

CITATION: *Inquest into the death of Kailab Moir* [2025] NTLC 6

TITLE OF THE COURT: Coroners Court

JURISDICTION: Darwin

FILE NO(s): D0152 of 2022

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FINDING OF: Judge Sarah McNamara

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REPRESENTATION:

Counsel Assisting: Helena Blundell

Counsel for Territory Families: Michael McCarthy

Counsel for CASPA: David Heilpern

Counsel for NT Police: Tina Tomaszewski

Judgement category classification: A

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IN THE CORONERS COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

D0152 of 2022

In the matter of an Inquest into the death of

KAILAB MOIR

ON: 3 JULY 2022

**AT: THE STUART HIGHWAY IN
THE NORTHERN TERRITORY**

FINDINGS

Judge Sarah McNamara

INTRODUCTION

1. This inquest concerns the death of Kailab Wolfgang Moir. These findings will refer to him as Kailab in accordance with his family's wishes.
2. Kailab was a 15 year old First Nations boy who died in a single vehicle rollover that occurred on the Stuart Highway between Darwin and Katherine on the night of 3 July 2022. At the time of his death, he was a passenger in was a stolen vehicle that was suspected in connection with a number of aggravated robberies and other offences in the lead up to the rollover.
3. Also at the time of his death, Kailab was under the care of the CEO of Territory Families, Housing and Communities. His death is therefore a reportable death pursuant to

Section 12(1) of the Coroners Act NT 1993 ("*the Act*") and must be investigated by the Coroner.¹ The conduct of this Inquest mandatory.²

KAILAB

4. Kailab was born on 28 July 2006 at Katherine Hospital. He was the second eldest child of Krystal Moir ("Ms Moir"). His father was not known to him. His older brother, Kayden, was killed in a motor vehicle accident in 2018. He is survived by 3 younger siblings.
5. Kailab and his maternal family are First Nations People, specifically Ngarinman from the Timber Creek and Yaralin area.
6. Kailab was the much loved child, brother, nephew and grandson to his immediate and extended family. His maternal grandmother, Judy Wright, attended the Inquest remotely and I thank her for her participation and offer sincere condolences to Kailab's family for their loss.
7. Kailab spent his early years with his mother and siblings in Katherine before the family moved to Darwin. His family say he was most happy when he was amongst them.
8. His family remember his love of sport and art. They say that his passion and drive on both the rugby and footy field made everyone watching him smile. He also loved boxing.
9. Kailab's family remember him as a loving, caring young person. They say he was so likeable, even when he was being naughty. They know his behaviours were not always positive or safe but their strongest memories are that he was charismatic, chatty and funny.
10. Kailab had a passion and real talent for Hip Hop from a young age, free styling with his older brother and rapping with his friends. He started taking his interest in music more seriously in November 2020 when he met Riley Stone, who would go on to befriend and mentor him with his music. He dropped his first music video single in August 2021 "Runnin it up". His family say that he hit over 30,000 views in the first month of release. A few months later he dropped a new single "The Come Up" under the name Palmo Stingah which brought him to the attention of the more mainstream media. He appeared on Hot 100 and participated in a 15 minute "Freestyle" challenge with Riley Stone.

¹ Section 14 Coroners Act NT 1993

² Section 15(1)(a) Coroners Act NT 1993

11. Posthumously, his YouTube likes have continued to multiply. At the time of writing these findings, the number of likes for his music video “Runnin it up” has reached almost 1,300,000. He was a young person full of potential on the music front.
12. However, Kailab’s young life was not an easy one.
13. Kailab was a complex young person and he had complex needs. He was diagnosed in 2014 with Attachment Disorder, Complex Trauma and ADHD. His medical records disclose significant antenatal exposure to alcohol and other drugs and he was formally diagnosed with FASD in February 2021. His behaviours were a constant challenge for all his family and all of those involved in his care.
14. He first entered into the care of the CEO Department of Territory Families, Housing and Communities (“CEO”) in 2011 at the age of 5. He was to spend almost all his young life, from that time, in the care of the CEO despite significant efforts made by the Department of Territory Families, Housing and Communities (“Territory Families”), his mother and his extended family to reunify him with his family.
15. While it is clear on the evidence before the Court that Kailab’s family never stopped loving him and wanting to be with him, the efforts to reunify Kailab with his family, for complicated reasons, were unsuccessful.³

CIRCUMSTANCES SURROUNDING KAILAB’S DEATH ON 3 JULY 2022

16. At the time of his death, Kailab was living in Out-of-Home Intensive Therapeutic Residential Care (ITRC) arranged by Territory Families through provider, CASPA Services Limited (CASPA).
17. Kailab was also subject to various bail conditions imposed by the Youth Justice Court in relation to ongoing proceedings for serious property offences.
18. In the days leading up to his death, Kailab’s non-compliance with bail conditions escalated significantly. NT police received multiple reports that Kailab was in breach of his bail conditions primarily relating to non-compliance with electronic monitoring device (“EMD”) and curfew conditions. Kailab was arrested on 24 June 2022 for breaching bail then granted further bail by the Youth Justice Court on 27 June 2022. Within 24 hours of being bailed again, NT police received further reports of breach of EMD and curfew conditions.

³ TF Practice Review Report p5 para 9.

19. The breaches continued for days, culminating with advice on 30 June 2022 that Kailab's EMD had had no movement for over 10 hours. A "Be On the Lookout For" alert was issued to all police on duty.⁴ The matter was transferred to Strikeforce Trident for action.⁵
20. On 3 July 2022, NT police received reports that Kailab was suspected to be amongst a group associated with a stolen motor vehicle.
21. The vehicle, a blue 1995 Toyota Landcruiser, NT registration CB89EZ was stolen during an unlawful entry from the caretaker's residence at Jingili Primary School by unknown persons during the night of 2 July 2022.⁶
22. The stolen motor vehicle had been involved in three fixed speed camera activations around Darwin on 3 July 2022 detected at:
 - a. 2.36am Tiger Brennan Drive driving 108km per hour in an 80km per hour zone;
 - b. 4.43am Stuart Highway driving 127km per hour in an 90km per hour zone; and
 - c. 4.45am Stuart Highway driving 125km per hour in an 80km per hour zone.
23. The occupants of that vehicle, including Kailab, were believed to have been involved in a series of escalating property offences between 12.47am and 9.41pm on 3 July 2022 around the Darwin and Adelaide River areas. The offences were serious ones and included theft of fuel, two unlawful entries into service stations and an aggravated robbery.⁷
24. It is understood that, following these incidents, Kailab and four other youths being AH, KR, HW and LL got into the stolen motor vehicle, drove north on the Stuart Highway towards Darwin and a rollover occurred. AH was the driver of the vehicle at this time.⁸
25. Members of the public who observed debris on the road and a crashed vehicle called police at 22.03pm.⁹ Police and St Johns Ambulance attended the crash scene.
26. St Johns Ambulance Officer Michael McKay found Kailab deceased at the scene.¹⁰

⁴ ibid

⁵ Coronial File Memorandum, Folio 1

⁶ ibid

⁷ ibid

⁸ ibid

⁹ Coronial Brief, Folio 2 JESSC Records

¹⁰ Coronial Brief, Folio 4 St Johns Ambulance Case Card

27. Police Major Crash Investigation Unit members attended the crash scene at 00.19 on 4 July 2022 and concluded the following:

- a. At approximately 1.45km north of the Manton Dam access road, the driver veered off the left hand side of the road.
- b. As a result of significant steering input to the right, the vehicle veered across the southern lane where a significant steering input to the left was made as the vehicle left the eastern shoulder of the road and moved onto the dirt and grass verge.
- c. This transitioned into a broadside slide with the driver's side of the vehicle leading.
- d. The vehicle has then tripped and rolled a number of times over 68 meters before colliding with a tree and coming to rest.
- e. Kailab was located 35 meters north of the final resting position of the vehicle and had sustained fatal injuries consistent with being thrown from a rolling vehicle and sliding over a rough gravelled surface.
- f. There were four other young people in the car who sustained various injuries and were taken to hospital.¹¹

28. The accident was determined to be a single vehicle rollover. There were no police in the immediate vicinity and no police pursuit of the vehicle at the time of the crash.

29. AH, the driver of the stolen vehicle, was charged with relevant offences in relation to the accident and Kailab's death and his offending was dealt with by the courts.

Formal Findings

30. Pursuant to section 34 of the *Coroners Act*, I make the following formal findings:

- (1) The identity of the deceased is Kailab Wolfgang Moir, born on 28 July 2006 in Katherine in the Northern Territory.
- (2) The time of death was approximately 9.50pm on Sunday 3 July 2022. The place of death was Stuart Highway, Northern Territory
- (3) The cause of death was multiple injuries caused by a motor vehicle accident.
- (4) The particulars required to register the death will be provided to the Office of Births, Deaths and Marriages.

¹¹ Coronial Brief, Folio 22 Statutory Declaration Darryl Slater

Issues for the Inquest

31. While it is clear from the factual circumstances surrounding the fatal vehicle crash that it was the dangerous driving of AH that caused the crash and Kailab's death, a number of concerns arise in relation to the broad circumstances that led to Kailab being involved in the high risk activities that led to his death.
32. The focus of the Inquest was on the adequacy of Kailab's care after he was placed in the care of the CEO and any shortcomings or systemic failures that explain his ultimate disengagement with pro social interventions, association with negative peer influences and his involvement in the Youth Justice System.
33. Specifically, I was concerned as to the appropriateness and adequacy of the services and care given to Kailab by Territory Families and its Out-of-Home Intensive Therapeutic Residential Care (ITRC) provider, CASPA Services Limited (CASPA), what went wrong for Kailab and what needs to be improved.
34. I was also concerned whether the NT Police responses to the reported breaches of bail and missing person reports was adequate and, further, whether police are adequately trained to deal with young people with cognitive disabilities such as FASD.
35. An issues list was prepared in advance of the Inquest guided the proceeding. The issues raised are addressed in the conclusions at the end of these findings.
36. The Inquest was not directed at blaming individuals involved in Kailab's care. The individual case workers, carers and professionals who were directly involved in Kailab's care and gave evidence at the Inquest impressed as being very fond of Kailab. They were each clearly deeply concerned and saddened by his tragic and untimely death. But, as was borne out in this Inquest, a child with needs as complex as Kailab's, can fall through the cracks and systems can fail, despite the best efforts of well qualified and hard working people and agencies. There are aspects of Kailab's experience to understand and reflect on and important lessons to be learnt.
37. I would like to thank all the parties for their co-operation and the evidence provided in this Inquest. In particular I thank Kailab's grandmother, Judy Wright, for her engagement with the process, notwithstanding the significant challenge of having no legal representation.
38. It was agreed by all parties that the inability of the family to secure representation resulted in them being largely unheard at tis mandatory Inquest which is an

unconscionable failing of the Government and the legal system that needs to be remedied.

39. I thank Counsel Assisting and staff at the Coroner's Office for their admirable efforts in engaging with family when possible, to facilitate their participation and put forward their views and concerns for my consideration.

TERRITORY FAMILIES¹²

Kailab's First Period in Care 2011-2013

40. Kailab first came to the attention of Territory Families in 2009 following two child protection notifications relating to him and his siblings in that year. Territory Families had previously been involved with Kailab's family prior to Kailab's birth, due to concerns around the parenting capacity of Ms Moir. The 2009 notifications related to exposure to substance misuse and physical harm. According to the records contained in the Brief, Territory Families were unable to provide support at that time due to capacity issues and the need to respond to other prioritised child protection investigations.¹³
41. In 2011 Territory Families received a series of further notifications in relation to Kailab and his siblings regarding exposure to substance misuse, domestic violence, neglect and lack of supervision while in Ms Moir's care. Interventions by Territory Families commenced.
42. After failed attempts by Territory Families to provide support through the "Home Strengths" program, Kailab was first taken into Provisional Protection and placed in the care of the CEO on 5 September 2011 when he was 5 years of age.
43. By virtue of various court orders he remained in the care of the CEO until he was reunified with his mother, Ms Moir, in January 2013.
44. In the 14-15 month period from September 2011 to January 2013, Kailab was placed with four different foster carers while Territory Families investigated possible family members who could care for Kailab. Initially, from 17 October 2011 he was placed with his younger brother in foster care.¹⁴

¹² It is noted that this agency is now called the Department of Children and Families. These findings refer to the agency's title at the time. Further, the timeline of and commentary in relation to Kailab's Care set out in the following paragraphs is drawn from the documents produced by Territory Families and contained in the Brief as well as the Institutional Response provided by Territory Families through Lisa Palamountain, Additional Documents, Folio 5. Some specific references have been included where appropriate.

¹³ Additional Documents, Folio 5 para 98

¹⁴ Coronial Brief, Folio 10 and Additional Documents Folio 5

45. The records show that, during this period, Kailab's foster care placements broke down or were terminated by his carers who were unable to manage his challenging trauma related behaviours. His second placement with a foster carer lasted less than 3 weeks. In addition to the foster placements, Kailab and his brother were placed in respite care from time to time.
46. In recognition of the challenges posed by Kailab's behaviours, Territory Families provided his carers with the support of a therapeutic specialist and respite care. Specifically, Kailab was referred to Territory Families Therapeutic Services Team (TST) on 12 December 2011.¹⁵
47. Kailab attended Alawa Primary School during this period and was described as an interested, inspired learner and a confident reader but his behaviour could be disruptive.¹⁶
48. Kailab had been referred to a paediatrician in February 2012 due to concerns around his aggressive behaviours. It was known at the time that Kailab had been exposed to significant levels of alcohol and drugs antenatally. Foetal Alcohol Spectrum Disorder (FASD) was considered by the paediatrician but, consistent with standard practice at the time, no facial features consistent with a FASD diagnosis were observed and therefore FASD was not investigated. Kailab's cognition was assessed as within normal limits though he was assessed as having a "borderline attention span" though was not hyperactive or fidgety.¹⁷
49. The failure to investigate a FASD diagnosis at this time is not a point of criticism. The Forensic Psychology Report commissioned for this Inquest by Rowena Friend¹⁸ reports:

FASD diagnosis has come a long way since 2012. Whilst today, the mere fact that Kailab was exposed to alcohol antenatally should spark investigation for FASD, in 2012 there was still limited research available and the thoughts at the time were that facial features needed to be present for investigation of FASD, which in Kailab's case were not present. Further, the first Australian guidelines for the diagnosis of FASD were not released until May 2016.¹⁹

But it was recommended by the paediatrician that there be follow up in four weeks time²⁰ and it appears that this was not actioned. It would not be until 2 years later that

¹⁵ Additional Documents, Folio 5 paras 113-145, Additional Documents Folio 19

¹⁶ Additional Documents, Folio 5 para 127

¹⁷ Additional documents folio 19 Letter dated 21 February 2012, Dr Louise Woodward, Paediatric Registrar, Royal Darwin Hospital

¹⁸ Additional Documents, Folio 21

¹⁹ Ibid p3

²⁰ Additional documents folio 19

there was further paediatric follow up around Kailab's behavioural concerns and this was clearly a concerning oversight by Territory Families and a lost opportunity to address the behaviours that were so greatly contributing to Kailab's instability of placements.

50. Territory Families also continued to work with Ms Moir throughout this period, to support her in addressing protection concerns. By November 2012, records reflect that the department was satisfied that it was safe and appropriate to return Kailab and his younger brother and sister to their mother's care due to the significant progress that had been made towards addressing protection concerns.²¹ Reunification planning commenced.

First Reunification January 2013 – December 2013

51. Between 7 January 2013 and 27 December 2013 Kailab was returned to the care of Ms Moir with his siblings. Kailab was 6½ years old at this stage.

52. During this period, there was regular contact with the family and monitoring of the reunification by Territory Families. Notably, from the commencement of the reunification period, supports were provided to the family, including a Therapeutic Specialist.

53. Kailab attended Wagaman Primary School during this period and was described as both "*very violent*" and "*very bright*".²² The evidence indicates that Kailab was a very capable learner, but his learning was impeded by emotional and behavioural issues. Concerns at school were such that, in August 2013, school staff met with Ms Moir, Territory Families and the Therapeutic Specialist and asked that Kailab be medically assessed. It is reported that Ms Moir declined as she did not want Kailab medicated.²³

54. Though the reunification started well, by the end of the year it had broken down. The domestic violence and drug use concerns that had led to the first care period had resurfaced and escalated after Ms Moir's partner at the time moved into the family home.²⁴

55. The evidence reflects that, as early as March 2013 during the reunification period, Ms Moir herself raised concerns with Territory Families around her partner's use of violence on her and the children. The children, including Kailab, gave direct accounts of

²¹ Additional Documents, Folio 5 para 144

²² Ibid para 169

²³ Additional Documents, Folio 5 para 162

²⁴ Ibid para 174

witnessing the violence to a child protection practitioner (“CPP”) who attended the family home after Ms Moir had telephoned with domestic violence related concerns.²⁵ There was evidence of an ongoing cycle of these concerns arising over the reunification period.²⁶

56. In response, Territory Families provided some supports to Ms Moir including counselling, ongoing safety planning, support of applications for DVOs and the ongoing therapy for Kailab referred to above ²⁷.
57. But some of the requirements of Ms Moir by Territory Families during this period were unrealistic, unfair and, at worst, coercive. Some practices of particular concern reflect a lack of understanding and lack of specialist approaches to domestic violence within the agency at the time. For example, in June 2013, Ms Moir was requested to sign a “Contract of Expectations” around her relationship with her partner and his use of violence.²⁸ Territory Families also required Ms Moir to engage with counselling. Ms Moir did so, but, seemingly out of fear of reprisal, reporting to the therapeutic specialist that she was worried that, if she did not, Territory Families would take her children back.²⁹
58. Professor Megan Davies, whose report “Family is Culture” was included in the Coronial Brief, describes such approaches to reunification where a mother is a victim of domestic abuse as “grossly unfair, [and] demonstrates little knowledge of how domestic and family violence affects women, and is illustrative of victim blaming in the system.”³⁰
59. Ms Palamountain observed that “Ms Moir’s capacity to care for [the children] during this period was severely impacted as a result [of] domestic violence against Ms Moir and the broader difficulties in [her] relationship”.³¹ She further appropriately conceded that more should have been done by Territory Families to support Ms Moir when she raised concerns about domestic violence at this time. She noted that Ms Moir wanted to leave the relationship to ensure the safety of her and the children but, regrettably, Territory Families’ response was unsafe being “impacted by the practice at the time which did not have the benefit of a domestic and family violence practice framework and lens”.

²⁵ Additional Documents, Folio 5 para 148

²⁶ Ibid paras 148-180

²⁷ Ibid paras 146-180

²⁸ Ibid para 156

²⁹ Ibid para 160

³⁰ *Family is Culture Review Report* p415-417

³¹ Additional Documents, Folio 5 para 181

60. On 17 December 2013 Kailab and his sibling were again removed from their mother's care and placed with grandparents.

Kailab's second period in care - December 2013-January 2016

61. When Kailab returned to care for a second time, he was 7½ years old. His second period of care lasted approximately 2 years and 2 months.

62. Kailab was initially placed in a residential care facility managed by ITEC and then placed with 3 different home-based carers during this period. The records show that, again, Kailab's placements broke down or were terminated by his carers who were unable to manage his challenging trauma related behaviours.

63. Kailab had regular paediatric appointments from March 2014 to November 2015. He had the same Therapeutic Specialist from March 2012 to October 2015, though he temporarily stopped seeing that Specialist between July 2013 and March 2014.³²

64. In December 2014 and January 2015 paediatric consultations led to diagnosis of a number of conditions including ADHD, attachment disorder, complex trauma and behavioural difficulties.³³

65. Kailab commenced medication. His behaviours remained problematic for his carers and at school though, by April 2015, his paediatrician and therapeutic specialist noted good progress. The intensive work done by Kailab's Territory Families case manager, carers, school staff including the school principal and special education teacher and therapeutic specialist over this period is to be acknowledged.³⁴ Ms Moir was also concerned and involved in discussions around Kailab's management, which were both regular and inter-agency in nature.

66. FASD was still not investigated, but, again, this is not surprising and not to be criticised given testing triggers and standards in place at the time. Forensic Psychologist Rowena Friend gave evidence that, though Kailab had obvious and serious behavioural issues, his cognition and academic performance was within normal range and there were no indicators that FASD ought to be investigated according to accepted practise at the time. What experts now know "is that there are ten potential brain domains impacted by antenatal exposure to alcohol, and this does not have to be related to cognition or academic skills".³⁵

³² Additional Documents, Folio 5, paras 138, 189 & 259

³³ Additional documents Folio 19

³⁴ Additional Documents, Folio 5 para 202

³⁵ Additional Documents Folio 21 p4

67. Though FASD was not considered, interventions appear to have had some positive impact. In October 2015, the Therapeutic Specialist closed Kailab's file, advising that the carer "had come a long way in developing her skills in responding to [Kailab] and in turn [Kailab] had settled well into placement."³⁶ A trial of Methylphenidate (Ritalin) and prescribed longer acting medication (Concerta) over the course of 2014/2015 had been considered a success. Paediatric reports indicate that aggressive outbursts at school had all but vanished by April 2015 and Kailab's concentration had improved. In November 2015, a medical decision was made to trial Kailab off the medication that he had been prescribed to address his behaviours.

68. Throughout 2015, Territory Families had again been working with Ms Moir to support her rehabilitation and parenting skills development. Her access with the children increased gradually over months to unsupervised access and, eventually, progressed to reunification.³⁷

Second Reunification January - July 2016

69. In January 2016 a second reunification attempt was made with Kailab and his three brothers returning to Ms Moir's care. His young sister was in the full-time care of her paternal grandparents at this time.

70. The Protection Order that had been in place expired during the reunification period on 23 January 2016.

71. On 2 February 2016, Territory Families received a protection notification from police relating Ms Moir's inability to manage the children's behaviours. Ms Moir reported to police that she was worried about repercussions from Territory Families if she tried to discipline the children.

72. It is noted that, while Territory Families had indicated that intensive support for behaviour management would be included in the reunification plan,³⁸ there is no evidence that any such specialist intensive support was in place to assist the second attempt at reunification. A Family Support Case was opened in February 2016 to monitor the progress of reunification, but it is unclear what supports, if any, were provided to Ms Moir.

73. By the end of April 2016, the second family reunification was breaking down³⁹.

³⁶ Additional Documents Folio 2 Practice Review Report p48 para 296

³⁷ Ibid p44 para 265 - 299

³⁸ Ibid p47 para285

³⁹ Ibid para 303-306

74. Paediatric records reflect that in May 2015, “things [had] got somewhat out of hand” and medication was reintroduced after Kailab’s mother had sought medical support.⁴⁰
75. Notwithstanding these ongoing concerns, inexplicably, on 21 June 2016 the Family Support Case to monitor reunification was closed⁴¹ but 6 days later a 14 day Temporary Protection Order was obtained for urgent protection for Kailab and his brothers.

Kailab’s third period in care – July 2016 – December 2017

76. Kailab’s third period of care lasted 1 year and 5 months.
77. Kailab had a number of home-based placements during this period, all of which broke down.
78. An initial interim kinship care placement was arranged but this was short-lived for a few reasons including concerns around exposure of the children to serious domestic violence while in that placement.
79. After removing the children from the kinship care arrangement, Kailab’s fourth placement during this period was with a purchased home-based carer from 19 September 2016. It lasted only a few days. The transition to the placement was not well managed. Territory Families records reflect that Kailab could not access his medication or his belongings that had been left behind at the kinship placement with Ms Ross.
80. At this time, Kailab’s behavioural issues were escalating further. This fourth placement in the first month broke down when he displayed very aggressive behaviour towards the carers.⁴²
81. On 21 September 2016, Kailab was moved to another purchased home-based care placement – his fifth placement in two months. By the end of September Kailab’s two younger brothers joined him at the placement. Though there were still some serious behavioural concerns in relation to Kailab’s behaviour at school at the end of 2016, by the first half of 2017, Kailab’s behaviour had improved and stabilised.
82. It appears from the records that Kailab had less contact with Ms Moir during this period of care. Though Ms Moir remained in contact with Territory Families, the evidence suggests that contact and access to the children was infrequent at the beginning of

⁴⁰ Additional documents Folio 19

⁴¹ Additional documents Folio 5 paras 302 and 311.

⁴² Ibid 296-297

2017. By March 2017, Ms Moir advised Territory Families that she had “relapsed” and that her new partner was “terrorising” her and “invading her home.”⁴³

83. Notwithstanding these reports, by July 2017, reunification was again in planning, conditional upon Ms Moir completing a residential rehabilitation program at CAAPS Aboriginal Drug and Alcohol Services (“CAAPS”), counselling, a domestic and family violence program and participating in a psychological assessment.⁴⁴

84. On 21 September 2017 Ms Moir entered into the CAAPS program. It appears that this was a requirement of the court, as well as a precondition to reunification set by Territory Families.

85. On 27 September 2017, a staged access program commenced with Kailab and his two younger brothers visiting Ms Moir at CAAPS. The visits increased in duration to overnight visits within two months.⁴⁵

86. Full reunification of all the children with Ms Moir occurred on 13 December 2017, while Ms Moir was still at CAAPS and 5 days prior to Ms Moir exiting the program. Notably and despite Ms Moir’s known complexities and vulnerabilities, this was prior to her safely reintegrating into an unrestricted and relatively unsupported environment.

Family Reunification December 2017

87. This reunification lasted 17 days, including the 5 days spent at CAAPS.

88. After a very short time, Ms Moir advised she was unable to care for Kailab and his siblings and relinquished care of the boys to Territory Families on 30 December 2017.

89. The evidence indicates that this further, failed attempt at reunification was very difficult for Kailab and his brothers. The reunification was, undoubtedly, in accordance with the wishes of Ms Moir and Kailab and his siblings and there had been some planning around supports that would be required. But the reunification was obviously premature and poorly planned. The plan was unrealistic having regard to the known complexities around the family’s circumstances. It was ill considered and doomed to fail.

90. There are aspects of the “safety planning” around this reunification that again raise concerns around impossible goal setting for Ms Moir. For example, the requirement that Ms Moir “address her pattern of DFV Relationships by attending a DFV program”⁴⁶

⁴³ Practice Review Report para 356-357

⁴⁴ Additional Documents, Folio 2, Practice Review Report para 360

⁴⁵ Ibid para 363

⁴⁶ Ibid

was both unrealistic in terms of any risk management and unfair given that she was the victim/survivor of domestic abuse.

91. Territory Families made appropriate concessions about this final failed attempt to reunify:

The [last] reunification should have occurred over a longer period of time.....in stages to allow time for Ms Moir to adjust to the responsibilities associated with care, and the CPP should have done more work to ensure that both family and other services were engaged with Ms Moir, to support Ms Moir with the process.

.....the plans were too ambitious, requiring Ms Moir to take on too much responsibility too quickly...there was insufficient time for the department to assess Ms Moir's capabilities and there were insufficient supports in place to increase the potential for success⁴⁷

.....The Protection Orders expired while Ms Moir was living in CAAPS, and reunification occurred within the rehabilitation setting. Such a short timeframe did not provide Ms Moir with sufficient time outside of CAAPS to put her new skills into practice nor the Department with sufficient time to assess Ms Moir's capacity to care for the children. These issues were exacerbated by the difficulties associated with the return of all three high needs children.⁴⁸

92. It is acknowledged that reunification is a key consideration in terms of the best interests principles of the *Care and Protection of Children Act NT* ("CPCA") that binds the CEO.⁴⁹ But that consideration must be balanced against multiple factors that go to best interests under section 10 of the CPCA including a parent's capacity,⁵⁰ a child's need for stability, permanency and needs.⁵¹

93. The reunifications, in particular, the final reunification, failed to appropriately balance best interests considerations under section 10 of the CPCA. They were, in fact, incredibly destabilizing for Kailab. Kailab's escalating behaviours in 2018 and his entry into the youth justice system should be understood and considered against that backdrop.

⁴⁷ Additional Documents, Folio 5 para 316

⁴⁸ Ibid para 319, 320

⁴⁹ Section 10(2)(cb)

⁵⁰ CPCA section 10(2)(b)

⁵¹ CPCA section 10(2)(e)-(g)

Fourth period in care December 2017 – July 2022

94. Kailab commenced his fourth period in the CEO's care when he was 11 years old. Despite the reunification in December 2017 only lasting a matter of weeks, Kailab and his brothers were unable to return to the previous carer, as that carer had already taken other children into care.⁵²
95. Clearly and in spite of known complexities, risks and past experiences, when reunifications occurred, there was no forward or contingency planning around alternative placements for Kailab and his siblings to cover the possibility that the reunification may break down, and, to avoid the children feeling uncertain in that event. So, when the third attempt at reunification occurred, Kailab was placed in yet another foster care arrangement.
96. On 8 February 2018 a long-term Protection Order was made for Kailab giving Parental Responsibility to the CEO until he turned 18.

2018

97. 2018 was a difficult year for Kailab who, at 11 years of age, had already suffered many difficult years. Territory Families struggled to find a stable placement for him. After reunification failed at the end of December 2017, Kailab moved between emergency carers, short term carers, respite care and kinship care multiple times. Throughout this period Kailab was largely self-placing with his mother and other adults and families with whom he felt safe.⁵³
98. At the end of May 2018, when Kailab was placed in a residential care facility with Lifestyle Solutions, Kailab's primary school expressed concern to Territory Families at him being placed in a "self-directed care" environment with older boys.⁵⁴
99. It is clear in the material that Kailab's behaviour was deteriorating rapidly from the beginning of 2018 and this placement coincided with that deterioration. From early 2018, Territory Families received multiple reports of disruptive, aggressive and, at times, violent behaviours from his school. Notably, within 1-2 weeks of the placement with Lifestyle Solutions, the school advised Territory Families that the need for support for Kailab had increased further due to rapidly escalating behaviours.⁵⁵ He was regularly suspended from school because of behavioural concerns, though school reports

⁵² Additional Documents, Folio 5 para 371

⁵³ Additional Documents, Folio 2, Practice Review Report paras 371-462

⁵⁴ Practice review para 404

⁵⁵ Ibid p64-65 paras 403-405

continued to describe him as “gifted” with “strong academic skills and strong computer skills and coding skills.”⁵⁶

100. Until 2018, Kailab had been a popular and engaged student, albeit not without difficulty. In 2017 he had been made a school captain. Until 2018⁵⁷ his school attendance and performance was very good, albeit with behavioural concerns. But in 2018 his behaviours at school led to him being put on an adjusted timetable of 2 hours a day.⁵⁸

101. In August 2018, shortly after Kailab’s 12th birthday, his older brother Kayden was killed in a hit and run incident in Perth. It is clear that this death had a crushing impact on Kailab. A progress report later prepared by therapeutic specialists for the Youth Justice Court noted:

*Kailab and his brother had a bond that was significantly stronger than would be expected in normal sibling relationships. In the absence of predictable and stable adult relational care, and through the significant adverse experiences endured by this sibling group, Kailab and his older brother assumed the role of carer and protectors for their younger siblings. In hearing Kailab talk about his relationship with his older brother, it could be easily described as visceral. Kailab’s older brother was the last safe family relationship he could rely on where he didn’t hold responsibility as protector.*⁵⁹

102. It is also clear that Territory Families did genuinely support Kailab and his family through this by paying for travel and accommodation to Perth and ensuring that Kailab received weekly psychological support from a psychologist. Kailab’s mother was incarcerated at this stage, but Territory Families ensured that Kailab was able to visit Kayden in Perth before life support was turned off and ensured that Kailab was with his family as much as possible.

103. Alcohol and illicit drugs emerged as a concern for Kailab in late 2018. In October Kailab was reported to have returned to placement substance affected.⁶⁰ Towards the end of November 2018, Kailab’s mother expressed concern that Kailab had arrived at her house with a group of boys wanting to use drugs.⁶¹

⁵⁶ Ibid para 391

⁵⁷ T237

⁵⁸ Additional Documents, Folio 5, paras 322-323

⁵⁹ Coronial Brief Folio 30 Youth Justice Records – red Folder Back on Track Report (c. 2021/22 undated)

⁶⁰ Additional Documents, Folio 2, Practice Review Report p70 para 440

⁶¹ Ibid para 454

104. It was also in 2018 that Kailab first started interacting with the criminal justice system as a youth.⁶²

105. Territory Families did facilitate ongoing engagement with multiple therapists over this period. They included a paediatrician, a psychologist, a counsellor, the school chaplain and a school family practitioner.⁶³ However, these psychological supports were not continued after December 2018 which was when Kailab entered into a residential care facility.

106. In her expert opinion, Forensic Psychologist Dr Rowena Friend commented:

...Had Kailab received ongoing and longer-term psychological therapy, this may have better addressed his grief and longer-term attachment issues which subsequently contributed to him seeking out older peers and engaging in criminal behaviours. In addition, were his FASD diagnosed earlier this may have allowed earlier access to....supports...

Entry into Residential Care

107. In December 2018 Kailab moved to a residential care home at Sabine Road, Milner due to placement breakdowns. By this time, Territory Families were unable to identify any alternatives to residential care. Kailab was 12 years old, and this was to be his home until January 2022. The Sabine Road house was managed by a number of different organisations over this period including Territory Families, Lifestyle Solutions, ITEC and then finally CASPA who provided Intensive Therapeutic Residential Care (ITRC) for children in placement.

108. ITRC was a reform initiative that followed on from recommendations made by the Royal Commission into the Protection and Detention of Children in the NT.⁶⁴

109. The Inquest heard that ITRC is considered the best practice model for children with complex needs and Territory Families itself did not have sufficient expertise to provide this therapeutic residential care.⁶⁵ The ITRC model was developed by the Australian Children's Foundation and included placement matching risk assessments and transition planning, and had a therapeutic specialist with a clinical or allied health background supporting both the children in care and the carers.⁶⁶

110. Ms Palamountain acknowledged that residential care placements are not the preferred placements for children as young as Kailab was at the time of his placement at Sabine

⁶² T238 and Coronial Brief, Folio 11

⁶³ Additional Documents, Folio 5, paras 327, 368 and 372

⁶⁴ Additional Documents, Folio 9 para 3

⁶⁵ Additional Documents, Folio 5, para 751, T220

⁶⁶ T128

Road.⁶⁷ However, in theory, there are accepted benefits of utilising ITRC for children, like Kailab, with complex needs, providing them with “a high level of professional and targeted therapeutic support to enable their return to the care of their family, foster care or independent living.”⁶⁸

111. It is accepted that the decision to place Kailab in a residential care facility was a last resort for Territory Families, and made after all available kinship care, foster care and purchased home based care options had been exhausted. Carers had been unable to meet his increasingly complex needs and safely manage his challenging behaviours. Ms Palamountain observed that placement breakdowns typically occurred when Kailab’s behaviours escalated which often coincided with periods when he perceived an issue with safety and stability, when reunification was being planned or when he was unable to see his mother.⁶⁹ As Kailab’s responses to threats to his safety and stability were not managed, his care arrangements further destabilised. That pattern gives rise to two important observations:

- a. It would seem that had Kailab’s medical needs been better attended to, for example, ongoing paediatric consults over the period 2016-2018, it is quite possible that with appropriate supports and behaviour management plans and medication, even in the absence of a FASD diagnosis, this step may have been avoided.
- b. It is also clear that Kailab’s options for out of home placements were severely limited due to insufficient numbers of carers in the Northern Territory to meet the demand for out of home care for children in need of protection.⁷⁰ According to Ms Palamountain, this remains a persistent problem.

Intensive Therapeutic Residential Care Placements with CASPA

112. Kailab remained at Sabine Road until January 2022 where he continued his pattern of self-placing and frequently left his placement to stay with friends and family. Staff searched for him and filed missing person reports where appropriate.⁷¹ By the time CASPA took over this residence as the ITRC provider, Kailab’s behaviours were entrenched and escalating.

113. Five of Kailab’s residential care placements were with CASPA Services LTD (“CASPA”) between February 2021 and July 2022.

⁶⁷ Additional Documents, Folio 5 para 392

⁶⁸ Ibid para 392

⁶⁹ Ibid para 390

⁷⁰ Ibid para 389

⁷¹ Ibid paras 384, 397, 398, 406 - 439

114. CASPA is a nationally operating out of home care agency that provides ITRC services to support children and young people and their families. In May 2020, CASPA contracted with Territory Families to provide those services working with children, like Kailab, who could not be placed in kinship or foster care typically because of their trauma and offending behaviours. ITRC is intended to be a short-term residential program designed to facilitate a transition back into a home based care placement⁷². It was stressed by CASPA witnesses that it is not intended for long term placements as did eventuate for Kailab⁷³.

115. The Inquest heard evidence from CASPA's CEO Ms Naarah Rodwell, Executive Director – Allied Health Mr Michael Manning and NT Executive Director Mr Nathan Baunauch. It was clear on their evidence that CASPA's residential placements are operated and managed by highly qualified and experienced staff including clinicians, social workers and youth workers who have expertise in dealing with young people with complex trauma, and a range of other challenges such as neurodiversity and substance misuse.⁷⁴

116. CASPA is accredited in the National Standards and assessed and routinely audited across all of the standards of care. Ms Rodwell gave evidence that it was part of the vision to be working towards implementing the national standards in the NT.⁷⁵

117. CASPA is a not-for-profit organisation. I heard evidence from both Mr Manning and Ms Rodwell that CASPA is currently operating at a loss in the Northern Territory, but they remain committed to working here.⁷⁶

118. Mr Manning gave evidence that ITRC differs from ordinary residential care in that it has a therapeutic core and has therapeutic specialists involved in developing plans, supporting care staff and directly providing therapeutic support to the young people in care.

119. I was told that a significant proportion of the young people in ITRC have complex needs, including diagnosis of FASD.⁷⁷ Both Mr Manning and Ms Rodwell told the Inquest that the cohort of children they care for in ITRC are almost all assessed as high risk in terms of their placement matching risk assessments.⁷⁸

⁷² Additional documents folio 10 paragraphs 1 & 3

⁷³ T145

⁷⁴ See for example the evidence of Ms Rodwell in additional documents folio 10 paragraphs 1, 2, 4, 8 and 15

⁷⁵ T193

⁷⁶ T130

⁷⁷ T133

⁷⁸ T194

120. The current funding model ordinarily envisages up to 4 young people in a house. Each house is staffed in shifts covering a 24-hour period. There are two therapeutic care workers per shift and a House Co-ordinator during the day. There is also a fully staffed after hours phone service. CASPA have transitioned their Northern Territory workforce from a predominantly casual workforce to a predominantly permanent workforce which, the Inquest was told, has improved consistency and stability of staff in all their houses.⁷⁹

121. The CASPA contract with Territory Families sets out minimum qualifications for staff. I heard evidence that where their staff are lacking qualifications CASPA offers access to the Certificate IV requirement.⁸⁰ I heard evidence that CASPA provides a 5 day induction training course for all new staff and that training is ongoing in clinical meetings. Both Mr Manning and Mr Baunach gave evidence that the ongoing training provided in clinical meetings was particularly useful to staff and that this included training in caring for children with neurocognitive issues such as FASD.⁸¹

122. Mr Baunach gave evidence as to the steps taken to ensure all their staff held the relevant minimum qualifications and he noted that under the contract CASPA had 18 months to comply with this requirement. He noted that this period of grace covered the entirety of Kailab's time in CASPA care.⁸² I also heard evidence that CASPA were near compliant with the minimum training requirements for all their staff at the date of the Inquest.⁸³

123. Mr Manning explained that CASPA's Therapeutic Specialists develop individual therapeutic case plans for each child in consultation with other stakeholders involved in a child's care and the Therapeutic Specialist then trains the therapeutic care workers. He pointed out the various plans (therapeutic, safety, incident management etc) also have input from the child in question and funding is allocated for specific activities tailored to a child's interests and needs.⁸⁴ He said that Therapeutic Specialists are encouraged to spend a minimum of a day a month in a particular house and for high needs children that is increased.

124. When Kailab was referred to CASPA he was in Don Dale. Soon after, he entered an ITRC placement at Sabine Rd when released on bail in February 2021. CASPA staff had visited Kailab in Don Dale to establish a relationship with him and consulted with Territory Families and in-house therapeutic specialists in relation to placement matching. As

⁷⁹ T146

⁸⁰ T114

⁸¹ T112

⁸² T152

⁸³ T2111

⁸⁴ T119

Kailab was involved in the criminal justice system by this stage, placements were decided in consultation with the Crossover Care team and the YORET and likely overseen by the Youth Justice Court and mandated in bail undertakings.

125. Ms Rodwell was asked if the funded ITRC model that operated when Kailab was in care was fit for purpose. She said that ITRC is a flexible model that she believes does work for young people with complex needs but that it is still in the early stages of reform in the Northern Territory and requires further investment and development. She advocated a more flexible approach for accommodating a child with complex needs like Kailab that did not fit the current specifications for ITRC under the funding agreement. Specifically, she identified risks associated with Kailab being accommodated in a 4 child occupancy⁸⁵. Her efforts in advocating for a more flexible approach to Kailab's care were reflected in the increase to a 1:1 staffing ratio to care for him.

126. Mr Manning also gave evidence that he did not think that the currently funded model was fit for purpose for young people with complex needs such as Kailab and that the ITRC contract with Territory Families had an exclusion for "significant" disability⁸⁶. He said that the ITRC model, as it exists in the NT, was not "fit for purpose" for someone with Kailab's complexities, risks and disabilities.⁸⁷ He advocated for consideration of an alternative, additional model operated by CASPA outside of the Northern Territory which provides safe placements and more intensive supports for high-risk young people. He said it requires additional specialised training and support and that such a specialised model for children with a significant disability does not exist in the NT.

127. Forensic psychologist Ms Friend acknowledged this as a deficiency in the existing model of care for children with complex needs in the Northern Territory.⁸⁸ Given the potential social cost and impact of behaviours that may eventuate as a consequence of this gap, alternatives models ought to be considered.

128. The Inquest heard evidence from Ms Palamountain and Mr Manning that Territory Families had previously operated a secure care facility that did provide physical restrictions on children such as locked rooms, but that this was not currently operational and the legislative basis for such a facility was currently being reviewed.⁸⁹ Mr Manning did not consider the previous NT Secure Care facility to be a best practice model. As I have noted earlier, none of the witnesses believed that locking Kailab in residential care was safe for him or his carers and I cannot therefore conclude that Kailab ought to have been placed in Secure Care even if it had been an option.

⁸⁵ T196

⁸⁶ T126

⁸⁷ T126

⁸⁸ T89

⁸⁹ T295

129. I am satisfied on the evidence that CASPA worked diligently to ensure that Kailab's placements were appropriate, and his needs met. I am further satisfied that CASPA conducted itself professionally and in accordance with principles of trauma informed therapeutic care.

130. However in spite of the efforts of CASPA, Kailab's behaviour continued to be challenging, risky and difficult to manage. His circumstances were particularly complex to navigate during this time due to ongoing and escalating interaction with the youth justice system. Ms Rodwell identified that a key challenge faced by CASPA in working with Kailab throughout this period was that, as Kailab was in and out of detention, his placements would be closed by Territory Families. The continual cycle of Kailab reoffending or breaching bail, returning to detention and bed closures had, according to Ms Rodwell, a major impact on CASPA's ability to work with Kailab and "create a healing and therapeutic environment" for him.⁹⁰

131. CASPA advocated for every placement to remain open for Kailab when he went into detention to ensure stability of placement and carers, which is considered to be fundamental to therapeutic care. Unfortunately, this did not happen, and, even when Kailab was on remand and bail applications were likely or when he attended a short term residential intervention program, Kailab's ITRC placements were sometimes closed.

132. The Inquest was told that decisions by Territory Families to close Kailab's placements at this stage involved a balancing of complex considerations around Kailab's interests and needs as well as the interests and needs of other young people accommodated in a facility and the requirements of the Youth Justice Court. Territory Families emphasised that the limited number of available placements and the high demand for them impacted decision making around bed closures for Kailab.

133. An additional complexity was that, once involved in the youth justice system, final decisions around Kailab's residence were directed by the Youth Justice Court and often mandated in bail undertakings. Those matters are guided by recommendations of a Territory Families Community Youth Justice Officer ("CYJO") who prepares bail assessments requested by the court. Kailab's case management as a child in protection under Territory Families, had been transferred from the "Long Term Team" to the "Cross Over Care Team" on 27 May 2021, after he had appeared before the Youth Justice Court.

⁹⁰ Additional documents folio 9 paragraph 9

134. In January 2022, when he was 15, Kailab was arrested for serious offending at the Sabine Road residence. His placement there was subsequently closed. This decision was apparently made by Territory Families, who had ultimate say in placement decisions, though there was consultation with CASPA. There was evidence that this residence was no longer deemed suitable to meet Kailab's needs.⁹¹ The apparent rationale was that this placement was no longer suitable and that he required a 1:1 or 2:2 staff placement.⁹² Nonetheless on release from Don Dale, Territory Families did inquire as to whether Kailab could return to Sabine Road but there was no availability at the house.⁹³

135. Territory Families, again in consultation with CASPA, then determined that Kailab would be best accommodated in a self-contained flat at a CASPA Ryland Road house. This was also in accordance with Kailab's expressed desire for more independent living. CASPA also sought and received funding from Territory Families to create a team of Therapeutic Care Workers (TCWs) who would work solely with Kailab on a one-on-one basis. This placement ended in March 2022 when Kailab assaulted a staff member and did significant property damage at the house. He was arrested and again detained at Don Dale.⁹⁴ Kailab was remanded at Don Dale from 11 March 2022 until his release on bail to immediately attend the 7 Emus Camp on 25 April 2022.

136. Kailab's placement at Ryland Road was closed after he re-entered detention. The evidence around the decision to do so was conflicting.

137. Territory Families say that CASPA had advised them that the Ryland Road placement was not capable of meeting Kailab's needs and that he required 1:1 support.⁹⁵ CASPA, however, asserted that he was receiving one on one funded support at Ryland Road at this point in time.⁹⁶ Territory Families case worker Ms Chippendale told the Inquest that she voiced concerns about Kailab returning to Ryland Road and she thought it was a unanimous decision between Territory Families and CASPA that Ryland Road was not the best place for him.⁹⁷ Ms Palamounain ultimately clarified that the decision to close this placement was made by Territory Families.⁹⁸

⁹¹ Additional Documents, Folio 5, para 660 and Folio 9 Annexure C

⁹² Ibid, para 651

⁹³ Additional Documents, Folio 8, Statement of Nathan Baunach para 1

⁹⁴ Ibid, Statement of Nathan Baunach para 3

⁹⁵ Additional Documents, Folio 5, para 666

⁹⁶ Additional Documents, Folio 8, Statement of Nathan Baunach para 3 & Folio 9, Statement of Naarah Rodwell, Annexures A-C and at T160

⁹⁷ T65 and T69

⁹⁸ T260

138. CASPA's CEO, Naarah Rodwell, gave evidence that Kailab's bed closure at Ryland Road was directed by Territory Families.⁹⁹ She gave evidence that she flew to Darwin and personally advocated to Territory Families for Kailab's placement at Ryland Road to remain open whilst he attended a three month court mandated program called 7 Emus (see below). She did not agree with a model where children lose their bed in the event that they are remanded in Detention or in some other form of transitional accommodation including residential programs and camps.¹⁰⁰

139. The closure of his bed at Ryland Road had significant consequences for Kailab. Territory Families were looking for a placement that delivered higher levels of support to Kailab.¹⁰¹ But without a home, he had no bail plan. Youth Justice Court records of 5 April 2022 reflect the fact that Kailab could not be admitted to bail as there was no identifiable home or suitable placement for him, including in a supported youth bail facility, Saltbush, given his complexities and risks.¹⁰² When Kailab was released on bail on 25 April 2022 to attend the 7 Emus Camp program at 7 Emus Station ("7 Emus") for three months, these issues were not resolved and he remained without a home, albeit in the care of the CEO.

7 Emus Camp

140. In a bail assessment presented to the Youth Court, Territory Families CYJOs recommended that Kailab attend 7 Emus. It was thought that this intended therapeutic intervention would give the Department time to develop a suitable placement for him with CASPA.¹⁰³ The decision to send Kailab to 7 Emus was not endorsed by case workers who were directly involved with Kailab.¹⁰⁴ But it was recognised that it was the only option for Kailab, other than Don Dale, as there was no suitable placement available at that time.¹⁰⁵

141. The bail assessment recommending 7 Emus does not make clear what involvement, if any, the author of the assessment had in Kailab's care, though it appears that the most senior members of the Crossover Team were spoken to in the course of the preparation of the bail assessment. Julian McGuinness, the Crossover Team Manager, gave evidence that the 7 Emus proposal came from his director and there were no other identifiable options outside Don Dale.¹⁰⁶

⁹⁹ T 197

¹⁰⁰ T198

¹⁰¹ Additional Documents, Folio 5, para 667

¹⁰² Coronial Brief Folio 30 Case notes 22217912

¹⁰³ Additional Documents, Folio 5 paras 668 and 671

¹⁰⁴ T68

¹⁰⁵ T67

¹⁰⁶ T77

142. It came to light in evidence that, for a period around this time, in addition to being homeless, Kailab was without an allocated Case Manager after Ms Chippendale and before Ms Coote took over case management.¹⁰⁷ Given Kailab's known complexities, homelessness and high risk behaviours, this gap in having a dedicated case manager, albeit a short one, is difficult to understand.

143. Kailab was released from detention to commence the 7 Emus program on 25 April 2022. Kailab's Youth Outreach and Re-Engagement Officer (YOREO) travelled with him and stayed with him for the first four days. On 4 May 2022 an incident occurred where it was alleged that a worker at the camp assaulted Kailab and another young person. As a result Kailab returned to Darwin.

144. Ms Friend, Forensic Psychologist, gave evidence that she did not think that the 7 Emus camp had the capability to deal with someone with Kailab's complex issues¹⁰⁸ and caseworkers expressed concern that the entire experience compounded Kailab's trauma.¹⁰⁹

Residential Care from May 2022

145. When Kailab returned early from 7 Emus, Territory Families had no available placement for him. Kailab had to be accommodated in a hotel room for a few days.

146. On 6 May 2022 Territory Families placed Kailab at a CASPA house in The Narrows. On 13 May 2022 he was relocated with all the other young people at the Narrows house to a house in Mahogany Street, Karama after neighbourhood complaints about the residence. Territory Families say that this placement was only ever temporary as the placement matching was not ideal for him.

147. His final move was on 27 May 2022 to another CASPA house at Henry Street in Stuart Park. This house had one other young person and was effectively staffed 2:2.

148. Ms Coote, his Territory Families case manager at the time, gave evidence that she strongly opposed this move. She gave evidence that Kailab did not want to move and wanted to stay at Karama¹¹⁰ and that, in her view, the Henry Street house was culturally inappropriate as the other occupant was a young white female.¹¹¹ Ms Coote ultimately conceded that she may have been incorrect as to whether the female was non-

¹⁰⁷ T101

¹⁰⁸ T89

¹⁰⁹ T23

¹¹⁰ T29

¹¹¹ T33

indigenous but maintained that the placement was culturally inappropriate due to gender.¹¹²

149. In addition to her opinion that the placement was culturally inappropriate, Ms Coote made a number of serious criticisms of CASPA's role in Kailab's care at this time. Her evidence on both scores was unsubstantiated and in conflict with evidence of other witnesses and objective facts. For example, Jullian McGuinness gave evidence that a cultural advisor did have input into this move and essentially it was not deemed inappropriate.¹¹³ Naarah Rodwell, CASPA CEO gave evidence that the cultural appropriateness of this move was never raised with her.¹¹⁴ Nathan Baunach, CASPA Executive Director gave evidence that Kailab understood the reasons why he could not remain at the Karama house and that he wanted to move to Henry Street which he was to share with one older person.¹¹⁵

150. Ms Coote expressed a view that CASPA did not take a therapeutic approach to Kailab's care but rather a punitive approach, was responsible for instability of residence and did not maintain adequate records. She was unable to give specific examples of any of these claims and, when challenged, she conceded that when she said "punitive" she meant "fruitless or ineffective".¹¹⁶ These assertions around CASPA's care were also not established on the evidence. For example, as already stated, CASPA had advocated for stability of placement and that placements remain open for Kailab while in detention. CASPA had advocated for and secured funding for a team of TWCs for Kailab. CASPA's CEO flew in to Darwin personally, specifically to meet with Territory Families to advocate for Kailab's placement at Ryland Road to remain open while at 7 Emus. Kailab's long term case manager, Ms Chippendale gave evidence that CASPA worked well with Kailab. The CASPA witnesses all spoke to the therapeutic principles that underpinned their care of Kailab.

151. Ms Coote's views on CASPA appear to have been poorly informed and not shared by others in Territory Families. They may be explained by the fact that she was involved in Kailab's case management for only a very short time from April to July 2022 but it is important to say that I give no weight to those opinions which were, regrettably reported in the media at the time of the Inquest, without reference to the majority view of Territory Families workers and absent any reference to the evidence of the work done by CASPA to help Kailab.

¹¹² T46

¹¹³ T105, T107

¹¹⁴ T209

¹¹⁵ T171

¹¹⁶ T38

Instability and Lack of Placements

152. What is clear to me regarding Kailab's placement history while in the care of Territory Families is that it was characterised by extraordinary instability. That pattern of instability was evident well before Kailab's entry into ITRC.
153. From the age of 5 until the date of his death, Kailab had approximately 35 different placements including kinship care, foster care, family reunification and residential care. This does not include his periods in respite care or his informal movements where he self-placed with a wide range of family and friends, nor does it include his periods in Youth Detention.
154. There is striking irony in the fact that the Protection Orders obtained for Kailab in part identified protection concerns around instability, the need for permanency in living arrangements and the need for stable and nurturing relationships. These factors underpinned the decision to remove Kailab from his family's care¹¹⁷. At best, they were not remedied by placing Kailab in protection. At worst, they were exacerbated.
155. Relevantly, placement instability has been broadly identified as a risk factor for later criminal behaviour¹¹⁸. While expert material included in the Coronial Brief rightly observes "multiple placement changes may be, in part, because of preexisting behaviour problems, [the] potential effects of placement instability, such as reduced opportunities for bonding and social support, school and neighbourhood changes, continued system involvement and monitoring, and increased anger or anxiety resulting from the loss of multiple caregivers or siblings, could compound any initial behavioural difficulties and result in a steady increase in criminality risk over time"¹¹⁹.

Crossover Team care dual responsibilities under CPCA and the Youth Justice Act (YJA)

156. As noted, Kailab's case management had been transferred to the Cross Over Care team within Territory Families in May 2021 after he had appeared before the youth Justice Court.
157. At that time, Territory Families Cross Over Case team dealt with children who are both subject to Protection Orders under the CPCA and are also before the Youth Justice Court for offending. Case managers in this team perform statutory dual roles as delegate of the CEO under the CPCA in ensuring the safety and wellbeing of a child under the Protection Order and Community Youth Justice Officer under the Youth Justice Act.

¹¹⁷ Protection Order application dated 8.7.2016 p5 Folio#

¹¹⁸ Prof Megan Davies Family is Culture Review p237ff

¹¹⁹ Ibid Directly quoting quoting Sarah DeGue and Cathy Widom Folio #

158. At the time of the Inquest, I was concerned about the potential for conflict arising in the combining of the two separate statutory roles in one individual and the impact on a child like Kailab. That concern has since become academic, with the reallocation of CYJO responsibilities under the YJA to the Northern Territory Department of Corrective Services in 2024 away from Territory Families.

159. There is, accordingly, no need to make a recommendation, however it is appropriate to make a few observations because I think that Kailab was adversely impacted by the dual role.

160. In my view, there was an inherent and concerning conflict in the two roles being allocated to a single person noting the difference in roles and statutory responsibilities:

- a. a child protection case manager is effectively the delegate of the CEO who has parental responsibility for a child and must make decisions based on best interests of the child principles; and
- b. on the other hand, a Youth Justice Officer's principle responsibility under the YJA is to the Youth Justice Court, not governed by best interests principles, with obligations to assess, monitor and enforce orders of the court.¹²⁰

161. The conflict was born out in concerning evidence that some Territory Families case managers used the criminal justice system as a response to poor behaviour. One Territory Families case worker deposed that around 31 December 2021, she requested that Kailab's bail be revoked due to ongoing issues with his violent and difficult behaviour at Sabine Road.¹²¹ Another had suggested that Kailab's bail be revoked and be detained in Don Dale to "reset"¹²².

162. Though a number of case workers did not agree that there was any tension between the dual roles¹²³, this evidence points to the clear potential that combining the two statutory roles resulted in criminalisation of care in Kailab's case. Once under the management of a cross over care case manager and subject to a court's requirement to follow directions of a CYJO who is also their statutory carer, any non compliance with a carer's direction could have a criminal consequence that a child who is not in care would not suffer.

163. While it is accepted that combining both roles was Territory Family's response to recommendation 35.5 of the Royal Commission into the Protection and Detention of

¹²⁰ Section 140AA Youth Justice Act

¹²¹ Coronial Brief Folio 23

¹²² Ibid

¹²³ See for example evidence of Ms Palomountain at T224; Ms Coote at T35; Mr McGuiness at T76

Children in the NT (“Royal Commission”), aimed at reducing the number of people managing complex children¹²⁴, I do not agree that this was a proper construction of that recommendation. The recommendation was primarily directed at ensuring continuity and coordination of case management and service provision and proper and timely hand over of information between detention and care agencies, to ensure appropriate and consistent planning for children in care who move in and out of detention¹²⁵.

Periods in Detention

164. Kailab had 11 different episodes in Detention at Don Dale ranging in length from short periods of 2 days to his longest period of 113 days. For all but one of these detention episodes he was on remand.¹²⁶

165. The Inquest did not consider the conditions of detention in particular detail during those periods. The prevailing conditions at Don Dale around this time have been well documented by the Royal Commission into the Protection and Detention of Children in the Northern Territory’s Final Report. There are however aspects of Kailab’s care while detained that should be highlighted.

166. During Kailab’s second period in detention in May 2020, the Department determined that it should develop a Behaviour Support Plan (BSP) for him due to his complex trauma and challenging behaviours. It was intended that the BSP would assist in identifying behaviours and triggers for those behaviours and informs those caring for him how to appropriately support him.

167. Ms Palamountain conceded both in her affidavit and her oral evidence that the Department’s efforts to develop this plan were poorly co-ordinated which resulted in significant delays in finalising the plan. The BSP was not completed before Kailab left detention on 3 June 2020. On 20 June a psychologist from SATS met with Kailab to complete the BSP but, due to a low level of engagement from Kailab, the task was referred to Australian Childhood Foundation (ACF).¹²⁷ The BSP was eventually completed at the end of January 2021 during Kailab’s next and longest period in detention and just weeks before a Multidisciplinary report diagnosing Kailab’s FASD was published.

¹²⁴ T221

¹²⁵ See Recommendations 35.5-35.7

¹²⁶ Coronial Brief, Folio 12

¹²⁷ Additional Documents Folio 5 paras 473-474

168. Ms Palamountain in her affidavit said that the delay in finalising the BSP was due to difficulties in staffing.¹²⁸ In oral evidence she said that the lack of continuity in service delivery was due in part to Kailab moving between detention and residential care and the lack of coordinated through-care planning meant that different service providers were involved in producing the BSP. It was not made clear why the cross over care team did not coordinate ongoing service delivery around the BSP when Kailab moved from detention to residential care. I acknowledge that there was evidence before me that Kailab, by this stage, was disengaged with services and when out of detention was refusing to attend medical and other appointments.¹²⁹

169. Ms Palamountain gave evidence that once it was determined a BSP was important they “*threw a number of service providers at it to develop it*”¹³⁰ though she conceded that the failure to complete a BSP until January 2021 did constitute an unacceptable delay.¹³¹ She also agreed that had a BSP been completed in a timely manner it would have assisted staff at Don Dale to appropriately respond and engage with Kailab.¹³²

170. Ultimately, the BSP predated the PATCHES FASD assessment by only a few weeks, and was of limited utility as it could not have taken into account the diagnosis and recommendations of that multidisciplinary report.¹³³

171. Also, while in detention, in May 2020 a doctor referred Kailab to a paediatrician for review of his medication.¹³⁴ There is no evidence that he attended a paediatric appointment at this time, and if not, why not.

Late diagnosis of FASD and failure to follow up medical needs

172. I have accepted, on the evidence from Ms Friend, that the diagnostic testing for FASD was in its early stages in 2016 and that it is not reasonable, with the benefit of hindsight, to expect that a FASD assessment should have been conducted in 2016. Ms Friend also told the Inquest that aspects of Kailab’s presentation had the potential to mask his FASD disability as he was chatty, charismatic and was achieving academically except for maths, but she said that his complex planning and problem solving abilities were quite impaired compared with a neuro-typical child and he also had significant memory issues.¹³⁵

¹²⁸ Additional Documents, Folio 5 para 503

¹²⁹ Additional Documents, Folio 5 paras 487, 488, 521, 657, 670 & T61-T63

¹³⁰ T241, T246

¹³¹ T246

¹³² T245

¹³³ Additional Documents, Folio 5 para 533

¹³⁴ Additional Documents, Folio 5 para 470

¹³⁵ T 85, T87

173. However, there were clear oversights by Territory Families in attending to Kailab's medical needs that, if attended to, may have more effectively treated Kailab's behavioural issues that were clearly present, serious, obvious and ongoing from the point that he entered care at age 5.

174. For example, Kailab was first seen by a paediatrician in February 2012 around 5 months after he was first taken into care. The paediatrician recommended a review in 4 weeks. This was not done. He was not reviewed until March 2014. There is no explanation for this failure. While Kailab was back in his mother's care for most of 2013, the Department was still involved with the family.

175. Another notable concern is the lack of evidence of any paediatric consultations between May 2016 and March 2018 despite known long standing behavioural concerns that were escalating at this time and despite evidence that medical interventions had been effective in the past. In March 2018 a Paediatric Registrar noted the significant potential for a diagnosis of FASD. An assessment was not formally recommended until October 2018 by Dr Bianca Middleton who advocated that Territory Families "facilitate and pay for private neurocognitive assessment for possible FASD diagnosis."¹³⁶ This was never actioned by Territory Families and, as conceded by Territory Families,¹³⁷ was a concerning missed opportunity.

176. Kailab was reviewed at the Don Dale Outreach clinic by a paediatrician on 10 December 2020 and he was noted as being "at risk of FASD" and it was recommended that Territory Families should provide a comprehensive neuropsychology assessment for the evaluation of FASD.¹³⁸ This also was not actioned.

177. On 29 December 2020 Kailab was reviewed by a psychiatrist at RDH due to mental health concerns while in Don Dale. Foetal alcohol exposure was noted.¹³⁹

178. Eventually, Kailab was assessed by the PATCHES multidisciplinary team on 14 and 25 January 2021. The assessment was not initiated by Territory Families, but ordered by the Northern Territory Supreme Court for a sentencing proceedings at a point when Kailab had disengaged, his behaviours had become unmanageable and his criminal offending very serious.

179. A report dated 1 February 2021 provided a FASD diagnosis. Unfortunately, this was 3 years after a Paediatric Registrar noted the significant potential for a diagnosis of FASD

¹³⁶ Additional documents Folio 19 Letter Dr Bianca Middleton dated 15 October 2018.

¹³⁷ Additional Documents, Folio 5

¹³⁸ Additional Documents, Folio 19

¹³⁹ Ibid.

and 2 ½ years after a Paediatrician recommended that Territory Families arrange the assessment.¹⁴⁰

180. The failure by Territory Families to facilitate a FASD assessment following recommendations in 2018 was a serious oversight. Assessments were possible in the Northern Territory by 2018 and, as explained by expert, Ms Friend, an early diagnosis is critical to behaviour management. Diagnosis informs supports that can be put in place to assist children as they get older to help with executive functioning difficulties to assist with problem solving, planning and organising and to put in place medications if appropriate.¹⁴¹

181. In terms of Kailab, Ms Friend opined that were these supports in place from an earlier time, Kailab may have been less resistant to engaging with professional services¹⁴² and they would have assisted in achieving stability and appropriate therapeutic interventions for Kailab.¹⁴³ Consistent with Ms Friend's experience of similarly placed young people, by the time that Kailab was assessed the process was a difficult one that required navigation of youth justice and out of home care contexts. She noted that, typically, young people involved in youth justice regularly fail to attend appointments or are uncooperative or hard to engage with and the process of obtaining background information from family and coordinating a multidisciplinary team of professionals is burdensome¹⁴⁴.

182. Ms Friend made some important general observations arising out of Kailab's case:

- a. The FASD assessment process is complex, expensive and difficult. She concluded that privately run, fee-for service assessments are not viable due to these significant barriers and appropriate.¹⁴⁵
- b. The current numbers of people with FASD in Don Dale and nationally in both detention and adult prison are unknown and there appears to be no record maintained.¹⁴⁶
- c. Many young people like Kailab are not diagnosed until after they enter the criminal justice system.

183. As was born out in Kailab's case, the individual and broader social costs of late diagnosis is often too great. I support Ms Friend's conclusion that the best model for

¹⁴⁰ Additional documents Folio 19 Letter Dr Bianca Middleton dated 15 October 2018.

¹⁴¹ T 83

¹⁴² T 91

¹⁴³ T87

¹⁴⁴ T92; Additional documents Folio 21 p14

¹⁴⁵ T92

¹⁴⁶ T92-93

completion of FASD assessments is a publicly funded service that is better, more accessible and more available to ensure that “we are catching these young people much earlier than their entry into the youth justice system”¹⁴⁷.

Staff Training

184. Kailab had a number of Territory Families case managers while he was in care. The case managers who gave evidence at the Inquest were clearly dedicated and had received training specific to their roles.

185. Ms Palamountain described the in house training provided to Territory Families child protection workers in her affidavit was extensive and included topics such as trauma informed practice, working with children with disability, neurodivergence including ADHD and FASD, and engaging with relevant agencies.^{148 149} Induction and training is designed to give workers an understanding of disability and trauma so that they can identify any need to engage with specialist supports and I accept that it is comprehensive and ongoing.

186. Front line case workers are supported by in house specialists such as the Disability and Development Team (the DDT) a specialist team within Territory Families that provides specialist advice and guidance to practitioners who work with young people with disabilities and to assist their access specialist services.¹⁵⁰ In addition, specialists are engaged where a need has been identified for a young person¹⁵¹.

Provision of Services to Kailab whilst in care and detention

187. The Inquest received documentation and oral evidence regarding the services provided to Kailab which included psychological services, medical and paediatric services, specialist behaviour support, Trauma Informed Education Needs Assessment, Therapeutic Response Plan (ACF), BSP (SATS, ACF and Woollybutt), YMCA Back to School, Balunu Strong Warriors, Balanced Choice, ACF Strong Ways Program, CHART Program, First Step, #U-Turn Program, Back on Track Program, Spin 180 Program, Stronger Together and music therapy.¹⁵²

188. Kailab was provided with significant psychological support including individual therapy and sibling therapy between June 2012 and May 2015.¹⁵³ He was referred to Darwin

¹⁴⁷ Additional documents Folio 21 p15

¹⁴⁸ Such as the National Disability Insurance Agency, Disability and Development Team.

¹⁴⁹ Additional Documents, Folio 5 paras 814-817.

¹⁵⁰ Ibid, para 9

¹⁵¹ T282

¹⁵² Additional Documents, Folio 5, 475, 479-480, 514, 535, 628

¹⁵³ Ibid para 243

Psychology Services in 2016, was engaged with Dr Sarkovitz in 2018 and had ongoing therapy with Jeremy Wong of ACF.¹⁵⁴

189. As a result of Kailab's FASD diagnosis Territory Families successfully applied for NDIS funding for him. On 18 June 2021 his NDIS plan was approved and included a range of supports.¹⁵⁵ This included funding for specialist behaviour intervention and the development of a (*another*) BSP which was referred to Woollybutt Specialist Services on 20 October 2021 to do. Territory Families received a draft of this BSP on 21 March 2022 but were unable to locate a final version of the plan and conceded that it was never implemented.¹⁵⁶

190. Kailab's referrals to professional service providers escalated in his later years as his behaviours became more complex.¹⁵⁷ The Inquest heard that, despite appearances, these were not necessarily duplicated services, but rather each service provider provided a specific service, or were different programs from the same provider.¹⁵⁸

191. Ms Friend was asked whether she thought the number of services engaged to work with Kailab was excessive. She said that the organisations were all supportive and she thought it would have been good for him to be involved with them given his disengagement from school.¹⁵⁹

192. It does seem that, particularly from around 2020, Territory Families was effectively engaged in crisis management with the response being to commission various providers to prepare plans that were never implemented. Ms Palamountain said in evidence that *"I think we've gone from not having a plan in place at all and that was an issue, to now throwing everything we possibly can at it."*¹⁶⁰ She conceded both in her affidavit and in evidence that over servicing may have been an issue and that communication with Kailab about what these services all did could have been improved.¹⁶¹

193. Mr Manning gave evidence that the various plans spoke to each other and were not developed in a vacuum. He said they were developed in collaboration with all of the key stakeholders. I understood his evidence to mean that the plans were evolving rather than duplications of each other.¹⁶² He also said that the various plans were

¹⁵⁴ Ibid para 300

¹⁵⁵ Ibid para 591

¹⁵⁶ Ibid para 779

¹⁵⁷ Ibid, para 578

¹⁵⁸ T248

¹⁵⁹ T89

¹⁶⁰ T256

¹⁶¹ T249 & Additional Documents, Folio 5, para 579

¹⁶² T119

consecutive in time and it was not a case of Kailab having to interact with different people doing the same thing at the same time.¹⁶³

194. Kailab, however, seemed to find the number of service providers bewildering and said that he did not know what many of the people he was engaged with did.¹⁶⁴

Addressing absconding, self placement and safety planning

195. As indicated in the chronology of placements provided, Kailab had been absenting himself from his various placements from early on. By 2018, this behaviour had significantly escalated.¹⁶⁵ This behaviour occurred when he was in purchased home based care and then in residential care and ITRC.

196. Typically, a carer would report Kailab missing to the Department. Sometimes a carer would look for him or Territory Families staff and sometimes police would look for him.¹⁶⁶ Territory Families made missing person reports to police when they did not know where he had gone and if he was missing for more than 24 hours.¹⁶⁷

197. When Kailab absconded while he was on bail or subject to court conditions from 2020 onwards, Territory Families in their role as CYJO reported these breaches to police as they were mandated to do.

198. CASPA provided Territory Families with “Absconding Reports” when Kailab had left his placement though. When there were concerns about Kailab’s welfare, CASPA would report him missing to police in accordance with their Operations Manual.¹⁶⁸

199. While Kailab was in residential care, care providers were required to implement Safety Plans under the ITRC contract with Territory Families. CASPA’s Safety Plans for Kailab were produced for this Inquest and took into account his FASD diagnosis once known.¹⁶⁹

200. It was suggested to a number of witnesses that the safety planning for Kailab had, in fact, failed to keep him safe. Mr Manning said that CASPA did their absolute best to keep him safe but that risk can never be completely eliminated.¹⁷⁰ Ms Rodwell maintained that the safety plans developed for Kailab were “child centred” and

¹⁶³ T120

¹⁶⁴ T249

¹⁶⁵ Additional Document,s Folio 5, para 371, 441

¹⁶⁶ Ibid , paras 371, 384 & T241

¹⁶⁷ Ibid, paras 385, 406, 413, 427, 435, 437

¹⁶⁸ Coronial Brief, Folio 23(g)

¹⁶⁹ Coronial Brief, Folio 26, T 112

¹⁷⁰ T115

“focussed.”¹⁷¹ She said that they considered Kailab’s “triggers and signs of escalation”, including drug use, and were tailored to his “likes, dislikes, sensitivity and challenges.”¹⁷² Ms Rodwell said that she could not think of anything else that could have been done to prevent Kailab absconding.¹⁷³ She also observed that “leaving the placement, absconding, drug and alcohol use, property damage and criminal behaviour and violence against staff were the primary issues when [Kailab] first entered a CASPA placement in February 2021 and they continued through the various safety plans created for Kailab and his team.”¹⁷⁴

201. Ms Palamountain gave evidence that the safety planning for Kailab by Territory Families was thorough in identifying risks and risk mitigation strategies. Like Mr Manning, she too noted that risk could never be fully eliminated.¹⁷⁵ Ms Cootes said that Territory Families took appropriate steps to keep Kailab safe but that he complained of boredom and made choices to leave his placement, which was safe, and those choices were outside the control of the Department.¹⁷⁶

202. Relevantly, when there were non compliances within an ITRC setting, care providers had no authority to restrict or confine young people within the facility or use force to prevent them leaving.¹⁷⁷ Both CASPA and Territory Families witnesses agreed that such an authority potentially escalates the risk of harm to the young person and their carers.¹⁷⁸

203. There was clear evidence that CASPA tried to engage Kailab in activities that appealed to him in an effort to stop him from absconding. An annual allowance of \$17,114 was allocated for that purpose and expenditure was flexible and could be administered to accommodate a child’s particular or changing interests.¹⁷⁹ Kailab was supported in things such as playing Rugby, going on various excursions and to movies. He was also provided with music therapy funded through his NDIS plan but also supplemented by Territory Families.¹⁸⁰ I also heard about efforts to engage him in vocational activities such as the Hammers for Hope program run by CASPA. But, again, Mr Manning noted that Kailab’s risk taking behaviours were well entrenched before he came into CASPA’s

¹⁷¹ Additional documents folio 9 paragraph 13.

¹⁷² Ibid

¹⁷³ T203

¹⁷⁴ Additional documents folio 9 paragraph 13

¹⁷⁵ T240

¹⁷⁶ T39

¹⁷⁷ Additional Documents, Folio 5, para 442

¹⁷⁸ Ibid para 443; T200

¹⁷⁹ T291 & T292

¹⁸⁰ T258

care and that the adrenaline high he got from criminal activities, or taking drugs meant that he probably did feel bored by less “exciting” activities.¹⁸¹

Information Management and Information Sharing with other agencies (CASPA and NT Police)

204. Territory Families workers gave evidence that case information during Kailab’s time in care was recorded on an NTG database known as the CCIS system. Both Ms Coote and Ms Chippendale told me that they were trained in using CCIS and that important information was easily accessible.¹⁸² This was not supported by some of the evidence.

205. It was apparent that Territory Families did not have some critical information such as paediatric reports and education reports appropriately filed and readily available. The most egregious example was the Paediatric Report dated 15 October 2018 referred to above which recommended Kailab undergo a neurocognitive assessment for FASD, but this was not the only example. This document was located by my Counsel Assisting in a folder in the Coronial Brief marked “Education”. Given Territory Families did not have this document, I infer it was provided by the Department of Education in response to the summons to produce documents for this Inquest.

206. Ms Palamountain said that the Department had replaced CCIS with a new system called CARE. She said that the CARE system is being progressed to have a 360 degree view of the child. She said they are in the process of settling data access agreements with key partner agencies (housing, education, police and health) that will allow them to have a level of access to the information held by partner agencies, and it won’t rely on individuals pulling information out of emails and putting them into an information system. She was unable to say what level of document access they will have as this has not yet been finalised.¹⁸³

207. Ms Palamountain in her affidavit also referred to the limited functionality on both CCIS and the youth justice information system IOMS in relation to recording disability. The new CARE system is a shared system for both child protection and youth justice case management and has functionality to add disability which automatically causes a flag to appear against a child’s profile.¹⁸⁴

208. In evidence, Ms Palamountain said that information regarding Kailab’s disability (FASD) was not provided to police when they made reports regarding bail breaches or missing

¹⁸¹ T117

¹⁸² T58, T18

¹⁸³ T228

¹⁸⁴ Additional Documents, Folio 5, paras 822-824

persons reports. She accepted that this was a gap, and this information may have assisted police to respond more appropriately to him.¹⁸⁵

209. She gave evidence that there were no limitations in Territory Families providing that information to police, but that there was currently no protocol or procedure in place to automatically share disability information with police when recording non-compliance with youth justice orders.¹⁸⁶ This strikes as a serious deficiency that could markedly impact interactions between police and a youth like Kailab with known disabilities.

Conclusions

Whether the services and care provided by Territory Families were appropriate and sufficient to meet Kailab's needs?

210. I am satisfied that the Department has comprehensively reviewed Kailab's care both from a child protection and a youth detention perspective and has properly identified a number of short comings and gaps in service in caring for Kailab. The Department made a number of appropriate concessions which I have referred to and summarise below.

211. I am satisfied that the Department has properly provided records and documents in its possession as requested during the Coronial Investigation in full cooperation with the summons. My comments below are not to be read as critical of their co-operation.

212. The documents provided to the Coroner's Office as requested by the OIC of the case were voluminous.¹⁸⁷ Unfortunately, they were, on the whole, poorly categorised which resulted in duplicate documents and emails appearing in multiple different folders rendering the task of reading and assessing their contents extremely time consuming and difficult for myself and my Counsel Assisting. That, of itself, raises real concerns as to internal management of case material and perhaps explains things like the serious inaction around failure to follow up Kailab's medical needs.

213. Accordingly, I would urge the department to ensure that the new information management system (CARE) coherently collates, categorises and identifies relevant documents.

Whether Kailab's ITRC placements were appropriate and safe?

¹⁸⁵ T282

¹⁸⁶ T282-283

¹⁸⁷ Coronial Brief, Folio 25 unredacted version

214. On the evidence before me I am satisfied that the Department did properly follow its processes and procedures in place at the time in sourcing placements for Kailab.

215. However, it goes without saying that the fact that he had approximately 35 different placements whilst he was in care was a terrible outcome for this very young, very traumatised child who was only 5 years of age when he first entered into care.

216. Territory Families acknowledged that Kailab's challenging trauma related behaviours, his young age and their inability to stabilise his placement after removal from his family decreased the likelihood of him establishing a secure attachment and is likely this resulted in long term negative impacts for him.¹⁸⁸

217. The Department sought and sourced appropriate home-based carers for Kailab up until 2018 and took steps to provide supports to individual carers and Kailab during these early years including therapeutic supports. However, these placements all broke down for various reasons. I accept that once a placement has broken down, the Department could not compel a carer to continue care. I accept the evidence that there is a nation-wide shortage of foster carers and an acute shortage of carers for children with complex needs.

218. I am satisfied that, despite residential care not being recommended for children as young as 12, Territory Families had effectively exhausted home-based care options for Kailab by 2018 and that ITRC as operated by CASPA in the NT was the best available option for Kailab. It was not, however the best possible option. The Inquest heard that more flexibility is needed in the funding model around home-based care placements for options for children with complexities as significant as Kailab's who may need 1:1 support and highly specialised care.

219. Kailab's case points to a clear need for the government to consider funding and operating a more specialised model of care for children with a significant disability. The choice should not be between ITRC and Don Dale as it was for Kailab in his later years.

Bed closures

220. I have raised concerns about the fact that there were times when Kailab would be without a known placement when he entered detention, even when on remand, and when he was sent to 7 Emus.

¹⁸⁸ Additional Documents, Folio 5, para 130

221. While it is accepted that, for Kailab, certain placements (such as Ryland and Sabine Road) were ultimately unsuitable due to his own behaviours that saw him re-enter detention, and that placements needed to change,¹⁸⁹ I do not accept that a placement should be closed and reallocated before an alternative option is identified. For any child in care, the notion that they had no home and the uncertainty that that understanding would bring must surely be distressing, destabilising, isolating and heighten any sense of abandonment already felt. As CASPA submitted in closing submissions through legal counsel, there should always be a “plan B”. Kailab’s grandmother Ms Wright, highlighted the distress felt when Kailab’s bed was closed when he was remanded in custody and his possessions went missing.

222. CASPA advocated for Kailab’s placements to remain open when in detention and Mr Manning gave specific evidence that it is best practice to keep a bed open for 3 months in case transition fails.¹⁹⁰

223. Territory Families acknowledged in submissions that there are benefits in maintaining a placement in these circumstances and that this is already considered in the decision making process. Though not borne out in Kailab’s case, Territory Families submitted that typically placements would be maintained. I accept the submission that decision making in respect of placement is complex and involves balancing the interests of all young people in its care and the allocation of a limited pool of resources. But while it may be unsafe for these decisions to be made by way of an inflexible rule mandating that placements remain open when children go into detention or a short term intervention program, it is equally, if not, more unsafe for a child to be homeless.

224. While I am satisfied that each of Kailab’s moves while in CASPA’s care were properly considered and that appropriate risk management tools were utilised in determining his placements, the 5 placement changes from 2021 to July 2022 and the periods where lack of a suitable placement kept him in detention or saw him stay in a motel did not provide him with the stability he needed.

225. Bed closures should not occur while a child is in detention or participating in a court mandated program unless an alternative placement has been identified that can be immediately made available on short notice in the event that a program is cut short, or bail is granted. Every child should have the security of knowing they have a home waiting for them.

Reunification

¹⁸⁹ T65, T69

¹⁹⁰ T134

226. During the period between 2011 and 2018 there were three attempts to reunify Kailab with his family. Territory Families acknowledged that whilst family reunification was in accordance with the wishes of Kailab, his family, and the objects of the *Care and Protection of Children Act (CAPCA)* the three planned reunifications were too ambitious and the Department did not do enough to support Ms Moir.¹⁹¹ I find that the 2017 reunification attempt in particular was premature, poorly planned and executed, and failure was inevitable.

227. I am of the view that these failed reunification attempts significantly added to Kailab's already heavy trauma load. I note that this is effectively acknowledged by Territory Families who noted an increase in his challenging behaviours when family unification planning was on foot and when it had failed. Territory Families also acknowledged deficiencies in their own policies, procedures and approaches to managing reunifications at the time as highlighted previously.

228. Territory Families acknowledged that better and different early interventions may have delivered different outcomes for Kailab and his family. In particular, providing better supports to Kailab's family early on may have either allowed him to remain with family or be successfully reunited with family with proper supports.

229. I was advised that there have been significant reforms that aimed to improve service delivery and may have resulted in better outcomes for Kailab. These included:

- Commitment to the "*Safe and Supported: the National Framework for Protection Australia's Children 2021-2013*";
- Prioritising Aboriginal Community controlled organisations to provide services and support;
- Improved Family Carer Assessments;
- Aboriginal Cultural Security Framework;
- Aboriginal Workforce Special Measures Plan;
- Establishing a Clinical Practice and Professional Services Directorate;
- Employment of a Senior Lecturer Professional Services;
- Legislative, policy, procedure and training reform with respect to responses to domestic and family violence;
- Implementation of the Signs of Safety Child Protection Practice Framework;
- Family reunification reform;
- Permanency Planning;
- Signs of Success Youth Justice Practice Framework;
- Youth Justice Model of Care reform;
- Through Care Planning (between detention and out of home care);

¹⁹¹ Ibid paras 314-320

- CARE: client management system;
- 360-degree view information sharing agreements.¹⁹²

230. I am hopeful that the Department's efforts at reform mean that a child like Kailab coming into care now would not experience the same placement instability that he did, and that family reunification would be better planned and supported.

Whether Kailab received timely and adequate medical and therapeutic assessments and care with specific reference to FASD?

231. Territory Families were aware of a risk of FASD when Kailab first entered care and management of his significant behavioural issues was proactive and appropriate in the early years of his care, prior to 2016.¹⁹³ I have acknowledged expert evidence that Kailab's presentation did not prompt an investigation for FASD in accordance with accepted guidelines at the time. But, unfortunately, monitoring and treatment of Kailab's clear behavioural issues was neglected at times, after those early efforts.

232. I am not satisfied that adequate and consistent steps were taken to ensure that Kailab's medical needs were met. It is accepted that there was a level of disengagement and resistance by Kailab as he grew older. I acknowledge the evidence that in his later years (2020 onwards) medical appointments were made for Kailab but he refused to attend. But there was an absence of evidence of even any attempts to ensure paediatric follow up between 2016-2018, and I consider this to have been a critical oversight. Ms Palamountain also conceded in her evidence that Kailab should have been reviewed in December 2016 and the failure to ensure a timely review between 2016 and 2018 was a "missed opportunity".¹⁹⁴

233. I am of the view that the failure to ensure paediatric follow up played a part in the constant placement breakdowns that Kailab experienced and likely contributed to the deterioration in behaviour to crisis point when he entered the criminal justice system in 2018. We know from the evidence of Rowena Friend that paediatric follow up may have assisted in behaviour management and reduced the likelihood of negative outcomes for Kailab, even in the absence of a FASD diagnosis.

234. Further, Territory Families have acknowledged that they did not act on the October 2018 paediatric report which recommended that a neurocognitive assessment for FASD be funded and obtained by Territory Families.

¹⁹² Additional Documents, Folio 5, paras 833-953

¹⁹³ T759

¹⁹⁴ T235

235. It is clear from the evidence that the reason this was not done was that the Department did not have a copy of this paediatric report in its records. As already noted, the Department has admitted that it did not have all critical medical and education records for Kailab. In my view it was incumbent on Territory Families, as the statutory parent, to ensure that it had this critical medical and educational information.

236. I am not satisfied that Kailab received a timely assessment in relation to his FASD diagnosis. Noting the evidence of Ms Friend and the importance of early engagement and diagnosis, I am of the view that the failure to have Kailab assessed at least in 2018 prior to him becoming resistant to medical and therapeutic interventions negatively impacted on the ability of clinicians to engage with him. It also negatively impacted the Department case workers and his carers to provide appropriate supports to regulate his behaviours at an age when they were critical. It is deeply unsatisfactory that the assessment was not actioned until it was called upon by the Supreme Court at a time when until Kailab's behaviours had escalated so severely.

237. I am of the view that the failure to have this assessment done in 2018 potentially undermined, to some degree, other aspects of his care such as properly informed care plans and strategies to manage his behaviours.

238. Territory Families properly conceded that the failure to do this assessment when it was recommended in 2018 represented an unacceptable delay and that an earlier assessment of FASD may have led to improvements in the level of care and support provided to Kailab.¹⁹⁵

239. In terms of this unexplained failure and the misplaced medical records found in his education file, I was told that the new CARE system and the proposed data sharing 360 degree view project are expected to address this issue and ensure that the Department has access to critical medical reports. I sincerely hope that this is the case.

240. I was informed that the more recently established Disability Development Team (DDT) and SATS would have identified his presenting behaviours and led to an earlier assessment process had it been operative earlier on in Kailab's care.¹⁹⁶

241. I was also informed that the establishment of the Medical and Allied Health Specialist Services (MAHSS) panel contract in 2020 would have streamlined the process of seeking a multidisciplinary assessment.¹⁹⁷

¹⁹⁵ Additional Documents, Folio 5, para 374

¹⁹⁶ T272

¹⁹⁷ Additional Documents, Folio 5, para 770

242. Ms Palamountain gave evidence that assessments and screening are now done when a child enters care. I was provided with a copy of the Department's Health and Medical Needs of Children in Care Procedure¹⁹⁸ which requires a baseline assessment of the child's medical, dental, psychological, disability and educational needs to be undertaken, within the first three months of a child entering into care. This Procedure also provides guidance as to how to procure assessments through the MAHSS panel for specialist referrals such as FASD assessments.

243. I am satisfied that this procedure, if followed, will assist in the care management of children who enter care with complexities like Kailab's.

244. Processes in relation to the identification of FASD for children entering detention were less clear. The Royal Commission into the protection and detention of children in the NT made recommendations specifically directing that comprehensive medical and health assessments be carried out in relation to physical and mental health and FASD screening occur for children entering detention where not already conducted.¹⁹⁹

245. The NT government status report says that this recommendation has been completed.²⁰⁰ However, Territory Families were unable to identify what that initial health assessment looks like and whether it is specific to FASD.²⁰¹

246. I propose to make a recommendation in relation to this issue which the Department has said it supports.

Whether the recommendations in the PATCHES report were implemented?

247. I received and heard evidence from Ms Palamountain that the recommendations were implemented where possible. This included an NDIS plan and various supports. I heard evidence that referrals for speech and occupational therapy were made for Kailab but he declined to attend appointments and could not be forced to do so.²⁰²

248. I am satisfied that appropriate steps were taken to implement these recommendations and accept that Kailab was difficult to engage with by the time the Multidisciplinary Report was available.

¹⁹⁸ Additional Documents, Folio 26

¹⁹⁹ Recommendations 15.1.2 and 15.1.3

²⁰⁰ Additional Documents, Folio 10

²⁰¹ T272

²⁰² T63

Whether there was appropriate communication, consultation and co-operation between Territory Families and CASPA in decision making regarding Kailab's case management including daily care, education, activities and therapeutic treatment?

249. With the exception of Ms Coote, all of the witnesses gave evidence that the working relationship between CASPA and Territory Families was excellent. Ms Chippendale in particular was extremely positive in her assessment of the relationship between herself as case manager and CASPA. Mr Manning gave evidence that the therapeutic work done was done in a team environment which included Territory Families and other service providers working together.

250. I was informed that regular meetings occurred both formal and informal, that these meetings included a range of stakeholders, that CASPA had included the case managers in their Teams Channels for each child so that they could see exactly what each child's day to day care looked like at a micro level.²⁰³

251. CASPA was required to provide Safety Plans, monthly reports, absconding reports and incident reports as part of its contractual obligations. All of these were produced for this Inquest and I am satisfied that this requirement has been met.

252. Where Ms Coote's evidence differed from the other witnesses on this issue, I accept the evidence of the other witnesses over Ms Coote's. I note that in fact communication between Ms Coote and CASPA identified in some emails was the only example which suggested communication issues.²⁰⁴ I also note that Ms Coote was only Kailab's case manager for a couple of months and her interactions with CASPA were limited.

253. I am satisfied that the working relationship between Territory Families and CASPA was appropriately collaborative given their respective roles and that communication and decision making appeared to be in accordance with the contract between the parties.

Whether Kailab's daily care, education, activities and therapeutic treatment was appropriate and adequate?

254. I received and heard evidence regarding efforts to engage Kailab in education. It is clear that up to 2018 Kailab was well engaged at school. From 2018 the picture is not so positive. However, there was ongoing and significant effort made by Territory Families and CASPA to enrol Kailab in various educational programs that he was prepared to be involved in such as Malak Re-engagement Program, Clontarf Foundation, Back on Track, YMCA's Back to School program, and Don Dale Education

²⁰³ T191

²⁰⁴ Additional Documents, Folio 9, Annexure H

Program.²⁰⁵ I heard evidence from Mr Manning about CASPA's efforts to offer enticing activities and that funding for these was provided under the contract. Regrettably, prior to 2021 these efforts were made without the benefit of the BSP.

255. Those opportunities included various activities, educational opportunities and support, as well as therapeutic treatments including psychological and occupational and speech therapy. For the most part, Kailab declined them with the notable exception of music therapy.²⁰⁶ I heard evidence that Kailab's music therapy was funded as part of his NDIS plan and that Territory Families continued to this even after the NDIS funding ran out.

256. Fortunately, the ITRC model ensured ongoing therapeutic support and included therapeutic care specialists working directly with children. In Kailab's last placement at Henry Street, the House Coordinator was a qualified therapeutic specialist and was at the house on a day to day basis.²⁰⁷

257. Overall, I am concerned that there were too many people involved in making plans and assessments for Kailab, that for the most part those plans were not informed by the BSP and that they were not always done in a streamlined manner or that Kailab understood what each service was supposed to do. I accept the evidence that many of the services provided very specialised programs rather than duplicating other programs but it must have been very confusing for Kailab at times.

258. Based on all of the evidence, I am satisfied that Kailab's daily care, education, activities and therapeutic treatment was appropriate and adequate and in accordance with the CASPA-Territory Families funded contract. However, I would like to see a more streamlined approach to providing services to young people like Kailab.

Whether there was an adequate assessment of Kailab's suitability for 7 Emus Camp?

259. Kailab's attendance at 7 Emu's Camp was mandated by the Youth Justice Court under a bail undertaking. It was endorsed by Territory Families in a bail assessment report provided to the court as discussed from paragraph 140.

260. It was clear to me from the evidence that the proposal to send Kailab to 7 Emus Camp was primarily driven by a need to find somewhere for him to go so he could be released from Don Dale while the Department and CASPA worked towards finding another

²⁰⁵ Additional Documents, Folio 9, paras 402,419,466,536

²⁰⁶ Additional Documents, Folio 9, para 663

²⁰⁷ T120

residential placement for him as Ryland Road was not working out. It is clear from the bail assessment reports prepared for the Youth Justice Court at the time that Kailab had no viable residential accommodation²⁰⁸.

261. I note that the Department took some efforts to prepare him for the camp and sent a YOREO with him for the first 4 days but did not provide any other supports. 7 Emus Camp was primarily a pre-vocational style camp. There was no evidence that the camp would cater for and provide therapeutic interventions for a child with Kailab's needs and complexities.

262. The Department did acknowledge that the assessment process did not adequately consider the mix of young people attending, Kailab's ability to self-regulate, nor his complexities including FASD, ADHD, attachment disorder and complex trauma. Ms Palamountain said that further consideration should have been given to Kailab's suitability and the level of support he required to successfully complete the camp.²⁰⁹

263. I am of the view that Kailab's complex needs meant that he ought not have been recommended for this camp without proper therapeutic supports. The Department has reached the same conclusion and taken appropriate steps to remedy this for future placements.

264. Ms Palamountain in her affidavit said that the Department has since worked with the 7 Emus camp staff to provide a trauma informed program and have also taken a more conservative approach in assessing the suitability of young people with complex needs for the program.²¹⁰

Whether Kailab's breaches of bail orders including failure to comply with electronic monitoring, curfew and absconding were adequately addressed?

265. On the material before me I am satisfied that Territory Families did comply with their statutory requirements to report Kailab's breaches of orders to police, and did take appropriate steps to try and locate Kailab where possible.

266. In relation to his absconding, I am satisfied that Territory Families did attempt to engage Kailab in appropriate activities in an effort to keep him engaged and at his placements, as detailed above.

²⁰⁸ Coronial Brief Folio 30 Case notes 22217912

²⁰⁹ Additional Documents, Folio 5, paras 697-698

²¹⁰ Additional Documents, Folio 5 para 701

267. In relation to his CASPA placements, it was clear from the evidence that they did not have any legal power to detain him at his placements and relevant witnesses told me that they believed that locking him in at a placement would in all likelihood have escalated the risk of harm to him and to his carers.

268. In relation to secure care facilities for young people in the Northern Territory, I was told that there are currently none available. I heard evidence from Mr Manning that in NSW CASPA is authorised to secure some young people in residential care facilities and that this is done by application to a court with orders reviewed every 3 months. He did agree that Community based therapeutic secure care could be explored as an option in the NT but it currently does not exist.²¹¹ I am of the view that this option ought to be explored for at risk young people who persistently abscond from placement.

Whether Territory Families employees involved with Kailab (both in and out of Detention) were adequately trained to care for and manage his complex diagnosis including FASD, ADHD, attachment disorder and complex trauma?

269. The training provided to Departmental staff involved in Kailab's care has been outlined above.

270. I am satisfied that the training is adequate noting the lengthy induction program, that training opportunities are said to be ongoing, that child protection practitioners already possess qualifications (both Ms Coote and Ms Chippendale held relevant tertiary degrees) and that referral to specialists are available and utilised by the Department.

Whether Territory Families Information Systems accurately recorded Kailab's disabilities and was this data shared with other agencies (CASPA & NT Police)

271. The evidence before me was that both CCIS and IOMS had limited functionality as regards recording of disability. Ms Palamountain also conceded that the Department did not have comprehensive medical and education documents on their system which contained critical information.²¹²

272. Kailab's FASD diagnosis was recorded and shared with CASPA, but the failure by Territory Families to retain all relevant records relating to Kailab's medical and educational history is of grave concern.

273. I was told that Kailab's FASD diagnosis and resultant disability was not shared with police when reporting compliance breaches but that there was no barrier to this being

²¹¹ T139

²¹² T228-229, Additional Documents, Folio 5 para 821

done and that it should have been shared.²¹³ I address this issue in detail in the section below relevant to Police.

274.The Department has since implemented a new shared system (CARE) which has improved functionality for recording disability.

275.I have been told that the new system CARE and the development of Information Sharing Protocols with relevant agencies is expected to address this issue. Accordingly, I will not make a specific recommendation for a changes to the Department's Information Management System. However, I do recommend that a review is conducted to ensure the new system is achieving information sharing as contemplated by the Protocols.

Crossover Team dual responsibilities under CPCA and the Youth Justice Act (YJA)

276.As noted, Territory Families are no longer responsible for compliance monitoring under the Youth Justice Act following recent government department restructures. Accordingly, the concerns that were raised at the Inquest regarding the inherent conflict in the combining of responsibilities of case worker under the CPCA and CYJO no longer arise and no recommendation is necessary.

Whether the Services and care provided by CASPA were appropriate and sufficient to meet Kailab's needs?

Whether Kailab's ITRC placements were appropriate and safe?

277.It is clear from the evidence that the ultimate responsibility for ITRC placement decisions fell to Territory Families who consulted with CASPA. I heard evidence that Placement Management Risk Assessments (PMRAs) formed an important part of the assessment process under the ITRC model and I was provided with CASPA's PMRAs.

278.Mr Manning gave evidence that CASPA have a range of highly complex young people in their care and that the PMRAs often come back as high to extreme, in which case, risk management strategies are recommended in the plan to reduce the risks. He said that the risks are also balanced up against the risks in other possible placement options and CASPA presents the various options back to Territory Families and the risks are discussed.²¹⁴

²¹³ T282

²¹⁴ T123-124

279. He said that PMRAs for very high risk children are provided to the CEO of CASPA and considered at an executive level before placement options are provided to Territory Families²¹⁵ and that placements are under constant review and are discussed at weekly meetings by a movement review panel.²¹⁶

280. The last two PRMAs for Kailab at the Sabine Road residence gave an overall risk assessment of high/extreme.²¹⁷ The risks associated with his remaining at Sabine Road appear to have been taken into account and resulted in the decision to move him to the self-contained flat at Ryland Road.

281. The initial PRMA for Kailab for Ryland Road was assessed as high/extreme and CASPA initially determined that this placement was not recommended. CASPA were of the view that he required a 1:1 staffing model. With this staffing ratio the Ryland Road PMRA assessment was reduced to "High" and he was assessed by CASPA as suitable.²¹⁸

282. I am satisfied that CASPA did undertake Safety Planning as required under their contract. Staff were trained in using the Safety Plans and were required to read them before going on shift and implement the strategies in the plans. Kailab's Safety Plans were reviewed weekly.^{219 220}

283. Other safety and risk management measures in place at the time included:

- a. Incident Crisis Management Plans in place for each child and made accessible to staff in each house in the event of a crisis.²²¹
- b. CASPA's 24-hour help line as well as 24 hour house staffing so Kailab could telephone if he required assistance when he was out of placement.

284. I am satisfied that CASPA gave proper and ongoing consideration to the appropriateness of Kailab's placements, and these were changed when required and additional funding was sought to increase staffing ratios due to his high needs.

285. I am satisfied that CASPA had appropriate plans and procedures in place to try and keep Kailab safe and mitigate the risks associated with him leaving his placements. I accept the evidence of Mr Manning, and others, that it is not possible to eliminate all

²¹⁵ T124

²¹⁶ T116

²¹⁷ Coronial Brief, Folio 26

²¹⁸ Coronial Brief, Folio 26

²¹⁹ T116

²²⁰ T113

²²¹ T118

risk. I also accept that if Kailab had chosen to remain at his placements, instead of in the company of others engaged in high-risk activities, he would have been kept safe.

286. I am concerned that the ITRC model as it is currently funded may not be fit for purpose for complex, high needs young people such as Kailab. Though there is some flexibility within the ITRC model and that was applied in Kailab's case in the increased staffing level allocated to him, and the Ryland Road placement which was intended to try and give him some independence, it fell short of meeting his needs.

287. For these reasons I conclude that the ITRC model delivered by CASPA was the best *available* option for him but not the best *possible* option. Accordingly, I must conclude that his placements were appropriate and as safe as they could be within the existing funded ITRC contract and available options.

288. I heard evidence from various CASPA witnesses about a very successful pilot project that CASPA had obtained funding for in the NT and that a bespoke model of care was something that could have been developed for Kailab in the longer term.²²² This model is not necessarily more resource intensive as it does not require 24/7 staffing and is aimed at transitioning young people into independent living. On the evidence there would be significant benefit in the NT Government funding such a model.

Whether Kailab was adequately supervised, monitored and managed in relation to his Electronic Monitoring obligations and compliance with court orders?

289. It is clear on the evidence before me that Territory Families were responsible for supervising and ensuring Kailab complied with his court conditions and that this was not CASPA's responsibility. However, CASPA staff did take steps to try to locate Kailab when he went missing including making Absconding Reports to police for example, on 27 June 2022 and 2 July 2022.²²³

290. There was some evidence of tension between CASPA and Ms Coote regarding the compliance roles.²²⁴ However, this appeared to be the exception. I note that CASPA did try to ensure that Kailab charged his EMD and that they reported his absences from placement to Territory Families as they were required to do.

²²² T193

²²³ Additional Documents, Folio 6, Annexures MH7 and MH 18

²²⁴ Additional Documents, Folio 9, Annexure (g)

Whether the Safety Plans developed for Kailab adequately addressed his absconding from placement?

291. I have addressed this issue above, noting that the safety planning was undertaken and regularly reviewed.

Whether Kailab's educational and therapeutic needs were being met?

292. The responsibility for ensuring that Kailab had his educational needs met is also primarily the role of Territory Families and not CASPA.

293. However, I heard evidence that CASPA does have an Education Specialist in the NT who works across all their residential houses. I infer that this specialist did participate or have input into the meetings with Territory Families regarding Kailab's educational options. Kailab also participated in CASPA's Hammers 4 Hope pre-vocational program which has an education component.²²⁵

294. The primary obligation to ensure that Kailab's therapeutic needs were met rests with Territory Families. I have addressed their efforts to do this above.

295. However, ITRC as opposed to ordinary residential care does have a therapeutic component with Therapeutic Specialists having oversight and involvement in all aspects of care. I also understand that the Therapeutic Specialists do spend time with the young people in their houses and that therapeutic care is delivered in informal settings at the houses.

296. I am satisfied that CASPA did provide a therapeutic care model and did provide therapeutic care to the extent they were required to do so.

Case Manager/Key Worker

297. I heard evidence from various CASPA witnesses that in NSW case management of a child is held by CASPA not the relevant government Department. In the NT, case management sits with the Territory Families (now Department of Children and Families) and CASPA effectively only has the daily care of the young person.

298. The question of whether or not CASPA should identify a "key worker" for each child was raised during the Inquest to ensure that the young person and their family have a central person within CASPA that they can speak to.

²²⁵ T116, T144

299. When asked about this idea, Mr Baunauch initially said that the coordinating person for a child is usually the House Co-ordinator, but that Kailab's placement movements resulted in changes of House Co-ordinator.

300. It was suggested to him that one of the recommendations of the draft review of CASPA's services done by Territory Families specifically recommended that a key worker be identified who can provide advocacy and ensure the care objectives are met for the young person.²²⁶ He agreed that this was something that CASPA could think about and accommodate. Although he said that they have now achieved such stability regarding placements that young people do not move between placements like Kailab did.²²⁷ I took this to mean that that in his view, the House Co-ordinator would therefore be able to effectively operate as the "key person".

301. The ITRC contract between CASPA and Territory Families specifically provides for the allocation of a key worker²²⁸ which is defined as

*"a specific Residential Worker responsible to assist a Child's development of a relationship with a primary adult. A Key Worker's role is: (a) assisting the Child to transition into and out of the Residence; (b) help the Child with specific aspects of daily life that a Child finds challenging; (c) help to manage crises at the time or be responsible for debriefing the Child following the event; (d) have planned individual times with the allocated Child; and (e) reports to Care Team on achievements, barriers, or concerns."*²²⁹

302. CASPA submitted through its legal counsel that the person best placed to act as the young person's "key worker" is their case manager unless CASPA are delegated case management responsibilities as they are in NSW. CASPA perceives the key worker role is performed largely by the House Co-ordinators. They say that in a situation such as Kailab's where he experienced unstable accommodation, including non-CASPA accommodation, the case manager is best placed to be the child's "key worker" and be the primary liaison point for family.

303. On the other hand, it was also acknowledged by CASPA in submissions that communication with family and building confidence in the care environment is essential to therapeutic care. It would seem that those responsible for the day-to-day care of a child would be best placed to promote therapeutic relationships as opposed to a case manager who may have less frequent involvement with a child in ITRC.

²²⁶ Additional Documents, Folio 23

²²⁷ T181

²²⁸ Additional Documents, Folio 23, p 57 ITRC contract

²²⁹ Additional Documents, Folio 23, p 53 ITRC contract

304. In light of Mr Baunach's evidence regarding the current stability of house placements and staff retention and the provision of a "key worker" under the ITRC contract I am of the view that the identification of a key worker by CASPA ought to be implemented and I propose making a recommendation to that effect. I note that it is a matter for CASPA as to who that key worker is in relation to each child and that it may well be the House Co-ordinator.

Police Involvements

305. The issues affecting police in this Inquest were fairly narrow.

306. I received evidence that from 2018 onwards police received 35 reports in relation to Kailab, mostly relating to his absconding from care. There were 12 "Missing Person" reports from March 2019 to July 2021 where he was deemed "voluntary missing" having absconded from care. From September 2021 there were no further missing person reports.²³⁰

307. It transpired in evidence that from September 2021 there were no further missing person reports as Kailab was on bail and the absconding reports were recorded by police as bail breaches.²³¹

308. The bail breaches immediately preceding his death between 27 June and 30 June 2022 were "serious breaches" as defined by s7B of the Bail Act. A serious bail breach requires a Grade 2 "Prompt Response" from police as per the relevant General Order.²³²

309. I heard evidence that breaches of bail, missing – voluntary missing persons and welfare concerns for a child are, would all ordinarily be designated a Grade 2 "Prompt Response" unless additional information escalated the seriousness.²³³

310. The bail breach reports sent by Territory Families and the Absconding Reports from CASPA did not highlight any welfare concerns other than risk of reoffending.²³⁴

311. In Kailab's case the task of locating him prior to his death was sent to Strikeforce Trident who had prior dealings with him. Breach of bail reports are routinely emailed to the relevant section and Bail Absconder alerts are added to the persons PROMIS identity.²³⁵

²³⁰ Additional Documents, Folio 6

²³¹ Additional Documents, Folio 6

²³² Additional Documents, Folio 6

²³³ T300

²³⁴ Additional Documents, Folio 6l

²³⁵ Additional Documents, Folio 6

312. Police made efforts to locate Kailab on 30 June which included contacting CASPA staff at two houses, attending a residence in Jingili and informing Transit and Casuarina Security that police were searching for Kailab.²³⁶ I was also told that given Kailab's criminal history he would have been made a priority due to concerns about possible ongoing offending.

313. To give some idea of volume of reports, I was told that in the week prior to Kailab's death, police received reports of 63 breaches of bail and 35 child welfare/missing person category.²³⁷

314. Police were not notified of Kailab's disability (FASD) in the bail breach reports.²³⁸

315. Existing information protocols do not mandate the exchange of health information between police and Territory Families but disclosure is permitted if for a relevant purpose.²³⁹

316. The Royal Commission recommended that police receive training regarding young people, including the impact of cognitive disabilities including FASD, and the effects of trauma.²⁴⁰

317. I was told that compulsory training was conducted in October 2018 over a 5 week period which was filmed and provided online for remote police officers. Additionally, half day workshops were held in 2019 in both Darwin and Alice Springs. There is an online course which covers cognitive disability, FASD and trauma which is compulsory for all police to complete and police recruits are given a session on FASD and intellectual disability that may affect a persons behaviour when interacting with police.²⁴¹

Conclusions: Whether NT Police engagements with Kailab were an appropriate and sufficient response to his conduct?

Whether the policies and procedures as regards actioning KM's breaches of court orders (Suspended Sentences and Bail conditions) including Electronic Monitoring and Curfews were adequate?

318. I was provided with the relevant Police General Orders, MOUs and Electronic monitoring processes documents and I am satisfied that there were no improprieties

²³⁶ Additional Documents, Folio 6, Annexure MH17

²³⁷ T300

²³⁸ Additional Documents, Folio 6

²³⁹ Additional Documents, Folio 6

²⁴⁰ Recommendation 25:1:5

²⁴¹ Additional Documents Folio 6

or non-compliances by police with the relevant procedures regarding Kailab's breach reports.

Whether the protocols and actions taken to locate KM when he was reported missing were adequate?

319. I am satisfied that appropriate steps were taken by police to try and locate Kailab when he first left his placement on 27 June and was reported to be in breach of his bail. I am satisfied that the priority level given was the same as if he had been reported voluntarily missing. I note that he was in fact considered a priority given his offending risk.

Whether information sharing protocols adequately and appropriately disclosed KM's "disability" issues?

320. Information regarding Kailab's FASD diagnosis was not disclosed by Territory Families to Police. I consider this to be a concerning gap in information sharing though I do not have evidence of any impropriety or poor treatment of Kailab while in police custody.

321. There seems to be no legislative impediment to Territory Families disclosing information of a FASD diagnosis to police. Schedule 2 of the *Information Act 2002 (NT)* (Information Act) allows for disclosure of health information by Territory Families for a relevant purpose including:

"Health information which may alert police to any behavioural issues to lessen or prevent a serious or imminent threat to the young person or another individual's life, health or safety and the wellbeing of the young person while in police custody."

322. Ms Palamountain acknowledged that there was no barrier to disclosure and she considered this a gap which ought to have been filled.²⁴² The consequence of this was that there were no disability alerts attached to Kailab's information in police systems – specifically PROMIS and IJIS.²⁴³

323. A/Assistant Commissioner Hollamby agreed at the Inquest that it would have been helpful and useful for police to be aware of Kailab's FASD. It was conceded through legal counsel, Police acknowledged that the existence of FASD is important health information and would be helpful to police to respond and intervene appropriately. However, it was submitted on behalf of Police that a mandatory alert is not necessary,

²⁴² T282

²⁴³ Additional Documents, Folio 6, T301

does not sit within the current legislative framework and opens police up to risks of complaints and civil claims. A/Assistant Commissioner Hollamby said that police have received complaints from people about various alerts.²⁴⁴

324. The A/Assistant Commissioner referred to policy guidelines in the *Custody and Transport Instruction* which says at order 496 that sensitive health information concerning infectious diseases must not be recorded in police systems against a person's identity. While that is accepted and it is further accepted that there may be sensitivity around a FASD diagnosis, that order makes no reference to cognitive impairments or a diagnosed mental illness and is limited to infectious disease so does not apply to FASD. Further, the order goes on to specify that the purpose of recording health information is the prevention of death or injury to the person and only relevant information is to be recorded.²⁴⁵ It is common sense that any information about impaired cognitive function and behaviours would be relevant to the safe management of that person.

325. Order 495 of the police *Custody and Transport Instruction* in fact permits the recording of any medical condition of a person in custody in a place that a police officer with supervision of the person can access it²⁴⁶ and the purpose of the General Orders in relation to Custody and Transport being to provide guidance and instruction on the care and treatment of persons in police custody", it is difficult to see how an alert as to FASD would not fit with current policy guidelines.

326. I was not persuaded that there is a legislative impediment to a mandatory alert. Police legal counsel referred to Section 70 of the *Information Act NT* which sets out the circumstances that an agency is not required to comply with Information Privacy Principles set out in the Act. In essence, it was submitted that a mandatory alert for individuals with a disability such as FASD would not fall within the terms of Section 70. I do not accept that argument and note that the broad exemption from compliance with an IPP ascribed to Police for the purpose of exercising its community policing function under section 70(f).

327. In summary, the availability of information regarding a child's FASD diagnosis in police systems, particularly in circumstances where the child has ongoing and escalating interactions with police as Kailab did, is crucial to ensuring that their needs and challenges can be effectively and fairly responded to and so that the child can be effectively communicated with. As referred to above, the Inquest received information that Police officers receive targeted training equipping them with skills and strategies

²⁴⁴ T301-302

²⁴⁵ Additional Documents, Folio 6, MH 21

²⁴⁶ Additional Documents, Folio 6, MH21

to communicate with and manage the spectrum of behaviours that can present in a child with FASD. That training is of limited utility and cannot be applied if an officer is unaware of a diagnosis.

328. In my view, mandatory alerts for FASD should be added in the Police information management system (SERPRO), and Police and Territory Families should review their protocols regarding this particular aspect of information sharing.

Whether Police are adequately trained in managing youths with disability, with specific reference to FASD, ADHD and complex trauma?

329. I am satisfied that police have taken pro-active and adequate steps to provide training to its members regarding cognitive disability including FASD and trauma.

330. I note also that there is a Protocol in place between police and Territory Families for police contact with children living in ITRC which references some of the issues young people in ITRC experience.²⁴⁷

RECOMMENDATIONS

331. I **recommend** that the Northern Territory Government through the Department of Attorney General and Justice ensure that funding and that adequate funding be made available to families to be legally represented at Coronial Inquests.

332. I **recommend** that CASPA identify a “key worker” for each child in their care as provided for in the ITRC contract.

333. I **recommend** that the NT Department of Children and Families (formerly Territory Families) approach closure of placements for a child in care be decided as a matter of last resort, taking into account the importance of stability and continuity of care.

334. I **recommend** that wherever possible and appropriate, a placement should remain open when a child goes into detention or a short-term intervention program to avoid criminalisation of care. If not possible and appropriate to maintain a placement, the placement should not be closed until an alternative has been identified.

335. I **recommend** that the NT Department of Children and Families (formerly Territory Families) streamline therapeutic interventions and services to avoid unnecessary duplication and overservicing.

²⁴⁷ Additional Documents, Folio 25

336. **I recommend** that the NT Department of Children and Families (formerly Territory Families) review the currently funded ITRC model to explore more suitable intensive care options for high-risk young people with extreme and complex needs or “significant” disabilities to ensure the improve safety and supports.

337. **I recommend** that the NT Department of Children and Families (formerly Territory Families) review whether recommendation 15.1 (FASD screening) of the Royal Commission into the Protection and Detention of Children in the NT has been implemented and that information sharing protocols give Territory Families access to this information.

338. **I recommend** that the NT Department of Children and Families (formerly Territory Families) share information regarding FASD with police.

339. **I recommend** that the NT Department of Children and Families (formerly Territory Families) broadly review its information sharing procedures with NT Police, including with respect to missing persons reports, to ensure sharing of information with respect to the disabilities of young persons with police.

340. **I further recommend** that NT Police include alerts in their system as to any known disabilities to ensure safe and appropriate responses to, care and management of young people interacting with police.

Conclusion

341. This Inquest concerned the life and tragic death of a much loved and talented First Nations boy, Kailab. I thank all interested parties who have participated in these proceedings to reflect on Kailab’s care and consider change. The Inquest highlighted the very real challenges faced by young people and carers coping with complex family circumstances, undiagnosed disability and trauma. Despite genuine and significant efforts of family, carers and caseworkers, efforts to protect Kailab sadly failed.

342. It is hoped that the importance of early diagnosis of FASD and other disabilities and improved service provision for complex children highlighted by this Inquest will assist in improving outcomes for high-risk young people like Kailab. I acknowledge again the dedication of the people involved in Kailab’s care who assisted this Inquest.

343. I offer my sincere thanks to counsel assisting, Ms Helena Blundell, for her hard work and dedication in preparing this matter and drafting these findings, and for liaising with Kailab’s family who were unable to secure funding for representation in the matter and, but for Ms Blundell’s efforts, would have been completely silenced. I also thank all counsel at the bar table for their sensitive approach to this matter.

344. Finally, I again offer my sincere condolences to Kailab's family and those that loved him.

345. I close this Inquest.

Dated this 4th Day of April 2024

DEPUTY CHIEF JUDGE SARAH MCNAMARA

CORONER