this category inappropriately, where specific interventions are required which should be facilitated in the community, and do not necessitate secure care.
- This 'catch-all' approach may be a hindrance to therapeutic interventions, given the negative impact that bringing young people into a secure environment can have, when less-restrictive options may have been effective:

*Longer placements in a highly structured, restricted and controlled environment such as therapeutic secure care increase the risk of institutionalisation and should be considered cautiously.<sup>2</sup>*

The New Zealand NGO Barnardos, who administer secure residential facilities for young men with harmful sexual behaviours, are leading changes to residential therapeutic interventions in the care and protection space in New Zealand. While the focus is different to that of the NT model being proposed, NTCOSS considers there are lessons that can be learnt from such an approach. One such example is in the articulation of behaviours in the admission criteria, as follows:

- are deemed unsafe to be treated in the community;
- have treatment needs that require intensive, comprehensive and integrative interventions; and
- have commonly refused, disrupted or failed previous community treatment attempts.

NTCOSS considers that more specific legislative definitions and terminology are required in the Amendment Bill to articulate the extreme behaviours that will be suited to therapeutic orders.

In relation to Section 223A (1)(b);

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<sup>2</sup> NSW Government Department of Human Services, *Out of home care service model – Therapeutic Secure Care Programs*, May 2012, accessed at: [http://www.community.nsw.gov.au/docswr/assets/main/documents/oohc\\_service\\_model.pdf](http://www.community.nsw.gov.au/docswr/assets/main/documents/oohc_service_model.pdf)

*'Previous attempts to carry out an assessment of, or to provide any treatment and care to, the child in relation to those patterns of behaviour have been unsuccessful'*

and 223A (1)(e);

*'There is no less restrictive means than those under the order to ensure the child will receive the assessment, treatment and care.'*

While it is commendable that the Department is pursuing Recommendation 66 of the *Growing Them Strong, Together* report, it is however unclear why the Department is establishing the secure care facility and subsequent amendment of the Care and Protection Act prior to the development and funding of critical wrap-around services, such as therapeutic residential care, therapeutic foster care, and therapeutic counselling and treatment services. The Department currently has limited alternative options to the admission criteria 223A (1) (b) and hence a therapeutic residential order may be the only resort. This limits the Department's best practice approach to facilitate positive sustainable outcomes for young people and their families. It can be argued that in terms of economic investment, the Department is selling themselves short by not simultaneously investing in other critical therapeutic options.

Legislation should put the onus and responsibility on the care and protection system to ensure all that can be done for the young person has been done, before considering secure care.

NTCOSS submits that:

- The admission criteria should include terminology that leaves no room for doubt, such as 'extreme', 'life-threatening', 'exploitation'. The legislation should also include specific definitions, where possible.
- The United Nations Minimum Rules for the Administration of Juvenile Justice ('The 'Beijing Rules') state under Rule 19.1: 'The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.' Such a principle should underpin the legislation;
- The aforementioned raft of services that are necessary to ensure this facility is used only as a last resort simply do not currently exist;
- That section 223A(1)(b) has minimal import until these alternative services are funded and implemented. In recognition of this, it is imperative that these alternative services are available and considered prior to an application for an order and that the Amendment Bill require that each individual service has been part of a previous case plan and pursued with other key stakeholders with respect to the young person;
- A potential result of the existence of a secure care facility may be that case workers do not rigorously explore alternative placements;
- It is commonly difficult to ensure children and young people present at appointments, and thus it is a concern that such an occurrence would be considered as an 'attempt' within this current admission criteria, without the necessary rigour.
- The Amendment Bill should cover what therapeutic treatment options are to be explored both before and after placement on an order;
- It is unclear what responsibility the Department has to explore pathways for young people before seeking a therapeutic order, and what the ramifications are should that responsibility not be met;
- That the legislation must articulate the responsibility of DCF staff to thoroughly consult with other local practitioners who may be well placed to engage with and joint case-manage the young person, especially in determining the availability of less restrictive means;
- To avoid young people being placed unnecessarily on therapeutic orders, the legislation should stipulate that a lack of accommodation is not a sufficient reason for placement of a young person in a secure care facility. The Victorian *Children, Youth and Families Act* articulates this as:

*When considering the risk of harm to the child or young person a lack of adequate accommodation is not by itself a sufficient reason for placing a child or young person in a Secure Welfare Service.<sup>3</sup>*

**RECOMMENDATION 1:** That the Bill should include a requirement that the Department be required to broadly consult with other local youth service practitioners to identify less restrictive placement options, prior to making an application for a Therapeutic Residential Order.

**RECOMMENDATION 2:** That Section 223A (1)(a) of the Amendment Bill remove the words ‘*patterns of aggressive, irresponsible and high-risk behaviour*’ and develop a set of admission criteria with tighter restrictions, in accordance with accepted international standards.

**RECOMMENDATION 3:** That Section 223A(1)(b) be amended to stipulate that previous unsuccessful attempts to carry out an assessment or to provide treatment and care to a child must be the fault of the child.

**RECOMMENDATION 4:** That the Amendment Bill should stipulate that a lack of accommodation is not a sufficient reason for placement of a young person in a secure care facility.

**RECOMMENDATION 5:** That the Amendment Bill should cover what therapeutic treatment options are to be explored both before and after placement on an order.

### **3.2 LEGAL REPRESENTATIVE OF THE CHILD**

Given the complexities facing the young people and families that will access these facilities, it is essential that high quality legal representation is available. Most importantly, practitioners must have had the appropriate training and experience with young people and families to ensure ‘the best interests of the child’ are met and that the representative is in fact an advocate for the young person.

NTCOSS submits that:

- Discussions must take place to examine the potential for Aboriginal Legal Services to be funded to establish appropriate practices to enable their lawyers to provide representation to young Aboriginal people subject to an application. This will necessarily require the existence of appropriate conflict of interest policies and practitioners who have the requisite training to advise and represent the Aboriginal person in a culturally appropriate manner.
- The legal representative must be an advocate for the child or young person;
- The Guidelines for Independent Children’s Lawyers<sup>4</sup> (ICL) provide principles applicable to the role and conduct of the children’s representative relevant to proceedings regarding therapeutic orders. In particular, the Guidelines state:

*The ICL is to ensure that any views expressed by the child are fully put before the Court and so far as possible, are in admissible form. This includes views that the ICL may consider trivial but the child considers important.<sup>5</sup>*

Please refer to sections 5.3 and 5.4 of the Guidelines, which provide more detail about how the ICL should navigate through these difficult matters.

- The Family Law section of the Law Council of Australia auspices an Independent Children’s Lawyer Training Program, and NTCOSS submits that successful completion of this program should be a pre-requisite for the appointment of a lawyer to be a children’s representative under the Care and Protection of Children Act.

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<sup>3</sup> Victoria Department of Human Services, *Children, Youth and Families Act 2005*, s.174 (c), accessed at [http://www.dhs.vic.gov.au/cpmanual/out-of-home-care/secure-welfare-placements/1459-placement-in-secure-welfare-services?SQ\\_PAINT\\_LAYOUT\\_NAME=print\\_entire](http://www.dhs.vic.gov.au/cpmanual/out-of-home-care/secure-welfare-placements/1459-placement-in-secure-welfare-services?SQ_PAINT_LAYOUT_NAME=print_entire)

<sup>4</sup> Available at: <http://www.nla.aust.net.au/res/File/PDFs/ICL%20guidelines-6-12-07.pdf>

<sup>5</sup> Ibid, p.4

- The ‘best interests of the child’ may entail advocating for, linking with or providing therapeutic interventions prior to being placed on an order, which currently is unable to happen as the services don’t exist.

**RECOMMENDATION 6:** That the potential for Aboriginal Legal Services to be funded to establish appropriate practices, in order to provide representation to young Aboriginal people, be examined.

**RECOMMENDATION 7:** That the successful completion of the Independent Children’s Lawyer Training Program should be a pre-requisite for the appointment of a lawyer to be a children’s representative under the Care and Protection of Children Act.

### **3.4 REVIEW AND MONITORING PROCESSES**

#### **3.4(a) REVIEW AND VARIATION OF THERAPEUTIC ORDERS AND CARE PLANS**

NTCOSS recognises the key role of the CEO in relation to review and variation of therapeutic orders and care plans. However, there is need for greater coherence around the process, accountabilities and timeframes involved in the reviews of both therapeutic orders and care plans.

NTCOSS submits that:

- a clear and accountable process, including timeframes, is essential to the review process;
- any review of a child or young person’s therapeutic care plan be administered by a review panel that includes all relevant stakeholders, including non-Government service providers, advocate/s for the child or young person, appropriate family and community members;
- there be a specified timeframe for review of all care plans and orders.

**RECOMMENDATION 8:** That the Amendment Bill under Section 225H be altered to include an external review panel, and clear timeframes to ensure due process is followed for all therapeutic orders and care plans.

#### **3.4(B) REVIEW IN RELATION TO SECURE CARE FACILITIES (SUBDIVISION 3)**

NTCOSS considers that it is necessary that the Amendment Bill, under Subdivision 3, includes clear guidelines for an external review process that ensures transparency, objectivity, timeliness in accordance with the values underpinning the facilities.

NTCOSS and the broader community services sector in the NT have shared concerns regarding the vulnerability of young people to the inappropriate implementation of Secure Care. The proposed admission criteria, the correctional environment of the facilities themselves, and the inherent complexities of the challenges facing young people and families in the Northern Territory give rise to these concerns.

NTCOSS submits that:

- An independent body, external to the Department, is appointed to conduct all reviews relating to the specifications referred to under 225N (1) (a) – (d).
- That a *review authority* be appointed by the Office of the Children’s Commissioner of the NT (OCCNT);
- That an external review body be properly resourced to fulfill this responsibility;
- That regular and frequent timeframes for review be stipulated in the Act;
- That review reports pertaining to the facilities are made available for public information, where the identities of individuals in the facility are protected;
- That Section 225P should include (d): ‘Lodge a complaint, where necessary’;
- That Section 225R (2) (b) should include a timeframe.

**RECOMMENDATION 9:** That an independent, external review process be articulated in Subdivision 3 of the Amendment Bill, as detailed above (p.7).

### 3.4(C) COMMUNITY VISITORS

Based on the information provided to the sector during the Department's briefings on Secure Care Group Homes in May 2012, it was stated that the Department is undertaking broader work towards introducing a community visitor scheme for children and young people in out of home care. While it is acknowledged that the Department is currently investigating a system of regular, two monthly visits to children in out of home care, NTCOSS submits that these visits will not be adequate for monitoring of children and young people on Therapeutic Residential Orders.

In the meantime, NTCOSS considers that a resourceful approach would be to extend the reach of the Community Visitor Program (CVP), under the Anti-Discrimination Commission, to provide this service to the Secure Care unit.

NTCOSS submits that:

- CVPs provide an avenue through which children and young people can be listened to and supported by someone who can advocate on their behalf;
- A CVP is necessary to reduce isolation amongst institutionalised children and young people, particularly given the potential disconnect that will occur from family and other community supports and services;
- A CVP must be independent of the Department;
- Such a scheme would also ensure that the facilities are operating in an open and transparent manner and that there are avenues to resolve disputes.

RECOMMENDATION 10: That the potential be explored for the Community Visitor Program, established under Part 14 of the *Mental Health and Related Services Act*, to extend service to the secure care facilities.

RECOMMENDATION 11: That an independent Community Visitor Scheme for secure care facilities be included in the Amendment Bill.

### 3.5 CULTURAL CONSIDERATIONS

The Principles of the *Care and Protection of Children Act 2007*, recognise in Section 12 that 'Kinship groups, representative organisations and communities of Aboriginal people have a major role, through self-determination, in promoting the wellbeing of Aboriginal people' and furthermore that 'a kinship group, representative organisation or community of Aboriginal people nominated by an Aboriginal child's family should be able to participate in the making of a decision involving the child'.

Chapter Four of the BOI report discusses the need for advice to be sought from the relevant Aboriginal agency when making a placement of an Aboriginal child in out of home care, and for this role to be recognised in the Act. This adds further emphasis to the necessity of ensuring that Aboriginal people and community are genuinely consulted with in relation to an Aboriginal child being placed on a therapeutic order.

Other jurisdictions have Aboriginal and Torres Strait Islander identified positions that recognise the specific needs of children and young people. For example, in Western Australia, District and Secure Care Aboriginal Practice Leaders must be consulted with prior to considering the placement of a young Aboriginal person in a secure care facility.<sup>6</sup>

In New South Wales, the *Out-of-Home Care Service Model – Therapeutic Secure Care Programs*<sup>7</sup> guidelines state that: Where a child or young person being considered for a placement in therapeutic secure care is Aboriginal the case conference must include an Aboriginal caseworker from Metro Intensive Support Services and the Director Aboriginal Services Branch. In addition, consultation must occur with relevant members of the

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<sup>6</sup> WA Department for Child Protection, *Secure Care Background Paper*, Feb 2011, p.4, accessed at:

<http://www.dcp.wa.gov.au/Resources/Documents/Policies%20and%20Frameworks/SecureCareBackgroundPaper2011.pdf>

<sup>7</sup> NSW Government Department of Human Services, *Out of home care service model – Therapeutic Secure Care Programs*, May 2012, accessed at: [http://www.community.nsw.gov.au/docswr/assets/main/documents/oohc\\_service\\_model.pdf](http://www.community.nsw.gov.au/docswr/assets/main/documents/oohc_service_model.pdf)



child's family, kinship group, representative organisation or community in accordance with section 12 of the *Children and Young Persons (Care and Protection) Act 1998*.

NTCOSS submits that:

- As it is anticipated that there will be a high number of young Aboriginal people who are likely to be on therapeutic orders, the legislation should reflect a greater capacity for young people to continue to engage in cultural life, as this can often be important to the success of therapeutic interventions. This would be consistent with the UN Declaration on the Rights of Indigenous Peoples, Articles 11 – 13.
- In respect of Secure Care, consultation with appropriate representatives from the child or young person's family, kinship group, representative organisation or community must be mandated in the Bill.
- Significant consultation is required with relevant NT Aboriginal organisations, staff and community members around the suitability and implementation of therapeutic orders and admission to secure care facilities for each young Aboriginal person the subject of an application;
- That there be at least two specialist Aboriginal-identified roles (male and female) within the Department, made available to provide guidance on a child or young person's care plan, and that the legislation stipulate these staff members must be consulted regarding all secure care decisions;
- The Amendment Bill should reflect the importance to links and retention to language, culture, land and identity of young Aboriginal people. For example, Section 225K (1)(a) should read: *'for the purpose of receiving medical care or educational training, or participating in arrangements of a social, cultural, spiritual, recreational or vocational nature, in accordance with the related therapeutic care plan'*;
- That the legislation reflects guidelines for secure care facility staff when working with young Aboriginal people, and the specific needs and approaches that are critical for working with this group.
- That recommendations around healing programs and traditional healing models from the *Our Healing, Our Way* report by the Healing Foundation<sup>8</sup> be considered in relation to therapeutic approach for young Aboriginal people;
- This would also follow recommendations in Chapter Four of the BOI report.

**RECOMMENDATION 12:** That the Amendment Bill better reflects the importance of links and retention to language, culture and identity of all young people, particularly Aboriginal people.

**RECOMMENDATION 13:** That consultation with appropriate representatives from the child or young person's family, kinship group, representative organisation or community must be mandated in the Bill, in relation to secure care matters.

**RECOMMENDATION 14:** That there be at least two specialist Aboriginal-identified roles (male and female) within the Department, made available to provide guidance on a child or young person's care plan, and that the legislation stipulates these staff members must be consulted regarding all secure care decisions.

### 3.6 LANGUAGES AND CONCEPTS

The Amendment Bill includes requirements that a therapeutic order is to be explained to the child or young person and their family. Practitioners in the care and protection system know, as do those in the justice system, that the language and concepts behind placement of a child or young people can be very difficult to understand by a person unfamiliar with them, even with English as a first language. This unfamiliarity is heightened if English is a second language, and one has limited experience with welfare and legal processes.

NTCOSS submits that:

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<sup>8</sup> Healing Foundation (2012) *Our Healing Our Way: Alice Springs Healing Forum Report*, p. 13 – 14, available at: <http://www.healingfoundation.org.au/wp-content/uploads/2012/03/Alice-Healing-Forum-report.pdf>

- Explanations of concepts and process need to be appropriate to the needs of the client group, and wherever there are language or conceptual barriers to understanding, the engagement of qualified, objective interpreters to assist comprehension is vital;
- This may be articulated in the legislation in a manner similar to subsection 15(1) of the Youth Justice Act (NT) which states in part:

*‘...the explanation must be made in a language and manner the youth is likely to understand, having regard to the youth’s age, maturity, cultural background and English language skills.’*

- Section 223C (5) should include (c): ‘engage an appropriate interpreter where required’;
- Resources and other information tools to assist children, young people and their families to become familiar with concepts of the therapeutic care system should be developed;

**RECOMMENDATION 15:** That the Amendment Bill consistently recognise and articulate the need for thorough explanation of the rationale and related concepts to the stakeholders impacted by a child or young person’s therapeutic order and placement in a secure care facility, including the use of interpreters. This could be articulated similarly to the Youth Justice Act (NT) (as above).

### **3.7 MINIMUM AGE**

NTCOSS submits that a minimum age should be articulated in the Amendment Bill. To ensure that inappropriate institutionalisation of children does not occur, despite our concerns regarding the liberty of all young people as expressed above, NTCOSS considers that a minimum age of no less than 10 years of age be included. Other jurisdictions have a legislated minimum age, for example, in Victoria, the minimum age for the equivalent in secure care is 10 and in NSW it is 12.

**RECOMMENDATION 16:** That a minimum age for therapeutic orders, no younger than 10 years of age, be articulated in the Amendment Bill.

### **3.8 DURATION OF STAY**

NTCOSS acknowledges that the Department has been responsive to calls to reduce the maximum timeframe of therapeutic residential orders from 12 months to 6 months.

NTCOSS also recognise that there is not a standard, across-the-board timeframe for models in other jurisdictions, including NZ. The models most similar to that proposed in the NT are those of Western Australia and Victoria, although these models have a focus on ‘crisis stabilisation’. The timeframe in both Western Australia and Victoria is 21 days, with an extension of 21 days allowed under extreme circumstances.

NTCOSS submits that:

- Placement in a secure care facility must be based on a thorough and professional assessment of need;
- Placement in a secure care facility should be seen as a short-term crisis option within the scope of a long-term therapeutic intervention, with risk being safely managed in a non-secure setting;
- A transparent review mechanism is required, in keeping with details in 3.4

**RECOMMENDATION 17:** That the maximum duration of stay in secure care facilities should be further reduced to 3 months

### **3.9 TRANSITIONING**

NTCOSS has concern over the limited focus on transition back into the community setting reflected in the Amendment Bill. There is a need to articulate this point in the Amendment Bill to ensure that the legislation reflects

an approach that strives for the successful transition of young people to reduce their need for secure care in the future.

This point is articulated in the Victorian *Children, Youth and Families Act*:

*If a child is placed in a secure welfare service under [section 173](#), the Secretary must plan for and support the transfer of the child to and integration of the child in another suitable placement in order to reduce the need for the child to be placed in a secure welfare service again.*<sup>9</sup>

Facilities of a similar nature in other Australian jurisdictions are acutely focused on the transition of young people out of secure care. There are particular challenges in the NT when returning a child or young person to a remote context, where no services exist to continue supporting the young person.

NTCOSS submits that:

- The family or other situation to which the child or young person will return may require assistance to support continued therapeutic work;
- Should the Government or non-Government sector be required to continue therapeutic work with children and young people, it must be properly resourced to do so;
- There are unique challenges in the NT in returning children and young people to a remote context. The approach that the Department will take to overcome these challenges must be addressed and communicated

**RECOMMENDATION 18:** That the Amendment Bill articulate the responsibility and approach of the Department when transitioning a child or young person out of a secure care facility.

### **3.10 SECLUSION AND RESTRAINT**

NTCOSS observed a padded seclusion, or 'multi-sensory', room in the facilities in both Darwin and Alice Springs. It was explained that the rooms could be used to seclude particularly volatile or high-risk children as necessary in a low-stimuli and safe environment. Sections 61 and 62 of the *Mental Health and Related Services Act* clearly articulate the circumstances in which seclusion or restraint may be used, to manage the use of such provisions in NT Mental Health facilities.

NTCOSS submits that equivalent stipulations must be included in the Amendment Bill to establish circumstances when the padded room in the facilities (and other forms of seclusion or restraint) may be adopted in Secure Care.

**RECOMMENDATION 19:** That the Amendment Bill include provisions to establish the circumstances under which the padded room in the facilities (and other forms of seclusion or restraint) may be adopted in Secure Care.

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<sup>9</sup> Victoria Department of Human Services, *Children, Youth and Families Act 2005*, Section 175, accessed at [http://www.austlii.edu.au/au/legis/vic/consol\\_act/cyafa2005252/](http://www.austlii.edu.au/au/legis/vic/consol_act/cyafa2005252/)

## ADDENDUM (A)

### MATTERS OF CONCERN REGARDING SECURE CARE FACILITIES MANAGED BY DEPARTMENT OF CHILDREN AND FAMILIES

This Addendum gives brief detail to NTCOSS' concerns around issues that lie outside legislative matters. Most of these issues have been raised by the sector to both NTCOSS and the Department of Children and Families (the Department) on many occasions, so will not be explored in detail here. We will continue to seek opportunities to raise and work with the Department on these issues into the future.

#### SUMMARY OF RECOMMENDATIONS

**Recommendation A2:** That until a fully resourced continuum of therapeutic care exists in the NT, therapeutic orders administered by the Department must not be made, and secure care facilities should not be operational.

**Recommendation A3.1:** That space should be made and processes put in place to allow for the family of children and young people to stay in the facilities in a safe and comfortable environment, where appropriate.

**Recommendation A3.2:** That the perimeters for outdoor and recreation space be extended as far as practicable.

**Recommendation A3.3:** That safe and private space is allocated for therapeutic interventions, such as meetings and activities, large enough to include space for family.

**Recommendation A3.4:** That a detailed plan is articulated to stakeholders around how safety and therapeutic benefits will be maintained given the co-habitation of disparate ages, trauma histories, genders and cultural groups.

**Recommendation A3.5:** That the Department collaborate closely with the Department of Education and Training and other service providers specialising in therapeutic programs to deliver a diverse mix of education, training and interactive programs with children and young people.

**Recommendation A3.6:** That a public transport plan is developed, allowing time for thorough consultation with stakeholders, prior to the opening of the facility.

**Recommendation A4:** That Aboriginal community leaders, community organisations and peak bodies must be genuine stakeholders in processes relating to therapeutic orders and the secure care facilities.

**Recommendation A5:** That the Department consider a pilot workforce training program (as per details in A5) or related initiative/s to ensure that critical levels of quality staffing needed for this therapeutic model are achieved, without undermining the need for highly qualified and experienced therapeutic practitioners.

**Recommendation A6:** That the therapeutic model ensures cultural considerations are clearly articulated for all young people, including those of Aboriginal and from culturally and linguistically diverse (CaLD) backgrounds.

**Recommendation A7:** That the Department consults with stakeholders, including the community sector about current and proposed transition pathways from secure care, particularly for people residing in a remote community.

**Recommendation A8:** That the Department develop a detailed assessment plan, allowing time for thorough consultation with stakeholders, prior to the opening of the facility.

**Recommendation A9:** That internal policies and procedures of the Secure Care facilities articulate the need for child participation, consistent with Section 11 of the *Care and Protection of Children Act*.

## **A1. INSTITUTIONALISATION AND LOSS OF LIBERTY**

The Department has stated its recognition of the significant loss of liberty associated with a child and young person's placement on a therapeutic order. This loss of liberty and the institutionalisation of highly vulnerable people remains a deep concern of the sector. As stated in the submission, it is the **position of NTCOSS that until a fully resourced continuum of therapeutic care exists in the NT, therapeutic orders administered by the Department must not be made, and secure care facilities should not be operational.** The recommendations in this submission are made in recognition that implementation of these facilities is under way, and we seek to work closely with the Department to ensure these facilities are utilised as best as they can be.

Furthermore, research from Scotland found that secure care can be effective at containing issues that bring young people into care, but that secure care services were not effective in changing behaviours or managing to 'ameliorate the issues'.<sup>10</sup> This research also found that those who left secure care often became involved in the same issues that previously led to them being in secure care, and that their re-entering the system was more likely to be around criminal justice matters rather than welfare. Such patterns were similarly found to be the case in Alberta, Canada.

## **A2. SPECTRUM OF CARE OPTIONS**

As referred to in a letter from Clare Gardiner-Barnes on 29th June 2012, the Department over the next 12 months 'is committed to the development of therapeutic foster care, therapeutic non-secure residential care, secure care, counselling and treatment services.'

The Department is aware of the concerns consistently raised by the community sector that the above raft of services need to be properly resourced and utilised. NTCOSS submits that this must happen well before secure care services are considered for use.

The aforementioned research in Scotland found that 'many young people appear to be entering secure care due to a failure of residential care services ability to undertake intervention.'<sup>11</sup> Well-resourced residential care for children and young people is an essential element of these supportive community services. Furthermore, British Columbia (Canada), in their explorations into secure care (and based on the experience of secure care facilities in Alberta) have opted instead for investing in and strengthening access to safe housing, employment, mental health services, drug and alcohol services and educational opportunities for young people.<sup>12</sup>

**Recommendation A2:** That until a fully resourced continuum of therapeutic care exists in the NT, therapeutic orders administered by the Department must not be made, and secure care facilities should not be operational.

## **A3. THE SECURE CARE FACILITIES**

- Family spaces

While the Department has indicated that families should be able to stay in the facilities to support their young people through the therapeutic process, there appears to be no dedicated space for this to happen.

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<sup>10</sup> Hillan, L., *Reclaiming Residential Care: A positive choice for children and young people in care*, The Winston Churchill Memorial Trust of Australia, 2005. Available at: [http://www.churchilltrust.com.au/site\\_media/fellows/Hillan\\_Lisa\\_2005.pdf](http://www.churchilltrust.com.au/site_media/fellows/Hillan_Lisa_2005.pdf)

<sup>11</sup> Ibid. p.38

<sup>12</sup> Ibid, p.40

It has been stated that families could stay in vacant beds. This makes the assumption that the facility would never be full, which is concerning, as there could well be enough young people that fall into the current admission criteria to fill the beds. In addition, there must be a screening process for adults who are staying in the facility to ensure utmost safety for all young people.

**Recommendation A3.1:** That space should be made and processes put in place to allow for the family of children and young people to stay in the facilities in a safe and comfortable environment, where appropriate.

- Outside and recreation space

Given that the young people in this facility are not there to be punished but to receive therapeutic treatment, and that outdoor recreation is critical to the wellbeing of children and young people, the space given for recreation is not adequate. This was reported as a particular concern in the Darwin facility.

Furthermore, for young people and families who reside in remote communities, and are accustomed to living largely outside, appropriate space for being outdoors – for a variety of purposes, not only sport and recreation – must be provided.

**Recommendation A3.2:** That the perimeters for outdoor and recreation space be extended as far as practicable.

- Space for therapeutic interventions

A major limitation of the facilities is that there appear to be no rooms assigned for therapeutic interventions such as meetings with caseworkers, psychologists, lawyers, etc. Appropriate therapeutic space and resources must be assigned to ensure these important elements of a child or young person's therapeutic needs are met. There must also be space for families, should they be staying, to also be involved in therapeutic interventions.

Furthermore, rooms for calming and de-escalation have not been assigned. Given that the multi-sensory room is intended for people presenting with extreme risk of self-harm and harm to others, this room is inappropriate for the purposes of calming and de-escalation. It is understood that different sections of the facility can be 'locked down', but it is imperative that all children and young people can continue therapeutic activities without it impacting on their therapeutic progress.

**Recommendation A3.3:** That safe and private space is allocated for therapeutic interventions, such as meetings and activities, large enough to include space for family.

- Co-location with prisons (in Alice Springs)

While the Secure Care facilities and the correctional centres use separate entries and the prison is not necessarily visible from the facility, community members (particularly those most vulnerable who may have had family in the correctional centres) associate this space with the prison. Considering the institutional environment of the facilities, this facility is dangerously similar to – and could be feasibly considered as – a prison for people who have not committed a crime.

It is noted that "Frequently Asked Questions" information available from the NT Government in relation to Secure Care in 2010 stated:

*“Siting [sic] the secure care facility near a prison would not be conducive to the therapeutic outcomes required for clients: clients must not be linked either in their own minds or the minds of the public to criminal actions and punishment.”*

NTCOSS supports this earlier assertion and is disappointed by the Department’s changed position. See **Recommendation A2**.

- Disparate young people

It has not been made clear as to how the Department will manage the risks associated with young people presenting with a range of disparate trauma histories, and at disparate ages. Similarly to when children and young people are held in detention, the peer influence that can occur may have a negative impact on therapeutic interventions.

Furthermore, it has not been made clear as to how the matter of different genders will be dealt with in the facilities, to ensure that no child or young person is put at risk. Many young people with the kinds of behaviours that fit the current admission criteria are likely to also be victims of, or have witnessed, physical and/or sexual abuse and thus safety for all clients is a primary concern.

NTCOSS seeks information on whether the mix of young people in the facility will be considered before a young person is admitted. How the Department manages those at risk of severely disrupting the secure care facility must also be considered.

**Recommendation A3.4:** That a detailed plan is articulated to stakeholders around how safety and therapeutic benefits will be maintained given the co-habitation of disparate ages, trauma histories, genders and cultural groups.

- Schooling and other programs

We understand the Department of Education and Training (DET) will facilitate schooling in the facilities. It is critical that there is appropriate space for teachers to prepare classes, and that a room is assigned so that other disturbances in the facility will not interrupt classes.

Furthermore, opportunities and facilities for extra-curricular programs with a focus on training and development for young people would complement the schooling process. Children and young people on therapeutic orders should be given every chance to access such programs.

**Recommendation A3.5:** That the Department collaborate closely with the Department of Education and Training and other service providers specialising in therapeutic programs to deliver a diverse mix education, training and interactive programs with children and young people.

- Transport

It has not been made clear how family and visitors to the facility will be transported from Alice Springs and Darwin; whether there will be a bus or other service at appropriate times to facilitate as much connection to community as possible for children and young people held in the facility. It can not be assumed that families will have access to private cars or costly taxis.

**Recommendation A3.6:** That a transport plan is developed, allowing time for thorough consultation with stakeholders, prior to the opening of the facility.

#### **A4. CULTURAL FACTORS**

- Collaboration and consultation with Aboriginal people

It is a sad fact that the vast majority of children and young people who will be held in this facility will be from disadvantaged backgrounds, and many from Aboriginal families. NTCOSS notes the space given for 'Indigenous Specific Considerations for the Model' in the Therapeutic Framework document, and understand the Department is acquainted with these modes of work. However, NTCOSS considers that future stages in the development of therapeutic services should include a strong focus on Aboriginal community stakeholders and genuine steps must be taken to meaningfully involve Aboriginal people in the development of this model. Particular areas where this collaboration is vital are:

- Working with young people in a culturally appropriate way, taking into consideration their family and what challenges they are facing
- Integration of cultural and spiritual healing in the therapeutic model
- Inclusion of family in the therapeutic process
- Communication processes that recognise different modes and styles of safe and appropriate cross-cultural communication;
- Consideration of Aboriginal child-rearing practices; and
- Consideration of different world-views. Indeed, the well-being and safety of the child or young person is paramount, but consideration of world-view should not work in exclusion to this.

Given that this facility involves the removal of children and young people from family and community settings, it is particularly sensitive for Aboriginal people given the traumatic history of the Stolen Generations that is still felt today. NTCOSS submits that Aboriginal community leaders, community organisations and peak bodies must be genuine stakeholders in this process.

**Recommendation A4:** That Aboriginal community leaders, community organisations and peak bodies must be genuine stakeholders in processes relating to therapeutic orders and the secure care facilities.

#### **A5. STAFFING**

Quality of staff is central to the success of the therapeutic model, and therapeutic specialists are essential. It is necessary that staff are trained in and committed to the theory and practice of working therapeutically must be a priority. This was a key finding in a recent evaluation of Therapeutic Residential Care Pilot Programs run by the Victorian Department of Human Services<sup>13</sup>, making it even more urgent for secure therapeutic care. NTCOSS submits that this staffing approach must entail:

- a large enough pool of care staff both for the specific facility and for the supporting community services;
- ongoing training not only to enable staff to work therapeutically with young people but also to relate therapeutically with other staff and to maintain appropriate and reflective self-care
- therapeutic specialists must be embedded in the full functioning of the facility and its wider system.

At a recent NGO forum on this topic, the group discussed the idea of the Department piloting a local workforce training program. This would involve delivering a training package to local job-seekers which

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<sup>13</sup> Verso Consulting Pty Ltd, *Evaluation of the Therapeutic Residential Care Pilot Programs*, Final Summary and Technical Report, Department of Human Services, Nov 2011. Available at [http://www.dhs.vic.gov.au/\\_data/assets/pdf\\_file/0005/712868/therapeutic-residential-care-report.pdf](http://www.dhs.vic.gov.au/_data/assets/pdf_file/0005/712868/therapeutic-residential-care-report.pdf)



would specifically train them in the therapeutic model, values and approach underpinning the Secure Care facility. It could also include supporting local practitioners in getting the qualifications and expertise they need to work in this type of therapeutic environment. Of course, the high levels of professional expertise that is required for this facility must be maintained.

This approach would save on the costs of recruiting interstate or international staff, increase local workforce capacity, and maximise the benefits of local knowledge which would undoubtedly lead to better outcomes for the client group and less staff turnover. Given that there remains significant time before the facility is ready to begin admitting clients, this seems a responsible, efficient, sustainable and progressive approach to appropriately staffing the facility.

Further, this is an opportunity to focus on recruiting Aboriginal people into these roles, whose understanding and ability to work with Aboriginal clients will assist in the realising of therapeutic benefits to children and young people.

**Recommendation A5:** That the Department consider a pilot workforce training program (as per details in A5) or related initiative/s to ensure that the critical levels of quality staffing needed for this therapeutic model are achieved, without undermining the need for highly qualified and experienced therapeutic practitioners.

**A6. THERAPEUTIC MODEL – including those from culturally and linguistically diverse (CaLD) backgrounds**  
NTCOSS submits that the therapeutic model must have a clear focus on cultural considerations. This should involve how best to work and interact with both Aboriginal young people and those from CaLD backgrounds, the population of which is growing significantly in the NT. There is little available data on this cohort, but a telling set of figures from CASY House (YWCA) in Darwin suggests that the number of young people from CaLD backgrounds presenting at youth services is increasing. In 2006, 2.5% of the total number of young people accessing the CASY House services were of CaLD background. In 2010 this figure was 8.6% and in 2011 the figure rose again to 12.8%.<sup>14</sup> Whether or not similar trends are reflected by the Department's records, this is significant and must be incorporated into planning.

**Recommendation A6:** That the therapeutic model ensures cultural considerations are clearly articulated for all young people, including those of Aboriginal and culturally and linguistically diverse (CaLD) backgrounds.

## **A7. TRANSITIONING**

NTCOSS is concerned that the proposed legislation does not impose a responsibility on the Department to ensure the welfare of the child or young person upon their release from secure care or on the expiration of the therapeutic order (addressed in section 3.9 of the attached submission)

The 'Secure Care Therapeutic Framework' document does refer to the transition of children and young people out of secure care, with clinical support staff and caseworkers playing a significant role in that transition and the organisational commitment of the Department in the provision of resources.

NTCOSS submits that the Department must consider the details of transition more fully, in particular for children and young people from a remote context, and consult with the sector on what appropriate pathways currently and should exist. Solutions may require further resourcing of Government and non-Government community services.

**Recommendation A7.1:** That the Department consults with stakeholders, including the community sector about current and proposed transition pathways from secure care, particularly for people residing in a remote community.

## **A8. ASSESSMENT**

NTCOSS submits that further information is needed about the assessment process for children and young people on therapeutic assessment orders. It is imperative that assessments recognise all the relevant psychological, psycho-social, educational and other factors to allow the risks and difficulties for young people to be identified to ensure accurate and successful treatment.

During assessment, the complexity of background issues of presenting children and young people must be taken into full account, including trauma history, AOD and VSA misuse, domestic and sexual abuse, Foetal Alcohol Spectrum Disorder, among others. Assessment must account for the fact that some behavioural challenges will be psychologically based and some physically based. The best methods of assessment must be employed to account for these many factors and need to be culturally appropriate in terms of process and content.

**Recommendation A8:** That the Department develop a detailed assessment plan, allowing time for thorough consultation with stakeholders, prior to the opening of the facility.

## **A9. CHILD PARTICIPATION**

The involvement of young people and other relevant stakeholders in therapeutic assessment and care orders has been articulated throughout the Amendment Bill and the Act. The Department is aware of the therapeutic benefits of involving all the relevant stakeholders in a plan, and that such involvement is more likely to lead to long-term success of care plans and other agreements. Including the child or young person and their family in their own therapeutic process, at all stages, is necessary both for better therapeutic outcomes, and in the spirit of self-determination. NTCOSS submits that key internal policy and procedure documents should articulate

**Recommendation A9:** That internal policies and procedures of the Secure Care facilities articulate the need for child participation, consistent with Section 11 of the *Care and Protection of Children Act*.