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Submission to the Community Affairs References
Committee

Inquiry into Out of Home Care

October 2014



1. About Aboriginal Family Law Services (WA)

The Aboriginal Family Law Services (WA) (AFLS) is committed to being a leader in the provision of family violence legal services, support and education for Aboriginal and Torres Strait Islander people in Western Australia (WA) who have experienced, or, who are experiencing family and sexual violence. (**Please note:** The term Aboriginal is used herein to refer to both Aboriginal and Torres Strait Islander people wherever relevant.)

Funded by the Department of the Prime Minister and Cabinet (DPMC) under the National Family violence Prevention Legal Service (FVPLS) Program, we are the largest FVPLS provider in Australia. The FVPLS program provides specialist legal services in the area of family violence matters. It aims to 'prevent, reduce and respond to incidents of family violence and sexual assault among Aboriginal people'. (*Access to Justice Arrangements Productivity Commission Draft Report*, April 2014, p29) Fourteen services are funded nationally to provide these services to 31 rural and remote locations.

Services are delivered in six regions across WA covering the West Kimberley, East Kimberley, Gascoyne, Midwest, Goldfields, and Pilbara regions. 47% of the State's Aboriginal population reside in these regions. (*Aboriginal and Torres Islander Census counts 2011 – Australian Bureau of Statistics*).

Offices are located in Broome, Carnarvon, Geraldton, Kalgoorlie, Kununurra, and Port Hedland. From these locations outreach services extend to over 30 remote townships and Aboriginal communities. The corporate services office located in Perth provides strategic and management support to all regional offices including finance, human resources, administration, quality assurance and compliance functions.

The National FVPLS Forum was established in May 2012 and works together to develop tools for capacity building, good governance, training and evaluation, and data collection. The AFLS contributed to and endorses the July 2014 submission made to the Senate Inquiry into Domestic Violence in Australia. The AFLS also acknowledges the importance of further comments on the WA context in relation to *Children in Out of Home Care* as outlined in the terms of reference cited in this document.

2. Introduction

The AFLS welcomes the opportunity to have input into the Senate Inquiry into *Children in Out of Home Care*.

The AFLS provides culturally secure legal and education services to Aboriginal people who are victims and survivors of family and domestic violence and sexual assault.

Family and domestic violence refers to that which occurs in a range of kinship and marital relationships, including physical, emotional, psychological, sexual, sociological, cultural, economic and spiritual facets. The extended nature of Aboriginal families is taken into account when defining family violence. Strategies to address violence need to acknowledge the diverse and complex kinship connections that exist in Aboriginal families, and the impact that the violence has on kin and community.

Data related to the prevalence and impact of any policy related to Aboriginal people in WA to date tends to be piecemeal and is not evidence based. This has resulted in unreliable data that does not clearly state the issues that impact on Aboriginal communities. Therefore, strategies being developed to address issues impacting on Aboriginal people at best can only be tentative and exploratory in nature. There is an urgent need for all organizations working in the Aboriginal arena, be they government or non-government to collect accurate

data related to any programs and services provided in order to determine strategies to be employed.

3. Response to Terms of Reference

Senate inquiry into *Children in Out of Home Care* terms of reference are:

(a) Drivers of the increase in the number of children placed in out of home care, types of care that are increasing and demographics of the children in care;

Historically, policies relating to Aboriginal people were developed by non-Aboriginal people who had no idea of the cultural implications associated with their development. These policies resulted in a huge fragmentation of Aboriginal life, economically, in terms of kinship affiliations, roles, responsibilities and expectations, as well as spiritual frameworks. Notwithstanding past practices, current government policies developed, such as those by the Department of Child Protection and Family Services (CPFS) that determine funding and methodologies for working with Aboriginal people, indicate that Aboriginal input is still not seriously considered. These include policies such as:

- Leaving Care Policy;
- Care Planning Policy; and
- Permanency Planning Policy.

5.8% of children in WA are of Aboriginal descent. 40% of the Aboriginal population is younger than 18 years.

Aside from the drivers outlined in section (b) below, drivers currently in place as outlined in *Child Protection Australia 2012-2013 Report* (CPA Report) (pviii) clearly states that these relate to:

- Children constantly being over-represented in a variety of orders that involve the CPFS;
- An increase in protection orders in out of home care from 6.7 to 7.8 per 1,000 children;
- Emotional abuse and neglect;
- Socio-economic disadvantage;
- Children at risk of and subject to sexual abuse.

According to the CPA Report (p55) the national rate of Aboriginal and Torres Strait Islander children placed in out of home care has steadily increased since 2009, from 44.8 to 57.1 per 1,000 children, compared to the rate for that of non-Indigenous children which has increased slightly from 4.9 to 5.4 per 1,000. It could be argued that little has changed in the intervening years from when legislation related to the governance of Aboriginal people was the order of the day, to the current situation in which Aboriginal children find themselves as citizens of Australia.

Additionally, a further driver to the increase of children in care is family and domestic violence. Statistically Aboriginal women fare much worse compared to non-Aboriginal women in relation to the prevalence and impact of family and domestic violence:

- Aboriginal women experience domestic violence more often and more severely than their non-Aboriginal counterparts do.
- There is a higher use of restraining orders compared to the non-Aboriginal population, with a higher level of violence in these situations.



- Aboriginal women are statistically more prone to hospitalisation and death as a result of family and domestic violence (38 times and 10 times respectively). (Nous Group: 16)
- Aboriginal women are 45 times more likely to experience domestic violence than their non-Aboriginal peers. (Gordon: 47)

In Western Australia, family and domestic violence incidents reported to the police have increased over the 5-year period from 2008 on average by almost 43%, according to the *Western Australia's Family and Domestic Violence Prevention Strategy to 2022: Achievement Report to 2013*. All regions had an increase of greater than 30%. The region with the largest increase is the Kimberley, showing a 5-year increase of 79% in Domestic Violence Incident Reports (DVIR) that have been completed by police. These figures do not specify ethnicity, an issue raised separately in this submission. However, it is relevant to note that while Aboriginal people make up 3.1% of the Western Australian population, the Kimberley population is closer to 50%. It is reasonable to question how many of the reports made in the Kimberley relate to Aboriginal victims of family and domestic violence.

In that same 5-year span, hospitalizations related to family and domestic violence have increased for men and women by an average of almost 46%. Homicides have doubled. The number of perpetrators charged with assault and sexual assault has decreased by 19% and 29% respectively. The number of perpetrators charged with breaches of a restraining order, including police orders has increased by 45%.

These increases may be attributed to a number of reasons such as an increased awareness of what constitutes domestic violence and willingness to report; an increase in the prevalence of family and domestic violence; and increased requirement of police to report domestic violence incidents. That being said, recent consultations performed by the Law Reform Commission of Western Australia heard examples of police refusing to take reports of domestic violence, with victims being told that no corroborative evidence was available in order to investigate the complaint, and that they should apply for a restraining order instead. (Law Reform Commission of Western Australia: 60)

The decreases in the numbers of perpetrators charged with assault and sexual assault raise some questions about perpetrator accountability through the justice system. This decrease seems anomalous when other indicators have increased.

Further ramifications of family and domestic violence on Aboriginal women and communities are visible through other indicators:

- Aboriginal people are overrepresented in the child protection system with Aboriginal children making up 49.5% of children in out of home care in Western Australia. (SNAICC Family Matters: 6)
- Aboriginal people are overrepresented in the prison system, women comprising 30% and men 24% of the total prison population. (Australian Bureau of Statistics 2010a).

Whatever we say about the prevalence and impact of domestic violence in Australia, it is important to note that an estimated 90% goes unreported. (Murray and Powell: 59)

As stated in *The Cost of Violence Against Women and Their Children* the financial burden of family and domestic violence to the Australian community is well documented and estimated at \$13.6 billion in 2008-09. (2009: 4) This is expected to rise and includes direct and indirect costs such as, the "direct costs to employers from absenteeism, staff turnover and lost productivity; the indirect costs are defined as employer tax share of public sector costs in the provision of services to victims and perpetrators of domestic violence; direct and opportunity

costs to victims, perpetrators, family and friends; and the shared impact of domestic violence on the wider community, including inter-generational costs.” (Laing and Bobic: 6)

For the Aboriginal community the prevalence and impact of family and domestic violence is understood in terms of loss of connection to family, culture and self. The removal of children from their families – mostly for emotional abuse and neglect for Aboriginal and Torres Strait Islander children in WA – continues. In 2013, the number of Aboriginal and Torres Strait Islander children in out of home care reached 49.5%, although they make up only 5% of the general population of children aged 0-17 years. (SNAICC Family Matters: 5-6) Despite the Child Placement Principle being legislated, around 43% of these children are not in placements considered culturally appropriate. These children are at particular risk of this disconnection given they are not being raised in a context saturated in expressions of their culture.

The development of a sense of belonging and self may be severely compromised when raised out of one’s own family. The circumstances of the removal, the quantity and quality of ongoing contact with parents and the ability to adapt to the new living situation will impact on the child’s development. The child’s ability to meet “normal” milestones will be challenged and almost certainly impaired by the trauma of the removal – as well as from the predisposing circumstances of abuse and trauma. Traumas associated with removal from family can include individual, cultural, community, family and economic. (SNAICC Family Matters: 13)

Childhood trauma and the resultant impact on development can lead to poorer outcomes in adulthood across all spheres – relationships, education, health (physical, cultural, spiritual), employment, and economic independence. Creating the conditions whereby trauma can be healed for those who have already experienced family and domestic violence is crucial to preventing violence for the next generations. A focus of resources and sustained effort now is fundamental to breaking the cycle of violence, which leads to negative life outcomes experienced by so many Aboriginal men, women and children.

The demographics of children subject to care are outlined in point (b) below.

(b) The outcomes for children in out of home care (including kinship care, foster care and residential care) versus staying in the home;

According to the 2011 *Profile of Children and Young People in WA* it is estimated that there are 31,073 (5.8%) Aboriginal children living throughout the State. The breakdown by age comprises:

Age group	No of Aboriginal children	No of all children	% of Aboriginal children in total population aged 0 to 17
0 to 4 years	8,811	154,511	5.7
5 to 12 years	13,837	231,471	6
13 to 17 years	8,425	152,981	5.5
Total 0 to 17 years	31,073	538,963	5.8

In terms of residential location the distribution of Aboriginal children according to the 2011 *Profile of Children and Young People in WA* is as follows:

Perth metropolitan area		Inner/outer regional area		Remote/very remote area		Total for WA	
Number	%	Number	%	Number	%	Number	%
10,893	35.5	7,434	24.2	12,339	40.2	30666	100

The *Child Protection Australia 2012-2013 Report* (CPA Report) data indicates that Aboriginal children are 8 times as likely as non-indigenous children to be under child protection services at 150.9 per 1,000 children compared to 18.5 for non-indigenous children. Of these, the following Aboriginal children were subject to a variety of orders in 2013. These were:

Type of Order	% of Aboriginal children
Finalised guardianship or custody orders	74.3
Finalised third-party parental responsibility orders	8.4
Finalised supervisory orders	2.6
Interim and temporary orders	14.7
Administrative arrangements	0

Data from the CPA Report also indicates that of these, the following children were subject to out of home care:

Relationship*	Number in out of home care	% of number in out of home care
Indigenous relative/kin	688	41.1
Other Indigenous caregiver	203	12.1
Other relative/kin	200	12
Total placed with relatives/kin, other Indigenous caregivers or in Indigenous residential care	1091	65.3
Other caregiver	581	34.7
Total not placed with relatives/kin, other Indigenous caregivers or in Indigenous residential care	581	34.7

*It should be noted that it is unknown how many Aboriginal children are living independently or, for whom relationship of carer and/or Indigenous status is known.

Data clearly shows that Aboriginal children still remain vulnerable and at risk.

Trans-generational issues often determine the value of Aboriginal children staying at home. Given the historical underpinnings in which families were forcibly separated and dispersed throughout the State since the advent of the 1905 *Aborigines Act*, notwithstanding the current status of Aboriginal citizens in Australia, trans-generational issues remain, in many cases, unresolved. This has resulted in dysfunctional family life in which people feel they have no 'place.' This is clearly outlined in the *Bringing Them Home Report* of 1997 in which it is argued that little has changed in 2014.

The notion of reconciliation focused on reconciling the past, as was the then Prime Minister Kevin Rudd's apology to the Aboriginal nation has resulted in piecemeal changes for the better. However, very little has been done to resolve the trans-generational trauma of grief and loss in which current children's great grandparents, grandparents, parents still live with every day.

It is an established fact in which there is a wealth of world-wide published material attesting to the fact that trauma travels in the 'blood' of families until healing occurs. Events described in the *Bringing Them Home Report* of 1997 pertaining to WA support the massive impact the separation of children and adults from their families has had. (pp101-113) In many cases

Aboriginal people were, and still are, unable to find their families in later years when the legislation was changed.

In order to shift the imbalance brought about by enforced legislation, concentrated healing among those affected must occur. To date, any healing has been conducted on a very small scale by individuals. This must be taken on board by government with Aboriginal adults and Elders determining what should be done and how this will happen. Their efforts need to have the complete support of the governing bodies, and financial allocations in budgets to address the issue of healing.

Notwithstanding the development of National Standards as a key part of the *National Framework for Protecting Australia's Children 2009-2020*, which was endorsed by the Council of Australian Governments (COAG) on 30 April 2009, the wheels of change turn very slowly.

In 2013, the Parenting Research Centre and the University of Melbourne performed an evidence review of out of home care interventions in the Australian Capital Territory. Entitled the *Evidence review: Analysis of the evidence for Out-of-Home Care* ("Evidence review") the review was commissioned by the government to provide guidance to future decisions around care types and interventions for the ACT going forward. It found that overall psychosocial and health related outcomes for children in care nationally remain poor. Risk factors such as mental health, health issues, homeless, unemployment and victimisation are prevalent. These risk factors were more prevalent in children who had been in care compared to those children who had never been in care. (Parenting Research Centre: 11)

Further, despite over a century of government supported care of vulnerable children, there is little evidence supporting what types of care best support what particular children (ibid: 10). The Evidence Review stated that kinship placements were purported to be the most stable of placements albeit children in these placements were less likely to be engaged with mental health services, may experience restoration to family of origin slower and tended to be adopted less often. (ibid: 5) Discussions about adoption are contentious regarding Aboriginal children given cultural considerations. Therapeutic foster care placements were considered useful for some children, specifically young people with behavioural problems.

It is important to note that the out of home care system is not harmless or passive and may represent harm to the child as well as safety. Separation from one's family is still separation, and this disruption can have long-term effects regardless of the safety of the future placement. The uncertainty of parental and other family relationships, unfamiliar housing, new schools and friends, separation from siblings and extended family are all potential impacts for children placed into out of home care. The loss of familial attachments and bonds, irregular contact with significant family members and possible dislocation from land can be catastrophic to the cultural development of an Aboriginal child. Decisions to remove a child from harm need to be weighed carefully with the harm created by that removal. For some children and in some cases where risk is not high, intensive family support may be a better alternative. This challenges the current risk averse child protection culture however, which struggles to assess a child's wellbeing in a holistic and consistent way.

(c) Current models for out of home care, including kinship care, foster care and residential care;

The *Children and Community Services Act 2004* states that the objective of the principle related to child placement is to maintain a connection with family and culture for Aboriginal children and young people who are the subject of placement arrangements. This includes four options in order of priority:



- children must be placed with family;
- children remain in their own community;
- children are placed with another Aboriginal family; and finally,
- children are placed with non-Aboriginal people who are sensitive to Aboriginal culture, the needs of the child and foster their cultural ties.

The principles of care related to child placement as cited above look as though they have merit, however, the story is often quite different in practice.

Kinship care is the preferred option for child placement in the first instance. In practice this often means staying with 'grannies' or 'aunties' similar to the days when this was the norm in Aboriginal traditional society in which this group of carers could always seek assistance from other family members as required. Currently they tend to live in overcrowded situations, coping with a number of children, with little assistance, either financial or physical, from other family members. Further this group of carers is often impoverished themselves with little assistance from the government. What is provided doesn't cater for the needs of these children outside of the basic food and shelter milieu. This is supported by Sammut (2011: 20) who states that *'Many are stressed and struggle with their responsibilities.'* Their struggle is not recognized by organizations such as the CPFS. Children who also may have a stronger temperament than their grannies or aunts with whom they may live, often override their authority and still do what they want to do on a daily basis. This doesn't add to any form of stability in action. As Sammut observes, *'Indigenous children can often end up receiving a lesser standard of care than non-Aboriginal children' in placement that fail to meet basic standards.'* (ibid: 20).

Sammut goes on to say *'...the high needs of children who make up the bulk of the OOH population will be just as hard to handle for kinship as foster care, and will be at risk of experiencing placement disruption. Hence of real concern is the paucity of research on the outcomes for Australian children in kinship care.'* (ibid: 20) It could also be argued that the same applies to those children in foster care. Sammut also argues that many children may survive better in foster care than with family who, regardless of how they love their relatives, may not be able to cope on a day to day basis.

This notion is supported if one considers the number of children who are unable to reside with relatives or foster carers due to the nature of their dysfunction. Many of the young teens disturbed and have self destructive behaviors that preclude them residing with family or in foster care. Therefore it has been noted that there is an increasing number of residential care facilities (where the control is greater) that are opening around the country to cater for this group. As Sammut states *'Hence, residential care is now regarded a 'realistic' option for children and young people who exhibit major behavioral and emotional problems.'* (ibid: 13) Therefore, when one considers the closure of these types of residential institutions during the 1980's to a resurgence in 2014 it could be argued that the current policies need reframing. Nationally the proportion of the out of home care population has dropped considerably; however, *'The actual number of children in residential care throughout Australia has increased by 56%'*. (ibid: 13)

The Evidence review (2013: 5-6) states several findings related to a number of types of care:

- Kinship care: has no worse outcomes than foster care for children inclusive of placement stability;
- Treatment foster care for young people: compared well to other types of care for young people with behaviour problems;
- Independent living skills programs for young people leaving care: showed no evidence for improved ability for young people to transition to successfully out of out of home care independence

- Residential care homes: showed little or no evidence with one exception of success compared to other care types of reducing the severity of young persons behavioural problems such that they can be stepped down to a foster care arrangement.

And despite screening a potential 3325 studies, the Evidence report (2013: 11) concluded that there is a dearth of evidence in a number of crucial areas relevant to this Inquiry. These include:

- Kinship care
- Permanency planning (from family re-unification to adoption)
- Treatment foster care, or wrap-around services
- The evaluation of policy and legislative change
- The educational needs and outcomes of children and young people in care
- Care for indigenous children, children from other cultural backgrounds, or children with disabilities

The Aboriginal Family Law Services (WA) supports the establishment of a body capable of creating the evidence base capable of supporting the policy decisions this inquiry is hoping to influence. This evidence base would need to focus on research concerning the specific needs of Aboriginal children and families in out of home care.

(d) Current costs of Australia's approach to care and protection

The types of placements reflect the costs involved. A child placed with kin or fostered receives the same fortnightly allowance as those parents in a similar situation who receive government allowances. This does not cater for things like extras at school, school uniforms, general clothing and shoes. They do receive a supplement depending on any other requirement, such as needing the services of professional bodies to deal with personal issues. It should be noted that kin caring receives less funding than those in foster care for obvious reasons.

Residential care in group homes costs the most as suggested by Sammut given that group home costs, as well as staff wages are provided through the government. He also suggests that those that run these residential homes are also welfare dependent themselves (ibid: p3) and are unable to assist the children to 'climb out' of their unfortunate situations.

The Productivity Commission *Report on Government Services 2011* stated that out of home care costs have increased significantly to over \$1.7 billion in 2009-2010, which is an increase of 180% since 2001. The out of home care, according to the same report *also consumed a higher proportion of (65%) of total national spending on child welfare services (\$2.5 billion) than a decade ago* as outlined below:

Real (adjusted for inflation recurrent OOHHC expenditure (2000-2010)

State/Territory	2000-1 thousand	per child	% welfare	2009-10 thousand	per child	% welfare	Expenditure growth
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		spending		spending	
New South Wales	\$228,267	59%	\$641,519	64%	181%
Victoria	\$163,770	62%	\$292,229	65%	78%
South Australia	\$28,589	52%	\$115,844	75%	305%
Queensland	\$83,989	51%	\$333,719	59%	297%
Western Australia	\$59,469	81%	\$173,284	74%	191%
Tasmania	\$9,823	73%	\$32,788	62%	234%
Northern Territory	-	-	\$40,210	68%	-
Australian Capital Territory	\$11,469	63%	\$20,990	66%	83%
Australia	\$585,377	59%	\$1,650,000	65%	182%

It is suggested that in the intervening years since 2010 to 2014 the costs have risen again.

More than one third of out of home care expenditure is being spent on residential care. The % of costs by placement type are outlined below. It should be noted that the increase in Western Australia was only 1%.

Percentage Increase Real (adjusted for inflation) recurrent OOHC expenditure by placement type and residential care as proportion (2000-2010)

State/Territory	Residential	Non-residential	Residential per child	Non-residential per child	%OOHC expenditure (residential) 2000-2001	%OOHC expenditure (residential) 2009-2010
Victoria	105%	58%	112%	8%	43%	49%
South Australia	1,035%	173%	126%	66%	15%	43%
Western Australia	198%	187%	200%	38%	35%	36%
ACT	329%	26%	46%	-50%	19%	44%

It should be noted that NSW, Queensland, Tasmania and the NT do not report expenditure by placement.

The Productivity Commission (2011), notes that the increase in costs are due to the greater number of children coming into care, and the shifts in policy to cater for the growth. It could be argued that costs are being driven upwards by the government policy makers who find themselves unable to address the issue of children's needs in a more lateral way. Providing extra funding without addressing the issues doesn't make an issue go away, rather it escalates.

In a collaborative with a number of other organizations throughout Australia, SNAICC prepared a paper entitled *Family Matters Issues Paper* that aimed to address the massive over-representation of children in out of home care. They came up with six key objectives which formed the basis of the cited paper. The aim of this research is to develop a strategic plan for presentation to government and non-government agencies in order to reduce the number of children in care.

It is said that prevention is often better than a cure, which could be true in the case of the cost effectiveness of prevention and early interventions services rather than out of home care costs. SNAICC et al suggest that *applying a public health model to care results in better outcomes for both children and their families. This public health model offers an approach*

that assists families early enough to prevent abuse and neglect from occurring. (undated: p14)

In WA in 2013 \$341.5 million was spent on child protection compared to out of home care costs for the same period estimated at \$68.1 million which was spent on family support and intensive family support services. The collaborative venture stated that *clearly a greater investment in prevention will significantly reduce the number of Aboriginal children being placed in out of home care.* (ibid: 14) They also argue that this in turn will create significant long-term cost savings.

If one considers that Aboriginal children make up 50% of all children in out of home care in WA, there should be a higher representation of positive outcomes, rather than the dismal picture currently presented. In WA, spending figures report Intensive Family Support Services, or, family preservation services are support services provided by NGOs to families at “imminent risk” of having children removed with the aim of “preserving” families. In WA they are CPFS funded, mostly mainstream and there is one metro Aboriginal specific service. Outcomes will be the same but each use their own practice framework so methods to achieve outcomes will be different. Most of these agencies also run out of home care programs. Despite community controlled services there is still an under representation in terms of funding for these organizations given that child protection and out-of-home services are controlled and managed by the State government. (9b9d: p15)

(e) Consistency of approach to out of home care around Australia;

In terms of the early childhood of Aboriginal children from 0-8 years old, there are a total of 189 services for 146,714 children of that age across the country. WA has 27 services for 18,757 children. All States and Territories except Tasmania and the Australian Capital Territory provide a range of services similar to those cited below in WA. These include:

Aboriginal Specific Service Provided	Number provided in WA
Long Day Care	2
Multifunctional Aboriginal Children's Services	4
Aboriginal Child and Family Centre	4
Family Day Care	0
Preschool	0
Creche	7
Playgroup	4
Kindergarten	1
Mobile Service	5
Outside School Hours Care	1
Vacation Care	1

In WA there is a dearth of Aboriginal early childhood services. Local Government Areas that have a high population of Aboriginal children have either none or, very few services. Where there are services, they are few and far between suggesting that the needs of this group of children are not being met. Similarly, the same could be said about services provided in the other States/Territories. (SNAICC: *Mapping and Analysis of Aboriginal and Torres Strait Islander Early Years and Family Support Services Across Australia*, undated, pp2-3 and 7-8)

In terms of these services offered it could be argued that there is an element of governmental consistency however, this has had little Aboriginal input or leadership, therefore, the outcomes are less than satisfactory. Further, outcomes tend to be tied to



funding models that do not often provide the opportunity to create something new that could be implemented at least, on a trial basis.

It is suggested that negotiation between Aboriginal organizations and government bodies meet to form a coalition of groups working towards addressing the out of home care issues and their increasing complexity as a matter of priority. If this doesn't happen then children across the board will continue to struggle through their displacement and being condemned to a never ending cycle of pain, grief and trauma.

An interesting factor to note is that there is no uniform approach to the issue of children and out of home care given that each State/Territory has its own child protection legislation (state jurisdiction) and statutory bodies. Each child protection department has a different approach to its assessment of risk for vulnerable children. In WA the Signs of Safety Child Protection Practice Framework is utilised to assess risk to children, and any protective factors which may be present.

Driven by CPFS, the Signs of Safety framework is a more collaborative approach than previous frameworks employed. It is however still focused on risk and protection, versus an early intervention child wellbeing approach such as that provided in the UK (Common Assessment Framework). The CAF is an early intervention, holistic assessment, integrated service provision and regularly reviewed approach to assisting vulnerable children.

An integrated out of home care system may not be necessary or achievable in the short term as a result of jurisdictional issues, however the use of existing structures that support children and families may help progress in this area. That is, universal services such as health (pre/ante-natal, early childhood etc) and education can be enlisted to provide targeted support to children in out of home care to ensure they have dedicated health and education plans in place. Further to this all children, especially Aboriginal children should have current and comprehensive cultural plans in place as part of their legislated care/placement plan process. These cultural plans should have input from that child's family members or relevant Aboriginal Elder or community representative to ensure the accuracy of the information contained in that plan.

(f) What are the supports available for relative/kinship care, foster care and residential care;

Supports available to various placements type depend on that placement, and on the needs of the particular child in that placement. According to the Evidence review (2013: 63) "generally kinship caregivers tend to be less well-off financially and may have lower levels of education than nonrelated caregivers, possibly leading to fewer resources for the children in their care". As stated in section (b), over 41% of Aboriginal children in care are placed in kinship care placements. This suggests that support to kinship carers in key areas would go along way to improve outcomes for children placed in their care.

Considering that there is an increase in the prevalence of child abuse through behavioral and emotional dysfunction, the rising number of high risk children with psychological problems, depression, hyperactivity, ADHA complex, anxiety, post-traumatic stress disorder, sexual deviance, conduct disorder, aggression, delinquency, poor social skills, as well as poor self esteem, it is not surprising that numbers of children in need of intervention are on the rise. (Sammut ibid: 6) The early identification of vulnerable children and families is crucial to ensuring that services at all levels have every opportunity to engage. This includes primary and secondary services, and comes from the approach that the best way to most effective way to transition children out of the out home care system is to prevent them from entering it.



Where children's safety is compromised and their removal is required the Aboriginal Placement Principal should be adhered to wherever possible. Placement outside of biological parents, they should be culturally appropriate and determined by elders in the child's local community. Support should be provided to those placements by the child protection services as well as Aboriginal organisations operating preservation and reunification programs.

Secondly, children begin to believe that the dysfunctional life they live is the norm across the board with obvious implications. Sammut argues that the high proportion of children affected by out of home care relates to *The root cause of the pressure on the OOH system is the under-acknowledged impact of child protection failure.....the growth in the size and complexity of the OOH population is an unintended consequence of child protection policy and practice designed to achieve the opposite of child removal – family preservation.* (ibid: 6) This suggests quite clearly that the supports available for relative/kin care, foster care and residential care are piecemeal, of poor quality and fail the children in need of their assistance.

Further, the evidence also suggests that in order to work effectively with dysfunctional children the issue of dysfunctional families and parenting needs to be addressed. There is no point in trying to close the stable door after the horse has bolted. Although it is recognized that there are many services aimed at providing assistance to dysfunctional families it is obvious, given the poor outcomes, that these methods are not working and they need to be addressed differently.

It is well known that many children have been in the 'system' for years before anything is actually done to prevent further abuse. The process is long and painful with over worked and under staffed DCP officers struggling to keep up with the load. This is supported by Sammut who argues that *too many children are being left in dangerous situations due to the misguided bias towards keeping abusive and neglectful families together, which has swung the pendulum too far in favor of protecting the 'rights' of dysfunctional biological parents at the expense of the best interests of children.* (ibid:7)

Some children in existing foster/relative care placements receive support from CPFS and funded services including social services. The majority of these services in WA are provided by mainstream providers with only two Aboriginal specific service providers providing services to approximately 10% of WA's Aboriginal children in care. There is an acute shortage of therapeutic services to children generally due to funding and lack of innovation on behalf of funding bodies and some service providers. There is an argument for further support services to families such as prevention, preservation and other secondary services that are long term and suited to their particular needs (i.e. substance misuse, mental health, disability etc).

(g) Best practice in out of home care in Australia and internationally;

There is a commitment to developing national best practice standards that is being led by the *National Framework for Protecting Australia's Children 2009-2020*, developed by the Commonwealth in partnership with all States, Territories and non-government agencies which was endorsed by the Council of Australian Governments (COAG) on 30 April 2009. Under the National Framework there are 12 national priorities, including verbatim data cited below:

- *Joining up service delivery* - Implement a 'joined up' approach to service design, planning and delivery, targeted to the hard-to-reach, most disadvantaged families



and children, by leveraging services and support from Commonwealth, state and territory governments.

- *Closing the Gap* - Support Indigenous community-building activities in areas such as culture and connectedness, strengthening families and communities and speaking up about abuse.
- *Seeing early warning signs and taking early action* - Improve identification of early indicators of the needs of at-risk children and their families through a common approach to assessment, referral and support in universal and secondary prevention services, with appropriate information sharing.
- *Improving support for carers* - Continue to explore options for improving financial and non-financial support to grandparents, kinship and foster carers, provide specialist supported playgroups for grandparents and other carers, and provide enhanced support for grandparents and kinship carers as a specified target group under the Communities for Children program.
- *Developing National Standards for Out of Home Care* - These standards will aim to improve the outcomes and experiences of children and young people who are unable to live with their families. (2009: p5)

Also, taken verbatim from the *National Standards Consultation Paper*:

“Western Australia has implemented the Better Care, Better Services standards, which provide an accountability framework for service providers. These standards focus on the areas of safety, education, culture and emotional development and are supported by an overarching *Charter of Rights for Children and Young People in Care*.

The Better Care, Better Services standards include:

Standard 1: Assessing the well-being of a child

Standard 2: Protection and safety of children and young people

Standard 3: Safety for children and young people in care

Standard 4: Responding to the needs of children and young people and families

Standard 5: Planning with children, young people, their families and carers

Standard 6: Children and young people in placement

Standard 7: Accountability and governance

Standard 8: Carers and staff recruitment, training, assessment and support

Standard 9: Complaints and disputes.

The standards address the following areas:

- health
- safety
- culture
- learning and achieving
- emotional development.” (ibid: pp 20-21)

Notwithstanding the efforts nationally and locally, the wheels of change turn very slowly. This is evidenced from the data outlined in points (h) and (j) below. In the interim period, best practice in Western Australia is still being developed.

The *National Standards Consultation Paper* briefly discusses what's happening in the United Kingdom and Ireland and suggests that the problems of out of home care programs have little future in their current state given that outcomes for children placed in out of home care under current methodologies have failed and that new methodologies need to be sought.

Key factors related to engagement with Aboriginal communities and families relates to the *No Bull Therapy* that arises from the *Best Interests Case Practice Model* written by Robyn Miller from the Victorian Department of Human Services. This philosophy of engagement has 5 basic clinical guidelines quoted verbatim:

- 1 *Striving for mutual honesty and directness in working relationships;*
- 2 *Overtly negotiating levels of honesty and directness;*
- 3 *Marrying honesty and directness with warmth and care;*
- 4 *Being upfront about difficulties and constraints;*
- 5 *Avoiding jargon.* (Miller 2012: p12)

The Victorian Human Services Department under its 'every child every chance' focus has redrafted the way it works with children by reflecting new case practice directions that arose out of *Children, Youth and Families Act 2005* and the *Child Wellbeing and Safety Act 2005*. The *Best Interests Case Practice Model* spells out a clear methodology aimed at getting it right the first time around. This includes:

- How to gather information and provide a picture of the child and family
- What needs to be included in the analysis and planning including risk factors
- What action to take and how to take it
- Ongoing review, modification and outcomes
- An outline of the best interests principles in appendix 1.

The *Out of Home Care Reform* (undated), document produced by the Children and Youth Services in Tasmania analyzed their current operational framework and noted the need for reform related to their provision of services. Their analysis included the lack of strategic direction, service gaps, system issues, practice gaps and funding considerations. As a result of their review they came up with what they see as the key features of the out of home care system:

- *"Capacity to comprehensively respond to the assessed needs of the child in an ongoing manner"*
- *Placement options and services that are matched to the assessed needs of every child*
- *Clear planning and transition pathways between placement types*
- *Flexibility of service delivery to meet the needs of the client group and service demands*
- *Funding agreements with the CYS will have scheduled reporting with data used to monitor the delivery, safety, quality and effectiveness of all services*
- *Service providers will be supported through consultation, data collection tools, and clear commissioning specifications*
- *Every element and component of the OOHC system, and those systems and services that support it, will be radically reformed – no one aspect will be left uninfluenced by this reform.* (ibid: p4)



The expected outcomes are that there will be improved outcomes across the system; a reduction in demand for services through early intervention and support services; and sustainable delivery.

In a comparative analysis of Canadian and Aboriginal children and whether they should be placed in care or remain with their families, in *Keeping Them Home: The Best Interests of Indigenous Children and Communities in Canada and Australia*, Philip Lynch explored the best interests of the community and the best interests of the child.

Lynch outlines surprising similarities between the Indigenous conundrum in Canada and the Australian situation in relation to the way in which general welfare law hasn't changed much since the 1900s. He outlines similar outcomes of children removed from their families and placed in care and states that: *Many first Nations and Aboriginal peoples argue that only culturally appropriate approach to child placement and custody determination involves First Nations and Aboriginal peoples making decisions for themselves from within their own legal, political, cultural and social framework. (2001: pp504-505)* Currently this does not occur.

Lynch supports the transfer of child welfare law, policies and practices to each appropriate First Nation or Aboriginal community. He discusses self determination and cites Michael Mansell from the *Bringing Them Home Report* in which Mansell states *Unless we are given the right and we are entrusted and given the opportunity to build up mechanisms within our community to deal with these issues, there is no end in sight.....If we are going to break down the dominant system there has got to be a beginning where the Aboriginal community is able to build up the mechanisms. (ibid: p505)*

Following an in depth examination of the best interests of the community and the best interests of the child Lynch citing Hudson and McKenzie says that *...the child welfare system devalues indigenous culture by not recognizing and using traditional indigenous systems of child protection, making judgments about child care based on dominant norms, and persistently using non-indigenous foster and adoption placements. (ibid: 521)*

Lynch concludes his paper by discussing five areas assessing the best interests of indigenous children and their communities, and they are quoted in some cases, verbatim:

- 1 *Best interests should consider the rights of a First Nation or Aboriginal child should involve the rights and interest of the child as well as the rights and interest of the First Nations and Aboriginal community. (ibid:p536)* Australia, in part, has commenced addressing these issues through Section 68F(2)(f) of the Family Law Act 1975 which governs the placement of Aboriginal children. Lynch suggests this is just the beginning of what should occur. (ibid: p537)
- 2 The courts should be culturally sensitive to Aboriginal child-raising practices. Lynch suggests that *The First Nations and Aboriginal communities will best be able to determine a child's neglect or abuse, which will require a legislative or judicial prerogative that no placement of an indigenous child takes place except on the advice, recommendation and instruction of the child's indigenous community. (ibid: p538)*
- 3 In terms of the interests of the child that any placement by a court should take into account the *long-term interest of the child in maintaining a meaningful connection with his/her culture, and the probable long-term impact on the child of being deprived of his/her culture, and with it, signifiers, identity and heritage. (ibid: p539)*
- 4 Lynch clearly states that *The removal of children from their home should be a last resort. When the removal is essential for the safety and protection of the child every effort should be made to place the child within his extended family, kin, clan or tribe. (ibid: p539)* To a point this is already being done in WA however, this point should be strengthened.



- 5 Lynch asserts that *Most importantly, in every of case of alleged neglect or abandonment of a First Nations or Aboriginal child must act as an invitation to the courts and the broader community to examine underlying causes.* However, Lynch, citing another author states that Courts are not “neutral arbiters”, rather, they exist within a state structure and operate with all of the constraints and functions appropriate to their role – namely, facilitating the reproduction, rather than the subversion of the status quo.....and finally Lynch states that *First Nations or Aboriginal individuals who fall prey to the instruments of the child welfare system will not substantially change....the inevitable consequence will be genocide of the First Nations and Aboriginal people. (ibid: p540)*

Finally, given Lynch’s last statement cited above in point 5, unless changes are made to existing policies and procedures for the care and welfare of children in this State, history will be repeating itself once more in a far more subtle manner than the early days in which Aboriginal people were considered part of the flora and fauna of this country. The Aboriginal Family Law Services (WA) concurs with Lynch’s findings and that these best interest considerations feature significantly in any best practice framework concerning Aboriginal children in out of home care.

(h) Consultation with individuals, families and communities affected by the removal of children from the home;

Over the years there has been wide consultation across the board by government and non-government organizations that have addressed how communities were affected by the removal of children from their home. At one stage in Western Australia there was a whole of government response that included some Aboriginal organizations that came up with a lot of ideas but few outcomes. Another example is the Australian Institute of Health and Welfare in Canberra who consulted with government organizations across all States and Territories to obtain *Child Protection and Out of Home Care Performance Indicators. (AIHW: 2006)* It is critical that children are returned to stabilize family groups, which to date is a pipe dream. Government organizations must work with local Aboriginal communities in order to seek resolutions.

A Review of the Department for Community Development headed by Prudence Ford in 2006 (Ford Report) showed that aside from an advisory body comprising of a number of experts in this field and 97 submissions to the review illustrated in Appendix C (p125) a dearth of Aboriginal responses. The majority of responses were from non-Aboriginal government and non-government agencies who claim to have the expertise to work on the Aboriginal ‘problem’. They don’t. It has taken Aboriginal elders and high functioning people out in the community, years to be accepted into the wider community. It is taking them even longer to obtain any kind of recognition that they are in fact the experts in the field.

It would be timely to draw together all the Aboriginal expertise in every State and Territory, and, bearing in mind the use of cultural protocols, seek their assistance in order to address out of home care and other issues of Aboriginal children and youth. Secondly, the terms of reference should be developed with this group who would lead the consultation process across the country with non-Aboriginal workers assigned to assist them with all of the administrative work. Any findings would require strategic input and commensurate dollars to support and initiatives that arose from the consultation. The Ford Report supports this notion with specific note made in their 70 report recommendations to the West Australian government. These recommendations are: 9, 33, 37, 41, 43, and 44.

(i) Extent of children in out of home care remaining connected to their family of origin; and

According to an issues paper *Outcomes for Children and Young People in Kinship Care* developed by the NSW Department of Community Services in 2006, the indications are that children placed with kin in preference to foster care tend to remain in care longer, are returned to their parents at slower rates and are the recipients of fewer adoptions. (2006: iii) The NSW data also shows that there is evidence that children placed with relatives are more likely to have contact with biological parents and siblings. This occurs to a lesser degree with children in foster care.

Aboriginal family life traditionally has closer ties with extended family than non-Aboriginal families tend to have. Aunties and uncles are generally considered as being their parents and have the same expectations and obligations placed on them as though they were the biological parents. As such, even in the urban Aboriginal context, immediate kin, community and culture are 'one' therefore, even when a child is placed with kin, he/she still has access to their family and the sense of segregation is decreased. A greater sense of distance occurs when a child is in foster care, especially with no immediate relatives close by. The demarcation lines have become more blurred with the advent of dysfunctional families and the notion of supporting children in a dysfunctional environment versus removal and placed with other kin or foster carers. Children tend to be very forgiving of dysfunctional parents and more often than not try to ameliorate the situations they find themselves in. Regardless of their treatment or lack of care of a parent, a child will miss them when separated. They do however, find comfort when placed with kin because the degree of separation is less.

Operationally and anecdotally, the Aboriginal Family Law Services (WA) has observed many examples of children receiving less than ideal contact with their family of origin. Reports from our service regions in WA are that lack of resources and understaffing issues for CPFS often result in limited contact options for parents and children; limited ability to undertake supervised visits and therefore progress reunification plans; and no weekend contacts which leads to much shorter weekday contacts for school aged children.

There are also reports of contacts with children being used as a tool of punishment against women particularly women experienced family and domestic violence. Even when women make changes and achieve what is required of them by the child protection agency there is no graduated incentive system to keep people motivated. Supporting clients who have children in the out of home care system is difficult in the Australian context of the welfare system and the continuing use of power by statutory bodies over Aboriginal parents and families.

Cultural considerations are also crucial for child protection workers when making case decisions with regards to anti-colonist and non-discriminatory decisions. A client who had never had her own tenancy due to chronic housing problems in a region serviced by the Aboriginal Family Law Services (WA) was asked to remain in stable accommodation for 12 months before reunification would be considered. She was being assessed on an issue which was to a large extent out of her control and needed to be influenced at a structural level. She was further marginalised for being from that marginalised section of community, impacted by policy decisions of a different government department.

There have also been cases where resource and funding shortages compromise successful reunification processes. Reunification is resource intensive and due to lack of staffing some reluctance to proceed with restoring children to their families has been observed. Rather than a gradual process from short and regular day time visits – supervised and then unsupervised - graduating to overnight stays, weekdays and weekends, our staff report



reunification schedules which proceed too rapidly. From afternoon visits to overnights in a short time, suddenly parents go from having no children in their care to full time care of a number of children, often without any financial or other support. This approach sets families up to fail and above all subjects children to potential instability, disrupted attachments and retraumatisation.

As we have discussed disconnection from family is a major issue for children in care, and reframed, connection family is a protective and healing factor for children for their future outcomes. It is vital for any out of home care system to invest in the family contact system both in terms of financial investment as well as evidence supporting its importance to the wellbeing of children and the prevention of future negative outcomes.

(j) Best practice solutions for supporting children in vulnerable family situations including early intervention.

Historically, government welfare agencies in Western Australia were, and to a degree still are, considered the 'enemy.' Legislation that negatively impacted on Aboriginal families throughout the State still lives on in the memories of grandparents, their children, and their children's children, up to today in the year 2014. Even today, when the Department of Child Protection and Family Services intervenes little has changed in the way children are removed from their families and placed into care. The issue of dysfunctional Aboriginal families still hasn't been addressed, yet government legislation keeps on grinding forward seeking solutions to issues with children when the way forward is quite clear. Part of the problem lies in the fact that many of those in power still believe that Aboriginal people are not capable of addressing their own issues and coming up with resolutions that might work. The welfare mentality among government agencies and their recipients is alive and well. This is supported by the Ford Report who states *Biological parents, extended family members, foster carers, and relative carers have reported feeling 'put down' and 'patronised' when engaging with the Department.....and have reported the difficulty in obtaining information and seeking clarification.....they also feel that the Department labels them as being 'difficult' if they continue to raise concerns.* (ibid: pp 40&41)

The *Bringing Them Home Report* of 1997 made 54 recommendations, some of which still have not been addressed in 2014. Given that *The Ford Report* clearly outlined that the Child Protection System in Western Australia is on the verge of collapse due to it being overwhelmed with the sheer volume of children being *queued and awaiting investigation* and needs to change (ibid: 37-44) suggests that a huge overhaul of the system is required. Herein lie the seeds for creating something completely different from past practices; policies in sync with Aboriginal ways of working, and strategy development aimed at implementing an Aboriginal led charge for change.

Building capacity has been a term used often in the past few years however, the words haven't actually had any incremental growth in terms of Aboriginal capacity building. Part of the reason lies in the political realm in which funding dictates strategies and outcomes. In order to capacity build in the out of home care arena, history should be disbanded and new ways of working developed.

Another contemporary issue that has been prevalent in human services in the government and non-government sectors in the last couple of decades is that of culturally sensitive practice. The need for this cannot be overstated. Understanding child protection and wellbeing through a cultural lens will lead to better outcomes for our children. All other best practice frameworks will only benefit from this understanding. That being said there is ongoing evidence that the child protection system is not sensitive to its clients' Aboriginality, and that it does not acknowledge historical issues as the root of its clients dislike and

mistrust of them. Working in the best interests of our children means working with us in a respectful way wherever possible.

Finally, it should be noted that Australia is a signatory to the UN *Declaration on the Rights of Indigenous People* specifically, of which the General Assembly adopted on 13 September 2007, The Articles cited below as outlined in that Declaration are pertinent to these issues cited in this paper:

1 **Article 2** – Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin of identity (2007:p4)

2 **Article 7.2** – Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group. (ibid: p4)

3 **Article 8.1** – Indigenous peoples and individuals have the right not to be subjected to forced assimilation, or destruction of their culture. (ibid: p4)

4 **Article 9** - Communities and Nations - Indigenous peoples have the right to belong to an indigenous community and nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right. (ibid: p4)

5 **Article 10** – Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the Indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return. (ibid: p5)

6 **Article 22.1** – Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration. (ibid: p7)

7 **Article 22.2** – States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination. (ibid: p8)

8 **Article 38** – States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration. (ibid: p10)

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