THE GASSING OF THE DON DALE 6

Extracts from the August 2015 Report of Children’s Commissioner Colleen Gwynne to NT Government, based on events that occurred from 4th to 21st August 2014 in the Behaviour Management Unit (BMU) of the Don Dale Youth Detention Centre.

The decision to conduct this self-initiated investigation was made by the former Children’s Commissioner, Dr Howard Bath.

On 12 August 2014, concerns were raised by a professional stakeholder on behalf of five young persons who were in detention. The complaint related to the alleged indefinite nature of the confinement in the BMU, and the unhygienic living conditions of the environment. It was the complainant’s opinion that the conditions were ‘inhumane’ as young persons were being held in solitary confinement in cramped and darkened cells, for up to 23 hours a day.

There were also concerns about the long-term impact this could have on the five young persons’ psychological and physical wellbeing.

The complainant’s concerns were initially raised with the Commissioner of the Northern Territory Department of Correctional Services (’Correctional Services’) and a written response was provided on 14 August 2014. Correctional Services’ response did nothing to reassure the complainant of the young persons’ wellbeing.

On 20 August 2014, the complainant lodged a complaint with this office, and provided a copy of the Commissioner’s letter of response. On 22 August 2014, two days after becoming aware of the concerns, Dr Bath was contacted by Correctional Services, who informed him that there had been a critical incident within the BMU and that a number of young persons had armed themselves with weapons and had tried to escape. He was further advised that the young persons had caused significant damage to detention centre property and that the only way to return any form of order was to use CS gas7, and the prison security dog from the Darwin Correctional Centre.

On 22 August 2014, Dr Bath attended Don Dale to assess the welfare of the young persons, and also to inspect the conditions and damage allegedly caused to the BMU. During this visit he confirmed that there had been six young persons confined to the BMU, prior to and during the incident of 21 August 2014. These events were widely reported in local, national and international news.

Each cell contains a concrete platform which is used for sleeping, a toilet, a fluorescent light fixture, and an intercom. Three of the internal walls are made of cement-rendered concrete. The front of each cell consists of metal bars covered with a metal mesh screen. Some cells also have a perspex screen. The door to each cell is made from bars and screen mesh and includes a hatch which can be opened from the outside. Each door is fitted with a handle and a lock on the outside which must be engaged with a key to lock the door. There is no handle on the inside of the door (that is, inside the cell). The door is not locked if it is only pulled closed, but it cannot be opened from inside the cell, as there is no handle.

The cells do not have any air-conditioning, or fans. There are no facilities for the young persons to access drinking water, nor are there any facilities for hand washing after using the toilet, or before eating meals. There are no windows which allow direct natural light, or ventilation.

Six young persons were being held in the BMU between 4 and 21 August 2014, for periods of between 6 to 17 days, depending on the individual. Five of these young persons had been involved in an escape from the medium security section of Don Dale on 2 August 2014. They were all placed in the BMU after they were returned to detention.

YJO B told investigators: ‘The kids kept asking if they could get out and management never had any answers for them and the detainees went off and I don’t blame them, I would have too. It wouldn’t have happened if they didn’t keep them in there for so long. It is horrible, it stinks, they do the spring cleaning every Saturday but when you’ve got so many kids in there and they are all going to the toilet and they were sharing cells, it is not nice living arrangements or accommodation, I am surprised it didn’t happen sooner.’

YJO A informed investigators the incident occurred as a result of a build-up of being kept in the BMU for so long, and boredom. Young person ‘E’ later told him he was angry because the shift supervisor had told him he was getting locked in for another 72 hours.

The incident concluded with the young persons being escorted from the BMU and out onto the basketball court, where there were sprayed with water in an effort to decontaminate them.

The GM sought approval from the on-call Magistrate to transfer the young persons from the BMU in Don Dale to the adult prison. The Magistrate gave verbal approval to temporarily transfer the young persons across to the adult correctional facility, pursuant to the emergency provisions contained in the Youth Justice Act. At 11.58 pm on 21 August 2014, the Magistrate e-mailed the GM written confirmation of the verbal approval she had provided earlier. The approval allowed for Correctional Services to transfer FIVE (emphasis added) young persons to the adult prison.

The Magistrate’s e-mail specifies the number of young persons she had authorised be transferred to the adult prison, however SIX (emphasis added) young persons were transferred across. ‘E’ was one the transferees, despite him being only 14 years of age. This was in breach of the Youth Justice Act…

He also said that he was not aware that spit hoods were used on the young persons on 21 August 2014, or on ‘E’ when he was returned to Don Dale on 22 August 2014. He confirmed that he did not authorise their use and he would only ever authorise the use of a spit hood if a young person was spitting. He was not aware of anyone spitting during the incident.

All YJO staff advised that they had received no training in critical incidents or methods to verbally de-escalate the type of incident that occurred on 21 August 2014. The staff did not feel equipped to safely resolve these types of incidents and were concerned they have not been provided with adequate personal protection equipment.

The length of time the six young persons were forced to spend in the BMU is very concerning. It is not acceptable to place young persons in a confined area for days at a time, only allowing them out for one hour per day. The environment in which they were housed was clearly not appropriate, with Don Dale staff decrying the conditions as ‘unhygienic’ and ‘inhumane’. The fact that the young persons were unable to have continuous access to water for drinking and washing is unacceptable.

The cells were not air-conditioned, did not have fans or natural light, all of which is unacceptable. Available observation records and CCTV footage show that the young persons spent the majority of their time lying on the platform (bed) when confined to their cell.

Case workers interviewed informed investigators that they visited the young persons on most days, however they were restricted to talking to them through the bars of the cells.