

QUESTION ONE: How might the number of Aboriginal and Torres Strait Islander children and young people entering care be reduced?

Key Principles:

1. **Support early intervention with families facing challenges or in crisis to avoid removal.**
2. **Improve accountability, decision-making and regulation within CYPS.**
3. **Resource skilled, independent Aboriginal-led advocacy and legal representation.**

The ACT has the lowest recurrent expenditure on child protection services per child¹ and spends the second highest proportion of child protection expenditure on out-of-home care services nationally.² For a small jurisdiction, the ACT has the second highest rate of ATSI children in care nationally.

Investment in early intervention with at risk families, led by Aboriginal CYPS staff and Aboriginal organisations, will prevent many cases from escalating to an out-of-home placement, a costly, traumatic and resource-intensive option. Aboriginal professionals and communities are best placed to support families in crisis and need to be involved at every stage of the decision-making process.

Departmental processes need to be culturally imbued. The Glanfield Inquiry noted concerns that

“Services and service providers should be well trained culturally as well as historically to work with families at the very beginning to put in supports before anything gets worse”- Joyleen

‘CYPS decision-making was not reflective of cultural aspects of many families affected by their decisions’.³ The Inquiry highlighted the ‘consistent recognition...that a culture had developed or persisted where CYPS officers were so focused on their role they rarely sought or listened to advice and guidance from those who were working closely with affected families’.⁴ CYPS must undergo extensive cultural change in order to be able to work with Aboriginal families to achieve better outcomes. Not only should staff receive comprehensive cultural training, decision-making power about Aboriginal children should be transferred to Aboriginal staff and Aboriginal-led organisations and with a greater input by families and communities affected by a decision.

Frontline Aboriginal workers are best placed to perceive the true circumstances of a family’s challenges, ensure a fair process and decide on a culturally appropriate course of action. The deep mistrust between Aboriginal people and CYPS must be understood in light of the historic wrongs done to Aboriginal people by child protection agencies. A vulnerable family’s first engagement with CYPS should be with Aboriginal workers who are culturally astute and removed from the perception of punitive state intervention.

The Cultural Team must be well-resourced to work with every Aboriginal child and their family. We strongly endorse resourcing Family Group Conferencing (FGC). When it is Aboriginal-led, resourced and properly supported by all stakeholders, FGC is a culturally appropriate way of working with Aboriginal families using a strengths-based approach. FGC is widely acknowledged as empowering

¹ Productivity Commission, Parliament of Australia, *Report on Government Services* (2018) 16.5.

² Ibid Table 16A.28

³ Laurie Glanfield AM, ‘Report of the Inquiry: Review into the system level responses to family violence in the ACT’ (Research Report, ACT Government, April 2016) 72.

⁴ Ibid 71.

the families involved.⁵ The Cultural Team should be equipped to increase its capacity to provide FGC. It should assess families for suitability as early as possible to prevent unnecessary and costly escalation of cases.

Aboriginal children are too readily placed in inappropriate out-of-home care when there are willing and able family or kinship carers. Slow decision-making harms Aboriginal children in out-of-home-care.⁶ The Cultural Team and/ or an independent linkup team should be resourced to quickly locate kin and assess them for suitability as carers, to fulfil the requirements of the Aboriginal and Torres Strait Islander Child Placement Principle.⁷ (The Placement Principle)

Although the Placement Principle has been in effect in the Australian Capital Territory for over 30 years, the numbers of Aboriginal children placed with non-Aboriginal families or inappropriate residential services for Aboriginal youth has increased. The barriers impeding the implementation of the Placement Principle must be clearly understood and all effort put into rectifying what family members say is a gross injustice in continuing to remove ATSI children from family, community and culture.

Culturally appropriate pathways for Aboriginal and Torres Strait Islander families should be embedded in CYPS procedures that are currently confusing and protracted. The power to remove Aboriginal and Torres Strait Islander children from their families remains with Western-based systems that are fundamentally unsuited to Aboriginal and Torres Strait Islander cultures and founded on entrenched systemic discrimination. Involving Aboriginal workers, families and community at each stage of the process, resourcing FGC as early intervention and equipping CYPS with cultural training is a step towards building better outcomes for Aboriginal families in crisis.

“Child protection is a European system designed for white kids. Keep Aboriginal children with Aboriginal kin who can settle things their way.” Diane

Natural justice – cultural support, advocacy and legal representation

The ACT’s care jurisdiction is impenetrable for many of our clients who are highly vulnerable, have low levels of literacy and a deep mistrust of child protection agencies due to past and current practices. The system is not conducive to participation and the voices of children and parents being heard, especially in the context of vulnerable parents. Every family should receive legal advice as soon as they begin to engage with CYPS. Organisations should be resourced to provide ongoing advocacy and legal representation to assist families navigate the jurisdiction and prevent matters escalating. Investment in early intervention circumvents costly, time-consuming and traumatic escalation of child protection matters through the legal system and separation of families.

The highly technical rules governing the ACT’s care jurisdiction amount to an impenetrable system heavily weighted in favour of CYPS. A duty lawyer would go some way to ensuring that families knew the consequences of court proceedings and decisions. Beyond this, court forms need to be readily accessible and written in plain English. Recently, the Centre assisted a self-represented

⁵ Nathan Harris, ‘Family group conferencing in Australia 15 years on’ (Research Report, Australian Institute of Family Studies, February 2008).

⁶ Secretariat of National Aboriginal and Islander Child Care (SNAICC), ‘Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care’ (Policy Position Statement, SNAICC, July 2016) 10 (*Achieving Stability Report*).

⁷ *Children and Young People Act 2008* (ACT) s 513.

litigant in a care and protection matter. She was unable to locate any of the requisite forms. When a solicitor from the Centre rang the Registry, staff at the court were similarly unable find the forms.

Aboriginal and Torres Strait Islander childrearing practices extend caregiving responsibility beyond the birth mother and father. Process to join family members as parties should be reflect and enable this reality, instead of convoluted cross-applications.

Improve decision making, accountability and review procedures in CYPS

In our experience, CYPS decision-making procedures are opaque. They allow too much scope for the discretion of individual case workers. Without culturally imbued processes and Aboriginal-led pathways, Aboriginal families are vulnerable to impressionistic and unaccountable decision-making by case workers.

There are no formal internal or merits review procedures for CYPS decisions made during the intake and assessment process.⁸ Families must be able to seek review and request reasons for CYPS decisions at every stage. CYPS has intrusive and coercive powers to intervene in peoples' right to family.⁹ It is critically important that these decisions are amenable to review and independent oversight.

The Australia Government has also recommended that, "Government also has a duty to ensure that all administrative decision-making- follows best practice standards, correctly applies the law, and that a merits review of decisions, where appropriate, is readily available. In this regard, the development of a strong, statutory independent merits review infrastructure has been, and continues to be, a significant source of access to justice for Australians."¹⁰

Case Study: Diane

Diane is an Aboriginal grandmother. Her grandson was taken into care. Four months later, with support, Diane applied to be a kinship carer. Shortly after, CYPS prepared a care plan for the young boy stating that there was no appropriate Aboriginal kinship placement. Diane's application to become her grandson's kinship carer was not processed for another 18 months

For two years, Diane was denied time with her grandson without any avenue to contest CYPS decisions. In March 2018, Diane was informed that CYPS did not identify her grandson as Aboriginal. She was devastated that her Aboriginal grandson was being raised in ignorance of his Aboriginal identity. She was also worried that the length of time the young boy had been in care would be used by CYPS to support an attachment theory that justified leaving him in care with non-Aboriginal carers.

Diane was assessed as a kinship carer by a non-Aboriginal psychologist. The report contained factual inaccuracies which contributed to a representation of her as an unsuitable carer. A kinship carer report was subsequently conducted by an Aboriginal psychologist who criticised the earlier report, refuted its inaccuracies and recommended Diane as a kinship carer.

⁸ Glanfield Inquiry, 75.

⁹ Human Rights Act 2004 (ACT) s 11 and UN Convention on Rights of the Child.

¹⁰ Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System*, Final Report (2009) 129.

Beyond creating internal and merits review of all CYPS decisions, we submit that CYPS decisions about Aboriginal children and young people should be scrutinised by a panel of Aboriginal elders. Diane's case illustrates the need for early assessment of kinship carers by culturally sensitive trusted and independent professionals. It demonstrates the disastrous effect of unaccountable CYPS decision-making procedures. If Diane had been able to seek review of CYPS intake and assessment decisions, it is likely that she would not have been denied contact with her grandson for two years. A timeframe that is unacceptable in the life experiences of a young child.

QUESTION TWO: How might the experience and outcomes of Aboriginal and Torres Strait Islander children and young people improve while they are in care?

Key Principles:

- 1. Aboriginal and Torres Strait Islander children must be placed with kinship carers.**
- 2. Placements must be made with a view to reunification.**
- 3. Children must be supported to maintain connection with family, community and culture**

It is crucial for the wellbeing of Aboriginal and Torres Strait Islander children and young people in care that they maintain a stable sense of identity.¹¹ 'For an Aboriginal and/or Torres Strait Islander child, their stability is grounded in the permanence of their identity in connection with family, kin, culture, and country'.¹² Aboriginal and Torres Strait Islander families are best placed to provide this stability for Aboriginal children and young people. It is not appropriate or culturally safe for Aboriginal and Torres Strait Islander children and young people to be removed from their community and culture and placed in non-Aboriginal out-of-home care. This is particularly significant in light of the traumatic history that Aboriginal families have experienced with child protection agencies.¹³

"It doesn't matter if Aboriginal kids have light, white or dark skin. They are still placed in white care and counted as white. [My grandson] still has no culture, 29 months on has lots of prayers and church" Diane

As noted above, the Cultural Team should be well-resourced to locate a child's kin and assess them for suitability as carers as soon as possible. We recognise that on some occasions, notwithstanding the expertise of Aboriginal and Torres Strait Islander service providers, it may not be possible for an Aboriginal and Torres Strait Island child or young person to be placed within their kin or community. Placements should be managed with a view to reunification. In these circumstances, it is even more important that an Aboriginal-led organisation manages and monitors the out-of-home placement to ensure the cultural safety of that child or young person.

Connection with family

'In Aboriginal culture the extended family plays a crucial role in raising children'.¹⁴ It is in the best interests of Aboriginal and Torres Strait Islander children that they maintain a strong connection to their extended family and culture.¹⁵ Cultural plans need to ensure that children stay in contact

¹¹ Secretariat of National Aboriginal and Islander Child Care (SNAICC), 'Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care' (Policy Position Statement, SNAICC, July 2016) 5 (*Achieving Stability Report*).

¹² Ibid.

¹³ Council of Australian Governments, Parliament of Australia, *Protection Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020* (2009) 28.

¹⁴ Secretariat of National Aboriginal and Islander Child Care (SNAICC), 'Child Rearing Practices' (Information Booklet, SNAICC, 2018).

¹⁵ *Achieving Stability*.

with their siblings, parents, grandparents, cousins, aunts and uncles and other significant family members. Aboriginal children in out-of-home care should have access to a team of culturally astute mental health professionals to support them with trauma, grief and loss, they may have experienced or continue to experience.

CYPS should support families who need financial assistance or extra support to travel and visit a child in out-of-home care. A child's right to a family¹⁶ should not be hampered by a lack of money. Intensive work with a child and their family, brokered by Aboriginal workers, is the only way to build trust between the family and CYPS and achieve better outcomes for the child or young person in care. Close contact with family is imperative, and the practise of placing children with foster carers as remotely as possible must cease.

Resourcing Aboriginal and Torres Strait Islander frontline workers

The Australian Law Reform Commission's *Pathways to Justice- Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* report acknowledged the links between out-of-home care, juvenile justice and adult incarceration.²⁶ Decisions made by CYPS have a profound impact on the lives of Aboriginal children, families and communities and occur against a background of historic wrongs done to Aboriginal people by child protection agencies.

"Child protection are a law unto themselves. How are we going to monitor that they are doing the right thing by Aboriginal children?"- Grace

We believe employing and supporting Aboriginal workers within CYPS and in all services who engage with Aboriginal families crisis is paramount supporting families in crisis. Aboriginal staff have invaluable community knowledge and expertise. Aboriginal children or young people in care need to work with Aboriginal staff from within CYPS and across a range of services. Aboriginal community-controlled services. The ACT is the only jurisdiction without an Aboriginal Family Violence Prevention Legal Service and this is an ongoing disadvantage.

"My granddaughter is four and had 5 case workers. They don't follow through on what they say they're going to do"- Grace

The organisations coordinating an Aboriginal child's out-of-home placement need to be funded to work intensively to engage Aboriginal staff. Organisations need to create environments in which Aboriginal staff feel fully supported to have meaningful engagements with families in crisis. These staff must be empowered to lead decision-making.¹⁷ In addition, all staff must have ongoing cultural education, a necessity too for the judiciary and indeed anyone who may be in a position to make decisions that impact Aboriginal families and communities.

"First thing's first- If reports are substantiated about Aboriginal children, you need Aboriginal input. Second, the Child Placement Principle is paramount. Kids should be placed with kinship or relative carers. The next option is community- being placed with an Aboriginal family outside the kinship system. The last resort is residential or foster care. If that's the case, they need a really good case manager with a cultural plan"- Joyleen

¹⁶ Human Rights Act 2004 (ACT) s 11.

¹⁷ Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd, Submission to Department of Communities, Child Safety and Disability Services, *Queensland Child Protection Commission of Inquiry*, October 2012, 42.

QUESTION THREE: How might we increase the number of Aboriginal and Torres Strait Islander children and young people exiting care and reuniting with their families?

1. Support Early Intervention strategies designed to prevent Aboriginal and Torres Strait Islander children and young people being placed in out-of-home care and ensure that those who require out-of-home care receive a culturally safe placement.. These are detailed in questions 1 &2 and include:
 - A family’s first engagement with CYPS is through an Aboriginal worker;
 - CYPS staff receive cultural training and learn how to collaborate with Aboriginal families;
 - Every family has ongoing advocacy legal representation;
 - The Cultural Team is expanded to facilitate Family Group Conferencing and/ or mediation in conjunction with Aboriginal community-controlled services;
 - Every decision made about a child or young person involves the input of an Aboriginal worker within CYPS, an Aboriginal-led organisation and the affected family.
2. Support families in crisis with a view to supporting restoration as soon as possible.

Every child placed in out-of-home care should have a timeframe for reunification. Children and young people need to stay connected to their family.

“Keeping connected with family is what our culture is all about. Joyleen

The catastrophic Stolen Generation policies and ensuing intergenerational trauma should serve as a stark reminder of the imperative to keep children and their families connected. Families should be prepared for restoration and receive financial and practical assistance, where necessary. If service providers looked at the reasons why a child was removed, and addressed those underlying issues, families could be supported to make real change to be able to care for their children. Aboriginal and Torres Strait Islander families should receive tailored, specialist services which are Aboriginal-led to address the complex trauma presenting in many cases. Families should be strengthened through CYPS engagement so that their children can return as soon as possible, not broken by the system.

QUESTION FOUR: In relation to the Child Protection system in the ACT, what would self-determination (choice and control) in accessing support services look like?

Key Principles

1. **Resource Aboriginal led support, advocacy and legal services**
2. **Listen to Aboriginal and Torres Strait Islander children**

It’s really important to have Indigenous ownership. I know how to engage with my mob and the rest of the department needs to listen- Joyleen

Service providers engaging with Aboriginal and Torres Strait Islander families need to be resourced to employ Aboriginal and Torres Strait Islander workers to be the first point of contact between the family and the department. Their job should be to ensure that the family’s voice is heard, that they understand the process and that their concerns are understood. The Aboriginal

representatives should work with the family to link them up to appropriate services and work intensively, mediating between the department and the family to prevent the situation escalating to crisis-point. Aboriginal and Torres Strait Islander workers are culturally astute, embedded in their community and best placed to find out the true circumstances and pathway out of a family's challenges.

The views of children in out-of-home care should be afforded greater weight.

Elly is worried about her 12 year old son's welfare. He is not eating and is getting into trouble at school. When the current carer expressed their concerns, all they were told was that CYPS would speak to the child's counsellor. The boy is adamant that he wants to return to his mum, who is demonstrably ready to look after the boy: 'They said that his views would be considered. They never asked his views' or returned calls to the family.

Barb's Story "My children were taken at their school when the 3.00pm bell was sounded. I was waiting to collect the children from school. My children were taken in front of all other children and parents/guardians. I was helpless to do anything and the children were crying for help as they dragged the children away."

The inappropriate behaviour and decision made in this example not only traumatised the family but also affected ATSI workers who were supporting her. The children were traumatised, embarrassed and frightened in front of their school friends. The issue of worse outcomes and re-traumatising of Aboriginal and Torres Strait Islander children in out of home care is one to be seriously grappled with.

Resource more accessible and Aboriginal-led support, advocacy and legal services

Mandatory reporting dissuades many of our clients from engaging with support services. Not only do they feel judged and disempowered when they access these services, it is our experience that engaging in support services attracts the notice of CYPS. This is deeply frightening for our clients, many of whom were removed from their families as children. Support services are funded to assist vulnerable clients. Women linking in with the services should not be punished for seeking support by undue intervention by CYPS. Isolated from key services, family situations escalate into crises, at which point child removal becomes a very real possibility.

Support services should be trained to work with Aboriginal and Torres Strait Islander families to build their capacity and empower them. It is critical that service providers are culturally sensitive and work to gain the trust of the families they assist.

Mulleun Mura is a Yarrabi Bamir pilot site. The program is Aboriginal-led and works with Aboriginal and Torres Strait Islander families to reduce or prevent contact with the justice system. The program is a family-centric, strengths-based support model, working intensively with high-needs families to ensure that they feel listened to, understood and supported.

Yarrabi Bamir forms part of the ACT's Justice Reinvestment Strategy which aims to develop a more cost-efficient and effective approach towards working with vulnerable families in the ACT. Prevention and early intervention are critical to the JRS methodology- resources are directed towards reducing the drivers of crime by working with clients and their families. A similar justice reinvestment model can be translated to the ACT's child protection system. We strongly endorse working with Aboriginal and Torres Strait Islander families to provide support, link up to services and prevent the escalation of challenging situations into a crisis. The ACT's child protection system

is fundamentally disempowering for families who, with early support and intensive case management, could be empowered to keep their family together.

Grandmothers/Aunts as carers

Aboriginal women are the backbone of their communities, caring for children and families in the role of mother, grandmother, aunt and provider.¹⁸ Many of our clients are grandmothers who have become the primary caregivers for their grandchildren. We find that many grandmothers will not ask for respite or financial assistance for fear of losing the children in their care.

Case Study: Jeannie

Jeannie is a grandmother and kinship carer. Her grandson was placed in her care when he was two months old. Jeannie sought assistance from care and protection services for respite when she developed health problems. It was six months before Jeannie saw her grandson again, in which time he had been passed between five foster homes. Jeannie recovered, but it took her a further two years to have her grandson restored to her care. "I tried to do the right thing rather than put my grandson with another family member but it quickly became out of control once I needed support from Welfare. When I became ill, I was treated as if I did something wrong and felt like I was being punished. I now feel so bad for letting the boy down during this time". "my grandson would still be with non- Aboriginal foster carers but for the support I received from the Aboriginal paralegal who helped me attend meetings and fill out paperwork. I was so grief stricken".

Jeannie's story typifies the fear of removal which prevents many carers from asking for extra assistance or respite from CYPs. It highlights the re-traumatisation for children and their families who are rendered powerless at a time when they need all their strength. The additional support that carers need to raise children should be readily available, in recognition of the importance of keeping Aboriginal children with their family and community. That is, to increase resources in Aboriginal led Organisations with ATSI people with an understanding of what is Self Determining and with the knowledge and sensitivity to what all ATSI people face.

CONCLUSION

Placing Aboriginal and Torres Strait Islander workers and organisations at the heart of child protection decision-making processes is crucial to effecting lasting, positive change to the ACT's child protection system. Aboriginal families and communities are best placed to care for Aboriginal children and CYPs needs to undergo structural and cultural change to reflect this and achieve better outcomes for Aboriginal and Torres Strait islander children.

¹⁸ Megan Davis 'How do Aboriginal women fare in Australian Democracy?' (2007) 6 *Indigenous Law Bulletin* 9.