

INQUIRY INERTIA:
INDIGENOUS
SERVICES STILL
BEARING THE WEIGHT
AFTER DECADES
OF GOVERNMENT
INACTION

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- 1 Australian Broadcasting Corporation, 'Australia's Shame', *Four Corners*, 25 July 2016 (Sarah Ferguson) <<http://www.abc.net.au/4corners/stories/2016/07/25/4504895.htm#transcript>>.
- 2 Matt Doran and James Dunlevie, 'Four Corners: PM Turnbull to Set Up Royal Commission into Mistreatment of Children in Detention', *ABC News* (online), 26 July 2016 <<http://www.abc.net.au/news/2016-07-26/turnbull-calls-for-royal-commission-into-don-dale/7660164>>.
- 3 Attorney-General for Australia, 'Royal Commission into the Protection and Detention of Children in the Northern Territory – Reporting Date Extended', (Media Release, 30 August 2017) <<https://www.attorneygeneral.gov.au/MediaReleases/Pages/2017/ThirdQuarter/Royal-Commission-into-the-protection-and-detention-of-children-in-the-Northern-Territory-reporting-date-extended.aspx>>.
- 4 Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory, *The Interim Report* (2017) 7.
- 5 Peter Callaghan, 'Royal Commission into the Protection and Detention of Children in the Northern Territory' (Speech delivered at Court 11, Northern Territory Supreme Court, 11 October 2016) 4 <<https://childdetentionnt.royalcommission.gov.au/NT-public-hearings/Documents/transcripts-2016/Opening-Senior-Counsel-Assisting.pdf>>.

The image you have just seen isn't from Guantanamo bay or Abu Ghraib but Australia in 2015. A boy, hooded, shackled, strapped to a chair and left alone. It is barbaric.¹

On Monday 25 July 2016, the Australian Broadcasting Corporation's *Four Corners* program aired the episode 'Australia's Shame'. The images of horrifying mistreatment of children in Darwin's Don Dale Youth Detention Centre ('Don Dale') sent shockwaves through Australian society overnight. The revelations were of such a magnitude that Prime Minister Malcolm Turnbull announced a Royal Commission into juvenile detention in the Northern Territory the following day.² The findings from the Royal Commission into the Protection and Detention of Children in the Northern Territory (the 'Royal Commission') are due to be handed down on 17 November 2017.³

Many are sceptical of the likelihood that this inquiry will actually spark institutional reform. This is not surprising – the interim report released by the Commonwealth Attorney-General's Department found that there had been '50 earlier reports and inquiries on the issues covered by the Commission's Terms of Reference'.⁴

As Senior Counsel Assisting, Peter Callaghan SC said in his opening remarks on the first sitting day of public hearings on 11 October 2016:

It invites the question as to whether there is a need to confront some sort of 'Inquiry mentality', in which investigation is allowed as a substitution for action, and reporting is accepted as a replacement for results.⁵

University of Canberra Professorial Fellow Michelle Grattan writing for *The Conversation* observed that:

It is surely extraordinary it took a *Four Corners* program, excellent as it was, to force the attention of Northern

Territory and federal politicians on to the scandal of the NT detention system when most of the evidence had been before their eyes for a long time.⁶

Grattan's comments included reference to the report released by the Northern Territory Children's Commissioner in 2015, specifically investigating the services provided at Don Dale and the incidents that sparked the use of tear gas and other controversial restraints on detainees in August 2014.⁷ At the time, Northern Territory Corrections Commissioner Ken Middlebrook said the investigation 'is certainly not in-depth and doesn't really paint the whole picture of what happened'.⁸ Middlebrook resigned in 2015 after a convicted murderer and rapist escaped from a prison work camp and due to a number of problems at both Darwin's adult prison and Don Dale.⁹

In spite of the numerous government-led inquiries and reports into Indigenous youth detention and the criminal justice system, it would seem that Indigenous community organisations are at the forefront of advancing social outcomes for their own people. Organisations such as Aboriginal Medical Services Alliance Northern Territory ('AMSANT'), Danila Dilba Health Service ('Danila Dilba'), Warlpiri Youth Development Aboriginal Corporation ('WYDAC'), Northern Aboriginal Alliance Justice Agency ('NAAJA') and Central Australian Aboriginal Legal Aid Service ('CAALAS') have been crucial bodies that have advocated for Aboriginal self-determination and culturally appropriate services in the Northern Territory. Unfortunately, it appears that long-term commitments from governments to tackle systemic failures as a result of these reports and inquiries so far have been lacking.

Throughout July 2017, I completed an internship at Danila Dilba and became familiar with the efforts of some Indigenous organisations working in the Northern Territory first hand. I attended Darwin's National Aborigines and Islanders Day Observance Committee ('NAIDOC') week march¹⁰ under Danila Dilba's banner and the resounding message was clear: seize this political moment to create lasting change to better the outcomes for Indigenous people in this country. Thomas Mayor, a Torres Strait Islander man born and raised on Larrakia Land (Darwin) and Northern Territory Branch Secretary of the Maritime Union of Australia, spoke to the crowd of attendees about the need to capitalise on the current governmental focus on Indigenous people, citing the Royal Commission, the 'Uluru Statement from the Heart'¹¹ and the Referendum Council Report and Recommendations¹² towards a referendum on a First Nation's Voice to Parliament. He acknowledged that, although there had been many inquiries before, this is a unique time. He urged everyone to 'join the community in fighting to see change' in order to 'build a better future for our mob'.¹³ He pressed the importance of 'unity' amongst Indigenous people to avoid 'this opportunity being lost'.

It is promising that amidst the submissions and hearings, the Northern Territory government has not waited for the Royal Commission's recommendations to begin changing how things are managed at Don Dale. Within days of the *Four Corners* story breaking, Territory Families contracted Danila Dilba to assist in providing services to the children and young people in detention for an initial period of six months.¹⁴ This was instigated under Adam Giles' Country Liberal Party and has been continued by the Labor Party who won the Northern Territory election in August 2016. There is hope among justice agencies, members of the legal profession and sections of the broader community that with bi-partisan support, governments

6 Michelle Grattan, 'Evidence of NT Detention Centre Abuse Was There for All to See', *The Conversation* (online), 26 July 2016 <<https://theconversation.com/evidence-of-nt-detention-centre-abuse-was-there-for-all-to-see-63084>>.

7 Office of the Children's Commissioner (Northern Territory), 'Own Initiative Investigation Report Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre' (Media Release, 17 September 2015) 1 <https://occ.nt.gov.au/_data/assets/pdf_file/0004/440860/media-release-childrens-commissioner-170915.pdf>.

8 Zach Hope, 'Northern Territory Corrections Boss Hits Back at the Children's Commissioner's Investigation into Don Dale Youth Detention Centre Fracas', *NT News* (online), 18 September 2015 <<http://www.ntnews.com.au/news/northern-territory/northern-territory-corrections-boss-hits-back-at-the-childrens-commissioners-investigation-into-don-dale-youth-detention-centre-fracas/news-story/705d80a51ca855362f804c0be71fdbe>>.

9 Xavier La Canna and James Oaten, 'NT Corrections Boss Ken Middlebrook Quits in Wake of Murderer, Rapist Edward Horrell's Escape from Prison Work Camp' *ABC News* (online), 29 December 2015 <<http://www.abc.net.au/news/2015-11-12/nt-corrections-boss-ken-middlebrook-quits/6935512>>.

10 'NAIDOC Week celebrations are held across Australia each July to celebrate the history, culture and achievements of Aboriginal and Torres Strait Islander peoples': National Aborigines and Islanders Day Observance Committee, *About NAIDOC Week* (2016) NAIDOC <<http://www.naidoc.org.au/about>>.

11 First Nations National Constitutional Convention, 'Uluru Statement from the Heart' (26 May 2017).

12 Referendum Council, 'Final Report of the Referendum Council' (30 June 2017) 2.

13 Thomas Mayor, (Speech delivered at the NAIDOC Week March, Darwin, 7 July 2017).

14 Territory Families is the Northern Territory government department responsible for youth justice and the management of Don Dale Youth Detention Centre.

- 15 Australian Institute of Health and Welfare, 'Northern Territory: Youth Justice Supervision in 2015-16' (Youth Justice Fact Sheet No 77, 2017) 2 <<https://www.aihw.gov.au/getmedia/ff88a3b4-d9a6-4fb3-add2-82fd9799b55a/YJA-2015-16-NT.pdf.aspx>>. 'The rate of Indigenous young people aged 10-17 under supervision on an average day in the Northern Territory was 120 per 10 000, compared with 5 per 10 000 for non-Indigenous young people'.
- 16 Northern Territory Department of Correctional Services, 'Annual Statistics 2014-15' (Report, 2016) 9 <https://justice.nt.gov.au/_data/assets/pdf_file/0009/269793/2014-15-NTDCS-Annual-Statistics.pdf>.
- 17 Australian Institute of Health and Welfare, 'Youth Detention Population in Australia 2016', (Bulletin 138, 2016) 13 <<https://www.aihw.gov.au/getmedia/fe88e241-d0a2-4214-b97f-24e7e28346b6/20405.pdf.aspx?inline=true>>.
- 18 Ibid 7.
- 19 Department of Children and Families, 'Annual Report 2015-16' (Northern Territory Government, 30 September 2016) 26 <https://territoryfamilies.nt.gov.au/_data/assets/pdf_file/0010/379594/Department-of-Children-and-Families-annual-report-2015-16.pdf>.
- 20 Katharine Murphy, 'Indigenous Child Removal Rate Risks "Second Stolen Generation"', Kevin Rudd Warns', *The Guardian* (online), 13 February 2017 <<https://www.theguardian.com/australia-news/2017/feb/13/indigenous-child-removal-rate-risks-second-stolen-generation-kevin-rudd-warns>>.
- 21 Danila Dilba Experience, *About Us*, Danila Dilba Health Service <<http://www.daniladilbaexperience.org.au/about-us.html>>.
- 22 Danila Dilba, 'A Blueprint For Change Part I: Youth Justice' (Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, May 2017) 1 (on file with author).
- 23 Interview with Delsey Tamiano (Darwin, 21 July 2017).

will deliver authentic and lasting change to the lives of Indigenous children and young people.

Juvenile detention in the Northern Territory is a race issue. Despite Indigenous 10-17 year olds comprising only 45 per cent of the Northern Territory's total youth population,¹⁵ 94 per cent of receptions into youth detention in the Northern Territory during 2014-2015 were Indigenous detainees.¹⁶ The Northern Territory also has the highest rate of detention of children and young people in Australia, with almost 16 per 10 000 children under supervision on an average day based on June 2016 quarter statistics, compared to the other states which range from approximately one to five children under supervision in the same quarter.¹⁷ Over half of Australian children incarcerated in the June quarter 2016 had yet to be sentenced, with the child or young person awaiting court proceedings.¹⁸

The rates of Indigenous children in out of home care in the Northern Territory have dramatically increased in the last few years, while non-Indigenous population figures have had minimal fluctuations. Between 2011 and 2012, the number of Indigenous children placed in out of home care was 573, and by 2015-16 this had increased to 908.¹⁹

In May 2017, former Labor Prime Minister Kevin Rudd delivered a speech marking the ninth anniversary of the national apology to the Stolen Generation. He advocated for a wholesale revision of Indigenous child removal policies, stating: 'We do not want to see the emergence of a second stolen generation, not by design, but by default'.²⁰

Since August 2016, Danila Dilba has been contracted to offer a new regime of outreach services to the detainees in Don Dale. Danila Dilba is an Indigenous medical service that is community controlled and provides a range of primary health and specialist health services.²¹ This includes health promotion education, counseling, allied health, drug and alcohol services, and chronic disease care. Danila Dilba is uniquely placed to service the local Indigenous community from which most juvenile detainees come. It has trusted relationships with that community, with a client base of more than of 60 per cent of Greater Darwin's Region's Indigenous population (amounting to over 12,000 people).²²

Whilst I was interning at Danila Dilba, I spoke with the Senior Youth Engagement Officer Delsey Tamiano, who believes there is no one simple solution to resolve the social issues affecting Indigenous youths. However, she is adamant in her belief that the structural change required in the youth justice and care and protection services in the Northern Territory needs to be Indigenous-driven, stating:

We know what we should be doing for our mob... We are best placed to provide what young people need, as we are here for the long haul and are offering a continuity of care. We have been leading the way for a long time and have a presence in young people's lives that extends into their adulthood.²³

Of late, Danila Dilba has expanded to include a law and policy team which lobbies government, meets with stakeholders and writes submissions to government inquiries. Chief Executive Officer Olga Havnen recognised that there was an opportunity for her organisation to provide important insights informed by Danila Dilba's intimate relationships with Indigenous communities and medical expertise and thus has been a key advocate for Indigenous people throughout the Royal Commission.

In their youth justice submission, they championed treatment programs centered on the needs and wellbeing of

children and young people as a primary objective.²⁴ They attributed the degree of over-representation of Indigenous people in the Northern Territory youth justice system to both the underlying risk factors that give rise to offending and re-offending and to the structure and operation of the Northern Territory youth justice system. Other organisations like NAAJA have echoed similar sentiments in other inquiries such as their submissions to the 2011 Review of the Northern Territory Youth Justice System²⁵ and the 2014 Review of the Northern Territory Youth Detention System,²⁶ the second of which they co-authored with Central Australian Aboriginal Legal Aid Service ('CAALAS') and Northern Territory Legal Aid Commission ('NTLAC').

The Tivendale School at Don Dale reported that more than 90 per cent of students at the school were Aboriginal, with English as a second language.²⁷ All students were reported as having 'extremely low levels of literacy and numeracy', and many present with diagnosed learning disabilities and social, emotional and psychological issues including: Fetal Alcohol Spectrum Disorder, Attention Deficit Hyperactivity Disorder, Oppositional Defiant Disorder, Autism Spectrum Disorder, histories of neglect, trauma and substance abuse, speech, hearing and vision disability.²⁸

The Interim Report, released by the Royal Commission, acknowledged the continued impact of intergenerational trauma on Indigenous people within the Northern Territory:

Aboriginal people have experienced trauma stemming from the results of colonisation and the loss of culture and land, as well as government policies such as the forced removal of children. This trauma has had a negative impact on cultural identity, which consequently has reduced the capacity of Aboriginal people to participate fully in their own lives and community. The fact that so many Aboriginal children and young people enter out-of-home care and youth detention in the Northern Territory is a consequence of these factors.²⁹

Danila Dilba submitted to the Royal Commission that there is a failure to recognise the extent to which health issues, disability and the impact of trauma on socio-emotional development may contribute to offending behaviour and will perpetuate 'more of the same', that is, recidivism.³⁰

Danila Dilba further added that the degree of over-representation in the Northern Territory Youth Justice system is a reflection of the structure and operation of that system. The system itself compounds over-representation and the likelihood of further offending and detention through:

- The lack of mechanisms for early identification of young people at risk of offending or reoffending.
- The operation of police powers to determine whether to divert from the youth justice system.
- A lack of suitable diversionary programs and alternatives to institutional incarceration.
- The high proportion of children and young people held in detention on remand.
- The inability of the system to direct young people into intervention and treatment programs until after they have been dealt with by the court.
- Failure to provide appropriate treatment and support to children and young people in regard to their health, behavioural issues or past trauma.³¹

24 Danila Dilba, Submission to the Royal Commission, above n 22.

25 NAAJA, Submission to the Youth Justice Review Panel (Northern Territory Government), *Review of the Northern Territory Youth Justice System*, July 2011 <<http://www.naaja.org.au/wp-content/uploads/2014/05/Youth-Justice-Review-Submission.pdf>>.

26 CAALAS, NAAJA and NTLAC, 'Review of the Northern Territory Youth Detention System' (Submission to the Northern Territory Government, November 2014) <<http://www.naaja.org.au/wp-content/uploads/2014/05/Joint-CAALAS-NAAJA-and-NTLAC-submission-to-the-Independent-Review-of-You...pdf>>.

27 Tivendale, 'Tivendale School Profile and Fact Sheet' (Executive Summary, Department of Education Northern Territory, 6 December 2016) 5 <<https://childdetentionnt.royalcommission.gov.au/NT-public-hearings/Documents/evidence-2017/evidence16march/Exh-089-002.pdf>>. Tivendale is located within Don Dale Youth Detention Centre, for detainees 10–17 years old who are remanded or sentenced to a period of detention.

28 Ibid.

29 Royal Commission, above n 4, 35.

30 Danila Dilba, above n 22, 1, 7.

31 Ibid 3.

32 Royal Commission, above n 4, 3.

33 The Throughcare model is a voluntary program that helps Indigenous detainees 'stay out of trouble' once they have been released from detention: see, eg, NAAJA, *Throughcare Project* <<http://www.naaaja.org.au/our-services/indigenous-throughcare-project/>>.

34 Interview with Delsey Tamiano (Darwin, 21 July 2017).

35 *Ibid.*

36 For example, Darwin's Timmy Duggan, a former NBL basketball player, runs one such program. He is the founder of 'Hoops 4 Health,' a program promoting fitness and health education: *Hoops 4 Health Aboriginal Corporation* (14 April 2014) Australian Indigenous HealthInfoNet <<http://www.healthinfonet.ecu.edu.au/key-resources/organisations?oid=1272>>.

37 Transcript of Proceedings, Royal Commission into the Protection and Detention of Children in the Northern Territory (Commissioner White and Commissioner Gooda, 12 May 2017) 3889.

38 *Ibid* 3893.

39 *Ibid* 3896.

The evidence presented to the Royal Commission so far reveals a youth detention system that 'is likely to leave many children and young people more damaged than when they entered'.³²

In the last 12 months, Danila Dilba has expanded their original contract with Territory Families, which allowed them to observe, monitor and report the experiences of detainees in Don Dale, to now include offering court support, recreational activities, advocacy, health checks, individual appointments, referrals, and a Throughcare model of post-release support.³³ Danila Dilba visits Don Dale two to three times a week providing a mixture of individual and group sessions. Delsey Tamiano sees her role as primarily one of building relationships: 'As an organisation, we are concerned with health and wellbeing, but for the children in Don Dale we want to connect, create trust, and provide a good mentoring role'.³⁴

Tamiano notes the crucial work they do as advocates for detainees in Don Dale:

Sometimes the children are afraid to make complaints about their treatment in detention, due to fear of further victimization. Although we always encourage detainees to lodge a formal complaint, with their consent we can notify Territory Families on their behalf.³⁵

Danila Dilba facilitates a range of recreational activities for children in Don Dale and those recently released.³⁶ NAAJA has also been instrumental in post-release programs for youth, working with Don Dale detainees since 2009.³⁷ Throughout the Royal Commission hearings, NAAJA representatives commented on their frustrations with the exit plans created by the internal Don Dale caseworkers, in particular due to their lack of comprehensiveness. Project Coordinator of NAAJA Throughcare program Samantha Taylor-Hunt stated:

I hesitate to say that they're not being done, but we're not seeing them, and we're not feeling like they're thorough in their putting together strong post-release plans particularly. So exit plans are designed to lead that youth back into community, is my understanding, and we rely much more heavily on our case management plans that our youth worker puts together ...³⁸

For detainees who are released after being on remand, NAAJA has partnered with Danila Dilba to provide appropriate care for their social and emotional needs. In the Royal Commission hearings, manager of NAAJA Throughcare program Thomas Quayle remarked:

our area or expertise is post-release caring and Throughcare support. You know, we are not therapeutic. So partnering with Danila Dilba allows us then to ensure we have got another member of staff in place who is able to take care of the therapeutic needs of a young person and is well supported by an organisation for whom that is the area of expertise.³⁹

The Royal Commission is yet to hand down their recommendations, so it remains to be seen what these will be and whether they will be implemented, and if so, what their impact will be. It is clear however, that Indigenous-led efforts need to be at the heart of lasting reform. While there are mixed feelings among stakeholders whether this Royal Commission will deliver the much-needed change that the youth detention

and care space requires, for Tamiano, it is imperative to not lose sight of the individual child in the system. With her years of experience working with Indigenous children, Tamiano recalls a Back2Bush program that Danila Dilba used to run that took young people out of Darwin to Kakadu to go fishing and camping, often for the first time:

40 Interview with Delsey Tamiano
(Darwin, 21 July 2017).

I remember looking back at photos from that day, and all I could see were the smiling faces of these children. Governments talk about statistics but you cannot measure a smile on a child's face. It is important to keep in mind that we can only do what we can – we can't save the world but we can make a difference. Don't give up.⁴⁰

