CITATION: *Inquest into the death of Baby G* [2024] NTLC 16

TITLE OF COURT:	Coroners Court
JURISDICTION:	Darwin
FILE NO(s):	D0068/2023
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HEARING DATE(s):	9 - 11 July 2024
FINDING OF:	Judge Elisabeth Armitage
CATCHWORDS:	**Child death in care; Trisomy 21 (Down Syndrome); NIPT testing; Down Syndrome Association NT; Territory Families Investigation and Safety Assessment policy and procedures; least intrusive intervention; Territory Families' Family and Parent Support and Strengthening Families policies and procedures; "active efforts"; *Care and Protection of Children Act 2007* (NT)**

REPRESENTATION:

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

No. D0068/2023

In the matter of an Inquest into the death of

BABY G

ON: 18 MARCH 2023
AT: ROYAL DARWIN HOSPITAL

FINDINGS

Artwork depicting Baby G's totem, provided by his family and reproduced with permission

Judge Elisabeth Armitage

Introduction

1. Baby G was born at the Gove Hospital on 10 of September 2022 to Camilla Yunupingu and Brendan Ganambarr Mandanbuy. He had an older brother, J. His family are Yolngu from Milingimbi in East Arnhem Land and their language is Yolngu Matha. Baby G's totem was the butterfly.

2. When he was born he was unexpectedly diagnosed with Trisomy 21 (Down Syndrome) and on 12 September he was transferred from Gove Hospital to Royal Darwin Hospital (RDH) for specialist care. He was then transferred to the Women's & Children's Hospital in Adelaide on 15 September 2022 for surgery and he returned to RDH on 10 November 2022.

3. Camilla and Brendan left their families and their home community to travel with their son to his various hospitals. In Adelaide they stayed with Baby G at the hospital during the day and returned to a hotel at night. Although they spoke some English (with Brendan more confident than Camilla), in Adelaide they were provided with an interpreter at the hospital. Transport and food was arranged for them by hospital social workers.[1] Brendan describes his experience with the hospital in Adelaide as "really good" and they had no issues with "welfare".[2] When Baby G was transferred back to RDH, Camilla and Brendan remained with him in Darwin to provide parental care.

4. Baby G had a number of serious additional complications including: severe and progressive lung disease as a result of alveolar simplification, severe pulmonary hypertension, a hole in the heart (repaired during surgery in Adelaide), feeding difficulties, severe global developmental delay, glaucoma, cataracts, and a blood disorder. He suffered from recurrent and severe deteriorations in his breathing and he required extensive and complex medical treatment. He also contracted COVID-19. There were hopeful periods when his health improved and, on occasions, the doctors thought he might be well enough for discharge, but sadly each time his health deteriorated, his discharge was deferred.

5. Tragically, Baby G never left hospital. In the last weeks of his life, his health declined. There were extensive discussions between his treating medical team, his legal guardian, who by that time was the CEO of Territory Families,

[1] Unsworn affidavit, Brendan Ganambarr, 9 July 2024, [14]
[2] Unsworn affidavit, Brendan Ganambarr, 9 July 2024, [15]-[16]

Housing and Communities (Territory Families, now known as the Department of Children and Families) and his appointed carers. It was agreed that his decline was a natural progression of his severe underlying lung disease and that further aggressive treatments would not be successful or in his best interest. Comfort care, with a focus on symptom management, was commenced on 16 March 2023. On the morning of 18 March 2023[3] Baby G passed away.

Why was Baby G a child in care?

6. Between 2 December 2022 and 9 February 2023, the CEO of Territory Families made three applications for protection orders for Baby G. The first application on 2 December 2022 was unsuccessful but on 16 December 2022, a Protection Order was made giving Short Term Parental Responsibility to the CEO for a period of 2 months.[4] A further application was made on 9 February 2023 and Short Term Parental Responsibility was given to the CEO for a period of 12 months.[5] The catalyst for these applications were child protection notifications made to Territory Families on 11 September 2022, 20 November 2022 and 7 December 2022.

7. When Baby G passed away he was a child in care, and an inquest into his death was mandatory.[6] Accordingly, I was required to consider any relevant circumstances concerning this death, and I may also comment on and make recommendations about matters connected with public health and safety connected with the death. [7] In this inquest I was particularly concerned to understand why Baby G's Trisomy 21 was not identified before he was born and what difference it might have made to his short life if it had been detected. I also wished to understand the circumstances which brought him into the care of Territory Families, and to consider whether active efforts had been made

[3] Affidavit, Dr K. Freeman, 24 March 2023
[4] Transcripts, Care and Protection Applications, additional documents, Folio 4
[5] Transcripts, Care and Protection Applications, additional documents, Folio 4
[6] Sections 12 and 15 *Coroner's Act 1993*
[7] Section 34 and 35 *Coroner's Act 1993*

to provide relevant supports and services to him and his parents to assist him to remain in their care.[8]

Testing for Trisomy 21 (Down Syndrome)

8. Trisomy 21, also known as Down Syndrome, is a genetic disorder caused when a person has three separate copies of chromosome 21, instead of the usual two copies. The condition is usually caused by random, unusual, cell division. It causes delay in physical, intellectual, and language development. Severity differs among individuals and Baby G was at the severe end of the syndrome.

9. Baby G's mother was not considered at high risk of conceiving a child with Trisomy 21. She had a previous pregnancy without complications and there were no genetic anomalies in her family history. Based on her age, the risk of her conceiving a child with Trisomy 21 was considered to be approximately 1 in 1000.[9] In her two ultrasounds conducted at 16 weeks and 2 days and at 22 weeks Trisomy 21 was not detected. But it is not uncommon for foetuses with Trisomy 21 to show no abnormalities on ultrasound.

10. There is a low risk, non-invasive, prenatal blood test (NIPT) for determining the risk of Trisomy 21 which is highly accurate (at 99.89 or 99.99 percent).[10] It is available from 10 weeks of pregnancy and is the same test used to determine gender. Simple blood samples can be taken at any clinic and are sent away for testing. But this test costs $400-$500 and it is not covered by Medicare.

11. The Menzies School of Research produced a helpful guide in 2010 designed to assist health care providers and educators with parental discussions about foetal anomaly screening tests.[11] Perhaps because of its age, this guide does

[8] Territory Families, Family and Parent Support Policy, Version1.4, 4 March 2022 and Procedure Version 3.0, 24 February 2022
[9] Expert opinion, Dr J. Chin, 4 July 2024
[10] T 41, J.J. Chin
[11] Wild K, Rumbold A, Maypilama L, Boyle J, Kildea S and Barclay L (2010). Checking for Problems with the Baby in Early pregnancy: It's Your Choice to Test for Down Syndrome and Neural Tube

not mention the NIPT test and it is not known whether this guide was used in respect of Baby G's prenatal care. However, the Australian Pregnancy Guidelines are clear that NIPT testing should be discussed with parents.[12] Given the limitations of the records available, it is not known whether an NIPT was discussed and offered to the parents, but no such test was conducted.

12. If a NIPT had been conducted, Baby G's Trisomy 21 would have (with a high degree of probability) been detected before his birth. Armed with that information his parents would have had an opportunity to be educated about his condition and to make choices. If the pregnancy progressed, then preparations would almost certainly have been put in place for the birth and his likely extended hospital stay.

13. With time to plan it is likely the parents would have been offered post-test counselling to help them prepare, birth planning, a supported move to Darwin so that Baby G could be born at RDH with access to the paediatric neonatologists who are available 24/7, and education including via pre-birth visits to the Neonatal Intensive Care Unit and through meetings with staff and specialists who would be involved with Baby G's care. Plans could have been progressed for housing and support services in Darwin and they could have been linked into peer support.[13] If these interventions commenced pre-birth, it would most certainly have resulted in better outcomes for Baby G and his parents, though may not have altered his prognosis.

14. The RDH Perinatal Mortality and Morbidity Review panel discussed Baby G's case on 22 February 2023. It was the panel's considered opinion that all

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Defects. Menzies School of Health Research, Darwin, http://www.menzies.edu.au/childhealthrescources

[12] T 44, Dr J.J. Chin

[13] T 45, Dr J.J. Chin

pregnant women should be offered the publicly funded aneuploidy screening,[14] which is the less reliable form of screening.

15. On the other hand, Dr Melanie Thomas, GP Obstetrician with Miwatj Health Aboriginal Corporation, and responsible for the clinics that Camilla attended, fully supported[15] increased accessibility of cfDNA testing (or NIPT). While noting the current cost, she identified the benefits of this testing, as compared to the publically funded aneuploidy screening, as follows:

    a) It is available to all pregnant women after 10 weeks gestation,

    b) Its improved accuracy reduces the likelihood of further invasive diagnostic testing (such as amniocentesis),

    c) Its improved accuracy reduces the likelihood of missing a diagnosis,

    d) It is a simple blood test that can be carried out by any health care provider, without the need for the mother to travel, and

    e) It does not require an ultrasound (though I understand ultrasounds are recommended).

16. Professor Marco Brienco, then Chief Executive Department of Health, in consultation with Dr Jeremy Chin and the Chief Medical Officer, thoughtfully responded on this issue.[16] They noted and supported the following:

    a) NT Health, in collaboration with other relevant organisations, work together to ensure the care provided to Territorians during pregnancy is delivered in line with best available evidence including the Australian Pregnancy Care Guideline,

[14] Letter from O&G Register, RDH, to MIWATJ Health Aboriginal Corporation (undated), located in MIWATJ antenatal medical records
[15] Letter to Counsel Assisting from Dr M.Thomas, 18 July 2024
[16] Letter to Counsel Assisting from Professor M. Brienco, 23 August 2024

b) Health professionals should receive continuing education on fetal chromosomal anomalies and testing for these,

c) Noting that NIPT is more flexible for women living in remote communities, can be undertaken closer to home than other chromosomal screening, is more reliable than the Medicare funded "maternal serum screen", and is already being used in a number of clinics across the Northern Territory, its use could be implemented in remaining clinics within a 12 month timeframe. It is recommended that health professionals discuss, offer and perform testing (where consent is given) in line with Australian Pregnancy Care Guideline Part 11 – Foetal Chromosomal Anomalies, and

d) Where chromosomal anomalies are detected, health professions are to refer the mother/family to relevant services and support organisations.

17. Given that the NIPT can be conducted anywhere and is highly accurate, I consider there to be substantial and compelling reasons why the NIPT is preferable for remote pregnant women in comparison to the less reliable Medicare funded screening. Had Baby G's diagnosis been known, it is most unlikely that he would have been reported to Territory Families as suffering from suspected Foetal Alcohol Syndrome (FASD). Further, with proper planning and supports in place, his parents would likely have been more successful in providing consistent and appropriate care and, if achieved, that would have been better for Baby G.

18. Accordingly, I will make a recommendation concerning the promotion of the Australian Pregnancy Care Guidelines to health professionals. I will also make a recommendation that NT Health liaise with Miwatj (and any other appropriate Aboriginal health care providers) to determine whether and in what circumstances the NIPT should be made freely available to pregnant women, and for NT Health to make all reasonable endeavours to progress,

secure funding for and facilitate the provision of free NIPT's where identified as appropriate.

Down Syndrome Association (NT)

19. Rachael Kroes, Chief Executive Officer of the Down Syndrome Association of the Northern Territory (the Association), gave evidence about how this Association helps and supports families who have a child with Down Syndrome.[17]

20. Ms Kroes explained that the Association can provide peer support and education to immediate and extended family as early as a prenatal diagnosis. The Association visits and supports parents and children in hospitals or at home, including in some remote communities, such as Nhulunbuy and Maningrida. The support provided is emotional, practical and educational.

21. Anyone can connect a family to the Association, but referrals are often facilitated by hospital paediatricians, social workers or, one presumes, other case workers. The Association stocks 'welcome packs' at RDH which are usually available in the paediatric wards and these can be used by hospital staff to discuss the possibility of a referral with parents. However, no-one (not the hospital social workers, medical staff or Territory Families workers) [18] had these discussions with Baby G's parents or referred Baby G or his parents to the Association.

22. The Association did not become aware of Baby G until 22 February 2023. They learned of him by chance when they visited another family at RDH. By this time Baby G was already in the care of Territory Families, his parents

[17] In this section of the findings I will use the term used by the Association, Down Syndrome, instead of Trisomy 21

[18] T 31, the first hospital social worker was not aware of the Down Syndrome Association; T 137, neither was the second hospital social worker; T 55, and nor was the hospital ALO

were rarely attending the hospital, and there was little prospect of the Association successfully engaging with them. Sadly it was likely too late.

23. When his parents were struggling and not receiving the family support that Camilla was clearly seeking, the practical, emotional and culturally sensitive peer support that Ms Kroes told me the Association offers might have made a significant difference to her resilience and capacity to continue to provide care to Baby G. How this support service was overlooked by professionals working with a family so clearly in need of support with a child unexpectedly born with Down Syndrome, is disappointing and not at all well explained. I consider this to be a significant missed opportunity by NT Health and Territory Families. I will make a recommendation that addresses this failing.

Engagement between Territory Families and Baby G

Child Protection Notifications[19]

24. During his short life, Baby G was the subject of three child protection notifications. The first of those was made the day after he was born.

The first notification

25. At 5.37pm on 11 September 2022, a phone notification was made to the Territory Families Central Intake Team (CIT) reporting that Baby G had been born and a review of hospital notes showed that his mother "has a history of alcohol use including active alcohol use during pregnancy." No further information regarding the severity or frequency of alcohol use was provided. The notification included the notifier's belief as to the possibility of Baby G having FASD (Fetal Alcohol Spectrum Disorder) given his "suspicious facial features". On a more positive note, it was also reported that the mother is "loving and doting towards the baby….attentive, breastfeeding well, changing nappies and giving baby lots of cuddles".

[19] Territory Families Records, Folio 10

26. Even before an investigation took place, this first notification placed Baby G firmly on Territory Families' radar, because he was particularly vulnerable and because the family were already known to Territory Families. In an application for a temporary protection order the history of the family was described in this way:[20]

> *Child Protection History*
>
> 26. There is a significant child protection history in relation to [Baby G's] older brother J which led to a family led decision to remove J from the primary care of his parents.
>
> 27. These were in relation to:
>
> a. Excessive alcohol use by Ms Yunupingu
> b. Lack of supervision of J and leaving him with unwilling and unsuitable family members to consume alcohol and smoke marijuana
> c. Ms Yunupingu's relationship with a man known to exchange alcohol for sex with minors and residing in unsuitable residence described as a shed
> d. Ms Yunupingu assaulting J with a stick
> e. J found wandering the streets at night alone with no clothes on and Ms Yunupingu later being found intoxicated.

27. In response to this first notification, Territory Families requested some of Camilla's antenatal clinic records, but these were never received and there was no active follow up to obtain them. Instead this first notification was **screened out** and not further investigated as it was deemed not to meet the threshold of "abuse/neglect due to an act or omission of a parent or carer".

28. However, if Territory Families had conducted an investigation and received Camilla's antenatal records,[21] it could have discovered that those records did not support the report that Camilla had a "history of alcohol use, including active alcohol use during her pregnancy."[22] On 1 April 2022, when she attended the Gunyangara clinic and her pregnancy was confirmed, the clinic notes describe her as an "ex drinker". On 27 April 2022, progress notes from an antenatal check-up at the Gunyangara clinic refer to a discussion about

[20] Territory Families, Application for a Temporary Protection Order, 2 December 2022
[21] Which were obtained under a Coroner's Authority issued under s19 of the Coroners Act 1993 for the purposes of the inquest
[22] Pregnancy and Birth Records Camilla Yunupingu, Folio 3

alcohol use during pregnancy being unsafe. Whilst there is reference to Camilla stating that she uses alcohol when feeling down or sad,[23] alternative approaches to those feelings were discussed, and there is nothing in the notes to indicate that she was actively drinking. To the contrary, it was recorded that she was considered at "low risk" of alcohol consumption during pregnancy. A file review on 18 May refers to her drinking ETOH (alcohol) during pregnancy and to an alcohol and other drugs (AOD) referral[24] but there are no further details or any concerns recorded in relation to alcohol use during her current pregnancy with Baby G. Progress notes from clinic visits in 2022 on 12 May, 1 June, 30 June and 17 August, all record that Camilla denied alcohol use or she was recorded as at low risk alcohol consumption during pregnancy.

29. Additionally, if the concerns of the notifier about the possibility of FASD had been investigated, Territory Families would have discovered that there was no reference to any concerns about FASD in the medical records of Baby G, whereas his actual conditions are well documented and likely fully explained his "suspicious facial features".

30. Even if those investigations had been conducted and the concerns raised in the first notification were not supported by the evidence, in light of Territory Families' concerns about Camilla's capacity to care for her first born child, together with the knowledge that she was now parenting a severely disabled newborn away from her family supports, it would likely have been reasonable for Territory Families to have continuing concerns about Baby G's parents capacity to provide consistent and appropriate care. Territory Families has a suite of policies, procedures and guidelines which apply in these circumstances which recognise that the wellbeing of children is enhanced by the provision of opportunities for children and families to engage with services and supports. Territory Families staff are required to make active

[23] Pregnancy and Birth Records Camilla Yunupingu, Folio 3, 119
[24] Pregnancy and Birth Records Camilla Yunupingu, Folio 3, 114

efforts to engage families and to provide relevant services and support.[25] I will return to these policies and procedures, and the question of whether they were appropriately applied to Baby G, later in these findings.

The second notification

31. Hospital notes document a meeting between Baby G's paediatric doctor, and his parents on 16 November 2022. A hospital social worker was present and the parents were assisted by an interpreter. At that time it was hoped that Baby G might be discharged the following week. Camilla said that she wanted to stay in Darwin with Baby G but she did not have any family to stay with. A possible plan for accommodation at the Lorraine Brennan Centre (LBC) was discussed. [26]

32. On 20 November 2022, CIT were notified of an incident at RDH. It was reported that Baby G's parents had been returning to the ward "almost every evening intoxicated" and on the night of 19 November, Camilla returned very intoxicated and "grabbed" Baby G from his cot. When a nurse entered the room she found Baby G face down on the ground and Camilla asleep in a chair. It was assumed by the notifier that the baby had been dropped from sitting height. There were no witnesses to the incident and when spoken to Camilla had no recall of the events, but was very apologetic. She was escorted off the ward by security and taken to the emergency department. It was also reported that due to the parents' intoxication "nurses are having to keep a close eye on the baby to ensure nothing happens."[27] Baby G was not injured.

33. This notification was **screened in** for physical neglect and harm. The intake assessment was reviewed by Kellene Lambert, Manager of Child Safety for the Greater Darwin Region, and she also reviewed the child protection history in relation to Baby G and his older sibling J. Ms Lambert considered that

[25] Family and Parent Support Policy, Version 1.4, 4/03/2022, p4
[26] Folio 9 Part 2, 55 of 88; 28-29 of 88
[27] TF Records, Folio 10, 6 of 619

Baby G was a highly vulnerable infant, Camilla and Brendan likely had serious alcohol dependencies, and there was a real risk of Baby G suffering immediate, long term, or fatal physical harm if in their care while intoxicated, and/or at real risk of suffering neglect if they left him alone for extended periods of time.[28]

34. It seems the main factor giving rise to the concerns for harm and neglect was the parents' purported alcohol dependencies. As to her belief that the parents were alcohol dependent, Ms Lambert relied on reports of: possible indications of Baby G having FASD, the initial report that medical records documented Camilla's drinking both historically and while pregnant with Baby G, previous reports of Camilla neglecting her first child J due to her alcohol use, the report that the parents were returning "almost every evening intoxicated" at night, and that Camilla was so intoxicated on 20 November that she was escorted to the emergency department.[29] It was also reported that the parents were not on the ward for extended periods.

35. While it is accepted that these reports were made to Territory Families, it seems that little was done by Territory Families to actually investigate whether or not they were reliable, but they were substantially accepted 'at face value'. However, as discussed earlier, in contrast to these reports, Camilla's pregnancy records with Baby G do not contain any reports of her drinking at concerning levels after she was advised of the pregnancy and nor was there any medical evidence suggesting that Baby G had FASD.

36. Concerning the report that the parents were often "not on ward" and were "returning almost every evening intoxicated", a careful examination of Baby G's hospital records suggests that a different, and more positive, inference is open on the evidence.

[28] Affidavit, K Lambert, 26 June 2024, [41]
[29] Affidavit, K. Lambert, 26 June 2024, [42(e)]

37. The records reveal that one or both parents were caring for Baby G for at least some of each day between their return to RDH on 10 November and Provisional Protection being enacted on 1 December (albeit that they were also off the ward for extended periods on several days). That the parents were continuing to spend time with Baby G every single day (even if absent for parts of each day), was a family strength which does not appear to have been properly identified and acknowledged by Territory Families.

38. During this period Camilla was noted as affected (or likely affected) by alcohol on 13, 15 and 19/20 November, and Brendan on 19 and 23[30] November. Rather than supporting the report that they were intoxicated "almost every evening" a fairer reading of the contemporaneous records indicates that there were many days when the parents were present and not identified (or documented) as intoxicated. And concerns about intoxication were recent and emerging, rather than entrenched. This does not appear to have been properly identified or acknowledged.

39. If there had been an adequate investigation, Territory Families should have understood that:

    (a) there was no evidence of problematic drinking by Camilla during the pregnancy,

    (b) there was no evidence that Baby G was suffering from FASD,

    (c) there was an extended period of his hospitalisation during which there was no evidence of any concerns being raised about the parents,

    (d) their drinking and absence from the ward was a reasonably recent change (in the context of still attending the hospital regularly), and

[30] Folio 9 Part 2, 57 of 88

(e) the incident of 19/20 November, although of concern, resulted in no harm to Baby G.

40. In my view there were considerable family strengths which were not identified or acknowledged by Territory Families, nor were they recorded in the Signs of Safety Assessment,[31] and they should have been. The failure to investigate reports, identify family strengths, and work with and build on those strengths was a failure to apply Territory Families policy.

Provisional Protection

First meetings between Territory Families, hospital staff and the parents

41. At 11.30am on 23 November 2022, two Territory Families Child Protection workers, the hospital social worker, the treating paediatrician, and some other hospital staff, met to discuss Baby G.[32] His parents were not present as they were not at the hospital. Concerns about his parents attending intoxicated, a fresh concern that there had been an argument the previous evening, Baby G's complex medical needs, safety planning and the need for an interpreter were all discussed.

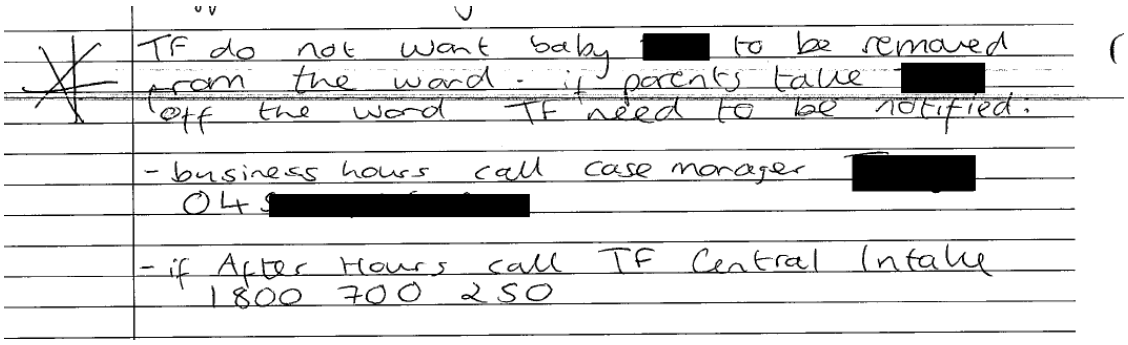
42. In the same meeting, Territory Families discussed the possibility of kinship care, however, there was seemingly no discussion as to whether, and if so how, Territory Families could provide support or housing assistance to Camilla and Brendan to retain care of Baby G in Darwin.[33]

43. That there was no court order in place to stop Baby G's parents "taking him away" was another topic of discussion. I consider this a nonsense. The parents had been engaging in his health care since his birth and there was no evidence in any of the records of concerns about them removing him from medical care or the hospital. To the contrary, the concerns were that they were leaving him

[31] Folio 10 pp 40, 41
[32] Folio 9 Part 2, 55 of 88; Folio 10, 504 of 619
[33] Folio 9 Part 2, 55 of 88

at the hospital unaccompanied. Additionally, there was evidence that Camilla wanted to remain in Darwin if he was discharged and was seeking assistance to find accommodation. This fear of the parents' potential actions, was irrational and without foundation and it should not have been given any weight by Territory Families in its decision making concerning Baby G. It is hard to understand why there was such a high index of suspicion about the parents' intentions when there was no evidential basis for this suspicion.

44. Although there was no order in place restricting the parents' rights, during or shortly after that meeting the hospital social worker documented in Baby G's medical records,[34]


TF do not want baby [redacted] to be removed from the ward - if parents take [redacted] off the ward TF need to be notified:

- business hours call case manager [redacted]
  04[redacted]
- if After Hours call TF Central Intake
  1800 700 250

45. The hospital social worker agreed to speak with the parents[35] about Territory Families involvement and its plan for a meeting the next day. When Brendan returned later that day he was asked to leave because he appeared intoxicated. He was told that he could return to the ward when he was sober.[36] However, neither parent returned to the ward that night.

46. On the morning of 24 November 2022, the hospital social worker called and left a message for the parents requesting their return to the ward. Shortly after they did return and were told of Territory Families involvement and the planned meeting.

[34] Folio 9, Part 2, 56 of 58
[35] Folio 10, 504 of 619
[36] Folio 9 Part 2, 57 of 88

47. In her notes the hospital social worker recorded that the mother had completed a housing application and supporting documents. When informed about Territory Families, both parents were "upset and anxious" and they did not want Baby G to go to 'Balanda', or white people. The parents reluctantly agreed to meet with Territory Families if supported by the social worker and an Aboriginal Liaison Officer and Camilla wanted her sister and father involved. The hospital social worker emailed Territory Families to confirm a meeting time for later that day.[37]

48. Sadly, that same morning, Baby G tested positive for COVID-19 and he and his parents were placed into isolation. It must have been extremely stressful for his parents to learn that Baby G had another serious, potentially life threatening, ailment. I can only imagine that they must have been very frightened for them. I can also imagine that the prospect of isolation, without warning or preparation, was another significant stressor.

49. At 1pm, a Territory Families Case Manager and Senior Aboriginal Case Worker attended the hospital for the planned meeting. They intended to discuss a safety plan with the parents. But with the family now in isolation, the meeting could not proceed as planned.

50. Seemingly with little regard to the change in Baby G's circumstances and likely distress of the parents, the Case Manager insisted that Territory Family's immediate safety plan be read to them. For this to occur, the hospital social worker entered Baby G's isolation room wearing protective clothing, face mask etc. (PPE) in an attempt to facilitate a meeting by phone.

51. The meeting progressed on speaker phone but the hospital social worker recalls the line being very "crackly" and Camilla found it difficult to hear.[38] There was no interpreter present and Brendan, who spoke the better English, was asleep. None of Camilla's family were on the phone. According to the

[37] Folio 9, Part 2, 62 of 88
[38] Folio 10, 507 of 619

hospital social worker, Camilla kept asking, "Are they going to take my baby? Are they going to take my baby?". She was scared. The hospital social worker read out Territory Family's danger statement/safety plan and Camilla became upset and ended the conversation, which came as no surprise to the social worker.[39] Camilla told the social worker that she was a good mum and would stay on the ward with Baby G from now on.[40]

52. Obviously, this was a very unsatisfactory meeting. [41] There was no interpreter and no support from family, communication was difficult over a phone speaker, only one parent was participating, and she was under a great deal of stress having just entered isolation with her vulnerable baby. There was no evidence that any real safety planning took place, except Camilla was told she was not allowed to take Baby G out of the hospital. After that meeting the hospital social worker understood that there was no safety plan in place and it was "definitely" a work in progress.[42] Furthermore, according to the hospital social worker, it was not the case that Camilla was unwilling to participate in complex conversations around safety planning.[43] It was just that she did not have adequate supports in place to do so. The next day Brendan, on learning of the meeting, confirmed he wanted Baby G to stay with family. [44]

53. In my view that meeting was the antithesis of trauma informed practice. It was also unnecessary given the planned period of isolation imposed by the hospital. I consider it likely harmed the possibility of establishing a productive working relationship between Territory Families and the parents moving forwards, and that result was not in Baby G's best interests.

[39] T 69, hospital social worker
[40] Folio 9, Part 2, 64 of 88
[41] T 68-70, 78-79, hospital social worker
[42] T 70, hospital social worker
[43] T 78, hospital social worker
[44] Folio 9, Part 2, 68 of 88

54. On a positive note, given the isolation period, Territory Families now had time to plan with the parent's how they could best be supported to keep Baby G safe. However, there is no evidence of any further attempts to conduct safety planning with his parents.[45] This is inexcusable.

55. Nursing notes from 25 and 26 November refer to Camilla being happy and enthusiastic in her care of Baby G. She gave him eye drops, fed him and changed his nappy.[46] On the morning of 27 November, she was noted as being attentive to Baby G's needs.[47]

56. But Brendan struggled in isolation and on occasions left for a cigarette.[48] At 1pm on 27 November he insisted that he had to go for a smoke and refused the offer of a nicotine patch. He left the room stating that he would go and stay with family. Camilla remained with Baby G.[49] Later that night, Camilla became very distressed having just learned that a grandfather had passed away. There was a referral to an Aboriginal Liaison Officer.[50] Camilla later explained that it was Brendan's family member who had passed away.[51]

57. At 9.50am on 28 November, Dr Freeman, treating paediatrician, advised Camilla that Baby G was medically stable and that they were working on a plan for discharge locally, but not back to community. Of Camilla and Baby G, Dr Freeman noted, "needing hotel/hospice for 7 days."[52]

<u>Second meeting between Territory Families and hospital staff</u>

58. At 9.40am on 29 November, Dr Freeman noted, "TF family meeting soon to discuss discharge planning."[53] That meeting was planned for 1pm the following day. In her affidavit, Ms Lambert said that she had been discussing

[45] Folio 9, Part 3, 1 of 428; Folio 10, 508 -509 of 619
[46] Folio 9, 69,70 of 88
[47] Folio 9
[48] Folio 9, Part 2, 71 of 88; Folio 9, Part 2, 73 or 88
[49] Folio 9, Part 2, 74 of 88
[50] Folio 9
[51] Folio 9, 77 of 88
[52] Folio 9, Part 2, 75 of 88
[53] Folio 9, 78 of 88

Baby G's case with the various Territory Families staff and in particular what had been done to locate extended family to support the parents.[54] However, on my understanding of the evidence, Territory Families had done virtually nothing concerning any other supports for the parents. They had not commenced, progressed or secured interim or longer term accommodation for the family, they had not commenced, progressed or secured an application for residential rehabilitation, and they had not commenced any Strengthening Families referrals. Without actively progressing the provision of non-family supports, and without finding and assessing family who could care for baby G in Darwin, it seems the only option Territory Families were prepared to action was his removal from the parents.

59. At 8.35am on 30 November, Camilla called the Territory Families Case Worker wanting to know why Territory Families was coming to see her and Baby G that day. On being told that there were worries about the safety and wellbeing of Baby G and a safety plan needed to be developed she asserted that she could look after her son. She wanted to know who would be at the meeting and advised she wanted her father and family to attend (by phone).[55]

60. At 12.30pm, the hospital social worker met with Camilla to talk about the meeting and Camilla advised that she did not want to attend.[56] At around 1.20pm the meeting proceeded with Dr Freeman, the hospital social worker, the Territory Families Case Manager and a Senior Aboriginal Case Worker. No-one from Baby G's family attended. [57]

61. Hospital notes refer to the meeting as a "Paeds/TF discharge planning meeting". Dr Freeman advised that Baby G was progressing well and would be ready for discharge on Friday (2 December), earlier than Territory Families had expected. Dr Freeman said he would remain in Darwin for medical

[54] Affidavit, K. Lambert, 26 June 2024, [51]
[55] Folio 10, 508 of 619
[56] Folio 9, Part 2, 87 of 88
[57] Folio 9, Part 2, 85 of 88

appointments and a planned transfer to Adelaide in February for eye surgery but otherwise his care needs were straightforward. It was reported that Camilla was doing well caring for Baby G's physical, social and emotional needs. She was said to be attentive, talking and singing to him. The hospital social worker advised that she had assisted the parents to complete NDIS and housing applications which had been submitted, and that Camilla would like to stay at YiSSA once she leaves the hospital.

62. However, it seems that in spite of those positive reports, Territory Families staff entered that meeting with a fixed position, namely that the parents did not have capacity to care for Baby G, and that Baby G was at immediate risk should he be cared for by his mother. Territory Families advised that a Provisional Protection would be enacted the following day.

63. Territory Families' justifications for enacting Provisional Protection are recorded in the meeting notes, and my reflections (in italics) on those justifications, are summarised as follows:

- Parents have alcohol issues which need to be addressed by their attending CAAPS Alcohol Rehabilitation Program and, as there is a long waiting list for CAAPS, an application will be lodged for special consideration in relation to the parents. *It is not explained why special consideration had not already been progressed or why applications to CAAPS, or other rehabilitation programs had not already been actioned. Although there were incidences of intoxication, there was a longer history when there were no concerns. Accordingly, in my view it was not entirely clear on the evidence that Camilla did require residential rehabilitation, as compared to some other form of AOD support.*

- Parents do not have the capacity at this stage to care for Baby G. It is therefore, important that the parents are supported to be in a better place in terms of their health and wellbeing. *It is not explained on what basis Camilla's demonstrated capacity to provide care, throughout most of*

Baby G's hospitalisation and since being in isolation, was seemingly ignored, overlooked or discounted. It is not explained why parental supports to promote their health and wellbeing were not already in place or at least in train.

- Baby G is at immediate risk should he be cared for by his mother. *There was no evidence that Baby G had ever actually been harmed by his mother. There was one incident when he was considered at risk of harm and incidents where she had not provided care by being absent from the hospital. Against this, there was also significant evidence of her capacity to provide good levels of care, especially when supported to do so.*

- Parents do not have stable accommodation and will need support to secure interim accommodation whilst awaiting housing application. *This was correct, the parents did not normally live in Darwin and needed extra support to secure suitable and stable accommodation in which they could care for Baby G. This was well understood by Territory Families. In those circumstances it is not explained why Territory Families had taken no proactive steps to assist with housing, discussed further below. However, temporary housing was apparently available at YiSSA (or possibly at Lorraine Brennan Centre, see [30] of these findings) and Camilla wanted to remain in Darwin.*

- Parents need to identify family supports in Darwin. *Camilla had repeatedly indicated she was seeking support from her family which was not forthcoming. This was not a realistic demand and was out of the parents' control.*

- Whilst Baby G is being cared for by a Foster Carer this will provide Territory Families time to identify, safe, reliable and responsible family to be assessed to care for Baby G.[58] *Territory Families were aware of*

[58] Folio 10, 508-509 of 619

Baby G from birth. Territory Families proactively sought out strong family members but were unable to make any real progress in identifying family members able to care for Baby G in Darwin, either before or after he was taken into care. In the circumstances of this case, where Baby G needed to stay in Darwin, this was a largely fanciful justification.

64. In her affidavit, Ms Lambert, added a further justification, namely, that "Ms Yunupingu and Mr Madanbuy had not substantively engaged with Territory Families to safety plan for Baby G."[59] I consider this to be grossly unfair. On the evidence presented, since the first notification on 11 September 2022 Territory Families had done little to build a relationship with the parents or to proactively support or assist them with the objectively difficult circumstances they found themselves in (caring for a profoundly disabled, unwell, newborn, away from their community and with no family support). And, since the failed attempt at a safety planning meeting on 24 November, there were no further attempts by Territory Families to engage in or develop a safety plan with the parents.

65. It is obvious from my reflections and comments, that I have reservations as to whether it was necessary and appropriate for Provisional Protection to be enacted. Provisional Protection should only be enacted when urgent action is required to keep a child safe,[60] and there is no other reasonable way to safeguard the care of the child.[61] It is a perverse line of reasoning if a substantial cause for Provisional Protection being enacted is Territory Families own failure to identify and deliver family support services that, if provided, may well have obviated the need for protection.

1 December 2022 Provisional Protection is enacted

[59] Affidavit, K. Lambert, 26 June 2024, [60(e)]
[60] Section 51 Care and Protection of Children Act 2007 NT
[61] Section 8(2) Care and Protection of Children Act 2007 NT

66. Following the 30 November meeting, the hospital social worker spoke to Camilla and told her that Territory Families wanted to meet with her and Brendan at 11am the next day to "work out a plan" for Baby G. Camilla said she wanted her father and sister and an Aboriginal Liaison Officer involved in the meeting but she did not want the interpreter who was a "poison cousin". [62]

67. At 11.20am on 1 December, Dr Freeman, the hospital social worker and two Territory Families case workers met. Dr Freeman and the hospital social worker tried to advocate on behalf of Camilla and against Provisional Protection. Notes of the meeting record that they "reiterated that Camilla has behaved very appropriately over [the] last week" and asked Territory Families to consider in the alternative, a "period of intensive family support and opportunity to demonstrate parenting capacity". But in spite of their efforts, they were advised that the decision had been made and an application for temporary protection would be reviewed at court the next day.[63]

68. At 11.53am, Provisional Protection was enacted. It is an understatement to say that the hospital notes which summarise the events are uncomfortable reading. They record the events as follows: [64]

[62] Folio 9, Part 2, 87 of 88
[63] Folio 9, Part 3, 1 of 428
[64] Folio 9, Part 3, 2-3 of 428

01/12/22 1700 **SOCIAL WORK** SW involvement with family from 10:45am

~~Summary of Events~~

- SW met with Mum Camilla and Dad Brendan to remind them of TF Meeting today at 11am. Parents declined interpreter but asked that SW and ALO be present in meeting.
- SW met with TF with Dr Kate Freeman TF workers - [redacted]. ALO [redacted] present.
- SW organised security to attend ward and liaised with SA and SB Team Leaders.
- SW and ALO present in meeting with TF and parents. TF explained the concerns in relation to parents alcohol use and enacted provisional protection - brought [redacted] into care at 11:55am.
- SW supported parents to call lawyers - NAAJA - nobody available. Parents consented to SW calling & NAAJA again later today.
- Parents advised by TF that they needed to leave the ward and say goodbye to [redacted]. Parents went to pack belongings.
- Parents explained that they had nowhere to stay. No money until Centrelink payday tomorrow.

(SW note continued)

- SW advocated with SB TL for parents to be provided with accommodation through PATS - approved until Monday (05/12).
- Parents to attend Court tomorrow.
- SW contacted NAAJA and spoke to lawyer [redacted] for 30 mins.
- NAAJA requesting support letter from SW / Paeds team.
- Carer currently on the ward to learn cares for [redacted] once carer is confident [redacted] can be discharged into her care.

The parents are told to pack and leave

69. I found it distressing to read that the parents were instructed that they "needed to leave" and to "say goodbye". The parents said "they had nowhere to stay" and "no money" and the hospital social worker arranged accommodation through PATS (which I understand refers to a hospital patient transfer unit that can arrange accommodation). Unsurprisingly, the parents were distressed. Brendan was crying and said that Baby G needed to be with family. Having received instructions to pack and leave I have no difficulty in accepting that the parents believed they may not be allowed to see Baby G again. It must have been heartbreaking for them. It must have been traumatic. Despite their distress, the parents left the hospital without incident.

70. Territory Families notes of this interaction with the parents include the following observation, "during the meeting dad disengaged and scrolled on his phone".[65] However, had a trauma informed lens been applied, these behaviours might more fairly be understood to be a maladaptive trauma response, and not evidence of disengagement, disinterest or non-compliance.[66] It seems Territory Families workers were not trauma informed in their practice and readily inferred the worst of these parents.

71. The plan had been for Baby G to be discharged to a foster carer. However, sadly, and similar to earlier discharge plans, Baby G developed problems with his breathing and an elevated temperature. It was decided that he would remain in the hospital. Dr Freeman emailed the Territory Families Case Manager that Baby G had "presumed sepsis" and would likely require inpatient care until at least Monday. [67]

72. At 11.51am, just over 24 hours after Provisional Protection had been enacted, the Territory Families Team Leader emailed Dr Freeman and other relevant

[65] Folio 10, 132 of 619
[66] Judge David Woodroffe, Ethical and effective legal advocacy for Aboriginal and Torres Strait Islanders, presented for NAIDOC 2024, [9]
[67] Folio 9, Part 3, 3 of 428; Folio 10, 509 of 619

team members from Territory Families, acknowledging the "big worries" for Baby G and "offering the opportunity for the parent's to return to the ward", "with the carer to remain present at all times" recognising "this situation is uniquely unusual".[68]

73. After all the trauma caused by the enactment of Provisional Protection coupled with the direction to "say goodbye", shockingly and belatedly, Territory Families conceded at the inquest that that direction was entirely unnecessary and should not have been given. According to Territory Families, Provisional Protection could and should have been enacted without any directive that the parents leave the hospital. The parents could and should have been permitted to remain with Baby G, provided they were not intoxicated.[69] If the parent's did depart, there could and should have been respectful discussion and planning with them about how and when they could continue to spend time with Baby G.[70]

74. I consider that enacting Provisional Protection, coupled with a direction that the parents leave, was a more intrusive response than was warranted.[71] Additionally, it was harmful. It likely undermined the close bond and attachment that had formed between mother and child and the undermining of this attachment was not in Baby G's best interest.[72] It likely undermined the parents' confidence and future capacity to care for Baby G, which was not in Baby G's best interest. Additionally, it placed them in a considerable position of shame, thereby likely making it more difficult for them to resume his care.[73] And it made the possibility of a constructive working relationship between the parents and Territory Families nigh impossible, in circumstances where a

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[68] Folio 10, 513 of 619
[69] T 189, concession made by Counsel for Territory Families
[70] T 229-230, K Lambert
71 s 10 *Care and Protection of Children Act 2007*(NT)
72 T 230-231, K Lambert; T 30, hospital social worker
73 T 30, hospital social worker

constructive working relationship was in the best interests of Baby G moving forward.

2 December 2022 Application for Temporary Protection

75. At 12.03pm, the application for a Temporary Protection Order was filed in the Local Court by Territory Families.[74] The matter was heard that afternoon.

76. Letters of support from Dr Freeman and the hospital social worker were tendered and a safety plan and undertaking was proposed on behalf of the parents, who were legally represented and present in court.

77. In her letter, Dr Freeman acknowledged the concerns raised about the parents alcohol use but maintained that she had observed "great attachment", that Camilla "demonstrate[ed] attuned and responsive care towards her son" and had the "demonstrated ability to meet [his] needs in a supported environment". She accepted that the parents would require "high quality and high intensity support" but advocated that they be afforded that opportunity.[75]

78. Similarly, the hospital social worker acknowledged concerns around drinking in the context of considerable family stresses, but she also observed the "strong bond" between mother and child and commented on the positive care Camilla provided to him. She too supported the parents being given the opportunity to "care for [Baby G] with intensive supports and a strong safety plan in place".[76]

79. The safety plan and undertaking proposed in the proceedings on behalf of the parents included requirements that the parents were to remain "substantially present" while Baby G remained hospitalised and, following discharge, for the family to reside at the Lorraine Brennan Centre, with staff present to support the arrangement. The plan included support by a family member, JB,

74 Folio 11
75 Letter, Dr K. Freeman, 1 December 2022
76 Letter, RDH Social Worker, 1 December 2022.

who had agreed to intervene and take over Baby G's care if she had any concerns about his safety.

80. Territory Families did not support the safety plan and undertaking on the basis that they needed further information to determine whether it was viable and robust. But the judge was persuaded that with this safety plan and undertaking in place, safety concerns were sufficiently addressed. It was determined that an Interim Protection Order was not warranted and the application was dismissed. [77]

81. Following this no doubt highly stressful court attendance, hospital notes record that Camilla was back on the ward and attending to Baby G's needs at 8.30pm.

After 2 December

82. One or both of Baby G's parents were with Baby G at the hospital from 2-6 December, but were absent from midday 6 December until 3.45pm on 7 December. This was a problem because not only was Baby G not receiving the level of parental care required, the medical staff were unable to get parental approval for necessary medical procedures.[78] Brendan was present some days without Camilla. She returned to the ward on 8 December at 2pm. Later that afternoon Brendan appeared intoxicated and was asked to leave.

83. On 7 December, Hospital staff formally notified Territory Families of the parents being absent. This was the third notification. The Case Manager convened a meeting at 1.30pm which was underway between Territory Families and hospital staff when Brendan returned to the ward and joined the meeting. He was offered an interpreter but declined. Brendan advised that he had not seen Camilla and he did not know where she was. [79] He was staying

[77] Folio 11, Safety Plan & Undertaking for Baby G signed by Brendan Ganambarr and Camilla Yunupingu, 2 December 2022
[78] Folio 11, 39 of 428
[79] Folio 9, Part 3, 45-46 of 428; Folio 10, 531-532 of 619

at the Christian Outreach Centre and it was too far for him to come to the hospital.[80] He said that he and Camilla had an argument after court because Camilla didn't understand that process and she was really confused. JB, who is the cousin sister of Brendan and the family member referred to in the 2 December safety plan and undertaking, spoke with Brendan over the phone. She was in Millingimbi for a funeral but was returning to Darwin the next day and said she would try to locate Camilla and explore other family options for support. Brendan agreed that he would stay at the hospital until Camilla could be located and advised that he understood that he needed to stay and care for Baby G.

84. This third notification was **screened out** as it was deemed not to meet the definitional threshold of abuse/neglect.

85. On 8 December at 11am, a new hospital social worker who had taken over the case, and the Territory Families Team Leader and social worker, met. It was reported that Baby G's health was improving and he was off oxygen and "quite vocal" but he would not be discharged over the weekend.[81] Territory Families notes include that "RDH nurses, Doctors and TFHC agree that the parents drinking as escalated in the past week." However, other than Brendan being drunk that day, there is no clear evidential basis for this "agreement".

86. A further meeting was held at 12pm between Territory Families staff, Camilla, an Aboriginal Liaison Officer and the new hospital social worker. No interpreter was present. Again, the concerns of Territory Families were expressed to Camilla and it was reinforced to her that she needed to uphold the conditions of the safety plan and undertaking, and Camilla said that she would stay with Baby G.[82]

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[80] T 28, 32, the hospital social worker conceded there was lengthy travel time between the Christian Outreach Centre and the hospital and it would have been preferable if the parents were closer to the hospital

[81] Folio 10, 532 of 619

[82] Folio 9, Part 3, 52 of 428

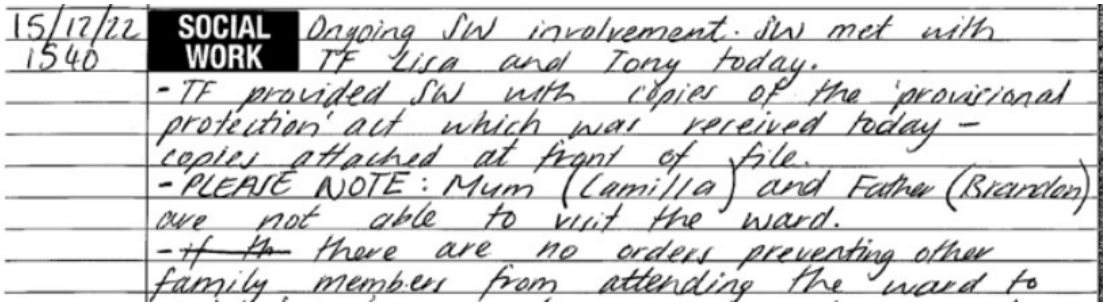
87. Clearly that meeting was not very successful because Camilla left the ward at 10.30am on Friday 9 December and neither she nor Brendan returned.[83] At 11.40am the new hospital social worker sent an email to the Territory Families Team Leader expressing the concerns of hospital staff that the parents had "minimal engagement with the baby and the hospital team" and they were not complying with the safety plan and undertaking. It is not clear why the parents were struggling to continue to provide care, but it is likely that in part it was because travel to the hospital was onerous, possibly because they felt ashamed and negatively "judged" by hospital staff, possibly because they were frightened off because of Territory Families involvement,[84] and possibly because they were simply struggling and overwhelmed.

88. At 3pm on 15 December 2022, Provisional Protection was again enacted and thereafter Short Term Orders were granted. Given the parent's prolonged absence it was necessary and appropriate that Territory Families enact protection at this time to ensure Baby G's medical, physical and emotional needs were met. However, I am concerned as to the accuracy of some of the contents of the affidavit filed in support of the Application.[85] For example, the affidavit reiterated concerns about FASD in circumstances where there was never any medical evidence to support this concern. Similarly, it reiterated the report that the parents were returning "almost every evening heavily intoxicated", which was factually inconsistent with the contemporaneous medical records.

89. Camilla and Brendan were served with a letter notifying them of the Provisional Protection in the waiting area of the hospital grounds on 15 December. Apparently, some Territory Families staff were of the view that the parents could visit Baby G under supervision, however, no arrangements

[83] Folio 9, Part 3, 55 of 428
[84] T 52, hospital ALO, "a lot of issues regarding judgement from the ward or staff that their child is already in care or they feel threatened that every sort of little thing they do is going to get reported back to Territory Families".
[85] Affidavit, Team Leader, 16 December 2022

were discussed with them as to how and when that could occur. Inconsistent with that advice, the hospital records documented that the parents were not to visit the ward.


15/12/22 1540 SOCIAL WORK Ongoing SW involvement. SW met with TF Lisa and Tony today.
- TF provided SW with copies of the 'provisional protection' act which was received today – copies attached at front of file.
- PLEASE NOTE: Mum (Camilla) and Father (Brandon) are not able to visit the ward.
- ~~If~~ there are no orders preventing other family members from attending the ward to

90. I heard evidence that when the parents attempted to visit Baby G they were turned away from the paediatric ward and later also from ICU.[86] In circumstances where Baby G was supervised in hospital, and the parents were sober, this level of intervention was unnecessary and must have been very distressing to the parents. In my view, it also likely further damaged the mutual positive attachment between Baby G and his parents and it certainly prevented them from providing care. As far as the hospital was concerned the parents were not permitted to see Baby G again until 23 December 2023, by which time Baby G was seriously ill and in intensive care.[87] His medical records document the change in Territory Families position concerning parental access as follows, " * TF informed SW that parents MAY visit if they are not intoxicated and they are acting apprpriate".[88] Despite significant efforts to contact the parents from this date, they could not be contacted and informed of this change until 23 January 2022. They attended the hospital that day, participated in a meeting and spent time with Baby G.[89]

[86] T 51-52, hospital ALO, "there was incidences when they had been to visit and they were told they couldn't" and "the wards were under the impression that they weren't allowed [to visit] at all"
[87] T 139, second hospital social worker
[88] Clinical progress notes 23/1222 15.35
[89] Affidavit, B Boyce, 27 June 2024, [181-182]

Foster care

91. On 19 December 2022, Baby G was placed with foster carers who had primary care of him until his passing. The foster carers were experienced, caring and diligent. They attended the inquest and were obviously very concerned to support Baby G's wellbeing and were greatly saddened by his passing. They were also non-Aboriginal though I accept that suitable Aboriginal carers could not be located.

92. There was a stark difference between the levels of support offered by Territory Families to the foster carers as compared to the parents. Both the hospital and Territory Families expected the parents, perhaps unreasonably,[90] to be present effectively 24/7 with no plans for respite.[91] The foster carers were not held to this same expectation. Instead, Territory Families urgently engaged respite care for Baby G during the night and also arranged for hospital staff to provide additional care during the day, when the foster carers could not be present.[92]

93. During the period Baby G was in foster care, his Territory Families case worker arranged for him to be christened and a baptism ceremony was held on 18 February 2023. Baby G's parents and members of his extended family attended the christening. It was a kind, generous and heartfelt occasion and Baby G's case worker is commended for making these arrangements.

94. Following continued complications and a deterioration in Baby G's health, on 13 March 2023 Baby G's Advanced Care Plan was finalised by Dr Freeman and he returned to ICU on 16 March. After full and proper consideration it was determined that it was now in Baby G's best interests to commence palliative care and he was moved to the paediatric ward.

[90] T 91, hospital social worker
[91] T 233, K Lambert
[92] T 58, hospital ALO; T 200, foster carer; T 233, K Lambert

95. Camilla visited Baby G on 17 March 2023. She sang to him and he responded to her voice.

96. Baby G passed away peacefully at 11.27am on 20 March 2023 in the presence of his foster carers. On being informed of his passing, his parents and members of his extended family attended. They held him and mourned for him.

97. Territory Families assisted his parents with repatriation and funeral arrangements. A ceremony was also conducted in Darwin for those who had cared for him. Butterflies were released in his memory.

Formal Findings

98. Pursuant to section 34 of the Coroners Act, I find as follows:

    (i) The identity of the deceased was Baby G born 10 September 2022 at Gove in the Northern Territory.

    (ii) The time of death was 11.25am on 18 March 2023. The place of death was Royal Darwin Hospital in the Northern Territory.

    (iii) The cause of death was Trisomy 21 with complex cardiac anomalies complicated by pulmonary hypertension, chronic lung disease and recurrent respiratory infections.

    (iv) The particulars required to register the death have been provided to Births Deaths and Marriages.[93]

Additional Issues for the inquest

Was Territory Families' Investigation and Safety Assessment Guidance applied and followed?

[93] These particulars include full names of deceased persons which are not culturally appropriate to include in published findings

99. NAAJA submitted that Territory Families had failed to conduct an independent and thorough investigation into the notifications received concerning Baby G's care and, held similar concerns in respect of their previous involvement with Baby G's older brother, J. In my view there is substance to this submission.

100. On receiving a report, Territory Families' Investigation and Safety Assessment Guidance requires practitioners to identify other sources of information and documentation, such as medical records, to inform their assessment[94] but seemingly this did not occur as:

a) Baby G's antenatal records were requested but not received. These records should have been obtained and, if that had occurred, a proper consideration of them would have revealed that they did not support the report that Camilla had engaged in problematic drinking once the pregnancy was confirmed.

b) There was no medical evidence which supported concerns that Baby G had FASD.

c) No consideration was given as to how the parents were presenting and coping during Baby G's stay in Adelaide, but there was no evidence of any negative reports.

d) A careful consideration of Baby G's RDH records revealed there were only limited occasions when the parents attended intoxicated which was not consistent with the report that they were "returning almost every evening intoxicated". While those records may not have been entirely accurate, they were contemporaneous and called into question assertions to the contrary.

e) Camilla maintained sobriety during the period of isolation without any documented difficulty.

[94] Investigation and Safety Assessment Guidance, p12

101. Concerning the second notification on 20 November 2021, that Baby G had been "grabbed" and dropped from chair height by Camilla, inconsistent with this Guidance, Territory Families failed to speak to the notifier, the hospital staff on duty, and nor did they interview Camilla to obtain her version.[95] If these enquiries had been made they might have better understood that Baby G likely slipped from Camilla's lap when she fell asleep in a chair (albeit intoxicated), there was no evidence that he had been "grabbed" or "dropped" and he was not injured.

102. In my view, if all of the evidence had been properly obtained and considered, it potentially shed a different light on Camilla's drinking, and the risk this posed to Baby G. On one available view, the evidence pointed to her drinking as a recently re-emerging problem, and not the entrenched problem assessed by Territory Families.[96] And, to be fair to her, any current problem was in the context of considerable objective stressors. If the evidence had been more thoroughly considered, a more compassionate and supportive engagement could and should have been offered to assist her to address her alcohol use and to assist her to retain care of Baby G, which (if safely achieved) would have been in his best interests.

103. NAAJA were also concerned about the reliance on and use of unsubstantiated reports to Territory Families in the inquest specifically and in care and protection proceedings more generally. Pursuant to s 27 of the *Care and Protection of Children Act 2007*, a s 26 report (of concerns about a child) is not admissible in proceedings before a court except with the court's leave.

104. However, I am satisfied that s 27 does not apply to the inquest. It is clear from s 13 of the *Care and Protection of Children Act 2007* that, for the purposes of that Act, *Court* means the Local Court; and, pursuant to s 88(1), *Court proceedings* means proceedings in the Court (that is, the Local Court) under

[95] Investigation and Safety Assessment Guidance, pp7-8
[96] T 168, K. Lambert

the *Care and Protection of Children Act 2007*. Although I am a Local Court Judge, I am not sitting in that capacity or in the Local Court when I conduct inquest proceedings under the *Coroners Act 1993* and so I am satisfied that the requirement for leave does not apply in the inquest.

105. So far as care and protection proceedings are concerned, the question of leave is a matter for the presiding judge. While the inquest serves as a timely reminder of this statutory requirement, it is neither necessary nor appropriate for me to comment further on how this power should be exercised.

Were Territory Families' Family and Parent Support Policies and Procedures applied and followed?

106. Territory Families has a comprehensive range of policies, procedures and guidelines which address how Territory Families staff are to work with families. I provide a very brief and partial outline of some of these below, insofar as they appear to me to be applicable to this inquest.

107. Territory Families' Family and Support Policy[97] recognises and relevantly provides that:

- families have primary responsibility for children,
- any intervention by Territory Families is to be the least intrusive possible, consistent with the best interests of the child,
- Territory Families may provide or facilitate services and support to children and families to promote or safeguard a child's wellbeing,
- active efforts must be made to provide relevant supports and services to children and families,

[97] Family and Support Policy, Version 3.0, 24/02/2022

- Territory Families staff are to participate in meaningful, culturally responsive engagement with children and families in a manner and language they will understand,

- Territory Families will undertake holistic assessments to identify and provide relevant services and supports, and

- Territory Families will connect families to additional supports such as supportive counselling, access to community supports and appropriate referrals.

108. Territory Families' Family and Parent and Support Services Procedure[98] outlines that family support can be provided when a child protection response draws to a conclusion or when an investigation is occurring and ongoing voluntary services are identified as being in the child and family's best interest. Territory Families staff are advised that they may "assertively engage" with the family to encourage engagement with services.

109. Territory Families' Strengthening Families Policy[99] provides that where there are concerns that a child might be at risk of future harm but is presently safe enough to remain with their parents/family, Territory Families may open a "strengthening families" case to mitigate the risks to the child. In such a case, short-term intensive support and assistance is provided to a child and their family designed to increase the family's ability and capacity to keep the child safe and in their ongoing care.

110. Territory Families' Strengthening Families Guidance[100] provides that Strengthening Families case work will:

[98] Family and Parent and Support Services Procedure, Version 3.0, 24/02/2022
[99] Strengthening Families Policy, Version 2.2, 3/12/2020
[100] Strengthening Families Guidance, Version 1.3, 4/3/2022

- include comprehensive safety planning being completed with the parents and family network,

- ensure any interventions are the least intrusive possible and a child will only be removed when all available options have been assessed as unable to maintain the safety and wellbeing of the child,

- demonstrate cultural consideration in all key decision making points, including working with interpreters, and

- ensure families are provided with clear timelines and expectations regarding tasks and responsibilities in a language and manner they understand.

Strengthening Families case

111. As discussed earlier in these findings, Territory Families held concerns about Camilla's capacity to safely parent J, and about her alcohol consumption. In light of those concerns, when they received the first notification concerning Baby G and irrespective of whether the notification was investigated or substantiated, Brenden Boyce, Territory Families Acting General-Manager, Regional Services, Greater Darwin Region, and Ms Lambert, together agreed that proper consideration should have been given to opening a Strengthening Families case. They frankly conceded that family support services would likely have been appropriate. The failure to assess, engage and offer such services was a failure to comply with Territory Families policies and procedures and a significant missed opportunity[101] to enhance Baby G's wellbeing and his parent's resilience.

112. Territory Families accepted that it did not inform itself of the supports available through the Down Syndrome Association and did not refer baby G

[101] T 151-154, B. Boyce and K. Lambert

or his parents to that Association. It was considered that there was an "opportunity for the Department to embed that in our practice".[102]

113. Territory Families did not progress Baby G's NDIS application. This work was undertaken by the hospital social workers and medical staff.

114. There were no referrals for counselling.

115. There was no genuine safety planning engaged in with the family. No clear timelines or expectations were discussed or agreed upon.

116. Respite care was not considered, let alone offered, to the parent's. By contrast it was urgently arranged for his Territory Families appointed carers.

Intensive Family Supports

117. In Territory Families institutional response, Mr Boyce acknowledged that despite a request on 2 December 2022 by the hospital social worker to Territory Families to link the parents into intensive family support services, this did not occur. [103]

Drug and Alcohol rehabilitation and counselling

118. Territory Families considered that the parents needed to attend residential alcohol rehabilitation. There were concerns that CAAPS was full and would not accept referrals for some time. However, there is no evidence that a request for 'special consideration' or a formal referral to CAAPS or any other potential residential or non-residential program or AOD counselling was ever made,[104] and that should have occurred.[105]

[102] T 198, K. Lambert
[103] Affidavit, B. Boyce, 24 June 2024, [238] and [244]; Affidavit, G. Gerbicz-Fisher, 8 July 2024, [114]
[104] Affidavit, B. Boyce, 24 June 2024, [229-234]
[105] Affidavit, G. Gerbicz-Fisher, 8 July 2024, [106]

119. Territory Families has since issued a reminder to all staff in the Greater Darwin Region that active efforts must be made to support clients to access alcohol and other drug services and, where a service is at capacity or has a waitlist, to try another service.[106]

Housing

120. Territory Families was concerned that the parents did not have suitable short- or long-term housing in Darwin.

121. In an effort to urgently address this the hospital social worker and Dr Freeman arranged for Baby G and his parents to reside at the Lorraine Brennan Cottages for 4 weeks from his anticipated discharge on or about 2 December 2022. The hospital social worker informed Territory Families that Patient Travel agreed to cover the cost and "there are nurses and security on site 24/7 and a Social Worker and an Aboriginal Liaison Officer during business hours".[107] Territory Families did not offer any alternative plan or options for housing. Additionally, they did not support this plan because they believed that it "required further work". However, there is no evidence that Territory Families identified what further work was required or offered any additional practical support to strengthen the arrangements.[108]

122. On 24 November 2022, an application for public housing was submitted by the hospital social worker to Territory Families requesting *priority* housing on the basis of "serious medical reasons".[109] The application was supported by Centrelink and bank statements. The next morning, an email response was sent by Territory Families advising that the application was incomplete and that it needed to be resubmitted with additional supporting documents. [110] The

[106] Affidavit, B. Boyce, 27 June 2024, [432]
[107] Email from Hospital Social Worker to Territory Families case workers, 2 December 2022 3.35pm
[108] T 194-195, B. Boyce
[109] Affidavit, B. Boyce, 27 June 2024, annexure BB2
[110] Affidavit of Brendan Boyce,27 June 2024, BB2

hospital social worker did not recall receiving this response or taking any further action on the application.[111]

123. Mr Boyce confirmed that Territory Families never progressed a housing application for the family and their case was not referred to the Territory Families Prioritising Allocations and Transfers Committee (PATC). The PATC was established in September 2022, met every two weeks, and was concerned to maximise and prioritise housing allocations according to need. Mr Boyce agreed that the PATC may have secured housing for the family and, if achieved, this would have been a relevant consideration in respect of any protection order.[112]

Conclusion on the application of the Family and Parent Support policy and procedures

124. It is difficult to reconcile these numerous failings with policies and procedures which direct that active and assertive efforts be taken by Territory Families to engage families in appropriate supports.

125. NAAJA's submissions were to the effect that, in order for a practice of "active efforts" to be prioritised and enforced by Territory Families, it should be enshrined in legislation similarly to the *Children and Young Person (Care and Protection) Act 1998* NSW which provides:

> 9A Principle of making "active efforts"
>
> (1) The Secretary must act in accordance with the principle of active efforts in exercising functions under this Act.
>
> (2) The principle of active efforts means—
> (a) in taking action to safeguard or promote the safety, welfare and well-being of a child or young person—making active efforts to prevent the child or young person from entering out-of-home care, and
> (b) for a child and young person who has been removed from the child's or young person's parents or family—

[111] T 61, 77, hospital social worker
[112] T 191-193, B. Boyce

(i) making active efforts to restore the child or young person to the child's or young person's parents, or

(ii) for a child or young person for whom it is not practicable or in the child's or young person's best interests to be restored to the child's or young person's parents—to place the child or young person with family, kin or community.

Note—

See the permanent placement principles in section 10A and the placement principles for Aboriginal and Torres Strait Islander children and young persons in section 13.

(3) Under the principle of active efforts, the Secretary must also ensure active efforts are—

(a) timely, and

(b) practicable, thorough and purposeful, and

(c) aimed at addressing the grounds on which the child or young person is considered to be in need of care and protection, and

(d) conducted, to the greatest extent possible, in partnership with the child or young person and the family, kin and community of the child or young person, and

(e) culturally appropriate, and

(f) otherwise in accordance with any requirements prescribed by the regulations.

(4) Without limiting subsections (1)–(3), active efforts include—

(a) providing, facilitating or assisting with access to support services and other resources, and

(b) if appropriate services or resources do not exist or are not available—considering alternative ways of addressing the relevant needs of the child or young person and the family, kin or community of the child or young person, and

(c) activities directed at finding and contacting the family, kin and community of the child or young person, and

(d) the use of any of the following—

(i) a parent responsibility contract,

(ii) a parent capacity order,

(iii) a temporary care arrangement under Chapter 8, Part 3, Division 1,

(iv) alternative dispute resolution under section 37, and

(e) another matter, activity or action prescribed by the regulations.

(5) To avoid doubt, this section is subject to the requirement under section 9(1) that this Act is to be administered under the principle that, in any action or decision concerning a particular child or young person, the safety, welfare and well-being of the child or young person are paramount.

126. NAAJA referred me to Queensland legislation which embraces the concept of "active efforts" defined as "purposeful, thorough and timely efforts" in respect of the Aboriginal and Torres Strait Islander child placement principle.[113] And I was also referred to statutes and case law in the United States to support their submission.

127. It was submitted by Territory Families that the better course for ensuring that active efforts are made is to ensure that frontline staff are appropriately trained, supported and refreshed of the need to ensure such efforts are made. Territory Families submitted that they were committed to ensuring this occurred. Given that commitment, it seems Territory Families would have no principled objection to the proposed legislative reform.

128. I consider there is force in the NAAJA submissions and I will include a recommendation concerning possible law reform.

Conclusion

129. Baby G was under medical care from the day he was born with Trisomy 21 and associated complications. His parents had no warning and no preparation for these challenging circumstances. He required 24 hour care and a parent was expected to be with him at all times. His room in the paediatric ward was small, with a cot, a fold up chair which converts to a bed and a narrow bench seat under the window. There was no fridge.[114] The parents were staying a considerable distance from the hospital and relied on public transport or a hospital bus (that could apparently take up to 2 hours each way) to get them to the hospital. They had no family who assisted with Baby G's care and they had no planned respite.

[113] s 5F *Child Protection Act 1999* Qld
[114] T 13, registered nurse

130. From his birth on 10 September, until the first documented concerns in mid-November, there is no evidence other than that his parents rose to the challenge of his care. However, they were isolated from their community and family supports, coming to terms with the care requirements of an extremely ill and disabled child, and were subject to other family stressors (they had witnessed an assault on a family member and a close family member had passed away). I have no doubt they felt overwhelmed and afraid at times. When they commenced to fail to cope, and left the ward or resorted to alcohol, they likely felt ashamed when hospital staff "growled at" them[115] on their return and when Territory Families intervened with the prospect of Baby G being removed from their care.[116]

131. It was well understood that the parents would need substantial support to successfully care for Baby G, both during his hospitalisation and in the event of his discharge. However, Territory Families provided little by way of practical assistance to support the parents to continue to care for Baby G.

132. Whilst the death of Baby G may not have been preventable, Territory Families acknowledged that more could have and should have been done to support this struggling family from the outset. Proper supports may have strengthened and preserved the mutual, loving, attachment observed between Baby G and his parents. If this were indeed possible, this would have been in his best interests.

Recommendations

133. **I recommend** that NT Health promote the Australian Pregnancy Care Guidelines with all health practitioners.

134. **I recommend** that NT Health, in consultation with Miwatj and other appropriate Aboriginal health care providers, consider how, and in what

[115] T 26, hospital ALO
[116] T 30, hospital ALO

circumstances, NIPT testing can be made freely available to pregnant women, particularly those in remote locations, and make all reasonable endeavours to secure funding for and facilitation of the provision of free NIPTs where identified as appropriate.

135. **I recommend** that NT Health and Territory Families work together with the Down Syndrome Association (NT) to ensure that staff working with children are aware of the available services and referral pathways to that Association.

136. **I recommend** that the Attorney-General consider a reform of the *Care and Protection of Children Act 2007* (NT), to include the principle of "active efforts" similarly to the NSW provisions.