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Ms Megan Mitchell  
National Children's Commissioner  
Via email [kids@humanrights.gov.au](mailto:kids@humanrights.gov.au)

27 May 2016

Dear Ms Mitchell

**RE: Submission on the Optional Protocol to the Convention against Torture (OPCAT) in the context of Youth Justice Detention Centres**

Thank you for the invitation to make a submission in relation to the above. We look forward to participating in the round table discussions. We make the following brief submission in advance of these discussions.

Background

The Commission represents young people in criminal justice proceedings in the NT and takes an active interest in the matters affecting young people in detention.

The Commission is represented on the NT Government Department of Correctional Services Youth Detention Reform Advisory Group which was established following the review of youth detention by Michael Vita.

The Commission has had staff appointed on the NT Government Department of Attorney-General and Justice Youth Justice Advisory Group.

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Purpose Built Facilities

The Commission has always endorsed the need for purpose designed and built youth detention facilities in the NT. While this demands a significant resource commitment, it is vital that youth detention facilities are not seen only as a place of detention but a place of rehabilitation in which a young person has the opportunity to make future life decision.

Resourcing in NT youth detention centres

Regrettably, the Department of Corrections continues to struggle to maintain a consistent and well-trained staffing model in the current two detention centres. Although more relevant training has been provided to the current and new youth justice officers in the last 12 months, the majority of the youth justice officers only stay for very short terms due to lack of supervision and resources. Given there has been little awareness of, or emphasis on, the human rights of the children, detainees are quite often disciplined with punitive measures which are not necessarily conducive to their rehabilitation. In addition, we also observe that very limited case management and support has been provided to the detainees. Most often, detainees are transferred to another detention centre without any notice/ communication and are remanded for significant periods of time without any assistance from the staff at detention centres to make contacts with their families or to develop bail proposal or post-release reintegration plan. In particular, we note that the current situation further disadvantages female and very young indigenous detainees.

Complaints and Monitoring Oversights

We do not consider the current mechanisms are adequate.

The Commission has urged the NT to establish an Independent Custodial Inspector role to ensure national and international standards are being met.

The Community Visitor Program ('CVP') as set up under the *Mental Health & Related Services Act, Disability Services Act, Alcohol Mandatory Treatment Acts* is a model which could be considered for an Independent Custodial Inspector.

Visitors and Panels are appointed by the Minister, cannot be employees of the Department of Corrections, have powers of entry to facilities without notice and power to inspect all records. Visitors have to respond to requests for visits within 24 hours, inspect seclusion and restraint registers at least every six months.

We recommend that the inspection of seclusion and restraint registers for children be more frequent than for adults, say bi-monthly.

CVP receives notification within a particular time frame of use of certain powers against detainees. Visitors and Panel members are paid, not volunteers.

We submit that the CVP could be more effective than the official Visitor system presently in place under the YJA as the powers and duties are more clearly set out in statute.

It usually involves Visitors doing weekly visits to the facility, getting to know detainees, working with the service on a Visitor-to-worker basis in the first instance, and is not just based on having a complaint that is then investigated, or a large-scale inquiry. The CVP often is alerted to issues by staff members who are concerned about conditions. The Children's Commissioner could also be the Principal Community Visitor for the youth detention centres (the Anti-Discrimination Commissioner is presently the Principal Community Visitor for the other facilities).

The CVP as presently set up is directed at the facilities where people are involuntarily detained for some reason. In that way, the Children's Commissioner might continue to be the appropriate model to monitor out-of-home care etc, but for detention, the protections need to be ramped up and the CVP is a more intensive monitoring/oversight model.

The CVP does not hold public hearings, or publish reports other than its annual report. In this way, it can be less confronting for services to deal with. The emphasis is on resolution at the lowest possible level, but with elevation to Ministerial level if needed, and quick resolution. It can refer complaints to the relevant Commissions (Health & Community Services Complaints Commission and Anti-Discrimination etc) if more appropriate. It complements the work of the relevant Commissions, rather than competing or taking away from it.

#### Childrens' understanding of Complaints Processes

We do not believe that young people in detention in the NT have sufficient knowledge of the processes available to them to raise issues. More importantly, they do not have faith that their complaints will be taken seriously.

We receive feedback regularly indicating that young people who have complaints do not follow through with them as they do not believe that their complaint will be actioned.

A more robust, transparent and independent complaint mechanism such as the custodial inspector role would increase awareness that young people have of complaints processes and heighten their faith in making complaints.

### Proposed Amendments to the *Youth Justice Act*

There are proposed amendments to Part 8 Division 2 of the *Youth Justice Act*. To make it easier to follow this, I attach a marked-up copy of the provisions, into which I have incorporated the proposed amendments.

We believe the amendments are an improvement on the current law, as they regulate the type of restraints that may be used and the circumstances in which they can be used.

### The Age of Capacity

NTLAC supports the raising of the age of capacity and endorsed the Jesuit Social Services Report on this issue in 2015.

### OPCAT Ratification

We support the ratification of the OPCAT and we believe it will enable inspections to be taken place across all detention centres and accordingly ensure consistency and accountability in terms of practice and treatment of all juvenile detainees across all jurisdictions in Australia. Further, the ratification will encourage more prompt and adequate responses from state and territory governments should there be any reports of maltreatment arising out of the inspections from the United Nations Subcommittee. In our view, this will certainly provide a more comprehensive monitoring mechanism.

We look forward to further participation in this consultation. Please feel free to contact us should you require further information.

Yours sincerely



SUZAN COX QC

**Director**