

NT royal commission: claims of chaos as government tries and fails to cut witness list

Government says disorganisation and last-minute changes have left them unable to prepare, but commissioner says 'the disadvantage is more imagined than real'



Former inmates from the Don Dale juvenile detention centre in Darwin are due to give evidence this week at the Northern Territory's royal commission into the protection and detention of children.

By Helen Davidson in Darwin
Thursday 8 December 2016

Solicitors for the Northern Territory government have failed in their bid to scratch 13 witnesses, including former Don Dale inmate Dylan Voller, from the royal commission's public hearing list this week, claiming disorganisation and last-minute changes have left them unable to prepare.

The complaints, heard on Thursday morning before the inquiry into the protection and detention of children, have been repeatedly raised by parties from all sides but other legal teams said their clients wished to carry on regardless.

After two hours of arguments and deliberations, Commissioner Margaret White dismissed the application, telling the hearing "the disadvantage is more imagined than real and can be worked through".

The witness list for the second public hearing, which began on Monday and is scheduled until next Friday, remains unclear, but Thursday's argument revealed 13

people including seven “vulnerable witnesses” such as Voller and other current or former detainees, are expected to appear.

The NT government’s solicitor general, Sonia Brownhill, had said the allegations expected to be aired by the witnesses could prompt adverse findings by the commissioners, and she needed time to prepare a thorough response and cross-examination.

“It is obvious there is potential for the allegations that are proposed to be made ... to have potentially damaging consequences to the reputations of both individuals and the NT government, and could give rise to or support either civil actions or criminal proceedings,” Brownhill said.

Voller’s testimony alone contained 31 named officers amid his allegations, Brownhill told the hearing, adding that one statement had taken a week and three days to be delivered to her legal team after it was signed by the witness.

She requested the royal commission not elicit evidence from any of the 13 as a matter of procedural fairness. While her team could respond to allegations later, “what’s critical is our capacity to cross-examine and deal with evidence as it’s led”, she said.

Senior counsel assisting the commission, Peter Callaghan SC, labelled the NT government’s application as “melodrama” and said Brownhill knew “full well” redactions and vulnerability concerns had to be addressed before statements were passed on.

He acknowledged the government had “many challenges” in cooperating with the royal commission and that it did not have the level of resources enjoyed by others, however “everyone here is labouring under significant difficulties”.

“The application is that the royal commission should simply refrain from hearing any more evidence in these hearings,” he said. “That is startling.”

The royal commission has heard repeated concerns about its rushed nature and apparent inability to give enough notice of appearances to parties.

John Lawrence SC, who represents one of the young former detainees, said the government was already familiar with the evidence his client would raise, and to delay his appearance any longer would add to the boy’s trauma.

Voller’s lawyer, Peter O’Brien, claimed the same.

On Wednesday Voller’s mother told Guardian Australia her son was considering withdrawing as a witness over fears of retribution, and said the royal commission had left her and son feeling unsupported and vulnerable.

On Thursday afternoon Natasha Fyles, the NT attorney general, said the solicitor general had “broad instructions” from the NT government to act before the commission and that day-to-day operations were a matter for her office.

“The royal commission is a huge project, a huge amount of work, and I think it was acknowledged by counsel assisting that the Northern Territory is a small jurisdiction and everyone is labouring ... to do their best and provide as much as possible,” she said.

“But obviously in light of events this morning, the SG made a decision that she thought the NT’s best interest was to be asking for that delay in time so she could prepare the information and the witnesses.”

Fyles said the NT government would look at providing more resources if the solicitor general said that was needed.

Government staff have been working overtime to meet the royal commission’s requests for 10 years’ worth of information and resources, amounting to more than 2m papers.

It was a “balancing act” between a thorough investigation by the royal commission and the need to continue running the system and addressing issues for the children in detention right now, Fyles said.

The royal commission is widely expected to request and be granted an extension of time beyond the March 2017 reporting date, however Fyles flagged on Thursday the NT government’s next budget was being prepared with the original date in mind. Any changes “would be incorporated into the budget of the day”.

The commission continued on Thursday afternoon with evidence from the deputy chief executive of the Territory Families department.