

CULTURAL CARE FOR ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN IN OUT OF HOME CARE

Terri Libesman
2011



SNAICC
Secretariat of National
Aboriginal and Islander
Child Care



Barnardos
We believe in CHILDREN

IKANBALA.

Publisher: SNAICC Secretariat of National Aboriginal and Islander Child Care
PO Box 1445 North Fitzroy VIC 3068 ph: 03 9489 8099 snaicc@vicnet.net.au

Intellectual property rights: The project was conducted jointly by UTS and SNAICC and funded by Barnardos Australia. These partners are equal in relation to the intellectual property inherent in the work with the exception of the LAC tools, which are held by the UK Department of Health.



Acknowledgements:

Thank you to the Victorian Aboriginal Child Care Agency (VACCA); Rumbalara Family Services (Victoria), Gippsland and East Gippsland Aboriginal Co-operative (GEGAC) Victoria, Hunter Aboriginal Children's Services (HACS) NSW, Yorganop Association Incorporated (WA), Aboriginal Family Support Services (AFSS) SA; Berry Street, MacKillop Family Services and Kilmany UnitingCare (now referred to as UnitingCare Gippsland) for organizing and participating in focus groups for this research. While based on the themes and issues raised in focus groups, any errors within this report are the responsibility of the author. The views expressed in this report are not those of any individual or organization which participated but rather the author's interpretation of themes and views expressed.

Particular thanks to and acknowledgement of:

Barnados and SNAICC for their generous funding of this research project. The LAC Project Australia's support for Aboriginal agencies by supplying Looking After Children (LAC), Looking After Children Electronic System (LACES) and training and support for Aboriginal and Torres Strait Islander out of home care organizations

Focus groups and individual out of home care worker participants:

Sheree Limbrick, Meaghan Holden, Sandy Conrow, Lisa Willmott, Dawn Hill-Allan, Marg Proudfoot, Michelle Baker, Marcus Stewart, Sue Williams, Kerrie McCormick, Yolanda Glenn, Mika Akune, Alma Morgan, Rebecca Crawford, Sharon Mongta, Karen Fox, May Pearce, Sally Sibley, James Gooch, Belinda Hill, Chris Craig, Alice Mawdsley, Rhiannon Carvill, David Parker, Christine Thornton-Gaylard, Helen Gray (*since passed away*), Ted Lancaster, Sharron Williams, Lizz Kiltie, Gail McKay, Joshua Warrior, Amanda Tonkin, Dawn Wallam, Peter O'Dea, Damien Gill, Kathleen Pinkerton, Donna Klein-Kawane, Christa Bartjen-Westermann.

Representatives from Government Departments:

Dean Daylight (Principal Advisor – Child Safety, Youth and Families Policy and Performance) Department of Communities (Queensland); Neil Harwood (Director of the Aboriginal and Torres Strait Islander Services Unit) and Jenny Lintern (Unit Manager, ATSI Unit OOH) Department of Disability, Housing and Community Services (Office for Children, Youth and Family Services - Aboriginal and Torres Strait Islander Services Unit) (ACT); Ruth Miller (Manager, Aboriginal Strategy Unit Families) (SA); Sue Gillett (Member of Child Protection/Out of Home Care "Team") Department of Community Services (Victoria); Jenni Collard (Executive Director - Aboriginal Engagement and Coordination Directorate) Department for Child Protection (WA); Trish Berry, Department of Human Services (Victoria).

The Reference Group for this project:

Jude Morowitz (Barnados), Sue Tregagle (Barnados), Julie Higgins (SNAICC Project Manager), Julian Pocock (Project Manager establishment stage), Sue Beecher (SNAICC Project Officer).

The Research Team

Focus groups were conducted by Terri Libesman (UTS, Sydney), Sue Beecher (SNAICC) and Julie Higgins (SNAICC). Interviews were conducted by Terri Libesman, Costa Avgoustinos and Sue Beecher. Research assistance was provided by Costa Avgoustinos. The Report was written by Terri Libesman.

INDEX

Introduction	5
Methodology	8
What is Cultural Care	10
Appreciation of the significance of culture.....	11
Land	13
Locating family	13
Recommendations	18
Grief and loss	19
Recommendation	19
Out of Home Care Placement	20
Recommendations	22
Cultural Care Plans	23
Recommendations	29
Recruitment and Retention of Aboriginal and Torres Strait Islander Kin and Foster Carers	30
Recommendations	33
Support for Aboriginal and Torres Strait Islander Kin and Foster Carers	34
Recommendation	36
Recruitment and support of non-Aboriginal and Torres Strait Islander Kin and Foster carers	37
Recommendations	41
Building the Capacity of Aboriginal and Torres Strait Islander Out of Home Care Agencies	42
Relationship between Aboriginal and Torres Strait Islander Out of Home care agencies and departments	49
Recommendations	50
What do we know about Aboriginal and Torres Strait	

Islander compared with non-Aboriginal and Torres Strait	
Islander Children in Out of Home care?	52
Recommendations	52
The Aboriginal and Torres Strait Islander Child Placement Principle	54
What is the Aboriginal and Torres Strait Islander Child Placement	
Principle?	54
The ATSI CPP and Cultural Care	55
Implementation of the ATSI CPP	56
Queensland Audit into compliance with ATSI CPP	58
Western Australia Review of the ATSI CPP	61
Early Identification and Provision of Cultural Support	65
Building on the success of the ATSI CPP	66
Recommendations	67
Conclusion	68
Appendix A - Legislation and Policy in each Jurisdiction	70
Appendix B - Online Cultural Plans	82
Appendix C – Recommendations	84
Appendix D – References	87

Introduction

Aboriginal and Torres Strait Islander peoples have higher levels of contact with child welfare systems in Australia than any other group. They are placed in out of home care at a rate 9 times higher than all children¹. Aboriginal and Torres Strait Islander families and communities have advocated and responded to the removal of their children at a local level from the time of colonisation. The formation of national Aboriginal organisations in the 1960s and 1970s led to political advocacy for greater cultural control over child welfare. The effects of Aboriginal separations and placement with non-Aboriginal adoptive and foster carers were the focus of the first, second and third Australian Adoption Conferences in 1976, 1978 and 1982 and at the First Aboriginal Child Survival Conference in 1979.² Further, the first Aboriginal and Torres Strait Islander Child Care Agencies (AICCAs) were established in the 1970s. In NSW the Aboriginal Children's Service was formed in 1975 whilst delegates at the First Australian Adoption Conference in 1976 encouraged the formation of the Victorian Aboriginal Child Care Agency.³

With respect to the Victorian Aboriginal Child Care Agency, Jackson declared in 1979:

The Agency is geared to service delivery and community development. It aims at ultimately providing an autonomous community centred service for children, based on the notion that there already exists within the Aboriginal community, multiple and diverse resources which can be integrated into the Aboriginal Child Care Agency Program ... Because it is an Aboriginal community organisation, the Aboriginal Child Care Agency can be easily sensitised to and reflective of the needs of Aboriginal families and children. This is vital as a breakdown between State welfare delivery and the participation of Aboriginal people, suspicious of programs stigmatised by child removal, has paralysed welfare operations. The Aboriginal Child Care Agency then, bridges this gap and operates outside the fear of 'Welfare.'⁴

¹ Australian Institute of Health and Welfare (AIHW) (2010), *Child Protection Australia 2008-2009*, Child Welfare Series no 47, Canberra, 46.

² National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (NISATSIC) (1997) *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, HREOC, Sydney, Chapter 21.

³ Ibid.

⁴ Jackson B (1979), *The First Aboriginal Child Survival Seminar*, Victorian Aboriginal Child Care Agency in association with the Office of Child Care, Melbourne and Canberra, 3; cited in NISATSIC (1997) above n2.

These sentiments were reiterated in focus group meetings in 2009 for this research. The importance of Aboriginal and Torres Strait Islander agencies and cultural recognition has been an ongoing theme with incremental legislative and policy changes being made from the 1970s onwards which have begun to recognise Aboriginal and Torres Strait Islander peoples' cultural rights⁵. In 1992, *Bringing Them Home*, the report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander children from their families, recommended that a negotiated transfer of responsibility for child welfare from government agencies to Aboriginal and Torres Strait Islander organisations take place in accordance with their capacity and desire to assume this responsibility⁶. While this recommendation is yet to be fully implemented, some legislative reform has taken place which facilitates greater control by Aboriginal and Torres Strait Islander organisations over their children's well-being, see discussion of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) below.

Aboriginal and Torres Strait Islander child care agencies provide a range of services, including the provision of advice with respect to child protection matters, preventative and support services, childcare and out of home care for Aboriginal and Torres Strait Islander children. The research for this report, looking at how to provide cultural care for Aboriginal and Torres Strait Islander children in out of home care, has reiterated findings from previous research. This being that the best cultural care is provided by Aboriginal and Torres Strait Islander peoples and the most effective way to provide cultural care is to support and build the capacity of Aboriginal and Torres Strait Islander families to keep children at home and where this is not possible for Aboriginal and Torres Strait Islander agencies, kin carers and foster carers to look after Aboriginal and Torres Strait Islander children.

The importance of culture to Aboriginal and Torres Strait Islander children who are placed in out of home care's well-being is acknowledged with the Aboriginal and Torres Strait Islander child placement principle (ATSICPP) in all Australian jurisdictions. The relationship between this principle and cultural care is discussed in more detail below. While the ATSICPP is a crucial corner stone for retaining cultural care for Aboriginal and Torres Strait Islander children in out of

⁵ Libesman T (2008), 'Aboriginal and Torres Strait Islander Children and Contemporary Child Welfare' in Monahan G & Young L (eds), *Children and the Law in Australia*, LexisNexis Butterworths, Sydney, 329-351.

⁶ NISATSIC (1997) above n2, Appendix 9: Recommendation 43c.

home care a significant percentage of Aboriginal and Torres Strait Islander children are neither looked after by Aboriginal and Torres Strait Islander out of home care agencies nor placed with Aboriginal and Torres Strait Islander carers⁷. The risk of these children being dislocated from family, culture and community is significant.

Many of the barriers to cultural care relate to historical injustices and broader social and economic inequities which weigh on Aboriginal and Torres Strait Islander communities. Reparations for past wrongs call for individual but also systemic and structural responses to Aboriginal and Torres Strait Islander children's wellbeing. Children live in families and communities and in many instances community development and support is integral to addressing contemporary Aboriginal and Torres Strait Islander children's cultural care and more broadly their well-being. The importance of recognising Aboriginal and Torres Strait Islander communities' rights to support their children is evident in examples of successful cultural care offered through Aboriginal and Torres Strait Islander agencies which support children in out of home care discussed below.

However Aboriginal and Torres Strait Islander organisations only service a small proportion of Aboriginal and Torres Strait Islander children who are in out of home care and there is no systematic or universal program for cultural care for Aboriginal and Torres Strait Islander children in non-Aboriginal and Torres Strait Islander care who are looked after by non-Aboriginal and Torres Strait Islander carers. While the aim for best practice cultural care should be to transfer all Aboriginal and Torres Strait Islander children to the care of Aboriginal and Torres Strait Islander agencies the reality is that many Aboriginal and Torres Strait Islander children will continue to be placed in non-Aboriginal and Torres Strait Islander care by non-Aboriginal and Torres Strait Islander agencies. Most of these agencies would like to provide the best care, including cultural care, for these children and young people. The challenge is to translate this good will into sustained commitments, processes and resources.

⁷ AIHW (2010) above n1, 47.

Methodology

A literature review on cultural care for Aboriginal and Torres Strait Islander children in out of home care informed this research. A significant point noted is the paucity of research or literature with respect to cultural care for Aboriginal and Torres Strait Islander children in out of home care. A review of state and territory legislation and policy with respect to requirements for cultural care for Aboriginal and Torres Strait Islander children in out of home care was undertaken, with particular reference to the Aboriginal and Torres Strait Islander child placement principle.

Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander out of home care agencies which have Aboriginal and Torres Strait Islander children in their care were sent a letter informing them about this research and inviting them to participate in focus groups about the cultural appropriateness of the Looking After Children Assessment and Action record and cultural care for Aboriginal and Torres Strait Islander children in out of home care. See separate report on LAC assessment process for Aboriginal and Torres Strait Islander children. Representatives from State and Territory Child Welfare Departments were invited to participate with an interview. All except the NT participated. Ethics approval to conduct this research was obtained from the University of Technology, Human Research Ethics Committee.

A draft semi-structured questionnaire was prepared and meetings were held with two large Aboriginal and Torres Strait Islander out of home care agencies to discuss and refine this questionnaire. We met The Victorian Aboriginal Child Care Agency (VACCA) in Victoria and Hunter Aboriginal Children's Services (HACS) in Newcastle, NSW. Focus groups were conducted with 8 agencies who provide placements for Aboriginal or Torres Strait Islander children in out of home care in Victoria, NSW, SA and WA. We met with 5 Aboriginal and Torres Strait Islander agencies; Victorian Aboriginal Child Care Agency (VACCA); Rumbalara Family Services (Victoria), Gippsland and East Gippsland Aboriginal Co-operative (GEGAC) Victoria, Hunter Aboriginal Children's Services (HACS) NSW, Yorganop Association Incorporated (WA), Aboriginal Family Support Services (AFSS) SA and 3 mainstream agencies; Berry Street, McKillop Family Services and Killmaney. We also conducted interviews with informants from Aboriginal and Torres Strait Islander organizations who have experience with

the cultural care of Aboriginal and Torres Strait Islander children in out of home care from Queensland and the NT.

The focus groups were recorded and notes were taken. These were then evaluated in terms of recurring themes using grounded theory. Limitations with this research included the self-selection of participants all of whom supported and considered cultural care for Aboriginal and Torres Strait Islander children in out of home care to be significant. The self-selection suggests an interest in cultural care and there is likely to be a higher level of disinterest, resistance to and neglect of cultural care amongst some non-participant organisations.

What is Cultural Care?

“They just want to put it in a box, put a boomerang on it and call it culture. Cultural care is more complex than this.”

“Cultural care is about being part of a family, community, extended network, knowing where you belong, and knowing what the difference is between two different nations.”

There are two components to cultural care for Aboriginal and Torres Strait Islander children in out of home care and they both need to be fully supported. The first involves collecting and recording the names of the child or young person’s parents, mob, family, and ancestors. This provides the child or young person with a personal history which they can keep and refer to into adult life⁸. This record of the family tree is often done in a diagrammatic form called a genogram⁹. It can help them to find out, in addition to crucially important information about their family, information about their heritage such as the country which their mother and father’s families come from, which clan’s they are connected to; stories associated with their country and their totem¹⁰.

The second aspect of cultural care involves helping the child or young person to connect or stay connected in a day to day way with their Aboriginal or Torres Strait Islander communities. This is a more active and ongoing aspect of cultural care. It involves working out how the child/young person can be supported in their participation and inclusion in their communities in practical and ongoing ways. It involves spending time with family and community not just on NAIDOC day or

⁸ The importance of records for children in out of home care, and the destructive impact of records which are false or derogatory was addressed in (NISATSIC) (1997) above n2 chapter 16. Chapter 16 addresses issues relating to the destruction of records, access, privacy and support which should be provided to people who have left out of home care and are seeking personal and community information.

⁹ While genograms used to have standard scientific symbols they have little literally to do with genes today.

¹⁰ The devastating impact of derogatory, incomplete and inaccessible records has subsequent to the (NISATSIC) (1997) above n8 been addressed by the Senate Community Affairs References Committee Secretariat (August 2009) ‘Forgotten Australians : A report on Australians who experienced institutional or out of home care as children’ Commonwealth of Australia, Chapter 9. The ‘Who am I Project’ at the Centre for Excellence in Child and Family Welfare, Melbourne University, is currently (January 2011) researching archiving and record keeping practices to support current and past care leavers in constructing their identity see <http://research.cwav.asn.au/AFRP/OOHC/WAMI/default.aspx>

other special occasions but being part of family gatherings where the child or young person can be embraced by their family.

Knowing one's family and being a part of one's community are both vital aspects of the child/young person's cultural identity and both need support if the child or young person is going to be culturally cared for. Cultural care/support plans need to be living documents, rather than records which are updated from time to time, because cultural identity is formed out of ongoing experiences.

Appreciation of the significance of culture

A barrier to cultural care is the lack of a depth of appreciation about the significance of cultural care and how it impacts on all aspects of a child or young person's well-being amongst many non-Aboriginal and Torres Strait Islander government and non-government agencies who work with Aboriginal and Torres Strait Islander families involved with child welfare systems. Focus group participants commented on how cultural care is addressed as an add on in planning for children's well-being and that it is seen as less important than health, education or other areas of their lives which are more obviously measurable. The following are typical of participant's comments,

“Cultural support should be in the front of the care plan. Not something that is tacked on.”

“Culture and identity is always the last point – pushed down the ‘pecking order’ when for Aboriginal children it should be the first point.”

“There is a lack of cultural identity focus when in a non-Aboriginal and Torres Strait Islander placement with a non-Aboriginal and Torres Strait Islander agency.”

There is a need to educate case workers, carers and all those involved in looking after the child about the importance of connection of children in out of home care to their families and culture.¹¹ A number of focus group participants reported stereotypical ideas about culture being

¹¹ CREATE Foundation (2005), *Aboriginal and Torres Strait Islander children and young people in care - Experiences of care and connections with culture*, CREATE Foundation, Perth.

something pre-settlement that primarily exists in remote locations as a barrier to cultural care, particularly for children and young people living in urban centres. They are often not recognised as having a distinct cultural identity. It is important that cultural competence training for out of home care workers or foster carers and resources which they are provided focus on contemporary Aboriginal or Torres Strait Islander culture relevant to the child or young person in their care. Participants in this research from Aboriginal and Torres Strait Islander out of home care agencies commented

“Aboriginal culture is dynamic. It is about how we live today not an imagined 500 years ago.”

“Sometimes communities adapt and develop from what they know. What we are making today will be tomorrow’s traditions.”

There was a perception that the complexity of contemporary cultural knowledge with respect to particular areas, laws, totem, skin and other aspects of identity was not recognised, even by many of those who were committed to cultural care. While most Aboriginal and Torres Strait Islander people have common cultural understandings at a very general level, Aboriginal and Torres Strait Islander participants from our focus groups emphasised that a child or young person should be assisted to find out about their specific heritage. Typical comments from participants included:

“It has to be more than just they are Noongar. This child is from this language group. This is how they connect, these are the family names, this is the history of where they come from. Noongar isn’t enough—there are over 100 language groups for Noongar”

“Country is huge and culture and experience are very different in different parts. It is important to understand where the child is from and the significance of their separation from country, community and place of history if they are living away from their roots”

Children and young people should be supported in learning about their own language groups, mob's histories, stories, customs and totems. While colonial processes have devastated many aspects of culture, including languages, much does remain and communities are building on their traditions in contemporary ways. Non-Aboriginal and Torres Strait Islander agencies sometimes are either unaware of the richness of contemporary culture or perceive adaptations to traditions as less authentic than practices which happened pre-contact. Many focus group participants emphasised the importance of recognition of the dynamic nature of contemporary culture and the respect and recognition which they would like to see this accorded in cultural care planning for children and young people in out of home care. Cultural care plans are not museum style documents but rather a part of the child or young person's day to day life.

Land

Land is central to Aboriginal and Torres Strait Islander cultures. The 'country' which a person is from has complex and layered levels of meaning which may already be a part of the child or young person's identity or which may be a journey which they are embarking on. To be introduced to country requires someone with the knowledge of at least some of these layers as land and country is connected to individuals and families in an intimate way which is different from that experienced by non-Aboriginal people. Opportunities should be given to children and young people who do not live on their land but who have connections to different places, to visit and spend time on their land.

Locating family

Identifying family members is often complex. This research found that the process of identifying family members, especially for children and young people who have been disconnected from their families and communities, is ad hoc. There is no particular agency which is funded and has the skills to assist all children. Family is the centre and lynchpin of cultural care and without adequate resourcing to assist agencies to locate family it cannot be adequately provided. Many of the Aboriginal and Torres Strait Islander agency focus group participants whom we spoke with said that their organisation is often approached to assist but has either no designated staff member or only a single person and that they are not resourced or inadequately resourced to do this vital and time consuming work. This places strain on the core functions of the agency and

relies on the passionate commitment of agencies to cultural care to provide voluntary services. This is not acceptable. A commitment to culture care must include a commitment to funding this important part of a child or young person's out of home care.

How do out of home care workers locate family members?

Most Aboriginal and Torres Strait Islander agencies start with their own local knowledge and contacts. Focus groups participants commented:

“We keep exploring for some family to create a little network”

“We follow up, find family members. Sometimes they don't even know little John or Mary exists.”

They also may contact local Aboriginal or Torres Strait Islander organisations from areas where the child/young person has come from or where the child has some connections. The particular local organisation contacted will depend on which state or area the child is from. For example, in NSW the NSW Aboriginal Land Council, local Aboriginal land council, and local child care agencies may be contacted. NSW Link-Up is also able to assist children and young people under 18 but it does not provide this service in all jurisdictions. Local archiving and libraries with services which assist in tracing family trees can also be helpful. For example new staff at Gippsland and East Gippsland Aboriginal Co-operative (GEGAC) in Victoria are taken as part of their induction to the 'Keeping Place', a museum which women in the community established to look after community knowledge. It is a place that one can look at historical records like portraits and chat with people who have a good knowledge about the community. Another avenue for locating family is by accessing documents using Freedom of Information. This requires some caution as government records are often racist, can include inaccurate information and can be upsetting. Permission from the relevant family member who is over 18 is required to access personal records¹².

¹² Both NISATSIC (1997) n2 above and The Forgotten Australians (2009) n10 above have recommended that sensitivity be used in the exercise of discretion where a person is seeking 'third party' information which would enable them to construct their own identity, where connection to siblings and family has been severed through their out of home care experience.

In Victoria, local Aboriginal co-operatives or the *Lakidjeka* Aboriginal Child Specialist Advice and Support Service (ACSASS) within the Victorian Aboriginal Child Care Agency (VACCA) may assist with identifying family members. A service such as the ACSASS would seem to be an appropriate organisation, with the requisite resources and funding, to take responsibility for cultural care planning. Currently in Victoria there seems to be a mismatch between where the knowledge and capacity to undertake cultural care planning exists, in Aboriginal organisations, and where legislative responsibility is located, in Child Protection Services. Our focus groups made it clear that it is much easier for Aboriginal and Torres Strait Islander out of home care organisations, which have strong links into their local community and are comfortable communicating with Aboriginal and Torres Strait Islander organisations outside of their local area, compared with non-Aboriginal and Torres Strait Islander agencies, to trace family members. A number of participants from Government departments expressed views similar to those expressed by Jenni Collard from WA Human Services that they try, “to get local level involvement but this can also be tricky – because it is still a very private matter. If a child is removed from family, they might be uncomfortable having the rest of the community knowing their business. Just because they are Aboriginal doesn’t mean they don’t deserve privacy.” Balancing the needs of the child and the feelings of the family in the context of child protection issues will inevitably require a great deal of sensitivity. In most circumstances this makes it even more important that Aboriginal and Torres Strait Islander people who have insider knowledge of the community and who will be better equipped to recognize issues and manage the situation have responsibility for locating Aboriginal and Torres Strait Islander family support and carers rather than the child welfare department.

Most non-Aboriginal or Torres Strait Islander participants in our focus groups indicated that they would contact an Aboriginal or Torres Strait Islander organisation for assistance if they had an Aboriginal or Torres Strait Islander child in care and were attempting to identify family members. They would also try to draw on the knowledge and connections of Aboriginal and Torres Strait Islander staff working within their agencies. A common view expressed across the focus groups is that there is need for designated Aboriginal and Torres Strait Islander staff within Aboriginal and Torres Strait Islander organisations to assist non-Aboriginal and Torres Strait

Islander agencies who have Aboriginal and Torres Strait Islander children in their care with all aspects of cultural care planning including identifying and linking the child or young person to their family. There is little funding or support for these linking agents. For example, at the time of our focus group, in 2009, there was only one VACCA worker to support all Aboriginal and Torres Strait Islander children in non-Aboriginal and Torres Strait Islander placements.

Rumbalara Family Services also only had one worker to support all Aboriginal and Torres Strait Islander children in non-Aboriginal and Torres Strait Islander care in their region. Participants noted that there are many children and young people who are disconnected from their family and community and who have identity issues. They are not sure who they are, where they from, or where they belong. Research needs to be done to be able to connect them to their families. Some Aboriginal and Torres Strait Islander organisations expressed the view that funding support for non-Aboriginal and Torres Strait Islander agencies to look after Aboriginal and Torres Strait Islander children undermines their aspirations for self-determination and with this the best and most appropriate care for children. While this may be the case, as discussed below, there are not going to be sufficient placements with Aboriginal and Torres Strait Islander agencies in the foreseeable future.

Linking children to their families and culture is as discussed below a requirement in all child welfare legislation across Australia. It is important for child welfare departments, out of home care agencies and all those responsible for supporting and addressing children's welfare to understand that the Aboriginal and Torres Strait Islander child placement principle is not simply related to the placement of children in out of home care. It is also concerned with cultural support for a child from the time that a department has contact with a family to their ongoing cultural needs after they have been placed in out of home care. The principle is more accurately part of an ongoing process concerned with the child or young person's cultural care. Measures need to be taken to ensure that the full spectrum of this legislative requirement is implemented. This requires support for non-Aboriginal and Torres Strait Islander agencies and carers who are looking after Aboriginal and Torres Strait Islander children and young people in out of home care.

Maintaining contact with family

Participants in focus groups for this research and others have commented on some of the barriers to maintaining contact with the child or young person's family. "In many cases, minimal attention was given to the development and maintenance of a child's cultural identity. It was noted that there was difficulty in facilitating contact with the child's birth family, often because venues where contact was facilitated were threatening to Aboriginal families." (WA Department of Community Development). A focus group participant commented:

"It is also an issue of access. If you put a kid in x and their family is in y – and it's 3 hour distance to have an access visitpressure is put on the carer, and the distance makes it hard to do."

"Children from interstate need resources and support to remain connected or to reconnect with family often far away. For example support is needed for a child's mother to come and stay. If this is not provided the connection will be broken and the child will face problems later."

"There are practical barriers like transport to cultural events."

A number of focus group participants commented that in rural areas distance makes contact and commitment to cultural events difficult. Further the history of colonialism has led to a high level of mobility and a diaspora of often poor families across the country. If Aboriginal and Torres Strait Islander children and young people are to develop and retain links with their parents, siblings and extended families who live interstate or at a distance then resources need to be available to support family travel for this purpose.

An aspect of cultural care involves making supervised contact with family culturally appropriate. This includes contact in a culturally appropriate environment and where supervision is required that it is preferably provided by Aboriginal or Torres Strait Islander staff. Focus group participants emphasized that the style of contact, communication and understanding both implicit and explicit, which is founded in the service provided by Aboriginal and Torres Strait

Islander agencies makes establishment and sustaining family contact much more likely than when contact is managed by a child welfare department or a non-Aboriginal and Torres Strait Islander agency. In many instances contact is part of the protection arrangements supervised by the Department and Aboriginal and Torres Strait Islander agencies may have little contact with the child or young person's family. Cultural care requires adequate support for contact visits including supervision, transport and a nice space for visits away from child protection associations that may be intimidating or connected to unhappy experiences.

Recommendations

1. Funding should be allocated to established Aboriginal and Torres Strait Islander children's organisations, where appropriate the peak Aboriginal and Torres Strait Islander children's organisation in each state and territory, for the purpose of assisting any out of home care agency to trace, identify and where requested make contact with Aboriginal and Torres Strait Islander family members of children in out of home care.
2. Cultural care planning should include where ever possible opportunities and funding for children and young people to visit the land which their families are traditionally associated with.

Grief and loss

“Family is all important.”

The cultural care which is needed by Aboriginal and Torres Strait Islander children is based on a living history and this for many families includes a history of removal and detachment. A repeated message from focus groups is that “a lot of loss has to be dealt with.” This includes loss through passed removals and family being members of the stolen generations, loss through current child welfare interventions and out of home care placements, loss through incarceration and loss through illness and death. Participants in our research commented:

“We talk about grief and loss that Aboriginal people have experienced. We talk about their loss because they are not with their family.”

“Cultural support is not something which is provided or can be understood in isolation. Aspects of cultural support include healing and understanding trans generational trauma and what underlies the current experiences of Aboriginal children and families.”

Sometimes cultural care includes “building up a child or young person who has been extremely traumatised.” It may include helping them to understand the history of their family and community so that their loss can be contextualised and better understood. It may also help older children to understand why they come from a disadvantaged background and to counter racist explanations for their disadvantage.

Recommendation

3. Foster care training include information about grief and loss and the particular trans generational experiences which many Aboriginal and Torres Strait Islander children face so that support can be provided to children and young people to address this aspect of their experience and identity.

Out of Home Care Placement

The Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) is the cornerstone of cultural care and is discussed in detail below. This section of this report is looking at cultural care where a child has already been placed in out of home care with a non-Aboriginal and Torres Strait Islander carer.

When developing cultural supports for a child or young person a number of avenues may be pursued. The starting point will usually be consideration of the placement of the child and consideration if reunification with his or her birth family is possible. A number of focus group participants suggested that four lines of inquiry may be considered:

- Is it possible for the child or young person to be reunified with their family?
- If not, if they have been placed with a non-Aboriginal or Torres Strait Islander carer is placement with an Aboriginal or Torres Strait Islander carer possible?
- If they have been separated from siblings is reunification with siblings possible?
- If they are to remain in a non-Aboriginal or Torres Strait Islander placement how will their cultural needs be cared for?

A common theme, particularly with the Aboriginal and Torres Strait Islander agency focus groups, was the lack of support available for birth families. Participants spoke about the importance where possible of reunification of the family. Two themes reoccurred. The first related to the lack of early intervention to prevent removal and then the lack of services to support the family to get back on track so that they can safely look after their children. Some focus group participants referred to the unattainable hurdles which are placed in the path of reunification and how some parents can ‘jump through all the hoops’ and yet still be thwarted in their attempts at reunification. It is a very hard judgement call balancing safety against the benefits of reunification and this report is not in a position to make comments on particular exercises of discretion. However, issues with respect to effective communication with Aboriginal

and Torres Strait Islander parents may hinder effective assessment. This can have adverse effects both in terms of failures to place children back with parents who are able to look after them and inappropriate reunifications. The involvement of Aboriginal and Torres Strait Islander agencies with this process may bring greater insight into the assessment process. Many Aboriginal and Torres Strait Islander focus group participants spoke about their ability to raise ‘the hard issues’ because of the trust which they are able to establish with families. Others spoke about their ability to be direct and honest with families in terms of what had to happen before their children could live with them again.

A number of agencies who participated in our focus groups had little contact with the birth family as this was not part of their work. Access visits with parents may be arranged by the Department rather than the out of home care agency. In this context the agency tended to have closer allegiances with the foster carers. Regardless of attitudes to birth parents many participants from Aboriginal and Torres Strait Islander agencies noted that where placements were made by a non-Aboriginal and Torres Strait Islander agency with non-Aboriginal and Torres Strait Islander carers the full spectrum of possible kin carers or Aboriginal foster carers may not be explored as the agency would not have the connections and in some instances the passion to pursue all Aboriginal or Torres Strait Islander placement options. Most participants were of the opinion that the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) will be more effectively implemented through the growth and development of Aboriginal and Torres Strait Islander out of home care agencies. The failure to adequately implement the ATSICPP has been noted by a number of inquiries and is discussed in more detail below.

The second issue frequently raised in focus groups related to the separation of siblings. The importance of keeping siblings together was emphasised by almost every participant in this research. A number of focus group participants reported having to ‘fight the department’ to enable siblings to retain contact. They also commented on how contact visits with birth family whittle away or are stopped without explanation. Where siblings are not placed together many participants commented that it was a struggle to retain ongoing contact between them. There are many reasons why siblings are not placed together. These include a lack of appropriate

accommodation or carers who are able to look after both or all the children. Where monetary resources or provision of housing assistance can help to keep family members together this should be a high priority. Where this is not possible the child or young person's relationship with siblings should be central in the child/young person's cultural care plan.

Recommendations

4. Resources and services should be provided, where ever possible through Aboriginal and Torres Strait Islander agencies, to assist family to address the concerns which led to the child or young person being placed in out of home care, with the objective of reunification where this is safe.
5. Support should be provided, including monetary support and priority housing assistance, to enable the placement of siblings together.

Cultural Care Plans

Most participants believe that cultural care planning starts with family which is central to Aboriginal and Torres Strait Islander cultures. Family may be extensive and in addition to parents and siblings may include grandparents, aunts, uncles and cousins amongst others. Family members may have different levels of capacity and interest in supporting the child or young person. Extended rather than nuclear family care is culturally appropriate for Aboriginal and Torres Strait Islander peoples. It also offers the opportunity for foster and kin carers to be supported and obtain some respite care. It gives the child or young person the opportunity to build a nurturing network around them and in this way develop their identity and sense of belonging. The Aboriginal Family Services (South Australia) has formalised this concept of sharing parenting and extending the family network for children and young people in out of home care with a 'mirror parenting program' which incorporates a broad range of relevant people's interest and roles in the child or young person's life¹³.

Safety checks must be in place with respect to anyone included in a child's or young person's cultural care plan. Where a child or young person is old enough they should be consulted and should consent to those who are included in their cultural care plan. People who may be involved in the child or young person's cultural care plan may include parents, grandparents, aunts and uncles, cousins, other extended family members, friends of the child and or family, community elders and other community members. These people may make different levels of commitment in terms of supporting the child or young person's cultural care. Close family members who are willing and appropriate can be involved intimately with the child/young person taking them to country, on camps and holiday. They may spend time at their home sharing meals with them or be available for respite care. They may become involved in aspects of the child/young person's life for example with extra curricula activities, with the child's school or health care by attending parent teacher nights or taking the child to medical appointments or they may take the child/young person to cultural and social events. Some family members may have limited capacity to make an ongoing commitment but they may be willing to share cultural information and be a friendly contact that acknowledges the child or young person at public events. Building

13. Claire Brunner and Cas O'Neil (2009) 'Mirror Families: creating extended family for life' *Children Australia*, Volume 34 no 4.

this network provides a blanket of cultural support around a child and creates a network of people who they know have an interest in them and who care about them. A number of participants commented on how they would like to see greater recognition of the family, and particularly elders, in the child or young person's cultural care. The following participant's comment reflects a widely expressed sentiment,

“We would like to see more formal recognition and support for involvement of family elders in decision making and care. They bring stories and history to the child's life and to the process of decision making.”

Some of the ways that family, friends and community members may be involved in the child or young person's cultural care include:

- Involvement in care planning and other decision making processes for the child or young person;
- Having the child visit their home, eat meals together, stay overnight or for weekends or holidays;
- Assisting with school projects and attending parent teacher nights;
- Assisting with transport to appointments and activities which the child may be involved in;
- Involvement in sport and other extra curricula activities;
- Taking the child or young person to family occasions or events;
- Taking the child or young person to cultural and community events;
- Helping the child or young person find out about their land and community and taking them to visit their traditional lands; and
- Serving as a cultural mentor for the child or young person.

In addition to family, friends and community members Aboriginal and Torres Strait Islander organisations, services and workers may be able to assist the child or young person with their cultural care. For example the foster carer may make contact with an Aboriginal or Torres Strait Islander liaison officer at the school which the child attends, they may send the child to an Aboriginal or Torres Strait Islander child care centre, have their health care needs looked after by

an Aboriginal or Torres Strait Islander medical service or participate in holiday care or camps which are especially for Aboriginal or Torres Strait Islander children or young people. Some services such as some Aboriginal and Torres Strait Islander children's services will have transport facilities and will pick up and drop off the child. As a member of an Aboriginal and Torres Strait Islander out of home care agency commented:

“Cultural care is about having a bus to bring children from all over the region to the local Aboriginal child care agency centre where they spend the day surrounded by Aboriginal children with lots of activities and resources which affirm Aboriginality.”

Community organisations or the people who are part of the child's cultural care plan may provide assistance with identifying cultural events which are happening and include the child/young person in the event. Often organisations like land councils prepare a calendar of events. Carers can also keep in touch with community issues through Aboriginal television, radio and newspapers such as the National Aboriginal and Torres Strait Islander Times and the Koori Mail. For older children in bigger urban centres there are film, sport and other cultural festivals. Having carers and those in their network aware of Aboriginal or Torres Strait Islander people who are respected in the local or broader community may also assist to build the child's self-esteem and pride in their culture and themselves. Carers or others involved with the child may attempt to include such people in the child's school or community events. For example they could suggest elders or other interesting and suitable people to welcome school gatherings to Country or to speak at assembly on occasions such as NAIDOC or Sorry Day. They may help the child to find and bring to school news, books or other information about historical or contemporary Aboriginal and Torres Strait Islander leaders, events, sporting stars, cultural achievers or others.

In NSW, the Aboriginal Cultural Support function (ACS) is the cultural support plan framework which helps provide cultural support to Aboriginal and Torres Strait Islander children and young people in out of home care. The NSW Department of Community Services (DOCS) adapted this system from Victoria. ACS is part of DOCS's electronic database KiDS. The Department described ACS as still relatively new (began mid-2009) and reported that staff are still being

trained to use it. Everyone connected to the child has a plan number and, there are a list of people to be consulted (eg. Family members, community members, caseworker, ATSI agency etc). There is a review status within ACS so that compliance can be tracked. While ACS should be used with every Aboriginal or Torres Strait Islander child in out of home care this is not yet the case. DOCS was unable to inform this research of the number or percentage of Aboriginal and Torres Strait Islander children with active ACS 'accounts'. There is no dedicated funding for the cultural support activities in ACS however there is a cost column within ACS to keep track of expenditure on cultural support activities. The extent to which ACS is able to assist with cultural care in NSW will depend on the resourcing of Aboriginal organizations to establish connections and relationships necessary for cultural care as ACS is a system for documenting information.

In Western Australia, in addition to a care plan, each Aboriginal or Torres Strait Islander child is required to also have a separate cultural plan. The Department of Child Protection WA was not able to inform this research how many or what percentage of Aboriginal and Torres Strait Islander children in WA have a cultural plan. There is no specific funding for cultural care in WA. In the ACT there should be a cultural plan attached to the care plan for each Aboriginal or Torres Strait Islander child but the Department informed us that 'due to time restraints on staff these cultural plans might not always be filled out as promptly as they would like'. The plans in the ACT are filled out by Care and Protection Services Office in consultation with the department's ATSI Unit, the foster carers and others. The Department was unable to tell us how many or what percentage of children in care have a cultural care plan. There is no specific budget allocated for cultural care but we were informed that 'any extra cultural needs can get contingency funding. For example recently one child's grandparents were ill so they made arrangements for the child to visit them.'

In Victoria, Child Protection has the statutory responsibility for making cultural support plans. They do so in consultation with Aboriginal Community Controlled Organisations (ACCOs) and ACSASS which is part of VACCA. See comments above with respect to the mismatch between cultural knowledge and statutory responsibility for preparing cultural support plans in Victoria. While Child protection will retain statutory responsibility for cultural support plans the responsi-

bility is being delegated to Aboriginal Family Decision Making workers in local/regional areas who will be funded to develop cultural support plans. Child protection workers in conjunction with child safety officers are responsible for implementing them. While the Department reports that ‘best practice’ supports the preparation of cultural support plans for all Aboriginal and Torres Strait Islander children in out of home care there is only a legal requirement to prepare plans for ATSI children on Guardianship orders. This is a significant limitation with the legislation. Many children are placed in long term out of home care without guardianship orders and the circumstances of these compared to children on guardianship orders often cannot be differentiated. Between September 2009 and February 2010, only 34 ATSI children on Guardianship had a cultural support plan prepared. This is a very small percentage of the number of ATSI children in Victoria in out of home care.

In Queensland Cultural Support Plans are developed by the Department of Community Services in conjunction with Recognised Entities. Recognized Entities are Aboriginal and Torres Strait Islander organizations which are run and managed by Aboriginal and Torres Strait Islander people. They have been mandated by their communities and are approved and funded by the Department of Communities to provide cultural and family advice in Aboriginal and Torres Strait Islander child protection matters. Section 6 of the *Child Protection Act 1999* (Qld) requires the Chief Executive or an authorized officer to provide an opportunity for a Recognised Entity to participate in all significant decision with respect to Aboriginal and Torres Strait Islander children. Currently there are 34 ‘Recognized Entities’. It is of great concern that the Department plans to reduce recognized entities from 34 to 11 organizations. As outlined below Recognized Entities are central to the application of the ATSI CPP for out of home care placements and to the creation of cultural support plans for Aboriginal and Torres Strait Islander children in out of home care in Queensland.

Cultural Support Plans (CSPs) are required for every Aboriginal and Torres Strait Islander child in out of home care in Queensland. The Department however could not in 2010 provide information on how many have in fact been prepared. The Department explained that, “The development of the cultural support plan is undertaken in partnership with the family, local Recognised Entity staff, and/or local Aboriginal or Torres Strait Islander workers or elders... the local Recognized

Entity plays a key role in the development of a quality cultural support plan. Child Safety and Recognised Entities have a primary role in obtaining information from the parents, extended family and relevant community members eg. elders.” It is not clear once the number of Recognised Entities is reduced from 34 to 11 how the Aboriginal and Torres Strait Islander Child Placement Principle or cultural support for Aboriginal and Torres Strait Islander children in out of home care in Queensland will be supported. As discussed under the Aboriginal and Torres Strait Islander Child Placement Principle below the 2008 audit of the ATSICPP in Queensland found many shortfalls with its implementation and these we believe will be significantly exacerbated with the cutting of Recognised Entities.

In South Australia, Cultural Maintenance Plans are required for all Aboriginal and Torres Strait Islander children and young people who are involved with Families SA for 6 months or longer. In SA and most other jurisdictions templates for Aboriginal Life Story Books are available to assist children and young people to record and honour their culture. The extent to which they are filled in and serve to connect a child to their culture again depends on support from suitable Aboriginal and Torres Strait Islander people who have the knowledge and capacity to assist. Funding of up to \$500 per year is provided for children and young people by the Department of Family Services SA to attend cultural camps, visit their community of origin to maintain their cultural connection, attend language and other recognised training opportunities, develop an Aboriginal Life Story Book, take part in Sorry Business relating to deaths in their family or community, cultural healing services or other activities that support their cultural needs.

Cultural information has a context and it can be misused or misunderstood if taken out of its context. Participants from focus groups commented that it is important that Aboriginal or Torres Strait Islander people are involved with the child/young person in learning about their culture. Some of the ways in which family, friends and organisations can offer cultural support to a child or young person require resources. Many Aboriginal and Torres Strait Islander families live in poverty. Helping to look after and support additional children may not be possible without financial support. This should be costed into cultural care plans.

Recommendations

6. Cultural support plans should be mandated in legislation for all Aboriginal and Torres Strait Islander children or young people who have or will be in out of home care for 6 months or longer.
7. The completion and implementation of cultural support plans should be included in child protection data collected and reported on through the Australian Institute of Health and Welfare.
8. Aboriginal and Torres Strait Islander agencies, and where legislation provides for recognition or designation then such Aboriginal and Torres Strait Islander organisations, should have a funded role in the development and implementation of all cultural support plans for Aboriginal and Torres Strait Islander children in out of home care.
9. Cultural care, including support for family members who engage with the child and include them in activities, should be costed and funded.

Recruitment and Retention of Aboriginal and Torres Strait Islander Kin and Foster Carers

There are insufficient numbers of Aboriginal and Torres Strait Islander kin and foster carers to look after Aboriginal and Torres Strait Islander children in out of home care. This situation will exacerbate with the ever increasing number of children in out of home care and because of the demographic of Aboriginal and Torres Strait Islander communities. There is a much higher ratio of Aboriginal and Torres Strait Islander children and young people to adults compared with the non-Aboriginal and Torres Strait Islander community¹⁴.

There are many reasons why there are insufficient Aboriginal and Torres Strait Islander kin and foster carers. These include:

- The very high rate at which Aboriginal and Torres Strait Islander children are placed in out of home care and the more extended periods compared with all children which they spend in out of home care which results in a disproportionately high call for kin and foster carers from Aboriginal and Torres Strait Islander compared with all communities.
- The poverty which is experienced by many Aboriginal and Torres Strait Islander families places additional strain on carers. The cost of looking after a child, who often has higher physical and emotional needs than most children, is not covered by foster care payments. Foster caring therefore places a particular strain on families who are already facing financial hardship if not poverty. This research has been informed by DoCS (NSW) that there are plans to reduce the support carer allowance in NSW. Such measures will clearly have an adverse impact on Aboriginal and Torres Strait Islander carers. Focus group participants commented:

“Families who have to manage their own plate find it difficult to take responsibility for more children. They should be provided with resources such as a food allowance.”

¹⁴ Australian Bureau of Statistics (2006), *Population Characteristics, Aboriginal and Torres Strait Islander Australians 2006*, Australian Bureau of Statistics, Canberra, 15.

“Grandparents who bare a considerable share of child raising are not getting enough support.”

Foster carer assessment processes were described by focus group participants as alienating and not appropriate for Aboriginal and Torres Strait Islander people wanting to become carers. Proposed reforms in NSW could exacerbate this problem. Focus group participants suggested that more flexibility in the application of eligibility criteria is needed. For example in NSW many carers are grandmothers and older single aunts. A lot of Aboriginal people, and this group especially because of their age, have health issues that might make them ineligible as carers. Reforms in NSW to increase case work responsibility for children in kin care may provide greater safety for these children, however the downside of such reform is that it may create a disincentive for some kin carers who do not want to deal with child protection departments. It is important that Aboriginal and Torres Strait Islander organizations which serve as a buffer between carers and the department be funded to work with kin carers to prevent a loss of these carers.

Inadequate resources within Aboriginal and Torres Strait Islander out of home care agencies for recruiting and supporting carers in combination with the lack of cultural connection and communication skills amongst some non-Aboriginal and Torres Strait Islander agencies working with communities means that not all available Aboriginal or Torres Strait Islander carers are recruited. The Department of Communities (Qld) informed this research project that local regional officers are trying to come up with strategies to get ATSI foster carers. Their success with a media campaign in 2008 was “varied” and so they are now trying to attract carers at a local level. The need to attract carers at a local level seems to be at odds with the Department’s plan to dramatically cut the number of Recognised Entities which connect the department to the local community. Some of the strategies which Queensland Community Services have developed for recruiting foster and kin carers are directed at rural and remote communities. The Department commented,

“Obviously, re-location away from family and extended family and from a community that is small and remote to an urban city with non-Aboriginal and Torres Strait Islander carers can

be extremely stressful and traumatising for children so there is a particular need for Aboriginal and Torres Strait Islander carers in Cape York and the Torres Strait communities. These plans are focusing on individual identified need in each community.”

‘The Far North Queensland’s (FNQ) plan includes the development of culturally appropriate recruitment materials for the Torres Strait and others in local Aboriginal and Torres Strait Islander languages. Resources developed through the FNQ plan may also be utilised by other regions for Aboriginal and Torres Strait Islander people throughout the state.’

The Department of Family Services SA reported that relative and kinship care staff meet regularly with elders’ groups in remote areas such as Yalata and Oak Valley to engage, support and facilitate kinship arrangements. They noted that “these relationships are critical to maintaining and supporting children in relative and kinship care within communities.” The Department appears to work closely and effectively with the Aboriginal Family Support Services (SA).

The ATSI Unit foster care service in the ACT was set up in 2005 and the Department reported in 2010 that “they still consider it young.” They try to recruit ATSI carers through use of local media and by word of mouth. However they report that they have had “minimal success” through these mediums. The Department informed this research that there are also ATSI foster carers that have been recruited by Barnardos and Marymead.

The dominant message from focus groups was that recruitment of Aboriginal and Torres Strait Islander foster and kin carers through mainstream campaigns was not very successful and that recruitment resources would be better placed with local Aboriginal and Torres Strait Islander agencies. Further Aboriginal and Torres Strait Islander kin and foster carers are more likely to be retained if provided with adequate support both in terms of dealing with the department and in terms of the resources required to look after a child or young person.

Aboriginal and Torres Strait Islander agencies across focus groups for this research reported communication breakdowns between foster carers and child welfare departments and the

difficulties which carers experienced dealing with child protection departments. This can lead to them withdrawing from assessment processes to become a foster carer or withdrawing from foster caring altogether. Focus group participants commented on the role of Aboriginal and Torres Strait Islander agencies as a buffer between the foster carer and the department. One of the reasons provided by Aboriginal and Torres Strait Islander agencies for their retention of carers is the support which they provide in “buffering carers against racist attitudes held by government agencies.”

Recommendations

10. Aboriginal and Torres Strait Islander agencies should be supported in developing their capacity both in terms of the roles which they fulfill and in terms of the numbers of Aboriginal and Torres Strait Islander children whom they look after in out of home care.

11. Resources to recruit Aboriginal and Torres Strait Islander foster and kin carers should be focused on local level campaigns and where possible conducted through Aboriginal and Torres Strait Islander agencies.

12. An audit comparing the resources provided to Aboriginal and Torres Strait Islander compared with all carers, taking the relative complexity of children and young people in care’s needs into account, should be undertaken to determine if Aboriginal and Torres Strait Islander carers are being discriminated against.

Support for Aboriginal and Torres Strait Islander Kin and Foster Carers

Aboriginal and Torres Strait Islander agencies reported a high retention rate of foster carers and a capacity to recruit carers because of their connections with communities, their culturally respectful and comfortable way of communicating with foster carers and because of their high level of support for foster carers. Participants also emphasised the role they play in mediating between the department and foster carers and alleviating the ‘stress’ for foster carers of dealing with child protection departments.

A number of participants referred to Aboriginal and Torres Strait Islander foster care support groups as valuable in assisting carers in networking with and learning from other carers. The network helps carers to connect to their spiritual and cultural roots as well as providing advice about practical matters and parenting. It also provides connections for the child to learn about their culture from other members of the community who are part of or connected to the group. Aboriginal carer groups can also assist with the recruitment of Aboriginal foster and kin carers where other efforts have not been successful.

Research into the multiple placements of Aboriginal children in WA in 2008 found that many Aboriginal families had strong obligations to look after their relatives.¹⁵ Many required better resources such as respite and financial support. There was evidence in the research that greater levels of Aboriginal relative carer support may reduce the number of placements children experience. The report recommended a need for greater levels of support for relative carers to maintain the communities’ capacity to take care of Aboriginal children.

The disparity in support between kin and foster carers is of particular significance to Aboriginal and Torres Strait Islander carers because of widespread poverty experienced by Aboriginal and Torres Strait Islander communities. A particular concern is the disparity of support and resources provided to kin compared with foster carers. Participants commented that:

¹⁵ Department for Child Protection (Western Australia) (2009), *Review of the WA Aboriginal and Torres Strait Islander Child Placement Principles*, available online, 14.

“Kin carers should be given the same training, financial and social support as foster carers.”

“The Department wipes their hands of kin carers. Young people may be placing themselves at risk....”

While assessment of carers is beyond the scope of this report culturally inappropriate assessment was raised in focus group consultations as a reason for carers not completing assessments. It was also suggested that the criteria looked for in carers prioritised middle class values. A participant commented:

“The Department wants houses with computers, carers with a car to drive them around. They don’t look at what the kids needs.”

Poverty creates hardship for foster and kin carers. The financial support provided by governments does not cover the real cost of looking after a child and this of course places a strain on families that are already struggling. Participants suggested the need to look holistically at problems which a child or young person in out of home care may be facing and not “blame the child, carer, school or another individual party.” For example, a health problem related to alcohol foetal syndrome, respiratory issues or premature birth may not be picked up and the impacts of this problem may result in an individual being blamed rather than recognising and addressing the underlying problems.

Where a strong cultural care plan, which has harnessed support from family, friends and agencies is in place, this can provide support for the child as well as the carer. This is because the carer has a larger circle of people involved in the child or young person’s life. Where these connections are established in an ongoing way, which preferably is inclusive of the foster or kin carer, carers are more likely to feel supported and better able to manage the responsibility of foster care. When costing cultural care plans, the respite and support roles of family, friends and organisations should be taken into account

Recommendation

13. Foster care support groups should be assisted and supported.

14. The financial and social benefit of increasing support for Aboriginal and Torres Strait Islander carers on a means tested basis should be supported and evaluated.

Recruitment and support of non-Aboriginal and Torres Strait Islander Kin and Foster carers

As discussed above strategies are needed to recruit and retain more Aboriginal and Torres Strait Islander carers. However there are insufficient numbers of Aboriginal and Torres Strait Islander carers and with this situation proving difficult to improve, non-Aboriginal and Torres Strait Islander carers who are committed to the cultural care of Aboriginal and Torres Strait Islander children must be supported. Opinions amongst Aboriginal and Torres Strait Islander agencies with respect to placing Aboriginal and Torres Strait Islander children with non-Aboriginal and Torres Strait Islander carers varied. Some were of the view that they would only place a child with an Aboriginal and Torres Strait Islander carer while others believed that all children should be looked after by an Aboriginal and Torres Strait Islander agency and that they were happy to support non-Aboriginal and Torres Strait Islander carers who are committed to supporting the child or young person's cultural identity. In some jurisdictions placement of an Aboriginal or Torres Strait Islander child with a non-Aboriginal and Torres Strait Islander carer requires the approval of an Aboriginal and Torres Strait Islander agency (see discussion of the Aboriginal and Torres Strait Islander Child Placement Principle below). However all focus group participants agree that non-Aboriginal and Torres Strait Islander carers will need training and support not simply as foster or kin carers but specifically with respect to Aboriginal and Torres Strait Islander culture including ways in which past and contemporary laws and policy impact on Aboriginal and Torres Strait Islander families and communities. Many participants emphasised that cultural competency training should have a specific focus on the relevance of culture to family relations and caring for children rather than general programs about 'culture'. A number of Aboriginal and Torres Strait Islander agencies offer outstanding cultural competence training courses. Learning about culture is an active and ongoing process and one which offers carers a great opportunity to become immersed in a deeply enriching path of learning. Cultural 'competence' training is the subject of a separate paper by Sue Beecher.¹⁶

A few participants also noted that it is very difficult to know how to connect to family where there is politics involved which non-Aboriginal and Torres Strait Islander agencies and foster families do not understand. They noted that education and resources are needed to assist non-

¹⁶ Beecher, S (2011), *LAC – implementing revised Assessment and Action Records*, SNAICC, Fitzroy North.

Aboriginal and Torres Strait Islander case workers. Many participants from non-Aboriginal and Torres Strait Islander agencies noted that all staff would like to be culturally appropriate but most lack the knowledge and connections which they believe are necessary. A few participants noted that they try to gather what they can for children but lack sufficient insight into what is required.

For many carers, particularly those who have been recruited by a non-Aboriginal and Torres Strait Islander out of home care organisation, supporting the cultural care of an Aboriginal or Torres Strait Islander child can be daunting. While many would like to engage with the community and attend community events, focus group participants discussed how carers may not feel comfortable doing so. They may not know the appropriate protocols and ways of engaging with community members. Many non-Aboriginal carers and agencies feel adrift not only being uncertain about who to contact but also about how to make contacts. Non-Aboriginal and Torres Strait Islander agency participants commented that it is not easy for non-Aboriginal and Torres Strait Islander foster families to assist Aboriginal and Torres Strait Islander children to link to family, community and culture without support from Aboriginal agencies. One participant commented:

“Cultural care requires the establishment of trust and rapport with the community. This is often difficult for non-Aboriginal and Torres Strait Islander carers and case workers who are not yet connected to the community.”

Some participants also commented that it is hard to tell (non-Aboriginal and Torres Strait Islander) carers that they have additional responsibilities with respect to an Aboriginal or Torres Strait Islander child. Participants noted that non-Aboriginal and Torres Strait Islander carers and workers often miss cultural subtleties and nuances. Participants noted that for many non-Aboriginal and Torres Strait Islander carers there is a significant learning curve. They also observed that carers are not always comfortable linking into an Aboriginal or Torres Strait Islander community, which is already based on connections in terms of where you are from and who you know, when they are ‘outsiders’. Participants in a number of focus groups noted that there is a need to breakdown stereotypes. Community members may be suspicious about who

non-Aboriginal and Torres Strait Islander carers are and why they are looking after an Aboriginal or Torres Strait Islander child. It is important both for the carer and for the child/young person that they are caring for that they feel comfortable with and are accepted by local Aboriginal or Torres Strait Islander communities. Focus group participants suggested that it would be helpful to organise for an Aboriginal or Torres Strait Islander person to take them to community events and introduce the carer and child so that they are not seen as or do not feel like outsiders. Focus group participant commented:

“Aboriginal communities connect to each other by understanding ‘where people come from and where they fit in.’ When the carer and young person has someone to ‘vouch for them’ it helps to break down barriers so that they feel accepted.”

“Non Aboriginal agencies with non -Aboriginal carers should transfer support for connection to family and country to Aboriginal agencies. There should be special workers in Aboriginal agencies that can help with this work.”

“Aboriginal agencies should be contacted. While Aboriginal children remain in non-Aboriginal care with non- Aboriginal agencies they don’t have the ability to provide cultural care to these children. They have a responsibility to provide cultural care and this should be done by linking up with Aboriginal agencies.”

The need for non-Aboriginal and Torres Strait Islander carers and non-Aboriginal and Torres Strait Islander agencies to receive the support and guidance of Aboriginal and Torres Strait Islander agencies and community members was the most consistent point raised in our consultations. This requires funding and support. Comments from focus groups included:

“The idea was to look at ways that the Aboriginal Family Support Services could remain in the child’s life and to talk around the idea that if children are referred to a non-Aboriginal and Torres Strait Islander agency, we stay involved as a partner, even if only as a resource.”

“Cultural care and linkage workers should be proportionate to the number of Aboriginal and Torres Strait Islander children and young people in care.”

Non-Aboriginal and Torres Strait Islander carers may also benefit from foster care support groups. In NSW they are able to link in with regional Aboriginal Carers Network groups, which then assist them to link into the community and to make contacts that can help to support the child or young person’s Aboriginal identity. In NSW and WA there is no special support provided by the Department for non-Aboriginal and Torres Strait Islander carers of Aboriginal and Torres Strait Islander children. Jenni Collard from the Department for Child Protection (WA) informed this research that the department, “let non-ATSI carers know of ATSI functions they can take kids to, set up cultural camps, where they can dance etc.” There is however a significant difference between engaging children and young people in a routine way with their culture and family and letting them participate in activities.

In the ACT again there is no specific support for non-Aboriginal and Torres Strait Islander carers to link Aboriginal and Torres Strait Islander children to their culture. The Department informed this research that they would pay attention to whether the non-Aboriginal and Torres Strait Islander carer can provide for the child’s cultural needs at the ‘vetting stage’. Trish Berry from the Department of Human Services (Victoria) informed this research that non-Aboriginal out of home care organisations are assessed against the registration standards which require them to demonstrate ‘cultural competency’. In March 2009 the Department implemented new training for carers. She emphasised that with every reform there is an expectation that cultural care is considered at all levels in all services. She suggested that cultural concerns run throughout every element of training including from interviewing skills to responding to sexual abuse and domestic violence training. Trish Berry commented, “We are developing cultural care training from the ground up – it is not just an add on.” However, as in other jurisdictions very few dedicated resources are available to support non-Aboriginal and Torres Strait Islander carers to look after the cultural needs of Aboriginal and Torres Strait Islander children in their care. In Victoria, carers can attend cultural competency training conducted by VACCA and VACCA diaries go to all Aboriginal kids in out of home care. Despite consistent reportage from departments of the difficulty in recruiting enough Aboriginal and Torres Strait Islander carers

there is little support for non-Aboriginal and Torres Strait Islander carers to attend to the cultural needs of Aboriginal and Torres Strait Islander children in their care.

A number of focus group participants suggested that local elders or respected people from the community as well as family and friends could serve as possible cultural mentors and support for Aboriginal and Torres Strait Islander children and young people in non-Aboriginal and Torres Strait Islander care to connect to their culture. Those who are respected elders within their communities often have considerable responsibility across many domains of community life. While it is understood that personal relationships are not built on cold and impersonal contracts it is also important to recognise the strain which excessive demands on individuals within communities can make and that these can be reduced with financial and other resources to compensate or assist with the load.

Recommendations

15. Aboriginal and Torres Strait Islander agencies should be funded to employ designated staff to assist non-Aboriginal and Torres Strait Islander agencies with non-Aboriginal and Torres Strait Islander carers to provide cultural support to Aboriginal and Torres Strait Islander children in their care. The number of linkage workers should be proportionate to the number of Aboriginal and Torres Strait Islander children and young people in non-Aboriginal and Torres Strait Islander out of home care.
16. Financial and other resources should be allocated to assist Aboriginal and Torres Strait Islander family, friends and elders to support the cultural care of Aboriginal and Torres Strait Islander children and young people in out of home care.

Building the Capacity of Aboriginal and Torres Strait Islander Out of Home Care Agencies

The overwhelming body of opinion and central message from consultations was that Aboriginal and Torres Strait Islander out of home care agencies are able to support Aboriginal and Torres Strait Islander children's cultural care most successfully. The longer term objective should be to bring Aboriginal and Torres Strait Islander children in care over to Aboriginal and Torres Strait Islander agencies. Focus group participants from Aboriginal and Torres Strait Islander agencies commented:

“Building the capacity of Aboriginal agencies is an essential part of cultural care. It is really hard for a mainstream agency to provide cultural care – even if they have Aboriginal workers. They have a different background and way of relating to and understanding the world.”

“Aboriginal and Torres Strait Islander children should be looked after by an Aboriginal and Torres Strait Islander out of home care agency unless they do not have a placement for that child.”

“Aboriginal agencies should first be consulted to see if they can take an Aboriginal child. They should only be placed by a non-Aboriginal and Torres Strait Islander agency if the Aboriginal agencies do not have a placement.”

“The complexity of cultural knowledge, particular areas, laws, totem, skin... are missed [by non-Aboriginal and Torres Strait Islander agencies].”

“Aboriginal workers are more likely to understand sensitivities, family histories, they are supersensitive.”

“Non-Aboriginal and Torres Strait Islander workers often see the surface but do not understand the underlying circumstances.”

“The support we give to our carers – it’s difficult to transfer to others.”

“There is a need to understand that relationship building is part of out of home care work.”

“Families get their backs up because [non-Aboriginal and Torres Strait Islander] workers get down to business too quickly without establishing or building a relationship.”

Focus group participants also noted how past and contemporary racism impacts on children, young people and their families and the importance of cultural affirmation and support to counter the negative impacts of racism:

“Many adults were brought up by white families and they often grew up with racist ideas about Aborigines drinking and being no good – this was embedded in their brain... This is still what the mainstream embeds in peoples’ brains. It is very powerful and destructive. We need to support those who are not brought up with experiences of nurturing, and who have a broken cycle of knowledge about their culture.”

“There is a lot of negativity towards Aboriginality – any problems are blamed on their Aboriginality”.

“They [welfare and out of home care workers] fear families [Aboriginal and Torres Strait Islander families]. They lack understanding of us so it is difficult for them to make practical judgements about when it is safe to return children....Fear also means they have difficulty building a rapport with families either Aboriginal foster carers or birth families.”

Currently Aboriginal and Torres Strait Islander agencies can only take a relatively small percentage of Aboriginal and Torres Strait Islander children who need to be placed in out of home care. Central to policy and efforts to improve cultural care for Aboriginal and Torres Strait Islander children should be capacity building of Aboriginal and Torres Strait Islander children’s organisations. This should extend to all aspects of children’s well-being from early intervention to out of home care. This is because the best cultural care is with families and the most effective

way to keep children in their families is through supporting families and communities before a crisis point is reached. Focus group participants also commented on the importance of legislative recognition and implementation of their responsibilities with respect to Aboriginal and Torres Strait Islander children's well-being:

“Designated organisation status has helped with being involved and informed. We have more respect and our input is recognised. However family is still often not consulted. Formal family conferencing may help.”

“Aboriginal and Torres Strait Islander organisations would like to have equal statutory responsibility.”

“We are not here to say children should not be removed... we want to be part of the decision making.”

The ways in which families and communities can be more broadly and structurally supported is not the subject of this report but is of great significance in terms of the wellbeing and cultural care of Aboriginal and Torres Strait Islander children in the longer term. Aboriginal and Torres Strait Islander agencies are centred within communities and are therefore able to help to bring the resources and understanding of the community into the child or young person's life. This is reflected in the following comment:

“When we see kids at community or family events it is not as an out of home care worker but we see them. The boundaries between a worker and someone who is really part of their life are more porous.”

An Aboriginal and Torres Strait Islander perspective inheres in the agency and so they are able to bring ways of relating to families and expectations to their work. They can work as mediators/cultural brokers between child protection departments and foster carers assisting each to a better understanding of the other. Participants in our focus groups commented:

“Being in care with an agency like Hunter is part of their cultural support – they are part of our mob – the difference with being with our agency is that it is very much an extended family.”

“Being with an Aboriginal agency is like being with an extended family – it is like having big brothers and aunties. An Aboriginal child in a mainstream agency is just another child in care.”

“We understand where people [Aboriginal families] come from you can’t just have a mainstream organisation culturally competent, its philosophy is driven by white people, how they were raised, how they understand programs and services.”

Many Aboriginal and Torres Strait Islander out of home care agencies are leaders in terms of the levels of support they provide foster and, in some cases, kin carers; their capacity to recruit and retain foster and kin carers, their capacity to establish safe, strong and stable placements for children; their close relationship with the children and young people whom they look after in out of home care; their effective engagement of children and young people in the Aboriginal and Torres Strait Islander community and the ways in which they build a network of family around the child or young person. Support for foster and kin carers is essential if they are to be retained. Ways in which Aboriginal and Torres Strait Islander foster carers are supported is discussed above and includes helping to establish Aboriginal and Torres Strait Islander foster carer support networks, providing advice and contact between visits and making regular visits to the family, offering a supportive relationship with foster carers and providing continuity of care by the out of home care worker and assisting with advocacy and support in dealings with government departments.

Many participants from Aboriginal and Torres Strait Islander agencies whom we spoke with expressed the desire to build their capacity not only in terms of increasing the number of children in out of home care whom they are responsible for but also in expanding their role and responsibility for all aspects of the child’s welfare or well-being. Comments included:

“We would like to see greater departmental functions transferred to Aboriginal agencies in terms of responsibility for Aboriginal children. We would like to see Aboriginal children brought over to Aboriginal agencies.”

“We would like Aboriginal agencies to develop a greater role in decision making with respect to all aspects of child welfare.”

“We are consulted and provide advice on notifications, case management and all aspects of child care. We would like to provide more than advice.”

Legislation in most jurisdictions provides a role for Aboriginal and Torres Strait Islander agencies and families in terms of decision-making with respect to Aboriginal and Torres Strait Islander children. As discussed below, those agencies which have recognized legal status (gazetted organizations, for example) appear to have gained greater recognition and participation in decision-making than in jurisdictions where there is a lack of specificity with respect to which Aboriginal and Torres Strait Islander organization/s will play a role in decision-making. In Victoria, future case management of kinship care will be contracted to the ACCOs. The Department of Human Services informed this research that the purpose of this reform is to build the capacity of the ACCOs. It is deeply concerning that Queensland is considering significantly reducing the number of recognized Aboriginal or Torres Strait Islander organizations. The Western Australian *Review of the Aboriginal and Torres Strait Islander Child Placement Principle*, recommended removing the role of designated Aboriginal and Torres Strait Islander organizations in the application of the placement principle.¹⁷ This research has great concerns with this recommendation. See discussion of the Aboriginal and Torres Strait Islander Child Placement Principle below.

A number of the Aboriginal and Torres Strait Islander agencies included in this research have identified as a weakness record keeping and sometimes compliance with documentation requirements. This is not the subject matter of this research however it may impact on the ability of agencies to persuade government departments to increase funding and other aspects of agencies' capacity such as their statutory responsibilities or to fully recognise the significant

¹⁷ Department for Child Protection (WA) (2009), above n11, 18.

contributions which they make to out of home care for Aboriginal and Torres Strait Islander children.

There are a number of possible reasons why documentation may be a weak point in a number of Aboriginal and Torres Strait Islander children's agencies' practice and why they generally do not have a lot of documentation to demonstrate how successful their out of home care services are. The following are observations rather than an 'explanation' as to why this may be the case. The lack of cultural appropriateness of the documentation makes it less relevant to workers in Aboriginal and Torres Strait Islander agencies and there is therefore less motivation to complete it.¹⁸ The apparent lack of purpose for some documentation means that other more pressing responsibilities take precedence. The pressure on Aboriginal and Torres Strait Islander agencies to provide more services than they are funded for and the fact that they are approached for assistance in terms of their cultural and specialist knowledge at a higher rate than they are funded for (with some receiving *no* funding for this service) means that some less prioritised aspects of their work suffers. As an interviewee commented:

“Aboriginal organisation are pressed and pressured to take on roles which we are not funded for. This has an adverse impact on our organisation's ability to cope with other tasks and is relying on the goodwill and commitment to Aboriginal and Torres Strait Islander children to provide unfunded services.”

“Staff may not have adequate training or feel confident with the administrative requirements of form filling. Some staff may not have confidence in the ways in which information provided will be stored and used when provided to government departments.”

The agencies may not have a simple and effective way of measuring the work which they do or have the expertise to research and present information in a manner which is recognised as a good evidence base with respect to their practice. Traditional quantitative research methods may be

¹⁸ For more information, refer to the separate Looking After Children Report: Libesman T. & Avgoustinos C., 2011, 'The cultural appropriateness of LAC Assessment and Action Records for Aboriginal and Torres Strait Islander children and young people in out of home care.'

culturally inappropriate. The anecdotal evidence suggests that Aboriginal and Torres Strait Islander agencies are the best providers of out of home care for Aboriginal and Torres Strait Islander children. It would be useful to research the long term experiences and outcomes for Aboriginal and Torres Strait Islander children in out of home care with Aboriginal and Torres Strait Islander agencies compared with those placed with non-Aboriginal and Torres Strait Islander agencies and the range of placement factors which impact on their well-being.

As has been discussed above, Aboriginal and Torres Strait Islander children and young people are disproportionately represented in out of home care and sadly the rate of their over-representation is not ameliorating. As greater recognition is being given to the skills and expertise which Aboriginal and Torres Strait Islander agencies have in working with Aboriginal and Torres Strait Islander children greater demand is placed on their services. Anecdotal evidence from the focus groups from this study suggests that Aboriginal and Torres Strait Islander children have more stable placements and better outcomes if they are looked after by Aboriginal and Torres Strait Islander out of home care agencies. Aboriginal and Torres Strait Islander agencies already provide advice and training for government departments and NGOs. It is important that a mutually beneficial relationship develop and that government departments and non-Aboriginal and Torres Strait Islander agencies support and assist to skill Aboriginal and Torres Strait Islander staff and agencies in areas which they have expertise and which are beneficial for Aboriginal and Torres Strait Islander agencies. It is also important that resources be made available to recruit and train Aboriginal and Torres Strait Islander people in fields that will enhance the services which they provide. To this end TAFE and University courses should work on developing curriculum which is relevant to Aboriginal and Torres Strait Islander communities. This is not to suggest that tertiary education and qualifications should supersede knowledge founded in experience. Much practical knowledge and experience that brings a wealth of wisdom and understanding to Aboriginal and Torres Strait Islander agencies cannot be attained through formal education. This, however, can and should be complemented with relevant formal skilling so that organisations take advantage and bring to their communities the strengths of experience and training.

Relationship between Aboriginal and Torres Strait Islander Out of Home care agencies and departments

Many focus group participants emphasised the importance of good working relationships between the different agencies and people who are involved with a child's out of home placement and care. Many commented on the importance of capacity building in both Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander agencies and the different skills and expertise which can be developed with good relationships. For example, in NSW, Barnardos and Hunter Aboriginal Children's Services (HACS) contribute to the skill base of each agency through education and training with Hunter providing cultural competence training and Barnardos providing training and support in the LAC case management system. Recently the peak Aboriginal and Torres Strait Islander children's organisation in NSW – the Aboriginal Child, Family and Community Care State Secretariat (AbSec) – and the Department of Community Services NSW (DOCS) signed a memorandum of understanding based on that between Victorian Aboriginal Child Care Agency (VACCA) and the Department of Human Services Victoria (DHS). VACCA and DHS have assisted to develop the competence of each other with VACCA providing training such as Nikara's journey a culturally supportive training program for foster carers looking after Aboriginal and Torres Strait Islander children and more broadly case management support for Aboriginal and Torres Strait Islander children who have contact with the child protection system. VACCA is involved from the point of notification to placement where required in out of home care and the Department has incrementally increased the role which VACCA plays in child welfare for Aboriginal and Torres Strait Islander children in Victoria.

However there are many contexts where the relationship between departments, non-Aboriginal and Torres Strait Islander out of home care agencies and Aboriginal and Torres Strait Islander agencies can be improved. Focus group participants reported that consultations with Aboriginal and Torres Strait Islander out of home care agencies with respect to a child's placement were frequently inadequate. They were consulted too late and did not have sufficient resources to find carers. There is a wide spread perception that Aboriginal and Torres Strait Islander children in out of home care are not given equity in terms of resource distribution and support compared with all children. There was a perception amongst some out of home care agencies that non-

Aboriginal and Torres Strait Islander agencies would be provided with a much higher level of resourcing to take care of Aboriginal and Torres Strait Islander children with complex needs when they could do this if they were provided with the same resources. There was also a perception that once the child was removed the Department “walked away.”

Recommendations

17. An audit of resources to support Aboriginal and Torres Strait Islander children compared with all children who have contact with child welfare systems should be undertaken to determine if Aboriginal and Torres Strait Islander children are being discriminated against.
18. Consideration be given to what extra support is needed to assist Aboriginal and Torres Strait Islander agencies with out of home care placements for Aboriginal and Torres Strait Islander children with disabilities and complex needs.
19. That the recommendations no’s 42 to 49 of the *Bringing Them Home* report, with respect to building the capacity of Aboriginal and Torres Strait Islander children’s organisations and the transferral of responsibility for Aboriginal and Torres Strait Islander organisations in accordance with their capacity and desire, be implemented.¹⁹
20. That resources be invested in vocational and tertiary education with respect to curriculum development and training for Aboriginal and Torres Strait Islander peoples working in out of home care and Aboriginal and Torres Strait Islander children’s well-being more broadly.
21. Aboriginal and Torres Strait Islander agencies be assisted where this is desired to develop culturally appropriate ways of measuring and recording the outcomes of their out of home services.

¹⁹ NISATSIC (1997) above n2, Appendix 9.

22. Legislation and practice which supports the designation of Aboriginal and Torres Strait Islander agencies and their mandatory inclusion in decision making with respect to the welfare of Aboriginal and Torres Strait Islander children and young people be affirmed in jurisdictions where it exists and enacted in jurisdictions where there is not yet provision for this mandated recognition and responsibility.

23. Research be undertake to investigate the long term well-being of Aboriginal and Torres Strait Islander children looked after by Aboriginal and Torres Strait Islander agencies compared with non-Aboriginal and Torres Strait Islander agencies.

What do we know about Aboriginal and Torres Strait Islander compared with non-Aboriginal and Torres Strait Islander children in out of home care?

Very little is known about outcomes for Aboriginal and Torres Strait Islander compared with non-Aboriginal and Torres Strait Islander children in out of home care. Even less is known specifically about comparative cultural care. Research has found that Aboriginal children were less likely to have contact or be reunified with their families when placed in care than non-Aboriginal families.²⁰ It has also been found that Aboriginal children in metropolitan areas were likely to be in care for longer periods than non-Aboriginal children.²¹ These findings are concerning because family is central to Aboriginal and Torres Strait Islander cultural identity and the most effective and significant way to maintain cultural connection is for children and young people to stay with or be returned to their families as soon as it is safe for them to do so. The heart of cultural care is retention or establishment of connection with Aboriginal and/or Torres Strait Islander family/ies. It is clear that more is needed to effectively implement the Aboriginal and Torres Strait Islander child placement principle which is established in legislation and policy, in particular provisions within legislation in all jurisdictions which require measures to be taken to ensure ongoing connection with family and culture when Aboriginal and Torres Strait Islander children or young people are placed in out of home care with non-Aboriginal and Torres Strait Islander carers. See discussion of the Aboriginal and Torres Strait Islander Child Placement Principle below.

Recommendations

24. Research comparing and evaluating the outcomes for Aboriginal and Torres Strait Islander children and young people placed in out of home care in the following four situations be undertaken: by an Aboriginal and Torres Strait Islander agency with an Aboriginal and Torres Strait Islander carer; by an Aboriginal and Torres Strait Islander agency with a non-Aboriginal and Torres Strait Islander carer, by an non-Aboriginal and

²⁰ Barber JG, Cooper L & Delfabbro PH (2000), 'Aboriginal and non-Aboriginal children in out of home care', 25(3) *Children Australia* 5; Delfabbro PH, Barber JG & Cooper L (2002), 'Children entering out of home-care in South Australia: Baseline analyses for a 3-year longitudinal study', 24(12) *Children and Youth Services Review* 917 and Delfabbro PH, Barber JG & Cooper L (2003), 'Predictors of short-term reunification in South Australian substitute care', 82(1) *Child Welfare* 27.

²¹ Ibid.

Torres Strait Islander agency with a non-Aboriginal and Torres Strait Islander carer and by a non-Aboriginal and Torres Strait Islander agency with an Aboriginal and Torres Strait Islander carer.

25. The outcomes for Aboriginal and Torres Strait Islander compared with non-Aboriginal and Torres Strait Islander children in long term out of home care be compared and evaluated.

The Aboriginal and Torres Strait Islander Child Placement Principle

What is the Aboriginal and Torres Strait Islander Child Placement Principle?

The Aboriginal or Torres Strait Islander child placement principle (ATSICPP) has been one of the remarkable achievements of Aboriginal and Torres Strait Islander children's organizations. The principle is an acknowledgment of the importance of Aboriginal and Torres Strait Islander culture and family connection for Aboriginal and Torres Strait Islander children and young people and it is also a recognition of the destructive impact the history of policies of assimilation and forced and unjustified removal of children have had on Aboriginal and Torres Strait Islander peoples.

In each jurisdiction the ATSICPP has been embedded in legislation and has a similar descending order of placement for children who need to be in out of home care.²² The first preference being with the child's extended family or kinship group, the second preference with their local community and the third preference with another Aboriginal and Torres Strait Islander family in the area. If these preferences are not practicable or in the best interests of the child, then they will be placed with a non-Aboriginal and Torres Strait Islander family. There is also a requirement in each jurisdiction that relevant Aboriginal or Torres Strait Islander organisations (and in some jurisdictions, the extended family) be consulted about the child's placement. In each jurisdiction children who are placed with non-Aboriginal and Torres Strait Islander carers are to be assisted to keep in contact with their family, language and culture and in most jurisdictions the aim is to reunite children who are placed in non-Aboriginal and Torres Strait Islander care with their families and communities. The principle is established in a more or less rigorous form in legislation in all states and territories. See Appendix A for the details of the placement principle in each state and territory.

²² *Children and Young People Act 2008 (ACT)*, s10, s513; *Children and Young Persons (Care and Protection) Act 1998 (NSW)*, s13; *Care and Protection of Children Act 2007 (NT)*, s12(3); *Child Protection Act 1999 (Qld)*, s83; *Children's Protection Act 1993 (SA)*, s4(5) and *Children's Protection Regulations 2006 (SA)*, reg 4; *Children, Young Persons and their Families Act 1997 (Tas)*, s9 (the principle is more clearly stated as policy of the Department of Health and Human Services); *Children, Youth and Families Act 2005 (Vic)*, s13; *Children and Community Services Act 2004 (WA)*, s12.

The combined effect of hugely disproportionate rates of Aboriginal and Torres Strait Islander children being removed from their families, the poor socio economic situation of most Aboriginal and Torres Strait Islander communities and the strong cultural commitment to family and sharing within Aboriginal and Torres Strait Islander communities has and will continue to result in a high proportion of Aboriginal and Torres Strait Islander kin and foster carers facing disproportionate sacrifices and economic hardship as a result of their out of home caring roles. Poverty will also result in good carers not being able to take on the responsibility for children and young people in need of care. The disproportionate rate of Aboriginal and Torres Strait Islander children in out of home care is closely associated with past colonial policies including forced and unjustified separations of Aboriginal and Torres Strait Islander children from their families. Greater support for the ATSI CPP should be part of a process of reparation for past wrongs. It should also be part of a commitment to fulfil Aboriginal and Torres Strait Islander children's human rights including their right to their culture. The United Nations Committee on the Rights of the Child in their 2005 report on Australia's compliance with the Convention on the Rights of the Child called for the full implementation of the ATSI CPP.²³ The role which foster and kin parents play in facilitating compliance with this human right and in addressing the wrongs of the past should receive greater explicit acknowledgment and the cost of compliance and responding to past injustices should not fall disproportionately on Aboriginal and Torres Strait Islander families who are financially least able to bear this burden.

The ATSI CPP and Cultural Care

In all jurisdictions the Aboriginal and Torres Strait Islander child placement principle includes a legislative obligation to assist children or young people to retain or establish connections with their culture when they are not placed with Aboriginal or Torres Strait Islander carers. The research for this report demonstrates that there are serious shortfalls in implementing this aspect of the placement principle and this is the greatest area of non-compliance with the principle. If a child or young person is placed in out of home care with a non-Aboriginal and Torres Strait Islander carer there are few formal processes to ensure that they remain in contact with their family and culture and we found no evidence of processes to monitor compliance with this legislative

²³ Committee on the Rights of the Child (2005), *Consideration of Reports Submitted by States parties under Article 44 of the Convention – Concluding observations: Australia (CRC/C/15/Add.268)*, available online, no 39.

requirement. In Victoria, there is provision in legislation for the preparation of cultural support plans for Aboriginal and Torres Strait Islander children and young people who are under a guardianship to the Secretary order. Most participants in our Victorian focus groups, including those from large non-Aboriginal and Torres Strait Islander out of home care agencies, had never seen a cultural support plan. This is particularly concerning since these are the case workers who one would have assumed would be most likely to be familiar with them. The legislative requirement of a cultural support plan for children who are on a guardianship order arbitrarily excludes children who may be in long term foster care but who have not been placed under a guardianship order. Legislative requirements in other jurisdictions require that an Aboriginal and Torres Strait Islander child or young person's cultural connection be supported. In most jurisdictions this requires their placement with a carer who is able to promote the child or young person's ongoing contact with their ATSI family, community and culture and who lives near the child's ATSI family/community. In many jurisdictions the child or young person is entitled to special protection and assistance with maintaining their identity, language, cultural and religious ties. Some of the measures taken to assist with cultural connection are discussed below. However there are few mechanisms in place for formally implementing this requirement. Our focus groups suggest that provision of cultural care to ATSI children in out of home care with non-Aboriginal and Torres Strait Islander carers is at best ad hoc and many children are missing out. There is a very heavy reliance on the out of home carer to fulfill this role. This is not reasonable and as discussed above resources and reforms are necessary to provide these carers with support.

Implementation of the ATSI CPP

More than half of all Aboriginal and Torres Strait Islander children are placed in out of home care with an Aboriginal and Torres Strait Islander carer in all states and territories except the Northern Territory and Tasmania. Tasmania has an extremely weak ATSI CPP and the NT has a history of neglect of Aboriginal and Torres Strait Islander children in the area of child welfare.²⁴ The lack of Aboriginal and Torres Strait Islander child care agencies in the NT and Tasmania are also a likely factor in these anomalous failings. In NSW 85% of Aboriginal and Torres Strait Islander children are placed in Aboriginal and Torres Strait Islander out of home care, in WA

²⁴ Pocock J (2010), *State of Denial: The Neglect and Abuse of Aboriginal and Torres Strait Islander Children in the Northern Territory*, the Secretariat of National Aboriginal and Islander Child Care (SNAICC), Melbourne, 23-26

and SA 75%, in Victoria and Queensland close to 60%, in the ACT around 55%, in the NT around 45% and in Tasmania around 25%.²⁵ Many factors interplay to produce these statistics and a higher percentage of out of home care placements in compliance with ATSI CPP in one jurisdiction compared with another may indicate more effective implementation of the placement principle but it may also indicate a less rigorous process of identifying Aboriginal and Torres Strait Islander children and young people than in other jurisdictions. It is therefore hard to make clear assessments about the disparity for example between the success of the ATSI CPP in NSW compared with Victoria without further information. The Victorian Aboriginal Child Care Agency (VACCA) with its ACSASS service, which is involved in advising on notifications and assessments as well as advice with respect to placements, probably results in a higher percentage of Aboriginal and Torres Strait Islander children being identified as Aboriginal or Torres Strait Islander and therefore having their placement tracked. In NSW, however, it is possible that more Aboriginal and Torres Strait Islander children could move through the child protection system without being identified.

In a number of jurisdictions there was no procedure in place for implementing the ATSI CPP. Sue Gillett from the NSW Department of Community Services (DOCS) explained that “staff are very nervous and unclear about who they can consult outside of the immediate family. Part of this fear comes from the families themselves who are uncomfortable with their dirty laundry being aired with others in their community.” DOCS is currently working on guidelines to address this confidentiality issue. The sensitivity of seeking alternative family carers when a child or young person is being placed in out of home care was raised in a number of focus group meetings. It was noted that it is difficult for Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander workers to broach this issue but that Aboriginal and Torres Strait Islander workers often had a clearer understanding of relationships within communities and therefore were able to pursue less confrontational lines of inquiry. The problem of intimidation by family members who are unhappy about their child being removed and the extra difficulty this raises for some families to take on children was also raised. Greater support needs to be provided to foster and kin carers in these circumstances.

²⁵ AIHW (2010), above n1, 47.

Under the *Children's Protection Act 1993 (SA)* whenever Families SA (a division of the South Australian Department for Families and Communities) becomes involved with an out of home care placement for an Aboriginal or Torres Strait Islander child they must involve an Aboriginal organization. Families SA reports that Aboriginal Family Support Services (AFSS) plays a critical role in these placements. 'Principal Aboriginal Consultants' within Families SA are responsible within the Department for 'leading in intervention strategies for Aboriginal children, young people and their families.'²⁶ They play a role in developing culturally sensitive policies, programs and practices and providing advice to management on regional Aboriginal needs. All services providing guardianship and alternative care services in South Australia must be on the Guardianship and Alternative Care Pre-Qualified Provider Panel. In their application, service providers can select whether they wish to be approved to provide services to Aboriginal children and young people. If the service provider intends to be appointed to the panel to provide services for Aboriginal children and young people, they must provide details and evidence of adherence to and observance of the Aboriginal and Torres Strait Islander Child Placement Principle.

Queensland Audit into compliance with ATSICPP

The Queensland Commission for Children and Young People and Child Guardian conducted an Aboriginal and Torres Strait Islander Child Placement Principle audit in 2008.²⁷ The audit established a five step procedure for monitoring compliance with the ATSICPP under s83 of the *Child Protection Act 1999 (Qld)*:

1. Identification of a child's Aboriginal and Torres Strait Islander status;
2. Giving the recognised entity the opportunity to participate in decision making with respect to the placement process;
3. Identification of placement options in accordance with the placement principle;
4. Consideration of the placement options and the views of the recognised entity with respect to these options;

²⁶ The Department for Families and Communities (South Australia) (2007), *Position Description: Principal Aboriginal Consultant*, available online.

²⁷ Commission for Children and Young People and Child Guardian (Queensland) (2008), *Aboriginal and Torres Strait Islander Child Placement Principle Audit Report 2008*, available online.

5. Assessing non-Aboriginal and Torres Strait Islander carer's commitment to supporting the placement.²⁸

This procedure set up by the audit, if complied with, establishes useful criteria for monitoring the placement decision but further processes are necessary to audit compliance with s83(7) which provides for the child or young person's ongoing contact with their family, language group and community and their Aboriginal and Torres Strait Islander culture and identity when placed with a non-Aboriginal and Torres Strait Islander carer (ie. step 5). While the case plan includes provision for cultural care planning this does not embed or establish a system for monitoring that the legislative requirements under s83(7) are being complied with. The review suggests that a process be established for assessing the cultural sensitivity and commitment of non-Aboriginal and Torres Strait Islander carers. It recommends that guidelines be developed for assessing carer appropriateness including their commitment to facilitating contact with family, community, culture and preserving the child or young person's identity. While this recommendation is worthy of support more is required to facilitate compliance with the requirement that the child be supported in retaining their culture and identity. One of the problems with step 5 is that it places the full responsibility for maintaining the child or young person's Aboriginal and Torres Strait Islander identity with the non-Aboriginal and Torres Strait Islander carer. Cultural care planning requires extensive support and involvement from organisations (preferably Aboriginal and Torres Strait Islander) and family, friends and Aboriginal and Torres Strait Islander communities to be successful. Our consultations suggest that there are shortfalls in all jurisdictions at each stage of implementation of the ATSI CPP but the most significant shortfall occurs at 'step 5' with respect to the cultural care of children who are placed with non-Aboriginal and Torres Strait Islander carers.

The Queensland audit made recommendations with respect to better recording of participation by Recognised Entities with respect to the requirements to fulfill the Aboriginal and Torres Strait Islander child placement principle. It recommended that the views of the Recognised Entity be recorded and that areas of disagreement be included in the record. In 79% of the 82 files reviewed the Recognised Entities were not given an opportunity to participate in the decision

²⁸ Ibid, 35 and Chapters 4-9.

making in accordance with their rights under the *Child Protection Act 1999 (Qld)*.²⁹ The audit recommends the inclusion of a considerable body of information about the child, their family and carers, and the levels of support which they can and/or would be suitable to provide which may assist in retaining family and community continuity for the child or young person. It recommends that records be modified to include information about whether the placement has the ability to retain the child or young person's relationships with their parents, siblings and people of significance. It is worrying that in 91% of the files in the Qld review no people of significance were identified for the purpose of retention of relationships after the child or young person was placed in out of home care.³⁰ This may reflect recording practices or a failure to consider how the placement will impact on the child or young person's established relationships. The *Aboriginal and Torres Strait Islander Child Placement Principle Audit Report 2008* concluded generally that: 'The department's policies, procedures and information management systems *did not provide sufficient guidance and support* for the day-to-day decisions of frontline staff about the Child Placement Principle.'

The Queensland audit focussed on developing guidelines to inform departmental decision making about Aboriginal and Torres Strait Islander family and community structures and on recording compliance with the requirements of the ATSI CPP. While documentation is valuable and important, and the audit recommendations are useful and commended, our research suggests that the capacity to engage effectively and to provide cultural care for Aboriginal and Torres Strait Islander children and young people in out of home care goes deeper than establishing these requirements. Cultural care requires inclusion and interaction with those who live and experience the culture. The limitation with the Qld audit's approach to implementing the ATSI CPP is that compliance is about procedures and guidelines and may not translate into substantive understanding or engagement by departmental officers with Aboriginal and Torres Strait Islander carers and communities.

Despite the findings of this audit, as discussed above, the Department proposes to reduce the number of Recognised Aboriginal and Torres Strait Islander organizations from 34 to 11. These

²⁹ Ibid, 47.

³⁰ Ibid, 74.

organisations are central to effective compliance with the ATSICPP. The Department in an interview for this research, in response to a question about how they implement the Aboriginal and Torres Strait Islander child placement principle after outlining the legislative requirements explained,

“Child Safety provides funding to deliver Recognised Entity services to each of the Department’s Child Safety Service Centres. The Recognised Entities undertake a statutory support role and this includes active assistance to departmental staff in the development of cultural support plans, genograms, ecomaps and identifying possible kinship care placements...Recognised Entities play a significant role in the application of the Child Placement Principle through the provision of advice and information as well as the identification of kinship placements.”

Western Australia Review of the ATSICPP

In Western Australia, emphasis is placed on the role of APLs (Aboriginal Practice Leaders) who oversee what happens with Aboriginal children brought to the Department’s attention. There are 18 APLs, which is a senior level position within the Department of Child Protection. They must endorse if a child is going to be placed in out of home care or if they are unable to attend relevant meetings they must delegate this responsibility to another Aboriginal staff member. The Department has focused on recruitment of Aboriginal staff and in 2010, they make up 20% of all staff. Jenni Collard from the Department of Child Protection told this research that the “APL has to lead, curate and monitor decisions about the child. For example they must see that the Child Placement Principle is being adhered to.” While it is commendable that the Department has focused on recruitment of Aboriginal and Torres Strait Islander staff, concern has been expressed that this is at the expense of building the capacity of Aboriginal and Torres Strait Islander organizations and their role in supporting and making decisions with respect to Aboriginal children and young people who have contact with the child welfare system. As discussed above, the cultural differences between an Aboriginal and Torres Strait Islander organization and a non-Aboriginal and Torres Strait Islander organization, with the embedded values in this instance of a

government department, cannot be overcome by employing Aboriginal and Torres Strait Islander staff.

A random telephone survey of fieldworkers was conducted by the Department for Child Protection for the *Review of the WA Aboriginal and Torres Strait Islander Child Placement Principle 2009*.³¹ The review found that non-Aboriginal field workers lacked confidence in working amongst Aboriginal children and families and this together with a hazy understanding of the Aboriginal and Torres Strait Islander child placement principle and its relationship to broader best practice principles, could lead to inappropriate judgements about placements. The survey found that a large number of staff did not understand the relationship between the placement principle and the general requirement that all decisions be made in the best interests of the child. '51% of those surveyed said that they felt pressure to place Aboriginal children only with an Aboriginal carer.'³²

The random survey of 53 field workers representing 9% of field staff conducted for the WA review provides interesting insights into their experiences and perceptions. Their responses may provide guidance with respect to some of the educational needs of fieldworkers and some of the difficulties they face. Their perceptions, in this researcher's assessment, suggests shortfalls in understanding and experience of Aboriginal and Torres Strait Islander communities amongst field staff rather than what policy or legislative reform may be in the best interests of Aboriginal and Torres Strait Islander children and young people. The WA review suggests that the Aboriginal approved agencies consulted provided limited local information that was relevant to placement decisions and that '(d)espite the numerous attempts to attract appropriate Aboriginal agencies in regional areas in WA, this was difficult to achieve.'³³ The WA review has rejected designated Aboriginal agencies stating, 'One notable difference between WA and other states and territories is that despite other states having a nominated placement agency in their ACP, Department staff who were involved in the development and review of the ACP still advocate that a nominated agency is not appropriate in WA.'³⁴ The Review reports that field workers

³¹ Department for Child Protection (Western Australia) (2009), above n11.

³² Ibid, 13.

³³ Ibid, 15.

³⁴ Ibid, 7.

found consultations to be an extra work pressure which was not necessarily helpful. The review recommends amending s81 of the *Children and Community Services Act 2004* (WA) so that consultation would only need to occur with Aboriginal individuals or organisations with respect to a placement.

The research conducted for this report suggests that adequately funded Aboriginal and Torres Strait Islander organisations make an extremely valuable contribution to appropriate placements for Aboriginal and Torres Strait Islander children addressing many of the concerns identified by the WA review such as the lack of experience or confidence amongst field workers in engaging with Aboriginal and Torres Strait Islander families and communities. The focus groups for our research identified how difficult and resource intensive it is in many instances to trace and identify Aboriginal and Torres Strait Islander family and to mediate appropriate out of home care arrangements in the best interests of the child. The WA review also recommends that the legislation be amended to make clear that the best interests of the child is the paramount principle which guides the application of ATSI CCP and all other provisions of the Act.³⁵ As discussed above, an application of the best interests of the child with respect to Aboriginal and Torres Strait Islander children requires an understanding of the cultural experience and particularities of Aboriginal and Torres Strait Islander children. Usually the ATSI CCP and the best interests of the child will complement and serve each other. All focus groups and participants in this research emphasised that the safety of a child or young person takes precedence over all other competing interests. However, if the cultural care of Aboriginal and Torres Strait Islander children is going to be respected, in many instances non-Aboriginal and Torres Strait Islander field workers will not have the experience or knowledge to perceive these interests. It is therefore crucial that Aboriginal and Torres Strait Islander agencies, with institutional knowledge and understanding of these often subtle and deeply experiential issues, retain an institutionalised role in the decision making with respect to Aboriginal and Torres Strait Islander children in out of home care but also specifically with respect to the application of the best interests principle to Aboriginal and Torres Strait Islander children and young people and its relationship to the ATSI CCP.

³⁵ Ibid, 18.

In four jurisdictions (Queensland, South Australia, Victoria and Western Australia) Aboriginal and Torres Strait Islander organisations have their status and right to participate in decision making with respect to the ATSI CPP included in legislation. Three of the organisations which this research conducted focus groups with are gazetted under the relevant legislation as a recognised Aboriginal and Torres Strait Islander organisation with mandated advisory and decision making responsibility (Victorian Aboriginal Child Care Agency (VACCA), Aboriginal Family Services South Australia (AFSSA) and *Yorgonop* in Western Australia). ACSASS are services within VACCA which provides advice on all significant decisions made by the Department of Human Services in relation to Aboriginal and Torres Strait Islander children from the notification stage to out of home care placements and compliance with the ATSI CPP. ACSASS case workers are cultural consultants and partners in the case management of Aboriginal and Torres Strait Islander children who have contact with the Victorian child protection system. While ACSASS makes an enormous contribution to Aboriginal and Torres Strait Islander children's well-being its impact is limited by the significant shortage of culturally appropriate support services to aid Aboriginal and Torres Strait Islander families.

Recently a memorandum of understanding was signed between the peak Aboriginal and Torres Strait Islander body in NSW, Absec, and the Department of Community Services (DOCS). This agreement is based on a memorandum of understanding between the Department of Human Services (DHS) and VACCA. These formalised means of recognising Aboriginal and Torres Strait Islander organisations provide a good foundation for building more extensive Aboriginal and Torres Strait Islander networks which have the competence to provide cultural care to Aboriginal and Torres Strait Islander children and young people and where necessary to support Aboriginal and Torres Strait Islander children who are looked after by non-Aboriginal and Torres Strait Islander agencies and carers.

Our research suggests that the type of misgivings about designated Aboriginal and Torres Strait Islander organisations expressed by field workers in the WA review may suggest the need for education with respect to cultural issues and may reflect other problems, such as those identified by the Queensland audit of ATSI CPP discussed above, with respect to the implementation of the placement principle rather than a systemic problem with including designated Aboriginal and Torres Strait Islander organisations in the decision-making process. Contrary to the WA review's

recommendation with respect to removing the role of recognised Aboriginal and Torres Strait Islander entities in Aboriginal and Torres Strait Islander child placement this research recommends that it should be extended to all jurisdictions. As discussed above, further resourcing is necessary both to give effect to the right to participate in decision making and to effective implementation of the ATSICPP.

Early Identification and Provision of Cultural Support

It is important that children are identified as Aboriginal and Torres Strait Islander from the time they come into contact with the child welfare system. This will enable an understanding of the child's Aboriginal and Torres Strait Islander connections to be established and for them to be culturally supported in all their dealings with the child welfare system to the point of placement in out of home care if this is necessary. Very young Aboriginal and Torres Strait Islander children and children who have an absent Aboriginal and Torres Strait Islander father are most likely to have their Aboriginal and Torres Strait Islander cultural heritage overlooked when out of home care arrangements are made. This research has been told that even when children are identified as Aboriginal and Torres Strait Islander there is a failure to record appropriate information to enable appropriate placements to be made. The following comments are typical of observations made in focus groups:

“The referral system from the department is hard – they often just say they are Aboriginal and Torres Strait Islander, but provide no information about their community and mob. You don't know where the appropriate area is to look for a placement. You don't want to stick a kid in a place that is not near to their home and then the kid wants to know why they are not with their community – it's wasted time.”

“Consultation processes are inadequate – we are often asked too late and we do not have enough resources to find carers.”

“The Department walks away once the child is removed.”

In some jurisdictions like South Australia and Victoria attempts have been made to identify and address the cultural needs of Aboriginal and Torres Strait Islander children when they first come into contact with the child welfare department. Yaitya Tirramangkotti is a 24 hour service staffed by Aboriginal workers and situated in the Families SA Crisis Response Unit. The name Yaitya Tirramangkott means ‘people of prevention’. Kaurna elders, who are the original occupiers of the central Adelaide Plains presented the name to Families SA at a ceremony. The unit provides cultural advice and assistance in response to notifications on Aboriginal and Torres Strait Islander children and young people and provides additional information and recommendations to Families SA offices about the best ways to respond to concerns about an Aboriginal child or young person’s safety. This team takes into account cultural factors, local knowledge of families and clan groups to aid staff in making an appropriate assessment. As referred to above, ACSASS fulfils this role in Victoria.

Building on the success of the ATSICPP

The success of the ATSICPP needs to be built on to attain full compliance with the principle.

This as discussed in other parts of this report requires:

1. Greater support for Aboriginal and Torres Strait Islander organisations to address the underlying reasons why a disproportionate rate of Aboriginal and Torres Strait Islander children, compared with all children, are removed from their families, but also
2. to increase the Aboriginal and Torres Strait Islander kin, foster and residential care placements for Aboriginal and Torres Strait Islander children and support for these carers,
3. to increase the capacity of Aboriginal and Torres Strait Islander out of home care agencies and
4. to support those children and young people who are placed with non-Aboriginal and Torres Strait Islander carers, and who are looked after by non-Aboriginal and Torres Strait Islander agencies.

The responsibilities under ATSICPP do not end once a child has been placed in out of home care. As noted above the aspect of ATSICPP which requires that a child who is placed in a non-

Aboriginal and Torres Strait Islander placement be supported in their ongoing cultural identity has received least attention and requires considerable resources and support to be implemented.

Recommendations

26. That legislative provision requiring consultation with designated Aboriginal and Torres Strait Islander organisations with respect to the ATSICPP be implemented in those jurisdictions which have not embedded this requirement in legislation and be retained where they are embedded in legislation.

27. That peak Aboriginal and Torres Strait Islander organisation SNAICC, in conjunction with peak Aboriginal and Torres Strait Islander bodies where they exist in each state and territory, together with the Children's Commissioner / Children's Guardian (SA) in each state and territory be funded to take joint responsibility for monitoring compliance with the Aboriginal and Torres Strait Islander Child Placement Principle, with particular reference to compliance with the requirement that cultural care be provided for those Aboriginal and Torres Strait Islander children who are placed in out of home care with non-Aboriginal and Torres Strait Islander carers.

Conclusion

While failure to address systemic inequality, discrimination and the ongoing impacts of colonial policies on Aboriginal and Torres Strait Islander communities is the foundational barrier to cultural care, addressing these issues requires long term reform. The most significant immediate barrier to cultural care for Aboriginal and Torres Strait Islander children in out of home care is as discussed above the incomplete implementation of the Aboriginal and Torres Strait Islander Child Placement Principle. There are a number of reasons for this. These include inadequate support for the growth and development of Aboriginal and Torres Strait Islander agencies which are resourced to place and support Aboriginal and Torres Strait Islander children and young people in out of home care, the large number of Aboriginal and Torres Strait Islander children in out of home care, insufficient recruitment and availability of Aboriginal and Torres Strait Islander carers and the inadequate number of residential care homes for Aboriginal and Torres Strait Islander children and young people. The shortage of Aboriginal and Torres Strait Islander placements is particularly acute for children and young people with disabilities and complex needs. Inadequate support for non-Aboriginal and Torres Strait Islander carers to provide cultural care to the Aboriginal and Torres Strait Islander children whom they are looking after is connected to the above barriers to effective cultural care. It is most obviously connected to the failure to adequately resource Aboriginal and Torres Strait Islander agencies to support the cultural care of Aboriginal and Torres Strait Islander children in non-Aboriginal and Torres Strait Islander care. The failure to adequately support the cultural care of Aboriginal and Torres Strait Islander children in non-Aboriginal and Torres Strait Islander out of home care probably has the most significant impact in terms of dislocating Aboriginal and Torres Strait Islander children from their culture.

A further barrier to the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle is the lack of clear guidance or resources with respect to how it should be implemented. There is a lack of adequate knowledge with respect to how to apply the Aboriginal and Torres Strait Islander child placement principle. This is particularly so with respect to establishing and resourcing procedures to ensure ongoing connection for those children and young people who are in out of home care with non-Aboriginal and Torres Strait Islander carers. While there is recognition with respect to the need for culturally appropriate services and case

planning there is a breakdown of this understanding at the implementation stage. While high quality planning and cultural care is usually provided for those children and young people who are placed with an Aboriginal or Torres Strait Islander agency there is a lack of monitoring and measures to ensure responsibility and accountability for cultural care for many Aboriginal and Torres Strait Islander children who are not looked after by an Aboriginal and Torres Strait Islander agency. This is despite good will and a clear acceptance of the importance of cultural care.

While the legislative measures referred to incorporate Aboriginal and Torres Strait Islander input into decisions about their children they do not develop an Aboriginal and Torres Strait Islander pathway for participating in the care and protection of their children. Rather they provide an avenue for Aboriginal and Torres Strait Islander participation in the mainstream departmental process. If the well-being of Aboriginal and Torres Strait Islander children is to be addressed then the structural disadvantages and poverty which many communities face has to be an integral part of longer term policy for Aboriginal and Torres Strait Islander children's well-being. Legislative reform can facilitate change but it has to be complemented with social and economic reforms. Further, for these legislative reforms to be successful there needs to be adequate support for the Aboriginal and Torres Strait Islander organisation involved in child welfare and more broadly children's well-being. This involves in most cases capacity building and more direct funding for service provision. To improve the cultural care of Aboriginal and Torres Strait Islander children requires inclusion of Aboriginal and Torres Strait Islander people and understandings in all levels of decision making, policy formation and service provision with respect to family welfare and well-being.

Appendix A

Legislation and Policy in each Jurisdiction

ACT

Department: Office for Children, Youth and Family Support

Legislation: *Children and Young People Act 2008*

Aspirational statements

Special protection of culture: Decision maker must take into account the need for ATSI children to maintain a connection with lifestyle, culture and traditions of their community; and ATSI traditions and values: s10.

Self-determination: The closest statement to self-determination is found in s7: The objective of the Act is to ensure that ATSI people are included and participate in care and protection of ATSI children.

ATSI participation in decision making

Decision maker must take into account submissions made by ATSI organisations: s10.

Placement Principle

Chief-executive may place an ATSI child with any of the following out of home carers:

- A kinship carer;
- Member of child's ATSI community with some customary relationship to the child;
- Member of the child's community;
- An ATSI carer;
- A non-ATSI carer who is sensitive to the child's needs; is capable of promoting the child's ongoing contact with their ATSI family, community and culture; and lives near the child's ATSI family/community where reunification or continued connection is still a consideration: s513.

NOTE: In this reinterpretation of the Placement Principle, the ACT Chief-Executive does not have to prioritise ATSI over non-ATSI carers.

Additional placement considerations

Chief-executive must place them based on: who is first available; whether the child objects; whether it is consistent with any current ATSI cultural plan in force: s513.

Cultural Care

Cultural plans *may* be required in certain circumstances under legislation (s455):

- For ATSI children subject to a "care protection order" *may* have a care plan created that includes proposals for how to maintain and enhance their ATSI cultural identity.
- When preparing a care plan, the Chief Executive must tell relevant ATSI people close to the child or relevant ATSI organisations of this plan.

Access to record keeping

None required under legislation.

Permanent placement

No comment specific to ATSI children in legislation.

NSW

Department: Department of Community Services

Legislation: *Children and Young Persons (Care and Protection) Act 1998*

Aspirational statements

Special protection of culture: All decisions made must take into account the culture, language and religion of the child;

Child is entitled to special protection and assistance with maintaining their identity, language, cultural and religious ties: s9.

Self-determination: ATSI people should participate in the care of their children with ‘as much self-determination as possible’: s11.

ATSI participation in decision making

ATSI families and organisations must be allowed to participate in decisions regarding the placement of their children (and other such significant decisions) ‘by means approved by the Minister’: s12.

Placement Principle

The ‘general order’ for carers for ATSI child placed in out of home care are:

- a) member of child’s extended family or kinship group;
- b) member of the child’s ATSI community;
- c) member of some other ATSI family nearby;
- d) person approved by Director-General after consulting with members of child’s extended family or kinship group and ATSI organisations: s13(1)

Additional placement considerations

In deciding placement account must be taken to:

- a) whether child self-identifies as ATSI: s13(2);
- b) the child’s express wishes: s13(2);
- c) If child has parents from different ATSI communities, the ‘general order’ still applies but the best interests of the child will be the determining factor: s13(3);
- d) If child has one ATSI and one non-ATSI parent, placement must be based on the best interests of the child and the ‘principles’ of this Act (see s9). Wherever this child is placed, arrangements must be made to ensure they can stay in contact with their family, culture and community from both sides: s13(4)-(5);
- e) If child is placed with non-ATSI carer, there is a fundamental objective to reunite them with their ATSI family or community; and that continuing contact with ATSI family community and culture be assured: s13(6);

For emergency placements the placement principle ‘general order’ for preferred carers does not apply, but the Director-General must consult with the ATSI community as soon as practicable: s13(7)-(8).

Cultural Care

Nothing specific (eg cultural care plans) required in legislation.

Policy from website:³⁶

³⁶ Department of Community Services (NSW), *2008/9 Annual Report*, ‘Helping Aboriginal Families’, available online.

- A new Aboriginal Cultural Support (ACS) function is now part of DOCS's electronic database KiDS (the Key Information Directory System). This guides caseworkers in collecting and recording information to support effective cultural planning.
- Cultural support training underway in trial sites. Statewide implementation of ACS planning is likely to be completed mid-2010.
- "Aboriginal Life Story" book produced in 2009. Sections of this help children explore and develop their connectedness to their culture, family and community³⁷.

Access to record keeping

Records regarding the placement of ATSI children must be kept permanently: s14(1).

The child and parents (and anyone authorised by either) are entitled to access these records: s14(2).

Specifications on what must be recorded including the plan for a child leaving out of home care: s167.

NOTE: some exceptions are permitted under regulations.

Permanent placement

A permanency plan must comply with the Placement Principle: s78A.

The child can only be permanently placed with a non-ATSI carer after the child, ATSI organisations and members of the child's community have been consulted; the carer family is 'culturally appropriate'; and approval has been granted by the Minister for Community Services and the Minister for Aboriginal Affairs: s78A.

³⁷ Department of Community Services (NSW), *Fostercare Life Story Factsheet*, available online.

Northern Territory

Department: Department of Health and Families

Legislation: *Care and Protection of Children Act 2007*

Aspirational statements

Special protection of culture: None stated in legislation explicitly.

Self-determination: Kinship groups, representative organisations and Aboriginal communities have a major role though self-determination, in promoting the wellbeing of Aboriginal people: s12(1).

ATSI participation in decision making

Kinship groups, representative organisations or the child's Aboriginal community should be able to participate in decision making involving the child: s12(2).

Placement Principle

Aboriginal child should be placed with person in this order of priority:

- Member of child's family;
- Aboriginal person in the child's community based on community practice;
- Any other Aboriginal person;
- A non-Aboriginal person who is capable of promoting the child's connection with their culture and if possible contact with their family.

Aboriginal child should be placed in close proximity to child's family and community.

Additional placement considerations

None.

Cultural Care

None required by legislation.

Policy from website³⁸:

- NTFC develops a Cultural Care Plan for all ATSI children in care.
- There are other suggestions for ways to sustain contact with a child's ATSI culture. Eg. a Life Story Book, attending NAIDOC events.

Access to record keeping

None required under legislation.

Permanent placement

No comment specific to ATSI children in legislation.

³⁸ Department of Health and Families (Northern Territory), *Aboriginal Children in Care*, NT Families and Children program, available online.

Queensland

Department: Department of Communities

Legislation: *Child Protection Act 1999*

Aspirational statements

Special protection of culture: The chief executive must provide opportunity for the child's contact, as often as appropriate, with members of their community or language group: s88. Children's Court must recognise the principle that an ATSI child should be cared for within an ATSI community: s6.

Self-determination: None explicitly stated in legislation.

ATSI participation in decision making

When making a placement decision regarding an ATSI child, a recognised ATSI agency must be allowed to participate: ss6, 83.

If urgent or otherwise not practicable, the chief executive or other officer must consult with the ATSI agency *after* making the decision: ss6, 83.

The chief executive or other officer must conduct consultations with ATSI people in a manner appropriate to their traditions and customs: s6(5).

The Children's Court should also consider the views of a recognised ATSI agency or members of the child's community: s6.

Placement Principle

The ATSI child must be placed, in order of priority, with:

- A family member; or
- Member of the child's community or language group; or
- Another ATSI person who is compatible with child's community or language group; or
- Another ATSI person: s83.

If this can not be done, the ATSI child must be placed, in order of priority with:

- A person who lives near the family;
- A person who lives near the community or language group: s83.

If placing the child with a non-ATSI person, the person must be committed to facilitating contact with the child's family, where appropriate; their community or language group; their ATSI culture; their sense of ATSI identity.

Additional placement considerations

In making placement decision, the Chief Executive must take into account:

- The views of a recognised ATSI agency; and
- The need to ensure optimal retention of the child's relationship with family and other people of significance under ATSI tradition.

Cultural Care

In the legislation there is suggestion of something perhaps akin to a cultural care plan in some circumstances – the Chief Executive must ensure case planning is carried out for children in need of protection, or where no other entity is carrying out such care and protection (s51C).

In this care plan, the Chief Executive must encourage the participation of ATSI agencies and persons: s51D.

The chief executive must provide opportunity for the child's contact, as often as appropriate, with members of their community or language group: s88.

Policy from website: Nothing regarding cultural care. It only mentions a brief synopsis of the Placement Principle and of what constitutes 'recognised entities' (ie. Aboriginal agencies).³⁹

Access to record keeping

- None required under legislation.

Permanent placement

- No comment specific to ATSI children in legislation.

³⁹ Department of Communities (Queensland), 'Foster Care – Aboriginal and Torres Strait Islanders', *Queensland Government*, available online.

South Australia

Department: Department for Families & Communities

Legislation: *Children's Protection Act 1993; Children's Protection Regulations 2006*

Aspirational statements

Special protection of culture: In considering the best interests of the child when placing them in out of home care, consideration must be given to the child's Aboriginality: reg4.

A person or court making any decision regarding ATSI children must have regard to the general principle that an ATSI child should be kept within their community: s5.

Self-determination: None explicitly stated in legislation.

ATSI participation in decision making

ATSI organisation must be consulted before decisions made on ATSI child: s5

A person or court making any decision regarding ATSI children must have regard:

- To submissions made by a consulted ATSI organisation; and
- If there has been no consultation – to ATSI traditions and cultural values: s5.

Consultations with ATSI people must be conducted in a manner appropriate to their traditions and customs: s5(5)-(6).

Placement Principle

An ATSI child placed in out of home care should be placed, in order of priority, with:

- Member of child's family (with reference to Aboriginal culture);
- Member of child's Aboriginal community who has a relationship of responsibility for the child;
- Member of child's Aboriginal community;
- Person with same Aboriginal cultural background as child;
- Non-Aboriginal person who is able to ensure that the child maintains significant contact with their family, community/ies and culture: reg 4(b).

Additional placement considerations

Decision maker should take into account:

- If child objects to placement on reasonable grounds. If that is the case the child should be placed with the next available person by order of above priority: reg 4(c).

Cultural Care

None required by legislation.

Policy from website:⁴⁰

- Utilisation of 'Aboriginal Life Story Books' where launched in 2009.
- Cultural Support Funding of up to \$500 for each Aboriginal child in an alternative care placement.
- As part of the Aboriginal Community Engagement Strategy, Aboriginal Community Groups have been established in the southern and northern metropolitan regions to: develop strategies; identify gaps in services and offer best practice advice.

Access to record keeping

⁴⁰ Department of Families and Communities (South Australia), *2008/9 Annual Report*, available online.

None required under legislation.

Permanent placement

No comment specific to ATSI children in legislation.

Tasmania

Department: Department of Health and Human Services

Legislation: *Children, Young Persons and their Families Act 1997*

Aspirational statements

Special protection of culture: Decision makers must take into consideration the general principle that an Aboriginal child should remain within the Aboriginal community: s9.

Self-determination: None explicitly stated in legislation.

ATSI participation in decision making

A decision regarding where an Aboriginal child will reside may only be made once a recognised Aboriginal organisation has been consulted: s9.

Decision makers must take into consideration:

- Submissions made by consulted Aboriginal organisations; and
- where one has not made submissions, Aboriginal traditions (including kinship rules) generally held by the Aboriginal community: s9.

Placement Principle

Nothing in legislation.

The Department of Health and Human Services website⁴¹ states that placement decisions be made in reference to the Aboriginal Placement Principle which means, after consulting with Aboriginal services, the child may be placed, in order of priority, with:

- Extended family or relatives
- An Aboriginal family from the local community
- A non-related non-Aboriginal family living in close proximity to the child's family.

Additional placement considerations

None explicitly stated.

Cultural Care

None required under legislation.

No policy regarding cultural care stated on website.

Access to record keeping

None required under legislation.

Permanent placement

No comment specific to ATSI children in legislation.

⁴¹ Department of Health and Human Services (Tasmania), 'Out of Home Care', available online.

Victoria

Department: Department of Human Services (Children, Youth and Families)

Legislation: *Children, Youth and Families Act 2005*

Aspirational statements

Special Protection of culture: When making decisions on best interests of child, consideration must be given to the need to maintain and build an Aboriginal child's connection to their family, community, and Aboriginal cultural and spiritual identity: s10(3)(c).

Self-determination: In recognition of Aboriginal self-determination, when making decisions on Aboriginal child, Secretary or community service must give consideration to contributions by various Aboriginal family members, community members, organisations and the child themselves (see below): s12

ATSI participation in decision making

In recognition of Aboriginal self-determination, when making decisions on Aboriginal child, Secretary or community service must give consideration to contributions by:

- Members of child's Aboriginal community and 'other respected Aboriginal persons';
- Meeting should be set up with Aboriginal convener or Aboriginal organisation and the child, child's parents, child's extended family, other appropriate members of Aboriginal community, where possible;
- With out of home care decisions Aboriginal agency must be consulted and the Placement principle applied (this does not, however, apply to 'child care agreements' not involving custody): s12.

When placing an Aboriginal child in out of home care, regard must be had to advice from Aboriginal agencies and principles in s14: s13(1).

Placement Principle

When placing Aboriginal child in out of home care:

- First priority is child placed with Aboriginal extended family;
- If not possible, then child may be placed with Aboriginal family from local community; from another Aboriginal community or, as a last resort a non-Aboriginal family living near the child's family: s13(2).

If child is placed with non-Aboriginal carer, they must ensure the maintenance of the child's culture and identity through contact with the child's community: s13(2)(c).

Placement principle does not apply to 'child care agreements' not involving custody: s13(3).

Additional placement considerations

In deciding placement account must be taken to:

- Whether child self-identifies as Aboriginal: s14(1).
- The child's expressed wishes: s14(1).
- If child has parents from different Aboriginal communities, the placement order still applies but consideration should be given to the child's personal sense of belonging: s14(3);
- If a child has one Aboriginal parent and one non-Aboriginal parent, the child must be placed with the parent with whom it is in the child's best interests: s14(4).

- If child is placed with non-Aboriginal person, arrangements must be made to ensure that the child has the opportunity for continuing contact with their Aboriginal family, community and culture: s14(5).

Cultural Care

Cultural plans are required under s176:

- Secretary must prepare a cultural plan for each Aboriginal child placed in out of home care who are under a guardianship to Secretary order.
- This plan must set out how this child will remain connected to their community and culture.
- This ‘community’ is the one in which the child has a sense of belonging; or has primarily lived; or is the community of their parents/grandparents.
- Secretary must monitor compliance by the carer of the child.

Policy from website:

- Details on the cultural plans can be found at the Department of Human Services’ website.⁴²
- No “Aboriginal Life Story” books.

Access to record keeping

None required under legislation.

Permanent placement

The court must not make a permanent care order to place an Aboriginal child with a non-Aboriginal carer unless:

- No suitable place can be found with an Aboriginal carer;
- The child has been consulted;
- The order accords with the Placement Principle;
- An Aboriginal agency recommends the order;

A cultural plan has been prepared (if the Court requires it): s323.

⁴² Department of Human Services (Victoria), *Aboriginal Cultural Support Plan*, available online.

Western Australia

Department: Department for Child Protection

Legislation: *Children and Community Services Act 2004*

Aspirational statements

Special protection of culture: The objective of the Aboriginal Child Placement Principle is for ATSI children in out of home care to maintain a connection with family and culture: s12(1).

Self-determination: None explicitly stated in legislation.

ATSI participation in decision making

When making placement arrangements the CEO must ensure an ATSI officer is involved and consult with an ATSI agency: s81.

Placement Principle

Where practicable, an ATSI child must be placed, in order of priority with:

- A member of the child's family;
- An ATSI person in the child's community in accordance with local customary practice;
- An ATSI person;
- A non-ATSI person who is sensitive to the needs of the child and who can promote the child's connections with their culture and, where possible, family: s12.

Additional placement considerations

None.

Cultural Care

Policy from Website:

- Cultural Plans for ATSI children must be included in their Care Plans.⁴³

Access to record keeping

None required under legislation.

Permanent placement

No comment specific to ATSI children in legislation.

However, when making protection orders, the Court must heed the ATSI Child Placement Principle: s61

⁴³ Department for Child Protection (WA), *My Care Plan and Meetings*, available online.

Appendix B

Online Cultural Plans

Victoria and Queensland have placed examples of their Cultural Plans online. NSW has online a case plan form to be used by external agencies that includes an area of information regarding “Cultural Identity” but no copy of the Cultural Care Plan that needs to be attached. The other jurisdictions either do not use Cultural Plans or do not have a copy available online. Below is a break down of each jurisdiction.

Victoria

The Victorian Cultural Support Plan can be found at the Department of Human Service’s website (<http://www.dhs.vic.gov.au>) under:
“Children, Youth and Families > Placement and Support > Publications > Aboriginal Cultural Support Plan”

Here is a direct link:

http://www.cyf.vic.gov.au/_data/assets/pdf_file/0013/16402/cultural_support_plan_form.pdf

Queensland

A copy of the Queensland Cultural Support Plan can be found as a completed example form under Chapter 5 of the Department of Communities’ Child Safety Practice Manual (<http://www.childsafety.qld.gov.au/practice-manual>).

Here is a direct link:

<http://www.childsafety.qld.gov.au/practice-manual/documents/pr-developing-cultural-support-plan-atsi.pdf>

NSW

An Aboriginal Cultural Support (ACS) function is now part of the Department of Community Services’ electronic database of case plans, KiDS (the Key Information Directory System). The layout of this database (or the ACS within it) is not available through DOCS’s website.

On DOCS’s website, however, there is a hard copy of a Case Plan suggested for use by external out of home care agencies. Within this is a section to be filled in relating to a child’s ‘Cultural Identity’ with a note that for Aboriginal and Torres Strait Islander children an extra Cultural Care Plan must be attached. A copy of this Cultural Care Plan is not available through DOCS’s website. The Case Plan can be found at DOCS’s website (<http://www.community.nsw.gov.au>) as a link entitled “case plan” under:

“for agencies that work with us > out of home care services > case management”

Here is a direct link:

http://www.community.nsw.gov.au/for_agencies_that_work_with_us/out_of_home_care_services/ohc_case_management.html

ACT

An ACT Cultural Plan is not available from the Office for Children, Youth and Family Support website.

Northern Territory

A copy of the Northern Territory Cultural Support Plan is not available from the Department of Health and Families' website.

Western Australia

The Western Australian Cultural Plan is not available from the Department for Child Protection's website. It is only available via the Department's Field Worker intranet.

South Australia

South Australia does not appear to have Cultural Plans on their website.

Tasmania

Tasmania does not appear to use Cultural Plans.

Appendix C

Recommendations

1. Funding should be allocated to established Indigenous children's organisations, where appropriate the peak Indigenous children's organisation in each state and territory, for the purpose of assisting any out of home care agency to trace, identify and where requested make contact with Indigenous family members of children in out of home care.
2. Cultural care planning should include where ever possible opportunities and funding for children and young people to visit the land which their families are traditionally associated with.
3. Foster care training should include information about grief and loss and the particular trans generational experiences which many Indigenous children face so that support can be provided to children and young people to address this aspect of their experience and identity
4. Resources and services should be provided, where ever possible through Indigenous agencies, to assist family to address the concerns which led to the child or young person being placed in out of home care, with the objective of reunification where this is safe.
5. Support should be provided, including monetary support and priority housing assistance, to enable the placement of siblings together.
6. Cultural support plans should be mandated in legislation for all Aboriginal and Torres Strait Islander children or young people who have or will be in out of home care for 6 months or longer.
7. The completion and implementation of cultural support plans should be included in child protection data collected and reported on through the Australian Institute of Health and Welfare.
8. Indigenous agencies, and where legislation provides for recognition or designation then such Indigenous organisations, should have a funded role in the development and implementation of all cultural support plans for Indigenous children in out of home care.
9. Cultural care, including support for family members who engage with the child and include them in activities, should be costed and funded.
10. Indigenous agencies should be supported in developing their capacity both in terms of the roles which they fulfill and in terms of the numbers of Aboriginal and Torres Strait Islander children whom they look after in out of home care.

11. Resources to recruit Aboriginal and Torres Strait Islander foster and kin carers should be focused on local level campaigns and where possible conducted through Indigenous agencies.
12. An audit comparing the resources provided to Indigenous compared with all carers, taking the relative complexity of children and young people in care's needs into account, should be undertaken to determine if Indigenous carer's are being discriminated against.
13. Foster care support groups should be assisted and supported.
14. The financial and social benefit of increasing support for Aboriginal and Torres Strait Islander carers on a means tested basis should be supported and evaluated
15. Indigenous agencies should be funded to employ designated staff to assist non Indigenous agencies with non- Indigenous carers to provide cultural support to Indigenous children in their care. The number of linkage workers should be proportionate to the number of Indigenous children and young people in non-Indigenous out of home care.
16. Financial and other resources should be allocated to assist Indigenous family, friends and elders to support the cultural care of Indigenous children and young people in out of home care.
17. An audit of resources to support Indigenous children compared with all children who have contact with child welfare systems should be undertaken to determine if Indigenous children are being discriminated against
18. Consideration be given to what extra support is needed to assist Indigenous agencies with out of home care placements for Indigenous children with disabilities and complex needs.
19. That the recommendations no's 42 to 49 of *Bringing them home*, The report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, with respect to building the capacity of Indigenous children's organisations and the transferral of responsibility for Indigenous children to these organisations in accordance with their capacity and desire be implemented.
20. That resources be invested in vocational and tertiary education with respect to curriculum development and training for Indigenous peoples working in out of home care and Indigenous children's well- being more broadly.
21. Indigenous agencies be assisted where this is desired to develop culturally appropriate ways of measuring and recording the outcomes of their out of home services
22. Legislation and practice which supports the designation of Indigenous agencies and their mandatory inclusion in decision making with respect to the welfare of Indigenous

children and young people be affirmed in jurisdictions where it exists and enacted in jurisdictions where there is not yet provision for this mandated recognition and responsibility.

23. Research be undertake to investigate the long term well- being of Indigenous children looked after by Indigenous agencies compared with non- Indigenous agencies.
24. Research comparing and evaluating the outcomes for Indigenous children and young people placed in out of home care in the following four situations be undertaken: by an Indigenous agency with an Indigenous carer; by an Indigenous agency with a non-Indigenous carer, by an non Indigenous agency with a non-Indigenous carer and by a non- Indigenous agency with an Indigenous carer.
25. The outcomes for Indigenous compared with non- Indigenous children in long term out of home care be compared and evaluated.
26. That legislative provision requiring consultation with designated Indigenous organisations with respect to the ATSICPP be implemented in those jurisdictions which have not embedded this requirement in legislation and be retained where they are embedded in legislation.
27. The peak Indigenous organisation SNAICC, in conjunction with peak Indigenous bodies where they exist in each state and territory, together with the Children's Commissioner or Children's Guardian (SA) in each state and territory be funded to take joint responsibility for monitoring compliance with the Aboriginal and Torres Strait Islander Child Placement Principle, with particular reference to compliance with the requirement that cultural care be provided for those Aboriginal and Torres Strait Islander children who are placed in out of home care with non-Indigenous carers.

Appendix D

References

Atkinson R, 'Denial and Loss: the Removal of Indigenous Australian Children from their Families and Culture', (2005) 5(1) *University of Technology Law and Justice Journal* 71

Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Australians 2006*, Australian Bureau of Statistics, Canberra, 2006

Australian Institute of Health and Welfare (AIHW), *Child Protection Australia 2008-2009*, Child Welfare Series no 47, Canberra, 2010

Australian Parliament Senate Community Affairs References Committee, *Protecting vulnerable children: a national challenge: second report on the inquiry into children in institutional or out of home care*, Community Affairs References Committee, Canberra, 2005, available at: http://www.aph.gov.au/senate/committee/clac_ctte/completed_inquiries/2004-07/inst_care/report2/report.pdf (accessed 1 December 2010)

Ban P (2005), 'Aboriginal Child Placement Principle and Family Group Conferences', 58(4) *Australian Social Work* 384

Barber JG, Cooper L & Delfabbro PH (2000), 'Aboriginal and non-Aboriginal children in out of home care', 25(3) *Children Australia* 5

Beecher, S (2011), *LAC – implementing revised Assessment and Action Records*, SNAICC, Fitzroy North.

Bromfield LM, Higgins DJ, Osborn A, Panozzo S & Richardson N, *Out of home care in Australia: messages from research*, Australian Institute of Family Studies, 2005, available at: <http://www.aifs.gov.au/nch/pubs/reports/outofhome/outofhome.html> (accessed 1 December 2010)

Bromfield LM, Higgins DJ and Richardson N, *The recruitment, retention, and support of Aboriginal and Torres Strait Islander foster carers: a literature review*, Australian Institute of Family Studies and National Child Protection Clearinghouse, Melbourne, 2005

Bromfield LM, Higgins DJ and Richardson N, *Enhancing out of home care for Aboriginal and Torres Strait Islander young people*, Australian Institute of Family Studies and National Child Protection Clearinghouse, Melbourne, 2005

Bromfield LM, Higgins DJ and Richardson N, *Promising practices in out of home care for Aboriginal and Torres Strait Islander carers and young people: strengths and barriers*, Australian Institute of Family Studies and National Child Protection Clearinghouse, Melbourne, 2007

- Bromfield L, Richardson N & Higgins D, *Kinship care: a culturally appropriate practice framework for Aboriginal and Torres Strait Islanders* (presented at Blossoming of our Children: 10th Australasian Conference on Child Abuse and Neglect, Wellington, New Zealand, 14-16 February 2006)
- Butler-Bowdon T & Nowland S, *Aboriginal cultural awareness in children's services*, ARMSU Network, Advisory and Management Services, Adelaide, 2003
- Cashmore J (2006), 'Recent Australian Child Protection and Out of Home Care Research: What's been done and what needs to be done?', 31(2) *Children Australia* 4
- Cheers DA, *Evidence based practice in out of home care*, Faculty of Education and Social Work, University of Sydney, 2006 (thesis)
- Child Safety Commissioner (Victoria), *Great Expectations, supporting children and young people in out of home care to achieve at school*, State Government, Melbourne, 2007, available at: http://www.ocsc.vic.gov.au/downloads/great_expectations.pdf (accessed 1 December 2010)
- Chisholm R (1988), 'Aboriginal Children and the Placement Principle', 2(31) *Aboriginal Law Bulletin* 4
- Clark Y, Carver M & Longbottom J, *Review of Aboriginal Children in Non-Aboriginal Care in SA*, Department of Human Services, Adelaide, 2003
- Commission for Children and Young People and Child Guardian (Queensland), *Indigenous Child Placement Principle Audit Report 2008*, 2008, available at: <http://www.ccyppg.qld.gov.au/resources/publications/icpp.html> (accessed 1 December 2010)
- Commission for Children and Young People and Child Guardian (Queensland), *Views of Children and Young People in Foster Care*, 2008, available at: <http://www.yanq.org.au/content/view/1250/33/> (accessed 1 December 2010)
- Committee on the Rights of the Child (2005), *Consideration of Reports Submitted by States parties under Article 44 of the Convention – Concluding observations: Australia* (CRC/C/15/Add.268), available at: <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/CRC.C.15.Add.268.En?Opendocument> (accessed 1 December 2010)
- CREATE Foundation, *Indigenous children and young people in care - Experiences of care and connections with culture*, CREATE Foundation, Perth, 2005
- Darkinyung Language Group, *Darkinyung yada gudjagang = Strong healthy kids*, Darkinyung Language Group, Sydney, 2007
- Davis R & Dikstein J (1997), 'It just doesn't fit', 22(2) *Alternative Law Journal* 64

Delfabbro PH, Barber JG & Cooper L (2002), 'Children entering out of home-care in South Australia: Baseline analyses for a 3-year longitudinal study', 24(12) *Children and Youth Services Review* 917

Delfabbro PH, Barber JG & Cooper L (2003), 'Predictors of short-term reunification in South Australian substitute care', 82(1) *Child Welfare* 27

Department for Child Protection (Western Australia), *Review of the WA Aboriginal and Torres Strait Islander Child Placement Principles*, 2009, available at:
<http://www.community.wa.gov.au/NR/rdonlyres/5647BCE4-B734-43AF-BE76-C0A440908BF6/0/ATSICPPFinalReport2009.pdf> (accessed 1 December 2010)

Department for Families and Communities (South Australia) (2007), *Position Description: Principal Aboriginal Consultant*, 2007, available at:
<http://www.dfc.sa.gov.au/Pub/Portals/5/Vacancies/Principal%20Aboriginal%20Consultant.doc> (accessed 1 December 2010)

Department of Communities (Queensland), 'Foster Care – Aboriginal and Torres Strait Islanders', *Queensland Government*, available at:
<http://www.childsafety.qld.gov.au/fostercare/indigenous/index.html> (accessed 1 December 2010)

Department of Community Services (NSW), *2008/9 Annual Report*, 'Helping Aboriginal Families', available at:
http://www.community.nsw.gov.au/annual_report09/aboriginal_families.htm (accessed 1 December 2010)

Department of Community Services (NSW), *Fostercare Life Story Factsheet*, available at:
http://www.community.nsw.gov.au/DOCSWR/assets/main/documents/FOSTERCARE_LIFESTORY_FACT.PDF (accessed 1 December 2010)

Department of Families and Communities (South Australia), *2008/9 Annual Report*, available at:
<http://www.dfc.sa.gov.au/pub/tabid/252/itemid/1026/default.aspx> (accessed 1 December 2010)

Department of Health and Families (Northern Territory), *Aboriginal Children in Care*, NT Families and Children program, available at:
http://www.nt.gov.au/health/comm_svs/facs/foster_care/indigenouiscare.shtml (accessed 1 December 2010)

Department of Human Services (South Australia), *Review of Aboriginal Children in Non-Aboriginal Care in South Australia*, Social Justice and Country Division, Department of Human Services, Adelaide, 2003.

Department of Family and Community Services (Commonwealth), *Review of the Aboriginal and Islander Child Care Agency (AICCA) Program*, Final Report, 2005, available at:
[http://www.facs.gov.au/internet/facsinternet.nsf/vIA/indigenous/\\$File/AICCA_Report.pdf](http://www.facs.gov.au/internet/facsinternet.nsf/vIA/indigenous/$File/AICCA_Report.pdf) (accessed 1 December 2010)

Department of Health and Human Services (Tasmania), 'Out of Home Care', available at: http://www.dhhs.tas.gov.au/future_communities/reform_implementation_unit/dcyfs/program_and_strategies/out_of_home_care (accessed 1 December 2010)

Department of Human Services (Victoria), *Aboriginal Cultural Support Plan*, available at: http://www.cyf.vic.gov.au/placement-support/library/publications/cultural_support_plan (accessed at 1 December 2010)

Department of Human Services (Victoria), *Aboriginal Child Placement Principle: Guide*, Department of Human Services, Melbourne, 2002

Dodson M (1999), 'Indigenous Children in Care: Bringing Them Home, Keynote Address to Fostering the Future, 11th Biennial IFCO Conference, Melbourne', 24(4) *Children Australia* 7

Edwards C & Read P (eds), *The Lost Children: thirteen Australians taken from their Aboriginal families tell of the struggle to find their natural parents*, Doubleday, Sydney, 1989

Elarde P & Tilbury C (2007), 'The experiences of Aboriginal and Torres Strait Islander carers in the child protection system', 32(2) *Children Australia* 8

Gray M & Valentine B (2005), Devising practice standards for Aboriginal out of home care, 2(1-2) *Illinois Child Welfare* 116

Gonzalez-Mena J, *Multicultural Issues in Child Care*, 3rd ed, Mayfield Publishing Co, Mountain View (California), 2001

Hegar RL & Scannapieco M (eds), *Kinship foster care: policy, practice, and research*, Oxford University Press, New York, 1999

Higgins D (ed), *Indigenous community development projects: early learnings research report (vol 2)*, Telstra Foundation, Melbourne, 2005, available at: <http://www.aifs.gov.au/nch/pubs/reports/telstra2/telstra2.html> (accessed 1 December 2010)

Higgins DJ (2006), 'Protecting Indigenous children: views of carers and young people on out of home care', 75 *Family Matters* 42

Higgins DJ, Bromfield LM, Higgins JR & Richardson N, *Children with Complex Needs, perspectives of professionals from Aboriginal and Torres Strait Islander organisations, non-government agencies and government departments*, Australian Institute of Family Studies, Melbourne, 2007

Higgins DJ, Bromfield LM, Higgins JR & Richardson N, *Supporting Carers: perspectives of professionals from Aboriginal and Torres Strait Islander organisations, non-government agencies and government departments*, Australian Institute of Family Studies, Melbourne, 2007

Higgins JR & Butler N, *Promising practices in out of home care for Aboriginal and Torres Strait Islander carers, children and young people: profiling promising programs*, Booklet 1-4, Australian Institute of Family Studies and the Secretariat of National Aboriginal and Islander Child Care, Canberra, 2007

Hughes H (2007), 'Out of home care for Indigenous children and young people', 17(4) *Pointers: Bulletin of the Christian Research Association* 10

Jackson B, *The First Aboriginal Child Survival Seminar*, Victorian Aboriginal Child Care Agency in association with the Office of Child Care, Melbourne and Canberra, 1979

Lock JA, *The Aboriginal Child Placement Principle*, New South Wales Law Reform Commission, Sydney, 1997

Lynch P (2001), 'Keeping Them Home: The Best Interests of Indigenous Children and Communities in Canada and Australia', 23 *Sydney Law Review* 501

Monahan G & Young L (eds), *Children and the Law in Australia*, LexisNexis Butterworths, Sydney, 2008.

Mason J & Gibson C, *The needs of children in care: a report on a research project: developing a model of out of home care to meet the needs of individual children through participatory research which includes children and young people*, Social Justice and Social Change Research Centre, Sydney, 2004, available at: http://www.acwa.asn.au/Conf2004/acwa2004papers/08_Gibson.pdf (accessed 1 December 2010)

National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (NISATSIC), *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, HREOC, Sydney, 1997.

Office of the Children's Guardian (NSW), *Caring for Aboriginal & Torres Strait Islander kids: a resource for Aboriginal & Torres Strait Islander out of home care agencies*, Office of the Children's Guardian, Sydney, 2005

Pocock J (2010), *State of Denial: The Neglect and Abuse of Indigenous Children in the Northern Territory*, the Secretariat of National Aboriginal and Islander Child Care (SNAICC), Melbourne

Pocock J, *Their future, our responsibility: making a commitment to Aboriginal and Torres Strait Islander children*, SNAICC, Melbourne, 2001

Pocock J & Higgins J, 'Key commitments that SNAICC wants political parties to support for Aboriginal and Torres Strait Islander children and families', *SNAICC News*, November 2006, available at: <http://www.snaicc.asn.au/uploads/nwslt/00031.pdf> (accessed 1 December 2010)

Powell M & Withers J, *A question of safeguards: Inquiry into the care and circumstances of Aboriginal or Torres Strait Islander children and young people in care*, Community Services Commission, Sydney, 2001

Priest K, Coleman-Sleep B & Martin K, *Preparing the ground for partnership: exploring quality assurance for Aboriginal and Torres Strait Islander child care: a literature review and background paper*, Department of Family and Community Services (Commonwealth), Canberra, 2005

Richardson N, Bromfield LM, Higgins JR & Higgins DJ (2007), *Training Carers, perspectives of professionals from Aboriginal and Torres Strait Islander organisations, non-government agencies and government departments*, Australian Institute of Family Studies, Melbourne, 2007, available at:
<http://www.aifs.gov.au/nch/pubs/reports/promisingpractices/summarypapers/paper4.pdf>
(accessed 1 December 2010)

Rogers H, *Child protection and out of home care performance indicators*, Australian Institute of Health and Welfare, Canberra, 2006, available at:
<http://www.aihw.gov.au/publications/cws/cpohcpi/cpohcpi-c00.pdf> (accessed 1 December 2010)

Rowse T (2004), 'Many voices: reflections on experiences of Indigenous child separation', 39(3) *Australian Journal of Social Issues* 356

Senate Community Affairs References Committee Secretariat (August 2009) 'Forgotten Australians : A report on Australians who experienced institutional or out of home care as children' Commonwealth of Australia.

SNAICC, *Achieving Stable and Culturally Strong Out of Home Care for Aboriginal and Torres Strait Islander Children*, SNAICC, Policy Paper, Melbourne 2005, available at:
http://www.snaicc.asn.au/_uploads/rsfil/00061.pdf (accessed 1 December 2010)

SNAICC, *Footprints to where we are: a resource manual for Aboriginal and Torres Strait Islander children's services*, SNAICC, Melbourne, 2005

SNAICC, *Foster Their Culture - Caring for Aboriginal and Torres Strait Islander Children in Out of home Care*, SNAICC, 2008 available at:
http://srs.snaicc.asn.au/_uploads/rsfil/00262.pdf (accessed 1 December 2010)

Tilbury C (1998), 'Child protection policy and practice in relation to Aboriginal and Torres Strait Islander children in Queensland in the 1990s', 51(2) *Australian Social Work* 25.

Tomison AM & Stanley J (2001), *Strategic Directions in Child Protection: Informing Policy and Practice: Placement Decision-Making*, unpublished report for the South Australian Department of Human Services, 2001, available at:
<http://www.aifs.gov.au/nch/pubs/reports/SAbrief/SAbrief7.pdf> (accessed 1 December 2010)

Valentine B & Gray M (2006), 'Keeping them home: Aboriginal out of home care in Australia', 87(4) *Families in Society* 537

Van Diermen S, Johns V & Press F (ed), *From the flat earth: a guide for child care staff caring for Aboriginal children*, Childrens Services Resource & Advisory Program (Northern Region), Darwin, 1995

Wilkinson D (1994), 'Aboriginal Child Placement Principle: customary law recognition and further legislative reform', 3(71) *Aboriginal Law Bulletin* 13

Wilson TJ, *In the best interest of the child?: Stolen children: Aboriginal pain, White shame*, Link-Up (NSW), Canberra, 1997

Wise S & Sanson A, *Child care in cultural context: issues for new research*, Australian Institute of Family Studies, Melbourne, 2000