ORDER:
Suppress publication of information that might identify the child, any member of her family, her carers, other children in care, and her teachers, her suburb and school as well as information relating to the items utilised in her death.

CITATION: *Inquest into the death of Sammy* [2021] NTLC 032

TITLE OF COURT:	Coroners Court
JURISDICTION:	Darwin
FILE NO(s):	D0040/2020
DELIVERED ON:	25 November 2021
DELIVERED AT:	Darwin
HEARING DATE(s):	22, 23 June 2021
FINDING OF:	Judge Elisabeth Armitage
CATCHWORDS:	**Suicide, death in care, 9 years of age, Aboriginal Placement Principle not adhered to, trauma not assessed and treated**

REPRESENTATION:

Counsel Assisting:	Kelvin Currie
Counsel for Territory Families:	Tom Hutton
Counsel for mother:	William De Mars
Judgment category classification:	A
Judgement ID number:	[2021] NTLC 032
Number of paragraphs:	105
Number of pages:	24

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

No. D0040/2020

In the matter of an Inquest into the death of

SAMMY

ON: 14 MARCH 2020
AT: DARWIN

FINDINGS

Judge Elisabeth Armitage

Restriction on Publication

1. At the commencement of the inquest I made an order pursuant to section 43 *Coroners Act 1993* restricting the release of information that might identify the child, any member of her family, her carers, other children in care, and her teachers, her suburb and school as well as information relating to the items utilised in her death. That order remains. It is to ensure compliance with section *310 Care and Protection of Children Act 2007* and to prevent the disclosure of sensitive personal information. The pseudonym 'Sammy' will be used instead of her name in these findings.

Introduction

2. The oral evidence was heard in the inquest on 22 and 23 June 2021. On the afternoon of 23 June 2021 I adjourned the inquest for submissions at a later date. The date for submissions was eventually listed for 30 September 2021. In the meantime the lawyers for the mother of Sammy were given leave to file an expert psychiatric report. That was filed on 28 September 2021. They followed that up by filing on, 29 September 2021, written closing submissions that ran to 40 pages. Territory Families then sought an

adjournment to properly consider those submissions and I made an order that they do so and provide their written submissions by 14 October 2021.

Her Care

3. The deceased ('Sammy') was of Aboriginal heritage and born on 30 April 2010 in a hospital in the Top End of the Northern Territory. She had a large extended family who identified as Warlpiri. On Friday, 25 February 2011, she along with an older brother were removed by the Department of Children and Families when she was just 10 months old. The proximate reasons for removal were the intoxicated state of her parents, allegations of domestic violence and being dropped by her mother. She and her brother were admitted to hospital where they were treated for scabies that covered their bodies. The children were then placed with carers in a Purchased Home-Based Care placement.[1] The purchased carers were not part of her family or community and were not of Aboriginal heritage.

4. The separation from her parents was difficult. The access visits were initially every week and ended with her older brother crying for an extended period when once more separated from family. However, after a few months the access became more sporadic. In part that was due to family from time to time returning to their community, about 900 kilometres from Darwin.

5. The children changed carers when Sammy was 20 months old (2 December 2011). The new carers were again, not Aboriginal. The issue of attachment for the children was noticeable a week later when having access: It was noted that Sammy was clinging to her new carer and her mother seemed unsure as to what to do.

6. During 2014 the Child Development Team[2] noted concern with communication and "person/social skills" and made recommendations for

[1] A placement purchased by Territory Families from a provider of home based care similar to foster care.
[2] Dated 8 October 2014

the family to utilise strategies for communication repair and speech development. She was put on a waiting list to see a speech pathologist for speech therapy sessions and had six sessions over the next 12 or so months.

7. In October 2015, when Sammy was five years of age, she saw her General Practitioner due to "behavioural issues".

8. When she was six years of age her school reported that she was enthusiastic, sociable and had many friends. She asked the teacher a "high volume of questions" throughout each day. Although she had limited language development, she was improving, was eager to learn and always asked if she needed help. However it was noted that she found it difficult to concentrate. Her short-term memory was described by her teacher as "baffling".[3] She was assessed by the Child Development Team as having "severe overall language difficulties".

9. By the end of 2016 her General Practitioner had undertaken extensive testing to try and understand her behavioural issues. She was referred to a paediatrician and on 17 March 2017 was commenced on short-acting (4 hour) Ritalin.

10. On 23 March 2017 she underwent an assessment by a speech pathologist. She was found to have moderate difficulties with her overall language skills, both receptive and expressive. She was assessed as being in the 0.2 percentile. The strategies to support her included:

    10.1 Reducing the number of steps in verbal directions to single steps;
    10.2 Using simple sentences;
    10.3 Pausing when giving directions;
    10.4 Slowing speaking rate and pausing frequently;
    10.5 Asking her to repeat a direction to gauge comprehension;

[3] Letter from teacher 19 October 2015

10.6 Using visual supports in the classroom.

11. On 4 May 2017 at the age of seven years she underwent cognitive testing without the aid of medication. During the testing she was fidgety including rolling around on the floor and lying on the table. She needed verbal redirection every two or three minutes. Her thinking ability was assessed to be low average. In the opinion of the psychologist she had the potential to reach the average range with strategies and medication.

12. The Ritalin was effective in helping her focus and concentrate on her schoolwork. In August 2017 it was changed to long-acting (8 hour) Ritalin. When she was commenced on the long-acting Ritalin her dose was increased from 10 to 20 milligrams. She was never a large child and her weight was generally a little below or above 25 kilograms. She remained on that dose until February 2019 when it was increased to 30 milligrams. It is likely the main motivation for the increase was her hyperactivity in the office of the paediatrician on the day of review.

13. Although the medication assisted her concentration it also appeared to quieten her exuberant and smiling personality, at least while at school. It was the evidence of the independent expert paediatrician, Dr Rick Jarman that she was likely over-medicated which accounted for her overly quiet and anxious presentation.

14. Her presentation to adults seemed to depend very much on the amount of familiarity she had with them or how comfortable she felt. Some reported that she would answer only in monosyllables (like her caseworker paediatrician and school teachers), while the speech therapist and friends of her carer said they had no issues with holding conversations with her.

15. In contrast to her in-class experiences, she was very good at physical activity. She loved basketball and soccer and was involved with her team on Tuesdays, Thursdays, Saturdays and Sundays. She was ‘poached’ to join her

team because she was “the best”. She also exhibited more confidence with her friends and was said to be more talkative with them.

16. Her presentation at home seemed sociable and appropriate. She was said to get into everyone else’s business. There were said to be some problems where she needed support to deal with the other children being cared for in the home and she was also known to throw tantrums especially when asked to clean up. However, overall it was thought that she had become part of the family and was doing well. Her father and mother, her teachers, her paediatrician and departmental case workers were all of the view that she was being well cared for and was doing well.

17. However, as she grew older she appeared to lose confidence. She worked quietly in the classroom and was reluctant to ask for help. She was thought to have lost confidence especially when speaking to adults or using language to stand up for herself. On 22 March 2018 Sammy’s class teacher said that she seemed withdrawn that year and was not socialising with other children in the class.

18. Overmedication may have contributed but it is by no means the only explanation for her loss of confidence. It may have been a reaction to growing self-awareness of her difficulties with speech or short term memory. It is also likely that the trauma in her life was becoming an issue.

19. Initially access to her father and other family was at a shopping centre or a public park. When she was 5 years of age it was noted that she found access “distressing” and the evidence of her carer was that she continued to dislike attending. From August 2016 her father was admitted to hospital with ailing health. From that time Sammy was taken to the hospital to have access.

20. Until August 2017 she had her brother to accompany her. However, by that time he was struggling and he was removed from the placement. After he was removed Sammy only saw him occasionally. She sometimes saw him if

access to their father was arranged at the same time. On 13 October 2017 and 12 December 2017 they were both flown to their community to see family for six hour periods and just before Christmas they had some time together at a fast food outlet.[4] Her paediatrician commented on 6 March 2018 that she still got upset when she spoke to her brother. The following day (7 March 2018) they were both flown to their community (accompanied by their father) to attend the funeral of their father's eldest brother.

21. It was recognised by Territory Families that Sammy may have been suffering trauma. A *Service Provision Authorisation Form* dated 5 April 2018 sought that she be included in a play therapy program that included 10 therapy sessions at $100 each plus the possibility of more sessions throughout 2018. Her case manager wrote:

> [Sammy] would benefit from participating in the Intensive Play Therapy program Monday 16 - 20th April 2018.
> It will offer her overall support in many ways including socialising and friendships (as raised at school), the funeral she attended in Lajamanu in March 2018 and her thoughts on connection with family. Additionally support her in relation to her father residing in RDH long term due to ill health and her brother now residing in another placement.

However that never happened for reasons that were never able to be explained by the Department. However, the case manager who sought to organise the play therapy left that same month (April 2018) and the case was left unallocated until 12 June 2018.

22. Her condition was relatively complex and there may have been some aspects of Foetal Alcohol spectrum disorders (FASDs) in her presentation. However she was never assessed for FASD. In the Departmental Practice Review it was said: "There seems to be a gap in considerations of Sammy having an assessment regarding Foetal Alcohol Spectrum Disorder, which may have been beneficial given her poor attention span, impulse control, struggles to

[4] 18 December 2017

emotionally regulate and that the child protection history indicated her mother was drinking during pregnancy."[5]

23. However in the Department's Final Submissions that was disputed. It was said that her paediatrician who gave evidence at the inquest had said that he did not assess Sammy for FASD as he did not feel there were strong enough indicators to warrant formal assessment, it would not have altered her treatment and the testing may have put Sammy under greater pressure.[6]

24. The lawyers for the family however noted that the Department's Health and Medical Needs of Children Care Policy states:

> "a child with a prenatal history of maternal alcohol use, or presenting with unexplained development delays must be screened for FASD".[7]

25. It was also noted that if she had been found to suffer from FASD she may have been eligible for NDIS funding.

The circumstances

26. At the house where she resided each of the children had access to an iPad. Sammy was adept at using the iPad, an examination of it indicated she appeared to have set up three separate email accounts. The safari browser history included on 29 February 2020 her searching for what had happened to another 9 year old resident of Darwin who had died accidently on play equipment in a park a year before. On 7 March 2020 she searched 'Steven Stewart' and 'Kobe Bryant', both of whom had died.

27. In March 2020 she was said to be lethargic in class and the school wondered whether she might be overmedicated. At an Education Adjustment Program meeting on 9 March 2020 there was a discussion about her medication and a request for referral to the paediatrician for assessment.

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[5] Paragraph 96
[6] Paragraphs 63, 64
[7] Paragraph 155

28. On Thursday 12 March 2020 her teachers noticed a marked improvement. So much so that a video was taken of her. It shows her smiling, cheerful and engaged. It was said by the teacher that she was completing tasks by herself and faster than her peers. Other students were saying she was different. She was laughing and talking. Her carer was contacted by telephone and when asked about her medication said that she hadn't taken it that morning. It was assumed the change had everything to do with the medication.[8]

29. The following day, 13 March 2020, was a pupil free day and she stayed home. She took her medication. That evening she went to a friend's house and they had a dance-off. She was said to be happy and talkative. She was dropped home at about 8.30pm. The next day, Saturday 14 March 2020, was normal, excepting that, basketball had been cancelled and so she stayed at home.

30. She did not take her medication. That was said by the paediatricians to be relatively normal as Ritalin is only for a specific purpose and for a specific period of time (4 or 8 hours), to assist concentration and so is not generally required when concentration is not needed. For instance, Sammy did not take Ritalin when she and her carers went on holidays.

31. The home included a number of security cameras. She is first sighted on the camera vision at 8.19am that day. She was with the other children being cared for at the home. One of those children was approximately her age. They briefly played with a water balloon and within a few minutes were swimming in the pool. The deceased went in with her clothes on and stayed in the pool for about 30 minutes. After she got out she changed into other clothes and played with two younger children in the veranda area for about 30 minutes.

[8] The paediatricians considered that to be unlikely.

32. By 9.30am she was playing with a soccer ball, often throwing it into a bin as if using the bin as a basketball net. She then played with a balloon in a similar manner. At about 10.26am she and the other child of similar age were requested by the carer to vacuum and tidy up the play area. They initially played with the vacuum cleaner and soccer ball. But the other child did do some vacuuming and at 11.17am was permitted into the house to play on his iPad.

33. Less than 10 minutes later the deceased had changed her T-shirt and put a length of rope around her neck. She then stopped to look at her reflection in a mirror, seemingly put her hands in a praying motion, paused, touched the glass with her right hand and then walked off holding the rope above her head with her left hand.

34. She stood on a chair in the carport and tried to put it over a rafter. She then took a chair to the veranda of the granny flat and stood on it and looped the loose end of the rope over a beam, tied it and stepped off the chair. Her feet touched the ground. She got back onto the chair and untied the rope from the beam. She then went to the play area. The time was 11.30am. She was not sighted alive on the CCTV vision after that.

35. Fifty six minutes later (at 12.26pm) she was found by the carer. She was unresponsive with the rope around her neck. The ambulance was called and she was taken to Royal Darwin Hospital, but she could not be revived.

36. Two notes apparently in her hand writing were found that appeared to indicate her wish to end her life. One was crumpled and in her room. It was addressed to her mother and father and was apologetic. She had not been back to her room that day after first appearing on the CCTV camera and so it is likely that had been written some hours or days previously. The other was written on the back of a receipt and was likely written in anger. It was in the play room proximate to where she was found. The note indicated her desire

to kill herself and that she would be dead and in a grave. It was likely written moments before her death.

37. It is mandatory to hold an inquest because she died while in care.

ISSUES

38. There are two primary issues. The first was that after her removal she was at no time placed with family or Aboriginal carers. The *Care and Protection of Children Act* permits that to happen however provides a process that should be followed, commonly referred to as the *Aboriginal Placement Principle*. It is enshrined in section 12 of the Act:

> **12 Aboriginal children**
>
> (1) Kinship groups, representative organisations and communities of Aboriginal people have a major role, through self-determination, in promoting the wellbeing of Aboriginal children.
>
> (2) In particular, a kinship group, representative organisation or community of Aboriginal people nominated by an Aboriginal child or the child's family should be able to participate in the making of a decision involving the child.
>
> (3) An Aboriginal child should, as far as practicable, be placed with a person in the following order of priority:
>
> (a) a member of the child's family;
>
> (b) an Aboriginal person in the child's community in accordance with local community practice;
>
> (c) any other Aboriginal person;
>
> (d) a person who:

(i) is not an Aboriginal person; but

(ii) in the CEO's opinion, is sensitive to the child's needs and capable of promoting the child's ongoing affiliation with the culture of the child's community (and, if possible, ongoing contact with the child's family).

(4) In addition, an Aboriginal child should, as far as practicable, be placed in close proximity to the child's family and community.

39. That section was largely ignored and not followed.

40. The second issue was that Sammy's trauma, although seemingly recognised was never treated.

Placement

41. The 2007 Explanatory Statement to the section stated:

> "In decisions involving an Aboriginal child there are three key principles as set out in this clause. They are self-determination for Aboriginal people, appropriate placement (the clause gives a priority list for the placement of Aboriginal children) and community participation (community includes kinship groups or representative organisations)."

42. The Executive Director for the Northern Regions, Karen Broadfoot, provided the Institutional response from Territory Families. In her affidavit she addressed the level of compliance with section 12. For the most part it appeared that in her opinion the Department should have done more to comply. She said:

a. Further exploration of possible family care arrangements should have taken place, particularly during [Sammy's] early years.[9]

[9] Paragraph 137

b. The Department did not appear to have revisited a kinship placement with Sammy's maternal family after March 2011. That was in spite of interested enquiries from aunts in May 2011 and April 2013.[10]

c. There was no adequate consideration of placing Sammy and her brother with family after her brother's placement broke down in 2017.[11]

d. Sammy's mother had requested that the case be transferred from Darwin to Katherine. That would have made contact easier for all members of the family. That was not done.

43. However, in the written submissions received from Territory Families on 14 October 2021, there appeared to be an effort on the part of the Department to minimise those concessions. That seems curious given that Sammy was never placed with her family, community or an Aboriginal carer.

44. I therefore set out in detail the placement history.

45. The first notification received by Territory Families that concerned Sammy was on 14 December 2010. It was alleged that her father had kicked her mother in the head. Sammy was noted to be healthy and comfortable. Her mother said they were in the town to do Christmas shopping and she wanted to return to her community.

46. Just over two months later on 23 February 2011, two notifications were received. It was alleged that her mother was intoxicated and had dropped Sammy several times. Her father was also intoxicated and was taken into protective custody. Both the children and their mother had scabies. The three of them were taken to Royal Darwin Hospital by ambulance arriving just after midnight.

[10] Paragraph 140
[11] Paragraphs 146 and 147

47. Their mother left the ward with the children just after lunch later that day against medical advice. The hospital rang the police who found them at home and brought them back to the Hospital at 7.12pm. It was then explained to the mother that she could not remove her children from the Hospital. She was asked about domestic violence and said she had been kicked in the head. She had 5 stitches to the right side of her eyebrow. She denied dropping Sammy. She was asked how much she drank and she said eight cans a night.

48. On 25 February 2011 the children were taken into provisional protection.[12] The mother was upset because Sammy was still being breastfed and had not been started on formula. Sammy's five year old brother was said to be upset also. But it was said, "Mother appeared to have taken the news well, did not raise her voice or become aggressive in any way towards staff and cooperated with workers. The children were taken to the home of a couple who provided "purchased home based care". The couple were not family to the children, were not from the community of the children and were not of Aboriginal descent.

49. On that same day two of child protection investigations were finalised and neglect was substantiated. The mother was recorded as the person responsible for the neglect.

50. On 28 February 2011 the mother attended at the Department's Offices. She said she was able to get a $500 loan from Centrelink to enable her to take the children back to her remote community (600 kilometres from Darwin) where she said she had family that could support her. On that same day the paternal grandmother contacted the department and said she wanted to take the children and she had a good support system in the community (a remote

[12] Placed in the care of the CE of the Department for a maximum of 72 hours pursuant to sections 51.

community 870 kilometres from Darwin). It is a "dry" community.[13] A Temporary Protection Order (for 14 days) was obtained from the court on 28 February 2011.

51. On 1 March 2011 the department contacted a maternal aunt in another remote community. She said she had no room in her house for the mother and the children and another family member who might have otherwise been able to care for them ("N") had just had surgery.

52. On 2 March 2011 there was a family meeting conducted by the department. The mother said if family in her community couldn't take her and the children, she was happy to go to the fathers' community and stay with paternal family. The paternal grandmother said she had a three bedroom house where she lived with her two daughters (and one of their husbands) and their four children. She said they would care for them. The department advised that criminal history checks on all adults in the home would have to be submitted to progress the carer assessment process.

53. On 11 March 2011 the police at the community were asked by the Department to assist with getting consent forms from the four adults in the home so that criminal history checks could be submitted and on 14 March 2011 the Temporary Protection Order was extended until 28 March 2011.

54. On 14 March 2011 one of the aunts living in the grandmother's house rang to ask when her niece and nephew would be returning to the remote community. She was told that after the police checks were completed a decision would be made.

55. On 16 March 2011 the Aboriginal Community Health Worker in the remote community was contacted and asked if she had any concerns if the children

[13] That is, no alcohol available or allowed to be consumed within the community. To drink, the alcohol needs to be obtained from elsewhere and consumed outside the community.

and the mother lived in the house with the paternal grandmother and family. She had no concerns. She said that the aunts were good carers.

56. On 24 March 2011 the Department applied for and was granted a Protection Order for a period of 12 months. It was not due to expire until 24 March 2012. The reasons presented to the court in the application included allowing time for the department to work with the parents to address the child protection issues and to continue to assess the suitability of kinship placement arrangements.

57. On 27 April 2011 the mother asked if the children could be moved from Darwin to Katherine so as to be closer to family. The person she was speaking with was unsure but said she would check.

58. On 3 May 2011 the mother telephoned the department and asked when she would be getting her children back. She was told they were under a Protection Order for 12 months which meant they would be in the care of the department for a year. She was told she should seek legal advice.

59. On 6 May 2011 the maternal family member, "N" telephoned the Department and said she would like to take the children. She was told that "at this stage the children are under a court order for a year … placing children with family may be an option however the department will need to do assessments in order to ensure the children's safety". She was told they would keep her in mind for the future.

60. On 18 July 2011 the children's case manager emailed another part of the department seeking advice in relation to urgently assessing the aunts because the children were with "non-indigenous carers". She sought advice on whether "emergency placement" could be used to relocate the children.

61. She was told it was not an emergency situation that necessitated the children being moved to family "at this stage" and that a "planned approach" should be taken to the registration of the aunts. However it was noted that with the

police checks in the remote community and the department workers in Darwin "Things are … at a bit of a standstill".

62. On 16 August 2011 the mother telephoned the department concerned that an assessor had not contacted the aunts. On 18 August 2011 the assessor said she was planning on doing the assessment in a couple of weeks.

63. The assessment took place on 15 September 2011. It went well and the assessor said that she would recommend one of the aunts to be the main carer with back up from the other aunt. She mentioned that the house was to be renovated in the next month and so the department would have to wait until that was finished. The plan was that the children would live in the house with their grandmother and aunts and their mother and father would get another house in the community. It was expressed that it was hoped it didn't take long for the residents of the house to get their Ochre cards.

64. On 18 October 2011 it was stated in the Departmental notes: "we are still waiting on criminal history checks and Ochre cards. There is a note on the 7 November 2011 that the cultural care plans needed to be developed no later than 10 February 2012.

65. On 23 November 2011 the purchased carers were no longer able to care for the children. However that did not give rise to any reconsideration of placing the children with family, nor with finding a placement in the Katherine area so as to be closer to family. The children were placed with another Purchased Home Based Carer until 2 December 2011. That carer was not family or from the community or an Aboriginal person. On 2 December 2011 Sammy and her brother were placed with another Purchased Home Based Carer with whom Sammy stayed until her death. The carer was not family or from her community and was not an Aboriginal person.

66. On 4 January 2012 it was said that the Department was still waiting for the necessary checks to come back from the auntie. On 24 January 2012 the mother telephoned the department asking for an update.

67. On 25 January 2012 the aunts received their Ochre cards.[14] However it was said that although that was good, there was a new practice direction that required all household members over the age of 18 years to have Ochre cards. That meant that the grandmother and husband would need them as well.

68. On 8 February 2012 there was an indication that the applications for Ochre cards for the grandmother and husband were going to be assisted by the Remote Aboriginal Family and Community Worker. It was also said that the assessor would go back out to the community in the first week of March 2012 to check on the house after the renovations. The assessor said, "I hope I can get all this done soon so we can get the kids out there".

69. On 13 March 2012 a second interview was conducted with the aunts and a safety check of the renovated house was completed.

70. On 9 May 2012 the mother telephone and asked when the children's matter was in the court. She was told it was 'tomorrow". She said "oh" and explained she was in a remote community. She was told that she needed to contact a lawyer and was given the phone number of Legal Aid. It appears that on that date the case was adjourned, but a long term order, placing both children in the care of the CE until the age of 18 years was made on 12 July 2012.[15]

[14] Working with Children clearance
[15] The Department conceded that it should not have sought a Long Term Protection Order at that time.

71. On 6 September 2012 the mother telephoned the department and asked when the children were going back to the remote community. She was told the placement assessment was not completed.

72. On 7 September 2012 Safe NT (the issuer of Ochre cards) wrote that they could not contact the husband of the aunt (a letter had come back 'return to sender' and there was no answer to phone calls). They indicated they did not have the resources to keep following up. The husband's criminal history check noted a number of convictions for aggravated assault and assaulting a female in 2005.

73. On 23 October 2012 the Carer Assessment Report was provided. The assessor was unable to provide a recommendation because:

    a. The assessor was unable to get two references in accordance with departmental policy;

    b. The magistrate had concerns regarding the overcrowding in the house;

    c. One of the aunties was a big drinker; and

    d. The husband had a long history of criminal offences.

74. It was said that if the family's housing situation changed (it was anticipated that one of the aunts would get another house), it was recommended to have another assessment. The assessment was closed.

75. It was further noted by the Department:

> It is likely that having formed a strong attachment with her carer at an early age, that moving Sammy to another placement would have been considered detrimental".[16]

76. There was no further attempt at reunification by the Department. The family member "N" who had offered to take the children and who was told by the

[16] Practice Review Report paras 31, 90, 91.

Department she would be kept in mind as a potential carer was never contacted.

77. On 12 March 2013 an access visit occurred and it was recorded:

> "The father spent a lot of time with [Sammy's brother] and the mother spent a lot of time with Sammy. The mother was very good about keeping Sammy safe and always supervising her … The parents were appropriate at all times and the children really enjoyed the access. We planned a meeting with the parents the next day in the morning to discuss the parents going back to court to reapply for the children to return to their care."

78. On 13 March 2013 it is recorded:

> "The discussion was centred on what the parents had to do to make an application for the court in order to attempt to get the children back [17] … got all mother's family names so an assessment can be started on the mother's side of the family. We spoke to the father about why the assessment of his extended family was unsuccessful … The mother was emotional when talking about getting her children back …The parents appears to have a good relationship and both admitted they were no longer together. The father was happy for us to look at the mother's family for possible placement. She said that the maternal grandparents had never seen the children"

The mother said she had not drunk alcohol for four months. That was corroborated by the father.

79. On 17 April 2013 another aunt of the mother's contacted the Department saying she was willing to care for the children. She said she cared for two of her niece's children and her son along with her husband. The Department said there were checks to be undertaken and the parents would need to be spoken to. She asked that her work number be passed on to the mother. Nothing further occurred.

[17] Section 8(4)(b) suggests that where practical the Department return children to family

Non-Compliance

80. There was no 'kinship group, representative organisation' or 'communities of Aboriginal people' involved in any decision making relating to the placement of Sammy. The role described by the Act as promoting self-determination and the well-being of Aboriginal Children envisaged by section 12(1) and (2) was not realised.

81. Sammy was never placed with a member of her family, or an Aboriginal person in her community or any other Aboriginal person as envisaged by section 12(3) (a) – (c).

82. Despite her mother being known to be a victim of domestic violence from at least, December of 2010 she was not supported either prior to the removal of the children of after their removal. There was no consideration given to returning the children to her if supported by her family in the community at that time or at any time.

83. Ms Broadfoot stated that if the notification in December 2010 had been received today that it would have elicited a different response. She said:

> "If Sammy's first child protection notification was received today, rather than in 2010, the response from the Department would be to provide considerably more support to the mother and her children in respect of the domestic violence …"[18]

84. Sammy was removed from her parents at the age of 10 months and it took the next one year, 7 months and 26 days to find that the two paternal aunts being assessed were unsuitable. That was a very lengthy period of time at a very critical stage of her development. A good part of the reasons for delay seems to have been the time taken to deal with the various hurdles that family were required to overcome: criminal history checks, Ochre cards, housing and referees.

[18] Paragraph 213

85. The house that was offered by the paternal grandmother housed at least eight people. Overcrowding is a known issue in remote Aboriginal communities, as is the overrepresentation of Aboriginal people in the criminal justice system. Those two touchstones of disadvantage did not generate support and assistance.

86. To comply with section 12 of the Act required consideration of the order of priority found in section 12(3). But other family members were not considered even though they requested that they have the children. Other than the two aunts there was no serious consideration of other Aboriginal persons in her mother's or father's communities nor of an Aboriginal person outside of those communities.

87. Rather, the Department placed the children in a purchased placement with non-Aboriginal carers and when that broke down in another purchased placement with non-Aboriginal carers. There is no dispute that the carers were good carers. Indeed, the evidence is that they were some of the very best.

88. In submissions, that was utilised by the Department to point to section 10 which provides that the paramount consideration is the best interests of the child. That misses the point. Section 10 does not permit the Department to ignore section 12 and without a proper investigation and assessment of the options, place Aboriginal children with non-Aboriginal carers.

89. It is understood that Aboriginal children are over-represented in the child protection system and are said to be ten times more likely to be in out-of-home care. This case provides an example of just how that happens.

90. Having delayed the assessment for such a lengthy time, there was no doubt a real issue as to how another removal would affect Sammy. However, there seems to have been insufficient weight given to the fact that if removed it

was for the purpose of reunification with her family something encouraged by sections 8, 10 and 12 of the Act.

91. There was no explanation as to why when requested by the mother the case was not transferred from Darwin to Katherine. That was closer to Sammy's parents and community.

92. The way the Department saw the issues and options appear to have been summarised in the June 2014 "My Care Plan":

> "At the time of the initial assessment due to health concerns and age no family were approved. [One of the aunties] currently has a partner and 5 children in her care. It is the Clinic's and DCF's view that the aunty would not be able to care for the children because she has too many. [Her partner] has a criminal history. They are very good with the children and considered safe people but they cannot become kinship carers. [The other aunty] drinks a lot … [Her father] is very sick …"

93. The out of Home Care Plan on 16 January 2014 stated:

> "At the time of entering care there were no Aboriginal carers or family members available who could meet the needs of the children. The children now view themselves as part of the carer's family. They refer to the carers as mum and dad".

94. As of 3 December 2015 the long term strategy was stated as: "[Sammy] is happy and settled in her placement. She has a strong attachment to her carer and their family and gets along well with her brother".[19]

95. From her mother's perspective the removal of her children was a very difficult time. She said that she did not realise what was happening when they were taken. But she said the hurt, worry and sadness contributed to her and her husband drinking more alcohol and they were not told how to get their children back, only that they couldn't have them until 18 years of age and that she needed to see a lawyer.

[19] Out of Home Care Placement Request Form

Comments

96. This is not a matter where impulsivity was the primary reason Sammy died. It seems she had been thinking about death for at least two weeks. She had written a note of apology for her death to her biological parents likely on a previous day. Her anger caused her to leave another note which in clear terms indicated an understanding that she would be dead and buried.

97. Sammy was a child that had to cope with some significant hurdles and trauma. She was removed from her parents at 10 months of age. What she had suffered prior to that time is unknown, but it certainly involved alcohol, domestic violence, being dropped and suffering her body covered in scabies. She was placed with carers and then removed and placed with different carers at 20 months of age. By that stage she was clinging to her carer and crying when the carer gave attention to other children.

98. She had delayed speech that made communication more challenging and she became self-conscious when speaking to adults or in front of the class. She saw her father's health decline and then saw him hospitalised. She lived in a household where children came and went. Her brother was one of those that left.

99. She went to the funeral of her uncle and the following month her caseworker believed she should have therapy to deal with the various traumas she had been exposed to. But that did not happen.

100. That a child of 9 years of age had the knowledge and aptitude to understand death and the wherewithal to kill herself is confronting. That there were apparently no indicators that she was thinking of death and wishing to end her life is troubling.

101. However, it is known that children in out of home care often have to deal with significant trauma. In Sammy's case it was recognised and plans were put in place to support her. But the support that she needed was not provided.

102. Children in Out of Home Care are known to be at higher risk of suicide. Those with ADHD are at an even higher risk. They form a cohort of the most vulnerable and traumatised children. Dr Rick Jarman said that in Victoria most of the children in foster care are involved in long-term trauma counselling.[20]

103. It is obvious that children in that high risk cohort should at a minimum be supported with trauma screening and appropriate therapeutic responses throughout their time in care. Presently it seems that trauma therapies are considered, and possibly provided, in response to emerging behavioural issues. Whereas it would likely be more beneficial to children if trauma therapies were available to them much earlier, in response to their known exposure to trauma. Sammy was in the high risk cohort. She was not sufficiently supported.

Recommendations

104. I **recommend** that the Chief Executive of Territory Families ensure that the placement of Aboriginal children is in conformity with the Act.

105. I **recommend** that all children in out of home care be provided with assessment for trauma and where indicated trauma therapy.

Dated this 25 day of November 2021.

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ELISABETH ARMITAGE
TERRITORY CORONER

[20] Transcript p145