The NT Royal Commission: a good start, but more leadership is needed


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The harrowing image of a child, partially clad, hooded and shackled to a chair in a prison cell, has provoked public outrage and the prime minister’s resolve that a royal commission “get to the bottom of it”.

This swift commitment to a royal commission directs much-needed attention to the abuse of children in correctional institutions. Decisive action is welcome, but it is crucial that this results in a commitment to long-term systemic change in every Australian state and territory.

The terms of reference make it clear that the inquiry will have the capacity to address only part of the problem.

Among the limitations is the Northern Territory government’s involvement, raising concerns about the independence of the inquiry. Additionally, the terms of reference prioritise expedience, with the commission due to report by March 2017. Prompt findings will come at the expense of scope and,
despite advocates’ call for a national inquiry, the focus will be limited to the NT.

The commission will have the authority to inquire into the failings of both the NT child protection and youth detention systems. It will also consider whether the treatment of children in NT detention facilities has been in breach of Commonwealth, NT or human rights law.

It will have the scope to recommend changes to law, administrative and management practices, safeguards and oversight mechanisms. There is also scope for attention to early intervention strategies to divert children from the criminal justice system.

Despite the narrow jurisdictional scope, the terms of reference hold some promise. The emphasis on both the child protection and youth detention systems is an extremely important facet of the inquiry.

Effective reform demands that we properly understand, and address, the conditions that increase the likelihood that children in out-of-home care will come into contact with the criminal justice system. It is also crucial that we direct attention to bail conditions and the circumstances in which children are detained in correctional facilities in the absence of adequate housing or welfare services.

Although not specified in the terms of reference, it is imperative that children’s well-being be considered in comprehensive terms, with attention to the risks of physical, sexual and psychological violence.

The trigger for this inquiry was the deplorable abuse depicted in the closed setting of the Don Dale facility, but comprehensive safeguards will only be possible if the inquiry considers the broad range of settings in which children are vulnerable to abuse. This means both open and closed institutional settings. These include the contexts of police questioning, court appearances, transit, all forms of out-of-home care, and children’s contact visits with parents or caregivers.

It is extremely concerning that the terms of reference make no specific provision for inquiry into the over-representation of Indigenous children in child protection and criminal justice systems. A genuine effort to redress the violence that these children face in institutional settings demands close consultation with Indigenous leaders and Indigenous service providers. Legislative or policy changes that will have a disproportionate impact on Indigenous people should be led by Indigenous people.

There is no question that urgent action is required to immediately halt the abuse of children detained in the Don Dale facility. But it would be a grave error to think that institutional violence against children is restricted to the NT, or that it is the result of actions by rogue individuals in an otherwise functional system.

A two-phase inquiry would ensure the prompt action required for the NT and that detention practices in each state and territory are subjected to independent scrutiny. A national inquiry is necessary to
ensure that we confront the deeper, more troubling questions about why we incarcerate children. How might we adopt a principled and therapeutic approach to ensure children’s well-being, using detention only as a measure of absolute last resort?

There is a wealth of work at the international level to guide Australian reform. Of particular relevance are the UN Model Strategies on the Elimination of Violence Against Children in the Field of Crime Prevention and Criminal Justice. These strategies, taken together with Australia’s legal obligations as a party to the Convention on the Rights of the Child, require that we now set a high bar: not only to eliminate institutional violence against children, but to take active measures to ensure the well-being of all children in the care of the state.

But this is just a start. Australia’s human rights obligations provide that children be treated in a manner that promotes their sense of dignity and worth.

This requires that we challenge the currency of “tough on crime” policies. We need to shift the emphasis from punishing children to focusing on the rehabilitation and support they require to reintegrate into society. Trauma counselling, education, specialised rehabilitation programs and ensuring that children have access to their culture are fundamental parts of the required response, consistent with Australia’s human rights obligations.

The prime minister’s decisive action is welcome and offers renewed scope for the Australian government to demonstrate human rights leadership. By ratifying the Optional Protocol to the Convention Against Torture the government would ensure the independent inspection of places of detention. By ratifying the Third Optional Protocol to the Convention on the Rights of the Child, the government would provide children with a mechanism to lodge human rights complaints with the Committee on the Rights of the Child. Both protocols are much needed.

Juvenile justice is the business of states and territories, but the chronic abuses that have come to light demand that the Australian government demonstrate the leadership necessary to achieve human rights change.