

**Aboriginal and Torres Strait Islander
Child Protection Outcomes Project
Report on national and international
child protection frameworks for
Indigenous children**

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Executive Summary

A range of legislative models for the delivery of child welfare services to Indigenous communities have developed in a number of countries within different historical and political contexts. In each country however, there has been a resurgence of Indigenous political demands for greater self determination and control over family life, particularly since the 1970s. And in various countries throughout the world there are profound changes underway. For example Aboriginal peoples in Canada, Australia, New Zealand and the United States are '*locked in struggles to sever the bonds of dependency and underdevelopment*'. A transfer of real authority over children and families to Indigenous communities is widely considered as an important means of achieving long-term empowerment of Indigenous peoples in the area of children's wellbeing. The legislative models reviewed range from the transfer of legislative, judicial and administrative functions to Indigenous communities such as those under the *Indian Child Welfare Act 1978* in the United States, to those which retain all of these functions within the mainstream child welfare system such as under the *Children Young Persons Care and Protection Act 1998* in New South Wales.

Unfortunately there is limited information available on Indigenous child welfare services and even more limited is research conducted by and for Indigenous organisations. The research conducted was collated using extensive database searches and by writing to departments and other Indigenous child welfare providers. In Australia, a series of standard questions and some specific questions were sent to each State and Territorial Department mandated to administer child welfare.¹ Where Indigenous research has been available, such as a comprehensive literature review of Indigenous Canadian child welfare, it has been examined. Particular emphasis has been given to the Canadian Province of Manitoba due to its perceived benefits to Indigenous children, families and communities as a whole and also because it is a model that has possible applications to Australia, particularly as it provides for the phased devolution of child welfare services to First Nations communities.

¹ Where responses were received, they are included in the report. Reminder letters were sent to all Agencies who did not respond to the first letter.

Also reviewed are the various modes of service delivery either identified through existing literature or by service providers. Due to limitations with available literature, the time frame and the budget for this review, the report has generally drawn upon the primary planning or service delivery approaches and models applied within a particular jurisdiction. For example in the United States, family preservation models are widely used in Native American communities and in New Zealand the use of Family Group Conferencing in Maori communities is mandated in the *Children, Young Persons, and Their Families Act 1989*. As such, a greater focus has been given to these issues within these jurisdictions. For example, Family Group Conferencing has been applied in many jurisdictions, but it has tended to be adapted and often applied to the mainstream, whereas the Maori Family Group Conferencing model, which was the first of its kind and the model to which other jurisdictions refer, provides a better framework from which to gain an understanding of its applicability to Aboriginal and Torres Strait Islanders children, families and communities in Australia.

The report has been divided into jurisdictions starting with an overview of Australia and the states and territories within it and it follows with a review of Canada and its provinces, the United States and finally New Zealand. Where appropriate a critique of the particular jurisdiction has been made.

The report then thematically considers some general issues relating to the delivery of child welfare services to Indigenous communities such as cultural competence and self government and self determination. The report concludes with a set of recommendations.

Australia

Despite the call from peak Indigenous and non-Indigenous groups for national legislation covering child welfare services to Indigenous communities, Australia does not have one unified child welfare system, rather each state or territory has statutory responsibility for the provision of child welfare services.² As such each state and territory has its own guidelines and policies and amongst other things, this affects the data collected because it is not strictly comparable. For example data on notifications, investigations and substantiations differ because jurisdictions use different definitions and processes and different ways of identifying and collecting the Indigenous status of children and young people in the child protection system.³ National data covers three areas: -

- Child protection notifications, investigations and substantiations;
- Children under care and protection orders
- Children in out-of-home care.

In 2003–04, Indigenous children were much more likely to be the subject of a substantiated finding of neglect than other children. In Western Australia 43% of Indigenous children in substantiated cases were the subject of a substantiated finding of neglect, compared with 27% of other children and in the Northern Territory 40% of Indigenous children in substantiated cases were the subject of a substantiated finding of neglect, compared with 26% of other children.⁴ In Victoria, a relatively high proportion

² See Appendices for a table of the departments that are responsible for operating the child protection system in each state and territory. From Bromfield L, and Higgins D, *National comparison of child protection systems*, Issues Child Abuse Prevention, No 22, Autumn 2005, at 4-5

³ Australian Institute of Health and Welfare (AIHW), Australian Bureau Of Statistics and Australian Institute of Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, 2005 Chapter 11, Community Services, at 209
<http://www.aihw.gov.au/publications/ihw/hwaatsip05/hwaatsip05.pdf>

⁴ The AIHW pointed out that it is “important to note that these variations in the distribution of types of abuse or neglect across jurisdictions are likely to be the result of differences in what is classified as a substantiation as well as differences in the types of incidents that are substantiated. In Western Australia a relatively high proportion of substantiations were classified as either ‘physical abuse’ or ‘sexual abuse’, as the child protection data from that state includes only child abuse cases; cases which require

of substantiations were classified as ‘emotional abuse’, and in Queensland there was a high proportion of substantiations classified as ‘neglect’. It is suggested that these figures probably reflect those jurisdictions’ greater focus on those particular concerns.

Adoption

Between 1999–2000 and 2003–04 there were 15 registered adoptions of Aboriginal and Torres Strait Islander children in Australia. The Aboriginal Child Placement Principle is also applicable to the adoption of Indigenous children. Eight of the 15 registered adoptions were ‘placement’ adoptions meaning that no pre-existing relationship between the parent and the child existed. Of these eight adoptions recorded four were by Indigenous parents and four were by other parents.⁵ Formal adoption of Aboriginal and Torres Strait Islander children is not the preferred option for children who can no longer live with their parents. Rather informal arrangements are generally made for them to live with relatives or other members of their community.⁶

The AIHW report on the Health & Welfare of Australia’s Aboriginal and Torres Strait Islander Peoples also discusses the issues relating to pregnancies and the health of newborns. The report highlights the fact that the percentage of Indigenous teen pregnancy is higher than that for non-Indigenous teens, and that a number of risk factors exist that are affecting the health and well being of Indigenous babies. For example the AIHW reports that babies of Indigenous mothers, in the period of 2000-02 were twice as likely to be of low birth weight compared with babies born to non-Indigenous mothers (13% compared to 6%). It is reported that this is caused by a number of factors including the mother’s nutritional status, smoking and other risk behaviours, as well as illness during pregnancy.⁷ Low birth weight babies have a greater risk of poor health and death and are more likely to develop disabilities.⁸

a family support response (predominantly neglect and emotional abuse matters) are dealt with and counted separately.” Ibid at 211

⁵Australian Institute of Health and Welfare. *Child protection Australia* (2002-03), Australian Institute of Health and Welfare, Canberra 2004

⁶ Human Rights and Equal Opportunity Commission (HREOC), *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, Commonwealth of Australia, Sydney, 1997

⁷ Horter BL, Victoria CG, Menezes AM, Halpern R & Barros FC, “Low Birthweight, Preterm Babies and Intrauterine Growth Retardation in Relation to Maternal Smoking”, (1997) 11 *Paediatric and Perinatal*

Aboriginal and Torres Strait Islander experiences are not dissimilar to those experienced by other Indigenous people throughout the world and colonial policies of dispossession and forced removals of children from their families are part of the history of Indigenous child welfare services in Australia.

Child Welfare in Australia

In 1997 the Human Rights and Equal Opportunity Commission released its report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families. The report entitled 'Bringing Them Home' brought legislation and policies of forced and unjustified separations of Aboriginal and Torres Strait Islander children into the public arena. The importance of understanding contemporary separations in the context of colonial policy towards Indigenous Australians, with particular reference to the impact of the removal of children from their families was highlighted.⁹

Findings in relation to current child welfare

The National Inquiry found that Indigenous children continue to be over-represented in their contact with child welfare agencies across the country. As of 30 June 2004 the rate of Indigenous children in out-of-home care was around seven times the rate for other children. The rate of Indigenous children in out-of-home care was 13 times higher than for all children in Victoria and nine higher than for all children in NSW.¹⁰

The intergenerational effects of past removals, poor socio-economic conditions in communities, and systemic racism are all factors contributing to the ongoing

Epidemiology, , 140–51; and Kramer MS, "Socioeconomic Determinants of Intrauterine Growth Retardation", (1998) 52(S1) *European Journal of Clinical Nutrition*, , S29–33, in AIHW, op cit at 79

⁸ Leeson CP, Kattenhorn M, Morley R, Lucas A & Deanfield JE, "Impact of Low Birthweight and Cardiovascular Risk Factors on Endothelial Function in Early Adult Life", (2001) 103(9) *Circulation* 1264–8; and Mick E, Biederman J, Prince J, Fischer MJ & Faraone SV "Impact of Low Birthweight on Attention-Deficit Hyperactivity Disorder", (2002) 23(1) *Journal of Development & Behavioural Pediatrics* 16–22 in *ibid*

⁹ See Libesman T, "Child Welfare Approaches for Aboriginal Communities: International Perspectives", (2004) 20 *Child Abuse Prevention Issues Paper*, <http://www.aifs.gov.au/nch/issues/issues20.pdf>

¹⁰ AIHW op cit at 212

separations of Indigenous children from their families. Moreover, the cultural difference between welfare departments and communities add to reasons why Indigenous children continue to be removed. The HREOC Inquiry heard from Indigenous communities across Australia about the need for resources to implement programmes, improve the wellbeing of their children. The Inquiry also revealed the ineffectiveness of child welfare departments' intervention in Indigenous child protection. This is compounded by the fact that a great deal of fear and mistrust by Indigenous communities continues to exist today. The Inquiry concluded that;

*“Departmental attempts to provide culturally appropriate welfare services to Indigenous communities have not overcome the weight of Indigenous peoples historical experience of ‘The Welfare’ or the attitudes and structures entrenched in welfare departments. For many Indigenous communities the welfare of children is inextricably tied to the wellbeing of the community and its control of its destiny. If welfare services are to address Indigenous children’s needs they need to be completely overhauled . . . Ultimately child welfare appropriate to each community and region should be negotiated with those whose children, families and communities are the subjects of the system. Negotiation clearly implies empowerment of Indigenous parties and recognition of their true partnership in the reform process”.*¹¹

Despite the results of the Inquiry, this report found that Indigenous people in Australia are still struggling with governments and departments to ensure that their children and families receive appropriate services. Communities for the most part are not involved in all stages of program development and this is resulting in inappropriate services or a lack of services where they are most needed.

Recommendations with respect to child welfare legislation

The HREOC National Inquiry recognised the need to address the underlying social and economic causes of child abuse and neglect and the underlying colonial practices that continue to impact on Indigenous families even today. The Inquiry made a number of

¹¹ HREOC, op cit at 458-459

recommendations including legislative reform in the context of principles of self determination.

Recommendation 43a proposes a negotiation process between governments and Indigenous organisations to establish a new legislative framework, recognising the need for Indigenous peoples' involvement in the creation of a new framework. The Inquiry also recognised that a negotiation process at a community level was needed due to the fact that not all communities are the same and a 'one size fits all approach is not appropriate' (43b (2)). A minimum set of standards for child welfare and juvenile justice legislation was recommended (44). The Inquiry proposed that a child's Indigenous status must be recognised and considered in any children's court matter and that the child must be separately represented, (50) and the Inquiry proposed that where placement is with a non-Indigenous carer, principles of family reunion, continuing contact with the child's family and community, and the proximity of the carer to the child's family and community, should guide choice of a carer (51d). These recommendations have not been adopted in any jurisdiction. The changes to New South Wales' legislation after the National Inquiry are discussed below.¹²

Australian Child Welfare Reform

In the past 12 months a national focus on child protection has emerged with reports such as the audit of Australian Research into out-of-home care¹³ and the National Plan for Foster Children, Young People and their carers 2004-2006. And in the next 12 months, the National Child Protection Clearinghouse will conduct an audit of Australian child protection research.¹⁴

Most state jurisdictions have also been focusing on child welfare reform and most have either recently undergone or are presently undergoing child protection reforms, including the introduction of new legislation. The reform processes have generally

¹² Libesman, op cit

¹³ See Cashmore & Ainsworth, *Audit of Australian out-of-home care research*, Association of Children's Welfare Agencies Inc., Sydney, 2004

¹⁴ See Bromfield & Higgins, op cit at 1,

included a review of the child protection systems as they relate specifically to Indigenous children and families. The following provides an overview of the child protection systems in each state or territory and where relevant an overview of the reform processes as well as an outline of the legislation in each jurisdiction.

New South Wales

The *Children and Young Person's Care and Protection Act* 1998 provides the legislative framework for child protection in New South Wales and is administered by the Department of Community Services.

In 1994, a review of the *Children (Care and Protection) Act* 1987 was initiated by the New South Wales Premier and Minister for Community Services. The review identified ways child protection services could be improved by implementing a new legislative structure and made a number of recommendations specifically with respect to Aboriginal and Torres Strait Islander children.

Recommendation 6.3 from the Legislative Review Committee proposed that the Minister for Community Services should be given the power to delegate certain functions to Aboriginal and Torres Strait Islander people, thereby providing Aboriginal and Torres Strait Islander people with a greater degree of self determination in the provision of services to their children. The report noted that there was community support for including the concept of self determination in the legislation and noted also that Aboriginal and Torres Strait Islander people expressed the view that greater control over child protection would ensure more culturally appropriate and effective protection, including a greater emphasis on prevention and support programmes. Nevertheless the recommendations with regard to these matters were indecisive and failed to transfer any decision-making powers in child protection matters. This is contrary to the recommendations made in the National Inquiry¹⁵, which recommended a process of negotiation with Aboriginal communities with regards to legislative, judicial and

¹⁵ HREOC, op cit

administrative responsibilities. What the NSW Legislative Review Committee envisaged appears to be less about self determination and more about delegated functions in service delivery. Consequently its recommendations and the subsequent results fall short of the transfer of child protection functions that have already occurred in the United States, New Zealand and most parts of Canada.

The NSW Children and Young Person's Care and Protection Act 1998

If the NSW Legislative Review Committee's recommendations with regards to self determination fall short of international standards, it would appear the principles of Indigenous self determination have been further watered down in NSW with the *NSW Children and Young Person's Care and Protection Act 1998* implementing a "self determination" provision which falls short of the National Inquiry and even the Legislative Review Committee's recommendations.

Section 11 provides: "*Aboriginal and Torres Strait Islander Self-determination.*

It is a principle to be applied in the administration of this Act that Aboriginal and Torres Strait Islander people are to participate in the care and protection of their children and young persons with as much self-determination as is possible."

To assist in the implementation of the principle in subsection (1), the Minister may negotiate and agree with Aboriginal and Torres Strait Islander people to the implementation of programs and strategies that promote self determination. This section does not recognise that Aboriginal and Torres Strait Islander peoples have rights as a group to control their children. The provision is unclear and does not provide a definition to understand what is meant by the term self determination. Rather this is left to the discretion of the Minister, who only has the power to outsource programmes and discuss strategies with Aboriginal and Torres Strait Islander communities. Moreover, it fails to provide legislative safeguards as to how, and by whom, resources and programs should be implemented.

The legislation does however impose a positive obligation on the Minister to consult and facilitates participation. The Legislative Review Committee made a similar

recommendation to the National Inquiry with respect to consultation with relevant Aboriginal and/or Torres Strait Islander people and organisations about all significant decisions affecting Indigenous children. They recommended that a requirement to consult about all relevant decisions, not just decisions about placement, be included in the legislation.

Section 12 of the *Children and Young Persons (Care and Protection) Act 1998* provides that:

“Aboriginal and Torres Strait Islander families, kinship groups, representative organisations and communities, be given the opportunity, by means approved by the Minister, to participate in decisions made concerning the placement of their children and young persons and in other significant decisions made under this Act that concern their children and young persons.”

The provision undoubtedly weakens the principle of self determination further in that the means of participation has to be approved by the Minister. Further it fails to provide a method for identifying or accrediting “representative” or “appropriate” Aboriginal and/or Torres Strait Islander organisations. The provision places Aboriginal families’ and communities’ capacity to have input into the decisions over their children at the discretion of the Minister and the mainstream processes as a whole. This appears to give rise to a disparity between modern Australian knowledge and its application, given the fact that it is now widely accepted, including within Australian reviews, that the interventions of mainstream governments and departments have failed to address Indigenous children’s needs.¹⁶

The Review Committee recommended that a child be placed with:-

A member of the child’s or young person’s extended family or kinship group, as recognised by the Aboriginal and Torres Strait Islander community to which the child or young person belongs; or

¹⁶ Cunneen C, & Libesman T, *A Review of International Models for Indigenous Child Protection*, A report prepared for the Department of Community Services, 2002, <http://www.austlii.edu.au/> and Libesman, op cit

If it is not practicable or would not be in the best interests of the child or young person to be so placed, then they may be placed with a member of the Aboriginal and Torres Strait Islander community to which the child or young person belongs.

This order of placement can be displaced by a court if it is in the best interests of the child to do so, where the child is to remain with an Indigenous carer.

This recommendation was adopted in the *Children and Young Person (Care and Protection) Act 1998* however the test from the 1987 legislation applies if the placement is to be with a non-Aboriginal family. That is, the order of placement can only be displaced if it is not practicable, or the placement would be detrimental to the child. Pursuant to section 13 (d), where a child is placed with a non-Aboriginal carer, the Director-General must consult with the child's extended family or kinship group and Aboriginal and Torres Strait Islander welfare organisations as are appropriate to the child. In accordance with section 13 (6), if a child or young person is to be placed with a non-Aboriginal carer, the principle guiding their placement – subject to the best interests of the child, and if the child is old enough his or her own wishes – is that a fundamental objective must be reunion with the child's family or community and continuing contact with the child's culture and community.

In November 2001, the *Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill 2001(2)* was passed by both houses of Parliament thereby shifting the focus of the *Children and Young Persons (Care and Protection) Act* from ongoing assistance to vulnerable families in need of assistance to the placement of children permanently where the court assesses no “realistic possibility” of reunion. Section 78A of the amended Act provides for permanency planning, section 78A (3) provides that a permanency plan for an Aboriginal or Torres Strait Islander child must comply with the Aboriginal and Torres Strait Islander Child and Young Person Placement Principle in section 13, and section 78A (4) provides limitations on when an Aboriginal or Torres Strait Islander child can be permanently placed with a non-Aboriginal or non-Torres Strait Islander person or persons. It is acknowledged that

children need stability and for many in the child protection system this does not occur, however permanently removing Aboriginal and Torres Strait Islander children from their families is not the most appropriate solution and there needs to be an awareness at all levels of the legacies of past practices of removing Indigenous children from their families and communities.

Aboriginal and Torres Strait Islander communities have been consistently calling for a holistic community and family response to the needs of children. An individualistic approach that focuses on the child's needs without proper consideration of their parent/s' and communities' circumstances has been criticized by Indigenous groups in Canada, New Zealand and Australia as failing to take into account Indigenous understandings of family and children.

Service Delivery

There are some programmes being delivered in New South Wales as identified on the Department's website.¹⁷ They include the Miimali Aboriginal Community Association¹⁸, the Merana Aboriginal Community Association¹⁹, Wandiyali – Burri program²⁰ and the Aboriginal family support service in Dapto.²¹

¹⁷ www.community.nsw.gov.au

¹⁸ The Miimali Aboriginal Community Association services Blacktown, Doonside and Mt Druitt. Funding of \$250,000 plus a one-off establishment grant of \$50,000 has been secured through an initiative known as the Blacktown Aboriginal Strategy, one of the components that make up the larger Western Sydney Aboriginal Child Youth and Family Plan (WSACYFP) 2003-2006. See DoCS, *Working together with families and communities, Inside Out*, http://www.community.nsw.gov.au/html/news_publications/insideout/insideout_2005/JanFeb05/05JF-regions.htm

¹⁹ The Merana Aboriginal Community Association is another association that has been funded under an initiative known as The Aboriginal Child Youth and Family Strategy (ACYFS). It is said to focus on improving outcomes for Aboriginal children, young people, families and communities by looking at innovative ways to work with families that are flexible and culturally responsive, and connects them to their local community.

²⁰ DoCS Media Release, 24 September 2004

http://www.community.nsw.gov.au/html/news_publications/media_releases/media_240904a.htm
Announced September 2004 was the funding of \$170,000 to the Hunter-based Wandiyali Aboriginal and Torres Strait Islander Inc for the Burri programme. Burri, which means baby in Worimi language, supports young Indigenous parents who may be socially disadvantaged, homeless and isolated from community services. It is a six-week program which provides pre-natal parenting advice and support, individual and group counselling and support in access services. Burri includes Elders in the programme, who pass down birth rites through cultural teachings. The program provides home and centre-based counselling and parenting support, group sessions where young parents can meet in a social environment so that parenting skills can be improved, and a referral service. There are both male caseworkers to work

Research

In the response to our request for information,²² the NSW Department of Community Services pointed towards the internal discussion paper entitled ‘Aboriginal families: the need for community based parent support’ published in 2003 and the literature review about Prevention and Early Intervention which includes a chapter about Indigenous children, families and communities on their website.²³ Chapter 8 of the literature review looks at early intervention and prevention programmes as they relate to Indigenous communities.²⁴ It outlines the need for cultural awareness and cultural partnership, the allocation of more resources and funding, and ensuring that the services delivered are of a high quality, notably that funding and programme decisions should be long term to avoid repeating the mistakes of past ad hoc pilot programmes. The Department also highlighted the fact that they had funded Macquarie University and Charles Sturt University to undertake research into Child Care Choices of Indigenous Families as part of the existing Child Care Choices Longitudinal Study and is due for completion in 2008.

with dads and female caseworkers who can work with new mothers. Overall the program tries to deliver practical parenting skills in a culturally respectful way.

²¹ This Aboriginal Intensive Family Based Service (IFBS), named Birralee (meaning children), was established in Dapto. The service provides short-term intensive home-based service to Aboriginal families. It is a family preservation service and is designed to provide individualised and immediate assistance to families where a child is at risk of being placed into care.

²² Each State or Territory was asked a set of generic questions as well as some specific questions. The specific questions asked whether there were any best practice models or any other initiatives, developments or issues that stood out in their jurisdiction? How is the Indigenous Placement Principle being promoted and implemented? And where responses were received initially, departments were also asked what the most senior position held by an Indigenous person in the specific department was.

²³ Watson J, White A, Taplin S, & Huntsman L, *Prevention and Early Intervention Review*, The Department of Community Services, www.community.nsw.gov.au

²⁴ Ibid citing Cunneen & Libesman, op cit; Engeler T, McDonald MA, Miller ME, Groos A, Black ME & Leonard D, *Review of current interventions and identification of best practice currently used by community based A and TSI health service providers in promoting and supporting breastfeeding and appropriate infant nutrition*, Office for Aboriginal & Torres Strait Islander Health Service, Canberra, 1998; Franks A, *Northern Rivers Area Health Service: Health promotion*, NSW Health 2001; Memmott P, Stacy R, Chambers C & Keys C, *Violence in Indigenous Communities*, Commonwealth of Australia, Canberra, 2001; Watson J, *Aboriginal families, the need for community based support*. NSW Centre for Parenting and Research, unpublished discussion paper, 2002; Podnieks M, *Ngamangamalinya: Kampikampilinya – Mother and child: father and child*,. Final report Wilcannia Parenting project, Far West Area Health Service, 2000; Stanley J, Tomison AM & Pocock J, “Child abuse and neglect in indigenous Australian communities”, (2003) 19 *Child Abuse Prevention Issues Paper* <http://www.aifs.gov.au/nch/issues/issues19.pdf>

Queensland

The *Child Protection Act 1999* provides the legislative framework for child protection in Queensland and it is administered by the Department of Child Safety. It is the only jurisdiction in Australia to have a separate specialist department for child services rather than a department that covers a broad scope of services such as human services, community service and family services.

Over the last two years the Queensland child protection system has undergone widespread reform as a result of the 2004 Crime and Misconduct Commission public Inquiry “*Protecting Children: An inquiry into abuse of children in foster care*” and the subsequent Blueprint for implementing the recommendations of the CMC inquiry.²⁵ The CMC inquiry’s report made 110 recommendations and recommended that the legislative framework be changed. Divided into nine chapters, the report touches on issues relating to Indigenous Children in Chapter 3 but examines particular issues affecting Aboriginal and Torres Strait Islander children and communities in Chapter 8. The Report concluded that over a long period of time the Queensland child protection system had failed to deliver the support and services that are required for children at risk of abuse and that Indigenous children were over-represented in the child protection system with 24% on child protection orders compared to a population of only 5.7%.²⁶

The CMC noted that it had consulted widely with Indigenous communities and representatives of relevant agencies. Whilst specific issues were identified the Commission nevertheless noted that;

²⁵ Crime and Misconduct Commission, *Protecting Children: An inquiry into abuse of children in foster care*, Chapter 8 – Indigenous Children, January 2004, at 229; Forster, P, for the Government of Queensland, Department of Child Safety, *A blueprint for implementing the recommendations of the January 2004 Crime and Misconduct Commission report*, <http://www.childsafety.qld.gov.au/publications/blueprint/index.html>

²⁶ Crime and Misconduct Commission, op cit, and Information provided by the Queensland Department of Child Safety, Office of the Director-General – Robin Sullivan, June 2003

“It is not the view of the Commission that there need be separate regimes for protective services applying to Indigenous and non-Indigenous children. While there are clearly issues specifically relating to Indigenous children that are not present (or not to the same degree) for most non-Indigenous children, this does not mean entirely separate services and/or delivery mechanisms need to be established.”²⁷

Consequently the commission envisaged ‘one overarching child protection system applying to all children²⁸’ and so the recommendations specifically relating to Indigenous children are also to be read in conjunction with all the other chapters.

The Blueprint was released to implement the 110 recommendations and in 2004 the first major report under a performance reporting framework was established to monitor the implementation of the recommendations of the inquiry and Blueprint entitled the ‘*Child Protection Queensland: 2004 Child Protection System ‘Baseline’ Performance Report*’ was released²⁹. Subsequently, on 22 March 2005 the Minister for Child Safety released a report, ‘*Reform of Queensland’s Child Protection System – One Year On*’.³⁰ It prescribed a three-stage process for achieving the changes to the child protection system. Some of the recommendations and their implementation are discussed below.

Child Protection Act 1999 (Old)

The CMC recommended at 8.5 that the Indigenous child placement principle be only made if it is in the best interests of the child and Recommendation 8.6 says where placement is a non-Indigenous one then contact should remain with the kinship group where it is in the best interests of the child. Accordingly stage one of the legislative changes re-ordered the principles for administration of the *Child Protection Act 1999* so that the paramountcy principle applies to the whole operation of the Act. As such the welfare and best interests of the child are paramount considerations in relation to the Indigenous child placement principle, s83.

²⁷ Crime and Misconduct Commission, *ibid*

²⁸ *Ibid* at 5

²⁹ <http://www.childsafety.qld.gov.au/publications/baseline/>

³⁰ <http://www.childsafety.qld.gov.au/publications/documents/blueprogressreform.pdf>

Stage Two of the legislative reforms commenced 1 May 2005. Stage Two requires case plans to be implemented for all children in need of protection and requires that arrangements be made within those plans for maintaining the child's ethnic and cultural identity.³¹

Stage Three of the legislative reforms, which were introduced into parliament 24 May 2005 with the intention to commence in 2006, includes refining the Indigenous child placement principle.³² This includes what the Director-General will have regarded to if an Indigenous child cannot be placed according to the principle. According to the Department of Child Safety, this stage also includes the requirement that carers, including kinship or relative carers, are regulated to ensure the safety and protection of children in care, although the department did not outline the proposed regulations. Children will also be required to have contact with appropriate members of their community and language group.³³ Further, in accordance with Recommendation 8.11, the role of the Recognised Aboriginal and Torres Strait Islander entities that must be given an opportunity to participate in significant decisions is also clarified at this Stage. This recommendation was made to remove any ambiguity as to what type of 'decisions' required consultation.

At present s6 states:-

1) A decision of the chief executive or an authorised officer under this Act about an Aboriginal child or a Torres Strait Islander child must be made only after consultation with the recognised Aboriginal or Torres Strait Islander agency for the child.

³¹ Information provided by the Queensland Department of Child Safety, Office of the Director-General – Robin Sullivan, June 2003.

³² See Government of Queensland, Department of Safety, *Reform of Queensland's Child Protection System - One Year On, Progress of A Blueprint for Implementing the Recommendations of the Crime and Misconduct Commission Report "Protecting Children: An Inquiry into Abuse of Children in Foster Care*, 22 March 2005, www.childsafety.qld.gov.au

³³ See Recommendation 8.6 of the CMC Report says where placement is with a non-Indigenous carer, then contact should remain with the kinship group where it is in the best interests of the child.

(2) However, if consultation is not practicable before making the decision because the agency is not available for consultation or urgent action is required to protect the child, the chief executive or an authorised officer must consult with the agency as soon as practicable after making the decision.

Whether this would also require the authorised officer to review the decision if the consultation revealed the agency did not agree with the decision is not clear as there is nothing expressly requiring this in the legislation.³⁴

Stage three legislation will be overseen and implemented by the Legislation Reference Group, membership of which includes Queensland Aboriginal and Torres Strait Islander Child Protection Partnership and the Indigenous Support and Development Branch, and it is envisaged that there will be further consultation with Indigenous networks, including from remote areas.

Service Delivery

The department has highlighted the fact that in parallel to the introduction of new legislation they have also introduced a new practice manual that will be rolled out in conjunction with the legislation. For example, the Practice Manual has been upgraded to include reference to the Indigenous Child Placement Principle. Phase 1 of the Practice Manual commenced on 7 March 2005 and Phase 2 on 3 May 2005. The Department highlighted that *“at each of these stages, the development of the Practice Manual has involved close and considered consultation with Aboriginal and Torres Strait Islander stake holders. Consultation strategies used for the development of the Practice Manual and the amendments to the legislation are:*

- *Regular meetings with members of QATSICPP;*
- *Regular meetings with members of the State wide Taskforce;*

³⁴ See also s83(3).

- *Regular communication and consultation with the Indigenous Support and Development Branch;*
- *Incorporating feedback and recommendations from a report commissioned by the Recognised Agency Partnership;*
- *Customising Structured Decision Making tools to ensure cultural considerations;*
- *Involving Recognised Agency as a partner in the lead site implementation of Structured Decision Making; and*
- *Distributing draft copies of the manual to external partners and key stakeholders for comment/feedback prior to endorsement to ensure the needs of Indigenous children and their families have been addressed.”*

Recommendation 7.5 of the Blueprint report relates to Residential Care Placements for Indigenous Children and noted that only two of the 18 residential services in Queensland were Indigenous services. The Department has advised that there are currently 26 funded residential care services in Queensland including group homes and three of those services are Indigenous. The three services Beema Yumba in Cherbourg, BlackBoy Outstation located at Woorabinda³⁵ and Dundalli Residential Care and Support Service in Brisbane include group homes, rostered youth worker models and supported independent living services. Another two residential care services targeting Indigenous youth are expected to begin delivery in the near future,³⁶ although funding has been allocated for these services to Anglicare North Qld Ltd, who are negotiating for a property in Mareeba and the Churches of Christ Care in Mount Isa. The Queensland Department has noted that the CMC’s recommendation for residential care shelters for long term placements for Indigenous children ‘reflects the wider need for

³⁵ For a small case study on BlackBoy Outstation see Community Justice Groups, *Yaldilda – Standing Strong*, p.62, <http://www.indigenous.qld.gov.au/pdf/yaldilda/YALDCH5.pdf>. A description of the use of Outstations is also provided.

³⁶ Anglicare North Qld Ltd is funded for an Indigenous Residential Service and the Churches of Christ Care has been approved for a new non-family based care service in Mount Isa.

these services' and it is attempting to rectify the situation with the funding of new places and the ongoing recruitment and training of Indigenous staff. Indigenous service providers are also being actively encouraged to apply for alternative care funding to provide culturally appropriate placement options. And a new recruitment campaign is being launched in September for Indigenous carers.

Best Practice Models

As part of this review we asked the Department whether there were any best practice models that stood out in Queensland. The Director, Robin Sullivan noted the following.

The Child Care and Family Support Hub Strategy has been introduced as part of the Queensland Child Care Strategic Plan 2000-2005. As part of the Plan new models of service delivery are being established or piloted. The hub has been described as a 'multi-functional service that may take the form of a "one-stop-shop" or a network of services that work together to ensure seamless access to a range of services.' \$3.9M was committed over the period of 2000-2004 to develop the 24 hubs with six located in Aboriginal and Torres Strait Islander communities. Many of the hubs employ Child and Family Support (CAFS) Workers, which are funded through the RAATSICC child care funding programme. These workers support carers and families of children who appear to be at risk. With the recognition that the boundaries between child protection statutory work and diversionary/family support are important, in those sites included in the evaluation, CAFS Workers liaised with Child Safety Officers from the Department but did not undertake statutory duties but rather provide family support. It was also noted that the Community assumed collective responsibility for child safety notifications via the Community Child Protection Committees rather than the CAFS Worker having to undertake this responsibility alone. The necessity for these boundaries was discussed in the CMC Report.³⁷ In the Department's response they highlighted the need for the roles and responsibilities of CAFS Workers, other Indigenous family support workers, RAATSICC workers and other Indigenous

³⁷ Crime and Misconduct Commission, op cit

Statutory workers to be negotiated with Indigenous communities and the need for protocols to be established.

Work towards service integration has also been supported with the recent agreement to undertake a project entitled Meeting Challenges, Making Choices Strategy (MCMC). The agreement between the Departments of Communities, Child Safety, Education and Arts, Aboriginal and Torres Strait Islander Policy, Corrective Services and Queensland Health aims to develop models of integrated human service delivery in Indigenous communities.³⁸

The Department also noted that it is responding to the Blueprint recommendations and ongoing service delivery needs with the following priorities listed. The implementation of Recognised Agency functions across the State, future demand, addressing internal capacity, placement options, prevention and early intervention, carer recruitment, SCAN, therapeutic services, accountability, human resources including Aboriginal and Torres Strait Islander Employment Strategy and information services.

Aboriginal and Islander Child Care Agencies

Recommendation 8.2 noted that:-

“AICCA’s that have been de-funded, should be replaced by appropriate independent Indigenous organizations that have the support of their local community, and that, wherever possible, these organizations employ staff with backgrounds in child protection.”³⁹

Again funding was highlighted as a major problem and this issue was apparently a central issue found in the submissions.⁴⁰ In a submission by PeakCare is suggested that:-

³⁸ Information provided in the Queensland Department of Child Safety, Office of the Director-General – Robin Sullivan, 23 June 2005, at 8

³⁹ Crime and Misconduct Commission, op cit at 17

⁴⁰ Ibidat 130

“As indicated in the Department of Families’ response to the ‘At What Cost’ Report (CCSF 2001), the percentage of child protection and family support grants to Indigenous organisations provides an indication of whether Indigenous children and their families have equitable access to services. Good performance is when the level of spending is roughly equivalent to the proportion of Indigenous children on child protection orders (22.5% at 30 June 2001). In 2000–01, the portion of grants allocated to Indigenous organizations was 14.9 per cent. This is likely to be significantly lower with the closure of a number of Indigenous organisations since 2001.”⁴¹

It was acknowledged in the CMC report that financial support to organisations that could not demonstrate that they are fiscally responsible should not be provided, but despite this it was suggested that funding that allowed them to fulfil service agreements was nevertheless inadequate. A number of AICCA employees and non-Indigenous organisations suggested that the funding provided to these agencies to fulfil their service agreements is insufficient. The Aboriginal and Islander Corporation for Legal Services noted that resources for AICCAs was ‘a token of what is seriously needed’ and suggested that when the problems of effective service delivery are looked at, the department typically suggests that AICCAs have failed to meet the required standards without taking the under-resourcing issue into account. The central message of the submissions was that resourcing and funding was poor.

Further AICCA’s reported that they still wish to retain their broad service profile but resolve the difficulty of small staff teams having to cover wide and potentially conflicting roles. It was recommended that service and funding models include following five distinct but integrated programmes. A community development model would be used to work with and educate high-risk families and their children at risk of entering the child protection system with the other 4 models being non Indigenous ones.⁴² The model appears to be a positive step arrangement for AICCA’s who could provide Family Support, Placement Services, Carer support and child Advocacy/Statutory Advice Programmes. The Blueprint report added to this by noting

⁴¹ PeakCare submission, in ibid at 30

⁴² Government of Queensland, Department of Safety, op cit at 167. It was also recommended that the funding model take into account the requirement to operate on-call 24 hours per day etc.

that the function of the AICCA's appears to be predominantly one of advice and that the AICCA Service network needs to be increased to include placement services. It would appear that as a result a new partnership known as the Queensland Aboriginal and Torres Strait Islander Child Protection Partnership (QATSICPP) has been established as collaboration between the Department of Child Safety and Indigenous Child protection sector.⁴³ The Department has advised that on 7 March 2005 a workshop was conducted that comprised of Zonal Directors, Child Safety Officers, officers from the Service Delivery Partnerships Division and some members, the Secretariat of the QATSICPP and the Remote Area Aboriginal and Islander Child Care (RAATSIC). This resulted in a general agreement and a shared understanding with respect to the role and functions of Indigenous Recognised Agencies. It was agreed that Recognised Agencies provide advice and support to the Department of Child Safety to fulfil its statutory functions in regards to Indigenous children and as per the shared understanding the role of the Recognised Agency is 'embedded' within the broader range of child protection services. In turn the Department's functions include advice and support in the child safety functions of intake, initial assessments, the Suspected Child Abuse and Neglect (SCAN) teams at the 18 Assessment and Management sites across Queensland, court matters, case management and placement.⁴⁴

Service agreements with ten organisations that provide Indigenous Recognised Agency functions with 28 Child Safety Service Centres and two departmental hubs have also been developed. According to the Department the remaining 18 Centres and four hubs are not serviced as yet, they include Cape York, Gulf, Torres Strait and Logan areas, although the Department has pointed out that the establishment of the full complement of Indigenous Recognised Agencies' coverage is a priority.

Human Resources

⁴³ Ibidat 19

⁴⁴ Departmental Policy sets out the inclusion of Aboriginal and Torres Strait Islander involvement in the SCAN Assessment and Management Teams and Community Implementation Teams.

Recommendation 7.2 relates to cross-cultural training. As of March 2004 there was no Aboriginal officer delivering this training, however the document 'One Year On' says that this should be implemented by mid 2005.⁴⁵

Recommendation 7.6 suggests that there needs to be an increase in the number of 'specified' and 'identified' positions. It recommends firm guidelines in the determining numbers of Indigenous Staff and that representation across all levels in Area/Regional officers needs to be from Teams Leaders to Directors. The Department noted that under the new structure the role of Child Safety Support Officer has been established to delivery culturally appropriate early intervention and prevention services with 52 Identified positions and nine generic positions advertised in May 2004 and now finalised. The roles aim to provide a link in service delivery for both Indigenous and non-Indigenous clients, but also to provide more coherent career progression opportunities for employees, particularly Indigenous employees. It is anticipated that with the new positions and career progression, there will be a higher rate of retention for Indigenous staff, and better development opportunities, as well as positive outcomes for service delivery.

The Blueprint report also recommended the creation of Identified Child Safety Support Officer positions. The Department highlighted the fact that a large number of Identified positions were already established in the Child Safety Service Centres but that they were committed to fulfilling the Blueprint's recommendations.

Other Indigenous Recruitment and development strategies have also been implemented, including twelve Indigenous cadets in 2005 and the development of an Indigenous Staff Scholarships Program designed to professionally develop and retain Indigenous staff in key service delivery roles. In addition Postgraduate studies are encouraged with the provision of twelve scholarships in 2005.

Further, Recommendation 7.7 notes that Indigenous support and development branches/units should be headed by a senior position within the department. The fact

⁴⁵ Government of Queensland, Department of Safety, op cit, Recommendation 8.4

that a senior person has been recommended to head these units is important. However, it would be more preferable for this head position to be held by an Indigenous Senior person. This would ensure that not only is the section run by an experienced person, but it is also a way of working towards Indigenous People being more involved in decisions concerning their people. The Department confirmed that this recommendation has been implemented with the appointment of a Director who commenced on 4 April 2005 and a team of six professional officers and one administrative officer to support the Director.⁴⁶ The key purpose of the Branch is to ensure that Indigenous issues are progressing in a strategic way such as assisting community organisations that are funded by the Department of Child Safety in capacity building. The branch is also charged with the responsibility to liaise with Child Safety Directors within Government Departments and create links to ensure that change processes also include matters relating to Indigenous communities.

The Commission for Children and Young People and Child Guardian & Guardianship

In relation to Guardianship, Recommendation 8.4 of the CMC was that the Indigenous Child Placement Principle be periodically audited and reported on by the new child Guardian. This would appear to be a positive step towards ensuring the Principle is constantly reviewed.

The Department stated in their response that a one-year targeted monitoring plan has been developed between the Commission for Children and Young People and Child Guardian (CCYPCG) and the Department, with a four year monitoring plan under discussion. The Department has pointed out that monitoring of the adherence of the Indigenous Child Placement Principle is to be incorporated into these plans.⁴⁷ The Department did not provide further information as to how monitoring will occur and whether Indigenous peoples or organisations will be consulted.

⁴⁶ Information provided in the Queensland Department of Child Safety, Office of the Director-General – Robin Sullivan, 23 June 2005

⁴⁷ Information provided in the Queensland Department of Child Safety, Office of the Director-General – Robin Sullivan, 23 June 2005

South Australia

The *Children's Protection Act 1993* is the governing legislation in South Australia with regards to child welfare and protection including that of Indigenous children. In 2002 the South Australian Government published two reports, The Child Protection Review ("Layton report")⁴⁸ and The Review of Aboriginal Children and Non-Aboriginal Care in South Australia. Both reports highlighted a number of concerns in relation to Aboriginal children. These concerns included:-

- A known over-representation of Aboriginal children in the child protection system;
- Institutional racism within the department;
- Insufficient consultation with Aboriginal families and communities;
- A lack of knowledge and understanding of Aboriginal traditions and values among non-Aboriginal field workers;
- A lack of respect for, and discounting of, the need for culturally appropriate responses to Aboriginal families during child protection investigations; and
- The need for the government to view the situation as regards to Indigenous people in SA as a human rights issue.

In response to these concerns, the Department of Human Services, Family and Youth Services⁴⁹ established an Inter-Divisional Aboriginal Child Protection Group to explore ways that could address these concerns.

⁴⁸ Layton R, Q.C, *Our Best Investment: A State Plan to Protect and Advance the Interests of Children*, Chapter 8, released 26 March 2003.

<http://www.dfc.sa.gov.au/childprotectionreview/cpr-report.asp> See also Government of South Australia, *Child Protection Review, Discussion Paper*, May 2002

⁴⁹ Currently known as Department of Families and Communities: Children, Youth and Family Services

Indigenous intake team

As a result, a specific Intake and Assessment unit was established, known as Yaitya Tiramangkotti.⁵⁰ Yaitya is the Indigenous team operating within the Children Youth and Family Services Department, and is situated within the Crisis Response and Child Abuse Services. It receives all the child protection notifications involving Indigenous children. Notifications are assessed by the unit⁵¹ to determine whether the matter should come under intervention from the Department. Where the unit determines that intervention is required, culturally appropriate recommendations are then made to the District Centre. On intake Yaitya takes into account the following:-

- Cultural factors;
- Local knowledge of families;
- Aboriginal supports and services; and
- Knowledge supplied by Aboriginal Country Consultants.
- It is assumed that Yaitya staff have a broad knowledge base of the diversity of Aboriginal language and clan groups, and via Country Consultants (a more detail description is provided later in this section) provide a state-wide network.⁵²

However, the unit is required to use the same South Australian structured decision-making framework as is used in mainstream notifications to determine if intervention is required.⁵³

⁵⁰ The name 'Yaitya' means "people of prevention" and was presented to the Department by Elders of the Kaurna people, the original occupants of the central Adelaide plains area.

⁵¹ During the hours of 9am to 5pm.

⁵² Information obtained from the Department of Families and Communities: Children, Youth and Family Services, September 2005.

⁵³ See Tomison AM & Poole L, *Preventing Child Abuse and Neglect: Findings from an Australian Audit of Prevention Programs*, Australian Institute of Family Studies, Melbourne 2000 in Tomison A, *Current Issues in child protection policy and practice: Informing the NT Department of Health and Community Services child protection review*, National Child Protection Clearinghouse, Australian Institute of Family Studies, 2004 at 63

Yaitya's intended functions are as follows:-

- To receive record and assess all reports of child abuse and neglect made directly to them;
- To ensure the cultural appropriateness of the safety assessments and response classifications made on Aboriginal children by other staff;
- To advise District Centres (DC) and Crisis Care on how best to respond to reported Aboriginal children so that family and kinship structures are acknowledged and respected;
- To advise which DC should respond, taking account of family and kinship patterns as well as the location of the child;
- To identify Departmental staff with sufficient knowledge of the family and community who can work alongside non-Aboriginal staff during the initial response to the family;
- To intervene directly in initial response situations if necessary (e.g., where no other suitable Aboriginal staff member is available);
- To identify a person from the family and/or community who can provide support to the child and family during the initial intervention if the family so wish; and
- To provide advice, liaison and dialogue with Departmental staff, other professionals and Aboriginal groups/agencies on the key issues relating to the protection of Aboriginal children.⁵⁴

The service aims to provide:

- An Aboriginal perspective on Aboriginal families;

⁵⁴ Information obtained from the Department of Families and Communities: Children, Youth and Family Services, September 2005.

- An understanding and comprehension of Aboriginal culture and diversity;
- Credibility amongst the Aboriginal community;
- An understanding of the critical importance of identity and what that means for Aboriginal families;
- Considered assessments which were not based on stereotyping;
- A sense of equality and understanding with Aboriginal notifiers based on shared experiences of the impact and effects history has had on their communities;
- Intake workers whose language, concepts, perceptions and common assumptions are congruent with Aboriginal families and community; and
- An extensive knowledge of Aboriginal history, child rearing practices, kinship groups and families within the Aboriginal context.⁵⁵

Aboriginal Child Placement Principle

At present the Aboriginal Child Placement Principle is included in South Australian policy and practice with regards to child protection matters. It is not currently enshrined by legislation however, amendments to the Act are being considered by Parliament to include specific reference and adherence to the Aboriginal Child Placement Principle.

As part of policy and practice, the principle is listed as a Key Performance Indicator for both a service outcome and service capacity measure. The Department has noted that finalisation of the Kinship/Community Carer Assessment Manual and regional relative care workers available for consultation are strategies for further improvement.

⁵⁵ Information obtained from the Department of Families and Communities: Children, Youth and Family Services, September 2005.

The *Children's Protection Act 1993* provides that when working with Aboriginal families and communities in child protection matters, doing so in a culturally appropriate manner is critical.

Section 4, part 1(e) provides for, “*preserving and enhancing the child's sense of racial, ethnic, religious or cultural identity and making decisions and orders that are consistent with racial or ethnic traditions or religious or cultural values*”.

When placing Aboriginal and Torres Strait Islander children Section 5 part 1 of the Act states that “*no decisions or order may be made . . . as to where or with whom an Aboriginal or Torres Strait Islander child will reside unless consultation has first been had with a gazetted Aboriginal organisation . . .*”

In addition to the proposed amendments to legislation, the Guardianship and Alternative Care Directorate is currently developing a set of guidelines for applying the Aboriginal Child Placement Principle. The Directorate is also finalising the “Kinship and Community Care: Assessment Manual for Caregivers of Aboriginal Children and Young People” due for release by the end of 2005. Used by department workers, non-government service providers and Aboriginal alternative care service providers the manual also explains the ACPP and the factors to consider when working with Aboriginal and Torres Strait Islander children and families. In addition, the ACPP will also be reinforced in the South Australian Alternative Care Program Standards, a draft program being developed by the Directorate, which aims to facilitate consistent and quality practice across the alternative care sector. The draft standards provide that, “service providers will have policies and procedures in place that ensure cultural safety and support the placement hierarchy and the Aboriginal Child Placement Principle.” As part of these standards, alternative care service providers will be monitored annually to ensure the standards are being met and licences will be evaluated accordingly.⁵⁶ The Department has also noted that, “future requirements for placements of Aboriginal children in non Aboriginal care, will require senior endorsement.”

⁵⁶ Information provided by the Department of Families and Communities: Children, Youth and Family Services, September 2005. See also the report, *Collaborative Caring*, which provided a review of northern county alternative care service providers and emphasised the importance of the ACPP.

Human Resources

Specific induction programs are provided for Aboriginal and non-Aboriginal staff by the CYFS Training and Development Unit. Aboriginal staff have an additional day that covers working in the department as an Aboriginal person, with topics such as caring for self. The Training Unit is currently investigating other training options for Aboriginal staff such as VET⁵⁷ learning programs and training on the job options that suit Aboriginal Family Practitioners (AFPs). The program is dependent on the AFP review.

Cultural Sensitivity training is also provided for non-Aboriginal staff over two days and is conducted four times per year. As well as this specific training the Department also ensures that workers are aware of the possible needs of Aboriginal clients when training in other areas such as in VET topics such as the *Orientation to Child Protection and Out of Home Care*.

As at the end of June 2005 the CYFS had 145 Aboriginal employees. The current highest position held by an Aboriginal person is two MAS 2 Manager positions. However the highest position previously held by an Aboriginal employee with Children, Youth and Family Services was Director. At present an ASO 8 Manager Aboriginal Services position is being established with the aim to have it filled by end of September 2005. CYFS also has a draft Aboriginal Employment strategy to increase the recruitment and retention of Indigenous staff.⁵⁸

Best Practice Models

As noted above, as part of the research each State and Territory was asked to identify any Best Practice Models. In answer to that question, the Department identified the following service programs as best practice models rather than evaluated best practice models identified in literature. These departmental identified models may however provide useful information that could be utilised in the research and development of services in Indigenous communities.

⁵⁷ VET - Vocational Education Training

⁵⁸ See CYFS Plan 2005 – 2006

The Metropolitan Aboriginal Youth Team (MAYT)

Established in 1988 the MAYT is part of the Government's response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody to create detention alternatives and to also assist Aboriginal young people coming out of detention to make the successful transition back into the community.

As part of CYFS services' responsibility is to reduce Aboriginal over-representation in justice and welfare services. As part of the CYFS's goal to reduce Aboriginal representation the MAYT aims to :-

- Provide early intervention;
- Holistic services to empower families;
- Involving Aboriginal community members and stakeholder in planning, design, implementation delivery and evaluation of services to Aboriginal people.

MAYT offers programs such as:-

- Aboriginal Family Placements for young people who are on release on bail from Magill Training Centre,
- The Family Care Program,
- The Cultural Identity Program.

It is also involved in other programs provided in conjunction with District Centres, and Attorney General's Department. Other links have also been established between the Social Inclusion Unit and the School of Social Work and Social Policy at the University of SA, The Adelaide Central Community Health Service, and Rotary which are integral to the continued provision of service.

Panyappi Indigenous Youth Mentoring Program

Panyappi is an Aboriginal youth mentoring service for young people aged between 10 and 18 years. It provides support to Aboriginal youth who have ended up in places such as inner city hangouts that puts them at risk of either being a victim of crime or

offending themselves. The services provide long term consistent and intense support so that trust is built to assist in helping them to gain stability and direction in their lives.

Panyappi's services are provided to Aboriginal young people and their families and it aims to:-

- Intervene in pathways of offending behaviour and bring about positive shift in each young person's attitude toward offending and in their behaviour;
- Decrease each young participant's contact with the juvenile justice system and/or agencies associated with this system;
- Promote self-discovery and self determination by young people participating in the program, their family and wider community;
- Work collaboratively with all agencies that have mutual responsibilities for resolving the young person's difficulties.

Marni Wodli

Marni Wodli⁵⁹ is a program primarily aimed at Aboriginal young people between the ages of 15-18 on Youth Justice orders or under Guardianship of the Minister or other Aboriginal youth identified as being 'at risk'. The program provides culturally appropriate accommodation options to identified youth as well as providing independent living skills and support services that are tailored to each individual's needs. Young people have access to support services 24 hours seven days per week. The aim is to arm young people with the skills, knowledge and social supports to successfully live independently in the community. The service engages Aboriginal community members to ensure the service is culturally responsible, to provide mentoring, to support Aboriginal placement options and provide ongoing opportunities for young people to maintain links with family, community and culture.

⁵⁹ Meaning "Good House"

Interagency partnerships are key to the success of Marni Wodli and it is an aim that the model continues to build on existing interagency partnerships with Aboriginal specific organisations, as well as mainstream services.

High Risk Infant Pilot Demonstration Project Program

The High Risk Infant Program's vision includes the caring for infants in a safe, health and nurturing environment. Service provider's aims include working to strengthen families and to address issues faced by individual parent(s) in order that infants are kept safe. This is a mainstream program and whilst Aboriginal infants, families and communities utilise the program, it is not specifically designed as such. It is hoped that the following outcomes will be achieved:-

- A decline in child deaths and an increase in the safety of infants within the pilots;
- Decline in Child Protection re-investigations within pilot cases;
- Good family preservation/reunification outcomes using 12 month orders together with infant specific interventions; and
- Quicker movement into permanent care including kinship care.

The program's stated principles include the fact that the safety of the infant is of paramount importance. Child centred and family focused intervention is employed and the family is said to be in control of the intervention process including its pace, so long as the infant's safety is not compromised. Approaches that involve and build on the strengths of communities, particularly for Aboriginal families and communities, are used.

A comprehensive assessment of the infant's and family's circumstances is undertaken and providers work with parents to set goals for change. HRI Intervention Team workers provide counselling and practical home-based support and staff are available 24 hours a day seven days a week. An incorporation of a "whole of community" approaches which draws on family networks and other informal resources are employed when working with Aboriginal families.

High risk infants and their families are further supported by specialist Senior Social Work practitioners who work in selected CYFS District Centre offices. The program also aims to develop good partnerships with agencies that work with the family. The teams work with wider service provider networks such as those providing mental health, community health and intellectual disability services.

Working Together

This program is one that builds upon several previous projects including the Working Together project 2000-01 and the Port Augusta Aboriginal Families Project. The overarching goal of the project is to reduce the re-notification rate of child abuse and neglect. The project aims to provide children and families that are subject to the child protection system with respectful and effective family support. The project was renewed following the Llayton Report which recommended ways of engaging families so that workers were able to build relationships were needed. The report suggested that in doing so workers could then explore and resolve the underlying issues that were leading to child abuse or neglect. Currently District Centres that are willing and able to participate in the program are being identified by the CYFS Child Protection Review Implementation Team and new ways of engaging families are being explored. In Aboriginal communities, the program is aiming for shared responsibility between the community and the CYFS, and a whole of community response to the underlying causes of abuse and neglect.⁶⁰ The CYFS suggests that an example of this may be where family violence in the community is the major cause of abuse and neglect – in which case, a whole-of-community focus may be necessary.

The implantation of the program into District Centres will be guided by a consultant whose role is to work closely with each of the District Centres and City Centre to ensure consistency. It will be anticipated that the Working Together program will inform new child protection services responses State-wide. The CYFS observes that the program will be evaluated using Intervention and Action research methods and the result is that knowledge is case-driven and evidence-based.

⁶⁰ The CYFS did not elaborate on how they would achieve this.

“ A learning and development strategy that embraces action as the foundation for reflection and generation of new knowledge ensures that new methods of intervention become embedded in casework practice. In turn, new knowledge and methods of intervention will be documented in organisational policies that ultimately result in effective and long term change for families. Importantly, the methodology as described is consistent with the philosophy and practice of the ‘learning organisation’ .”

A Reference Group will guide and direct the organisational approach and enable regular and consistent feedback between key staff members in the central office and regional/location manager.

Port Augusta Families Project

The Port Augusta Families Project⁶¹ is overseen by Aboriginal people for Aboriginal families. It is staffed primarily by Aboriginal people and operates under the guidance of a committee of Elders. The Project operates with a clear and articulated vision and draws on a series of defined principles which are built on the concepts of empowerment, participation, and partnership. The client (and their immediate family) is in control of the process and the staff are accountable to that family. The CYFS has observed that the project is about doing things differently to how they have been previously done.

The CYFS cited the following visions:-

- Families will be functioning (within a normal range) for longer periods of time;
- Families will have developed their own coping and problem solving skills;
- There is a decrease in all the problems, which brought the family to the agency;
- Families will accept responsibility for problems and solutions;
- Families will have become more pro-active in dealing with problems and solutions;
- Families will be able to take control when negotiating with agencies;

⁶¹ From Port Augusta Aboriginal Families Project Review, Sharon McCallum, August 2001, see <http://www.health.sa.gov.au/Default.aspx?tabid=59>

- There will be fewer non-coping families in the community;
- Families, with their problem solving strategies, will become role models for other families;
- Families will be able to teach other families by example;
- Families will be able to pass on their learned skills; and
- There is a rekindling of family and community networks.

The following eleven-stage model of planned intervention was developed in April 1998. It has been revised several times as problems were identified.⁶²

- Stage One - Referrals to the Project received by the team and discussed in order to assess suitability.
- Stage Two –Staff meet with family to explain the Project. Family tree is completed.
- Stage Three - Project staff assist the immediate family to develop a list of the problems and the agencies involved.
- Stage Four - Immediate crises facing the family are addressed.
- Stage Five - Letters are written to the agencies asking what concerns they have with the family and what the family needs to do to get the agency out of their life.
- Stage Six - Meeting with the family to develop a priority list of problems from the information received from them and the agencies.
- Stage Seven - Family meets with the agencies to get agreement for the families proposed list of problems to be resolved. A case plan is devised.
- Stage Eight - Ongoing meetings with the family and Project workers to action the case plan.
- Stage Nine - Ongoing meetings with the family, agencies and staff.
- Stage Ten - Case Review Meeting
- Stage Eleven - Case Closure⁶³

⁶² The CYFS did not provide an explanation of the problems encountered.

⁶³ Information supplied by the CYFS.

Every Chance for Every Child (ECEC)

ECEC covers a number of initiatives operating across the metropolitan area, and a few in the country areas. The programs attempt to address issues such as low birth weight, limited access to ante natal care. Home visiting services are established and the CYFS reports that 98% of families within those identified areas, are receiving this service in the first weeks of life. Home visiting is being expanded and 1050 families are now receiving the service including 130 (20%) Aboriginal families who have entered the program. The CYFS indicated that all Aboriginal families in the areas where this service is available are offered the program however they did not clarify the exact areas where these services are being offered. They also advised that the introduction of an electronic Hospital to Home referral system has also been introduced, although further information as to how this system works was not provided.

It was also noted that Parent Child Centres providing services and support to families and children are now operating at Enfield (C.A.F.E. Enfield - Children and Families Everywhere) with others being planned for the future.

Healthy Ways Project

The Healthy Ways project focuses on Aboriginal well being including infant mortality and the reduction of tobacco use by Aboriginal young people in rural and remote communities. The communities participating in the project were selected on the basis of poor recorded status of women, lower birth weights and higher smoking rates.⁶⁴ Community development principles and community driven initiatives are used and in particular, community inclusion and participation, collaborative partnerships and prevention and early intervention.

⁶⁴ Those communities selected are: Coober Pedy; Marree; Oodnadatta; Whyalla; Yalata; Oak Valley; APY Lands – Pukatja, Amata, Kalka, Watarru. (Note: APY Lands communities were selected by Anangu women at a Women’s meeting in February 2004)

Improving Indigenous Birthing Outcomes Project.

The Improving Indigenous Birthing Outcomes Project saw the state-wide draft framework for action developed. The state-wide draft framework for action was developed from this project. The CYCS observes that it was the first time the South Australian Government had responded to the data collected over a number of years, about the poor Aboriginal birthing outcomes. Extensive consultations with Aboriginal women throughout the state were conducted and a state-wide community advisory group was established. Poor Aboriginal birthing outcomes are addressed by:-

- Plan, target and implement integrated antenatal and infant care services;
- Service models based on best practice in other Aboriginal communities in Australia and overseas;
- Workforce development;
- Community engagement and participation; and
- Recognise, and target the particular challenges for teens in remote settings, monitor outcomes and revise accordingly.

From the consultations and discussions for this project other projects were developed. In Port Augusta a community based midwifery pilot program was developed that targets 'at risk' women and in Whyalla the same program targets pregnant teenage young women.

The Metropolitan Aboriginal Kinship Program

The Metropolitan Aboriginal Kinship Program aims at reducing the negative impacts of drug use on Aboriginal families involved with the Kinship program in metropolitan Adelaide. The program targets Aboriginal people either currently using illicit drugs, who have recently ceased the use of illicit drugs or the main caregiver for children whose parent(s) are using illicit drugs where they have requested support. The following objectives were provided by the CYFS:-

- To reduce the uptake, reuptake and current intake of illicit drugs by people within Aboriginal families in Metropolitan Adelaide who are engaging with the Kinship program.

- To strengthen and support individuals and families who are engaging with the Kinship program to cope with illicit drug use.
- To value add to the current service system in meeting the needs of Aboriginal people and families coping with illicit drug use.

The CYFS indicated that these objectives will be achieved through the Kinship Case Management Program along with the seven Aboriginal Family Support Workers situated in Muna Paiendi, the Parks and Noarlunga Health Services all of which are provided assistance by the CYFS as well as providing formal links with other service agencies.

CYFS stated that the visions and principles for this services are as follows:-

Vision

- Individuals and Families will be functioning (without crisis situations) for longer periods.
- Individuals and Families will have developed their own coping mechanisms in dealing with illicit drug use within their families.
- There will be fewer non-coping individuals and families who are dealing with illicit drugs.
- There is a decrease in all the problems that brought the individual and/or family to the program.
- Individuals and Families will accept responsibility for problems and solutions.
- Individuals and Families will have become more pro-active in dealing with problems and solutions.
- Individuals and Families will be more skilled and therefore able to take control when negotiating with agencies.

- Individuals and Families with their problem solving strategies will become role models for other individuals and families.
- Individuals and Families will be able to teach other families by example.
- Individuals and Families will be able to pass on their learned skills.
- There is a rekindling of family and community networks.

Principles

- The program is not a one off assistance service.
- The program is based on a case management model, which aims to engage individuals and/ or families in an intensive ongoing way.
- This program is overseen by Aboriginal people for Aboriginal individuals and/ or families.
- The individual and/ or the family is in control of the process.
- The individual and/ or the family works in partnership with the Kinship program voluntarily and will have a commitment to reducing drug use.
- Aboriginal family support workers are accountable to the family for the services they provide.
- Progress with the problems is at a pace with which the individual and family can cope.
- This project is about difference. That is doing things differently from how they have been done before. This is to enable creativity, and to indicate to families and agencies that this program is a new way of working.

Once the Kinship Case Management Program is being implemented satisfactorily the CYFS has indicated that further programs will be developed to address the project objectives.

The following were listed as current programs:-

- APOSS Programs
 - Cooking, Family Days, School programs, etc
 - CDEP Licensing
 - Men's Program Muna Paiendi
- Women's program Muna Paiendi
- Art/ Exhibition program
- Women's Weaving Program
- Clean Up Program – APOSS/ AHA
- Men's and Women's Camps – “Communities for Change”
- Parental Support Group – Grannies
- Adolescent Football – Community Group Salisbury
- Crows/ Port Adelaide Games – Attendance with Clients
- Kaurna Juniors
- Supporting the State Aboriginal Football Carnival
- DASC and Kinship to organise activities for youth at Glandore Activities
- Child Counselling Program – Noarlunga Health Service
- Kinship Family Days

- Quarantining places for Kinship clients within Adelaide CDEP.

The Aboriginal Culture and Identity Program

The Aboriginal Culture and Identity Program has two aims. The program aims to assist Aboriginal children and young people to maintain and develop their cultural identity, providing opportunities to learn and experience their culture but it also aims to build cultural competence practice with staff so that they have an understanding and are able to support the children and young people in achieving a connectedness with their culture, community and kinship groups. The staff are supported so that they can acquire the knowledge and skills to develop and maintain Cultural Identity Plans for Aboriginal children and young people between the ages of 13-18.

The program targets young Aboriginal people who are under the guardianship of the Minister. Aboriginal Elders and other members of Aboriginal communities are involved in the program. The young people involved are key partners, and examine and develop culture and identity based on their experiences of being in care. It is hoped that these young people will become role models, leaders and mentors, passing on their cultural knowledge to younger Aboriginal children. The program also seeks to support the development of pathways for encouraging their future social aspirations.

Guardianship

Alternative Care Program Standards

The Guardianship and Alternative Care Directorate is currently in the process of developing a set of Alternative Care Program Standards. The standards are intended to set and monitor quality alternative care services and programs across government and non-government sectors with the underlying principle of facilitating safe and appropriate placements for children under the care of the Minister including strengthening cultural identity and ensuring cultural safety.

Individual Education Plans (IEPs)

The CYFS also highlighted the implementation of IEPs for all children and young people under the Guardianship of the Minister. The trialling and subsequent implementation of IEPs is being run by DECS staff.

Service Issues

Identifying and addressing systemic issues that hinder the provision of services for children under Guardianship and in particular Aboriginal children and young people is underway. Three Regional Support and Development Officers (one in each CYFS Region) have been employed for this purpose.

Whole of Government Rapid Response Service Framework

This framework aims to provide services to Guardianship children and young people to improve their levels of education, health and wellbeing, communication and information sharing and increase access to services they require.

Northern Territory

In the Northern Territory the Department of Health and Community Services through Family and Children' Services (FACS), has statutory responsibility for the safety and protection of children, administering the *Community Welfare Act* 1983. Currently the department is undertaking a review entitled Caring for our Children reform agenda, with new legislation proposed - the *Care and Protection of Children and Young People Act* 2005.⁶⁵ The government is also reviewing the child protection system in the NT in general. The two initiatives seek to develop a strong framework of law and professional practice and encourage inter-agency and community partnerships that promote the safety and development of Northern Territory children.⁶⁶ In 2003–04, Indigenous children in the Northern Territory were much more likely to be the subject of a substantiation of neglect than other children. For example, in the Northern Territory 40% of Indigenous children in substantiated cases were the subjects of a substantiation of neglect, compared with 26% of other children.⁶⁷

Caring for Children Reform Agenda

In August 2004, the then Minister for Family and Community Services, Marion Scrymgour,⁶⁸ noted in a ministerial statement that the NT has the youngest population in Australia - over 57,000 children and young people with 37% being Aboriginal.⁶⁹ The ministerial statement further noted that Aboriginal and Torres Strait Islander children are more likely to have substantiated abuse notifications made about them than other children and allegations involving Aboriginal children are 5.5 times more likely to be substantiated than those for non-Aboriginal children.⁷⁰ In addition, child abuse notifications increased 25% in 2003 mainly due to an increase in Indigenous notifications of 43%. And since the change of Government the number of notifications

⁶⁵ See Discussion Draft for a proposed *Care and Protection Of Children And Young People Act* 2005. This document was tabled in the Legislative Assembly by the Minister for Family and Community Services during the Sittings of the Legislative Assembly beginning 30 November 2004, at http://www.nt.gov.au/health/comm_svs/facs/community_welfare_act_review/pdf/draft_bill.pdf

⁶⁶ <http://www.children.nt.gov.au/>

⁶⁷ AIHW, op cit

⁶⁸ The First Aboriginal Woman to become a Government Minister in Australia

⁶⁹ Marion Scrymgour, Minister for Family and Community Services, *Looking after Territory Kids*, Ministerial Statement, August 2004 <http://www.children.nt.gov.au/>

⁷⁰ Ibidat 5-6

for abuse of Aboriginal children had nearly doubled and had increased by 95%. The former Minister suggested that she wanted this number to increase, noting that research supports the fact that child abuse is under-reported.⁷¹

As the data illustrates, the over representation of Indigenous children within child protection systems increases with the severity of the intervention. In 2003-04 Indigenous children in Victoria were nearly 10 times more likely to be the subject of a substantiated finding of neglect or abuse compared with all children.⁷² A substantiated finding is one where the department investigates a notification and finds that there has been neglect or abuse. While other states and territories may have lower comparative rates, for example in the Northern Territory, where Indigenous children are nearly five times more likely to have a substantiated finding of neglect or abuse compared with all children, this does not necessarily mean that Indigenous children in the Northern Territory are living in less poverty or face less neglect or abuse than those in Victoria. As a study by Pockock found, “*Rather than address the needs of Aboriginal and Torres Strait Islander children the Northern Territory child protection has in effect withdrawn from service provision abandoning the most impoverished children and families in Australia.*”⁷³ An example of the failure by the Northern Territory Department of Health and Community services to address the needs of Indigenous children, according to Pockock, is their failure to respond to children facing malnutrition. While the Department recorded 300 children in just three rural areas of the Northern Territory as malnourished, on the basis that they were clinically under weight and or stunted in their growth, they only recorded 81 children in the whole of the Northern Territory as suffering neglect. Clearly if statistics on Aboriginal and Torres Strait Islander children who are malnourished were collected for the entire Northern Territory, the numbers of children neglected by the Department would be much higher.⁷⁴ Where the indices of disadvantage are enormous, it is difficult to hold individual caregivers accountable for

⁷¹ Ibidat 8-9

⁷² Australian Institute of Health and Welfare, *Child protection Australia 2003-04*, Canberra, ACT: Australian Institute of Health and Welfare, 2005, (Child welfare series no.36)
<http://www.aihw.gov.au/publications/index.cfm/title/10095>

⁷³ Pockock, J , *State of Denial, The Neglect and Abuse of Indigenous Children in the Northern Territory*, SNAICC, Victoria, 2003 at 13

⁷⁴ Ibid at 18

the neglect which their children face. Clearly, structural and systemic disadvantage, and the manner in which this impacts on Aboriginal and Torres Strait Islander children's rights, is a responsibility which governments need to address. Neglect frequently reflects poverty rather than a lack of desire or willingness to look after children. Comparatively low levels of Indigenous children in child protection systems can reflect a lack of trust and therefore low levels of reporting of concern to departments and a lack of response by departments to reports of neglect or abuse of Aboriginal children.⁷⁵

The former Northern Territory Minister also commented that, “[*In opposition and coming into Government we believed that child protection was chronically under funded,*” and since the government was elected in 2001 funding for child protection services has almost tripled so that in 2004/2005 the budget is over \$20 million with a further \$53 million allocated to rebuilding the child protection system⁷⁶. Because of the increase in notifications, the government is focusing on increasing staffing levels in the main population centres as well as in regional and remote communities. As of August 2004 the Department had attracted 32 new operational staff including two cadetships and two traineeships for Aboriginal people with 10 more positions to be created in 2004-5.

The Government has suggested that child abuse and neglect can be reduced by building economically and socially sustainable communities and the following examples were listed as some of the programs the Labour government had introduced.

Care and Protection of Children and Young People Act 2005

In June 2005, Delia Lawrie became the minister for FACS. According to the Department, the Minister has since requested a review of the proposed *Care and Protection of Children and Young People Act* by Dorothy Scott of the University of

⁷⁵ See also Fox KE, ‘Are they really neglected? A look at worker perceptions of neglect through the eyes of a national data system’, (2004) 1(1) *First Peoples Child & Family Review, A Journal on Innovation and Best Practices in Aboriginal Child Welfare, Administration, Research, Policy and Practice* 73-82

⁷⁶ Pockock op cit at 7-9

South Australia. The new legislation proposed would replace the *Community Welfare Act* 1983.⁷⁷ Some of the proposed sections are discussed below.

Sections 7 to 11 in Part 1.3 contain the principles underlying the Act. They are as follows:-

S8 – Treating child with respect etc

- 1) Each child is a valued member of society and is entitled to be treated in a way that respects the child’s dignity and privacy.
- 2) Decisions involving a child should be made-
 - a) promptly having regard to the child’s circumstances;
 - b) in a manner that is consistent with the cultural, ethnic and religious values and traditions relevant to the child; and
 - c) with the informed participation of the child, the child’s family and other people who are significant in the child’s life.

s9 Best interests of the child

- 1) In decisions involving a child, the best interests of the child are the paramount concern.
- 2) Without limiting subsection (1), consideration should be given to the following matters in determining the best interests of a child:
 - a) the need to protect the child from harm and exploitation;
 - b) the capacity and willingness of the child’s parents or other family members to care for the child;
 - c) the nature of the child’s relationship with the child’s family and any other persons who are significant in the child’s life;
 - d) wishes or views expressed by the child, having regard to the maturity and understanding of the child;
 - e) the child’s need for stable relationships and living arrangements;

⁷⁷ Specific provisions relating to Aboriginal children are in the *Community Welfare Act* Part IX of the Act. The proposed Act can be found at www.nt.gov.au/health/comm_svs/facs/community_welfare_act.review/welfare

- f) the child's physical, emotional, intellectual, spiritual, developmental and educational needs;
- g) the child's age, maturity, sex, sexuality, cultural, ethnic and religious background;
- h) any other special characteristics of the child;
- i) the likely effect on the child of any changes in the child's circumstances.

s10 – Child Participation

For decisions involving a child –

- a) the child –
 - i) should have the opportunity to express the child's wishes and views freely;
 - ii) should be given adequate information and explanation in a manner that the child could understand;
 - iii) should be given the opportunity to respond to decisions; and
 - iv) should be given assistance in expressing the child's wishes and views; and
- b) the child's wishes and views should be taken into account, having regard to the child's maturity and understanding.

s11 - Aboriginal children

- (1) Aboriginal people should be allowed to participate in the care and protection of Aboriginal children with as much self-determination as possible.
- (2) A kinship group, community or representative organization of Aboriginal people should be given the opportunity and assistance to participate in the making the decisions involving an Aboriginal child.
- (3) In decisions involving the placement of an Aboriginal child, the child should, as far as practicable be placed in the following order of priority;
 - (a) placement with a member of the child's family;
 - (b) placement with an Aboriginal person in the child's community in accordance with local community practice;
 - (c) placement with an Aboriginal person;
 - (d) placement with a person –

- (i) who is not an Aboriginal person; but
- (ii) who, in the CEO's opinion, is sensitive to the needs of the child and is capable of promoting the child's ongoing affiliation with the culture of the child's community (and, where possible, the child's family).

It should be noted that pursuant to Section 12 of the Act, "Aboriginal" includes a descendant of the Torres Strait Islands. Sections 7 to 11 contain the principles of the Act. The Best Interests of the Child is the Paramount Consideration in the proposed Act at s9(1) and without limiting the best interests of the child, other matters in s9(2) may be taken into account in determining what is in the child's best interests. These may include cultural considerations which is part of a list of other considerations at s9(2)(g). Section 8 also requires that the child be treated with respect. This includes promptly having regard to the child's circumstances in the making of decisions that affect the child s8(2)(a), in a manner that is consistent with the cultural, ethnic and religious values and traditions relevant to the child at s8(2)(b). There is a requirement for the informed participation of the child, the child's family and other people who are significant in the child's life at s8(2)(c) although the Act doesn't explain who other significant people might be so that it is not clear whether a child's community would have standing, although s11 provides for the community's participation in decisions.

Section 11 provides that a child's kinship group, community or representative organisation of Aboriginal people should be given the opportunity and assistance to participate in the making the decisions involving an Aboriginal child although it does not explain how this should occur. S11(1) also contains a provision that relates to Aboriginal self determination which has similar wording to the New South Wales Act. As noted above the NSW self determination provision does not recognise that Aboriginal peoples have rights as a group to control their children. The provision is unclear and does not provide a definition to understand what is meant by the term self determination, nor does it provide legislative safeguards as to how, and by whom, resources and programs should be implemented. Unlike the NSW Act the provision does not expressly provide that the Minister has the power to decide how much self determination is possible, however the fact that there no guidance as to how this provision should be construed leaves room for interpretation. S11(3) contains the

principles relating to the placement of an Aboriginal child. Section 11(3) is subject to the paramount consideration of the best interest of the child test and does not take into consideration that maintaining a child's links with their community is in the best interests of the child. In that regard the NSW provision offers better protection to a child and the community's rights because the order of placement can only be displaced if it is not practicable or the placement would be detrimental to the child and the best interests test only applies where the child is placed with a non Aboriginal family. Section 11(3)(d) provides that in the last order of preference in the placement of an Aboriginal child, the child can be placed with a non Aboriginal person where in the CEO's opinion it is an appropriate placement. It would appear therefore that upon reading section 11 as a whole, it is possible that the self determination principle would be interpreted as only applying to placement decisions rather than policy or even legislative decisions.

Service Delivery

The Moulden Park comprehensive service

This is a pilot program based at the local school which aims to learn more about integrating children's care and education services as well as finding effective strategies to involve and support families. It attempts to address child and family concerns in the community. Programs are provided for parenting assistance (Families and Schools Together Program), early childhood support and referrals to family agencies. These types of services are being expanded in recognition of the role schools have in the protection of children and support of families. An evaluation of the program was due for completion in October of 2004 however at the time of writing this report had not been released.

The Breathing Space

The funding for this service is provided to Darwin Family Day Care for families in Darwin, Alice Springs, Katherine and Tennant Creek. Families using this service are referred by agencies dealing with drug and alcohol services; medical and mental health services; and parenting programs. The program seeks to assist families who are experiencing difficulties and need a break.

The remote children's service development

This program has been developed by the Department in conjunction with the Commonwealth Department of Family and Community Services and the Department of Employment, Education and Training. It involves consulting with the community to design early childhood programs that meet local needs. Three communities were involved, Mt Liebig, Yuendumu and Mutitjulu, with a further four communities under development – Titjikala, Ikuntji, Kintore and Laramba.

Parentline

Parentline is available for families and offers counselling and referrals for parents in need of particular assistance or where there are concerns over a child's safety. It also offers The Positive Parenting Program (Triple P) to interested parents where applicable.

The Department of Health and Community website

The site provides over 70 tip sheets on topics of interest and help for parents. It was noted in the Ministerial Statement that the sheets were being well used by parents and service providers.

Breakfast Program

There is a breakfast program in schools which has been expanded to allow an additional six communities to provide breakfast to children in school. The program complements a similar program run in the NT by the Fred Hollows Foundation.

Young Parents Program

The Ampe Aweke Alice Springs provides residential and outreach support to young pregnant Aboriginal girls and their babies. The child and maternal health home visiting program in Central Australia focuses on medical needs and recognizes families at risk so that help can be provided where needed.

Other

Other programs included the development of a child and family services precinct in Katherine; strengthening an early childhood program for Alice Springs town camp residents, and assistance for Little Kids program (Rela Kuka Mapa) run by the Western Arand Relacka Aboriginal Corporation at Ntaria. With other programs being provided in several remote communities in Daly River, Oenpelli, Borroloola, Manigrida, Galiwinku, and Numbulwar to identify strategies to help those communities protect and care for children.

The Kurduju Committee, developed by the communities of Ali-Curung, Lajamanu and Yuendumu Law and Justice Committees in the Northern Territory⁷⁸ have together, reviewed a range of law and justice issues affecting their communities, such as family violence and the operation of safe houses, night patrols and Aboriginal dispute resolution processes. The committees also act as a link between communities and the law and justice system so that culturally appropriate solutions can be developed to those issues affecting the community.⁷⁹

A Department officer was seconded to work in Wadeye to assist in capacity building and emphasizes the importance of strengthening families and communities.

Home Strength programme

On July 1 the first intensive family preservation programme commenced operation through Centre Care. Named Home Strength, it is part of the child reform agenda and will operate in the Darwin urban area. The programme employs qualified Indigenous and non-Indigenous staff. The programme is based on the North Carolina assessment scale and each family receives 12 hours interventions.⁸⁰ Caseworkers work with family

⁷⁸ See Kurduju Committee Report (2001) Vol 1 in Tomison A, *Current Issues in child protection policy and practice: Informing the NT Department of Health and Community Services child protection review*, National Child Protection Clearinghouse, Australian Institute of Family Studies, 2004, at 65

⁷⁹ Ibid

⁸⁰ The North Carolina Family Assessment Scale (NCFAS) is a Family Assessment Scale and outcome measurement for use in family preservation services and child welfare

http://www.nfpn.org/preservation/assessment_tool.php

to develop a family plan. Referrals are made to the service by other caseworkers with the Department.

Another important factor in the attempt to keep children safe is by working holistically with other departments. This includes the child protection services working with disability services staff in a joint protocol to try to detect family stress where there is a child with a disability. New first response guidelines for front line workers in the Police and FACS have been developed so that they can better respond to domestic violence, child protection and sexual assault.

Human Resources

Since the change of government extra money has been allocated which has enabled the Department to increase staff numbers. A centralised recruiting office has also been established with tangible results able to be seen with better recruiting practices. For example it was suggested that bulk recruiting -provides better value for money because programs can be delivered to all the new recruits at the same time and delivered at specific times such as a proper orientation program. Previously, by the time a new staff member got an induction they had already been in the Department for some time and may have already picked up bad habits. The number of Indigenous staff has also increased dramatically. When the Labour government first got into power the Department received additional funding which meant that they could employ further staff. The Department chose to make half of those positions Indigenous identified. It is too early to see significant results, however in the NT where the office is relatively small, it was felt that the mainstream staff were learning to work with Indigenous staff better, and take advantage of the benefits of communication and cultural understanding.

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The most senior Indigenous staff member in the Northern Territory office is a senior Aboriginal policy officer. There are some staff at mid to senior level but the Department is yet to appoint the first Indigenous manager. It does not appear that this

⁸¹ Information provided by Gary Sherman, from the Northern Territory Department of Health and Community Services, 2 September 2005.

will occur in the near future however it is envisaged that an Indigenous manager will occur within the next 5 years.

Research and evaluation

Adam Tomison provides an overview of current issues for Australian child protection systems, and discusses trends that are currently shaping child protection systems including those in service delivery such as intake process, interagency coordination, the role of family support services and child abuse and family violence in Indigenous communities. The purpose of the review was to inform the child protection review being undertaken in the (NT).⁸² Gary Sherman noted that it is the Department's intention to engage a University⁸³ to review the reform agenda's outcomes over the past 12 months.

⁸² Tomison A, op cit

⁸³ Information provided by Gary Sherman, from the Northern Territory Department of Health and Community Services, 2 September 2005

Victoria

In Victoria the *Children and Young Persons Act 1989* was the governing legislation with regards to child protection. Recently, however, a review of the child protection system has been carried out and this legislation has been replaced by the *Protection of Children and Young People Act 2005*. In 2002 the Victorian government initiated this review into the state's statutory child protection system. The review was carried out in three stages consisting of an initial report, community consultation and publication of a reform agenda. Prepared by the Allen Consulting Group, the initial report entitled "Protecting children: The child protection outcomes project" was published in September 2003. The review stated that it differed from previous reviews in that it "takes a more fundamental look at the appropriateness of the legislative, policy and program frameworks that determine the directions and boundaries of current policy and program responses" rather than focusing on "the existing legislative and broad policy frameworks".⁸⁴

The project identified several potential areas for reform but in regards to Aboriginal and Torres Strait Islander children and families the report noted "... there are serious and entrenched child protection concerns in communities". Rather than addressing these concerns, they suggested that due to the fact that they felt the issues were so "important and challenging", it was not possible to address them in the paper. Rather, they suggested that they required further examination in consultation with Indigenous communities and organisations.⁸⁵

After further consultations in relation to the broader child protection review, an additional report was released in April 2004 entitled, "The report of the Panel to oversee the consultation on Protecting Children: The Child Protection Outcomes Project".⁸⁶ The report drew attention to criticisms it had received in regards to timelines and consultation processes in preparing the report. In particular it highlighted

⁸⁴ Allen Consulting Group, *Protecting Children: The Child Protection Outcomes Project*, Final Report for the Victorian Department of Human Services, 2003 at vi

⁸⁵ Ibidat 7

⁸⁶ Frieberg A, Kirby P, & Ward L, *The report of the Panel to oversee the consultation on Protecting Children: The Child Protection Outcomes Project*, April 2004 www.dhs.vic.gov.au

that these concerns were most strongly felt within the Indigenous community and included a comment from the Victorian State Office of the Aboriginal and Torres Strait Islander Services:-

“It is also of concern that DHS [the Department of Human Services] is seeking Indigenous responses to the report yet the report has minimal Indigenous specific material to comment on. This is not an appropriate consultation process; VACCA and relevant Indigenous organisations should have been included in the review process at the outset and then resulting proposals included in the Report to give stakeholders, Indigenous and non-Indigenous, something to comment on.”⁸⁷

With regards to Indigenous child protection issues, a consultation process was undertaken with the Indigenous community.⁸⁸ The Secretariat of National Aboriginal and Islander Child Care, SNAICC, in their response to the Outcomes Report⁸⁹ suggested that the Government should take the time and in consultation with the Aboriginal community, explore and understand the reasons for the over representation of Indigenous children in the Victorian child protection system. It further suggested that this should be done if the child protection system is to ‘*incorporate an acceptable, adequate and workable response to Indigenous issues.*’

In September 2004, the Victorian government released the report entitled, “*Protecting children: Ten priorities for children’s wellbeing and safety in Victoria technical options paper*”⁹⁰, as part of the third stage of the review process. The report outlines the proposed reforms in ten key areas including the need to reduce Aboriginal over-representation in child protection and introduce alternative care systems, strengthen self-management and increase the range of culturally specific supports and services. In a summary of the report it is noted that,

⁸⁷ Ibidat 7

⁸⁸ According to SNAICC in their response to the Outcomes Project, Secretariat of National Aboriginal and Islander Child Care, *Response to “Protecting Children – The Child Protection Outcomes Project”*, February 2004, http://www.snaicc.asn.au/news/documents/Childprotectionoutcomes_000.pdf

⁸⁹ Ibid

⁹⁰ Victorian Government, Department of Human Services, published by Community Care Division, *Protecting children: ten priorities for children’s wellbeing and safety in Victoria*, April 2004, www.dhs.vic.gov.au/protectingchildren

“Aboriginal services require a holistic approach that includes the community in problem solving. Aboriginal communities require culturally relevant policies and programs rather than ad hoc amendments to current policies and programs working within the broader community,”

...and recommends legislating for,

“culturally relevant policies and programs which empower Aboriginal communities to take part in decision making and interventions impacting on children and families”⁹¹.

In summary the report suggested the following specific options:-

- “Include the Aboriginal Child Care Placement Principle in legislation;
- Develop strategies for culturally relevant early intervention and prevention to support Aboriginal families.
- Insert a provision in legislation that requires the Minister to assist Aboriginal communities to provide effective prevention and intervention strategies.
- Legislate for capacity to assign guardianship or custody of an Aboriginal child to a designated person in an Aboriginal organisation or agency.
- Allow for the assignment of guardianship to apply retrospectively for children who are currently on a guardianship order.
- Incorporate Aboriginal family decision making principles into legislation.
- Develop strategies to strengthen the participation of Aboriginal families in decision-making processes.”⁹²

⁹¹ Bromfield L, *Victorian Legislative Reform – Background and Summary of Technical Options Paper*, www.dhs.vic.gov.au/protectingchildren at 3

⁹² Ibid

The Victorian Aboriginal Child Care Agency (VACCA), in their Final Response to the legislative review, made a number of recommendations. Some of these recommendations are outlined below:-

- ‘A clear statement of the objective, values and outcomes of the legislation’s aims with regards to Indigenous people’;
- ‘That each major section of the legislation contains an Indigenous component that articulates its impact both directly and indirectly on Indigenous children and families’;
- ‘The establishment of a Ministerial Indigenous Child and Family Welfare Council to provide advice to government on legislation, policy directions, service delivery and practice issues...which would deliver a biannual report to parliament...and to...the Indigenous community’;⁹³
- ‘There should be recognition of Indigenous peoples’ understanding of family and country.’⁹⁴
- That ultimately guardianship of Indigenous children should be given to the Aboriginal community, which would commence as shared responsibility with the Department of Human Services until the Aboriginal community has the capacity to full discharge these responsibilities.⁹⁵

The Kirby Panel’s report emphasised that, “...*It will not be sufficient to add an Indigenous element to, for example, the assessment and investigation procedure or to make modifications to the out-of-home care processes for Aboriginal children without considering whether the system as a whole is inclusive of Indigenous cultures and values.*” In addition, it emphasised the necessity for “*a greater recognition than is currently the case that the Indigenous communities should be*

⁹³ Victorian Aboriginal Child Care Agency, VACCA, Final Response, Legislative Review, at 5-6

⁹⁴ Ibidat 12

⁹⁵ Ibidat 13

*able to exercise a significant measure of control over the provision of services delivered to their communities.*⁹⁶

The Ten Priorities paper suggested that an option for reforming Indigenous child welfare practice in Victoria is to legislate for the capacity to assign guardianship or custody of an Aboriginal child to a designated position or person in an Aboriginal organisation or agency noting that placing an Aboriginal child under state guardianship has negative historical and cultural connotations.⁹⁷

The Victorian Department of Human Services also commissioned this report to provide a comparative overview of legislation and service options for the delivery of child welfare services to Indigenous communities.

The Children Youth and Families Act 2005

The *Children Youth and Families Act 2005* does not provide a comprehensive legislative framework which specifically addresses Indigenous family and community contexts. It however incorporates some Indigenous specific provisions within the Act. Most notably Part 1.2 which provides the guiding principles for the act includes division 4 which is called ‘Additional Decision –making Principles for Aboriginal Children’ and includes an Aboriginal child placement principle. Notably section 12 provides that a decision in relation to an Aboriginal child should involve a meeting convened by an Aboriginal convenor who has been approved by an Aboriginal agency. However this section is not connected to the dispute resolution division of the act part 4.7 and little structural support or guidance is provided across the legislation for its implementation. This is more broadly a problem with this legislation. It has included a

⁹⁶ Victorian Government, Department of Human Services, published by Community Care Division, *Protecting children: ten priorities for children’s wellbeing and safety in Victoria*, April 2004 at 41, [http://www.office-for-children.vic.gov.au/children/ccdnav.nsf/fid/-590F11EC5149DD41CA256F0800109C7B/\\$file/protecting_children.pdf](http://www.office-for-children.vic.gov.au/children/ccdnav.nsf/fid/-590F11EC5149DD41CA256F0800109C7B/$file/protecting_children.pdf)

⁹⁷ Victorian Government, Department of Human Services, published by Community Care Division, *Protecting children: ten priorities for children’s wellbeing and safety in Victoria*, April 2004, [http://www.office-for-children.vic.gov.au/children/ccdnav.nsf/fid/-590F11EC5149DD41CA256F0800109C7B/\\$file/protecting_children.pdf](http://www.office-for-children.vic.gov.au/children/ccdnav.nsf/fid/-590F11EC5149DD41CA256F0800109C7B/$file/protecting_children.pdf)

few important sections with respect to Indigenous peoples but does not appear to have systematically or holistically considered how a legislative framework could transform child welfare into a system which works for Indigenous children's well being. The provisions in the Act which specifically address Aboriginal children include sections 13 and 14 which provide an Aboriginal child placement principle, section 18 which provides for the delegation of the Secretaries functions to the Principle officer of an Aboriginal agency, and section 176 which provides that the Secretary must prepare and monitor the implementation of a cultural plan for each Aboriginal child placed in out of home care under a guardianship to the Secretary order. Section 176 is an innovative and commendable provision which will go a long way towards securing the safety and well being of Aboriginal children if it is implemented effectively. . The dispute resolution part of the Act does not provide specifically for culturally appropriate conferences but section 222 does include provision for the Court to enable a member of an Aboriginal child's community to attend a conference. Section 323 of the Act provides a number of safeguards with respect to permanent care orders where an Aboriginal child is to be placed solely with a non Aboriginal person. These include a requirement that an Aboriginal agency must recommend the placement. The legislation fails to integrate or make provision for the inclusion of Indigenous peoples in the decisions and procedures which impact on them across the legislation.

Service delivery

The Victorian Child Protection Service has a projects and program development branch that is responsible for research, evaluation, quality improvement and developing program and practice enhancement in response to international and national research. A selection of reports and papers that describe some of their recent activities as well as current training resources is available on their web site⁹⁸. The Department has many extremely innovative and well thought through programs. The two key limitations with these programs and initiatives are firstly the piecemeal nature of their implementation, the lack of connection between different initiatives, and the lack of connection between departments outside of DHS and child protections services that are needed to provide complementary services for particular program initiatives. The second related limitation

⁹⁸ See <http://hnp.dhs.vic.gov.au/wps/portal>

being the lack of an overarching structural framework for conceptualising, implementing and managing the delivery of child protection and support services to Indigenous communities. An area of persistent difficulty is the equitable access to mainstream programs by Indigenous families. The links between Indigenous specific and mainstream services which Indigenous families could be using need to be made more accessible.

DHS programs include early intervention and prevention programs such as *Best Start* which aims to give children under 8 a range of educational, health and family services and is targeted at children from disadvantaged families. Eight programs entitled *Innovation Projects* are targeted at improving services to vulnerable families who are the subject of repeat notifications for the Department. Two of the eight Innovation programs are specifically targeted to Indigenous communities. The Department also has information to assist workers to communicate more effectively and provide more culturally appropriate services to Aboriginal families on their website. Other services offered include intensive therapeutic help for children and adolescents who have experienced severe abuse, programs for high risk adolescents and programs for high risk infants.

The Department has a protocol between the Child Protection Service and the Victorian Child Care Agency which was initially developed in 1992 and was strengthened and endorsed after a review in 2002. This initiative should be built upon and could be used as a springboard to develop a more comprehensive institutional framework for capacity building in Indigenous children's organisations and for sharing responsibility for Indigenous children's well being between the Department and Aboriginal agencies and communities. The protocol requires that advice is sought from an Aboriginal agency with respect to Aboriginal children who come into contact with the child protection system. For this purpose the Aboriginal Child Specialist Advice and Support Service (ACSASS) was established. The protocol requires identification of Aboriginal children who are notified and to involve ACSASS in all decisions made with respect to Aboriginal children. ACSASS should be involved in all case planning with respect to Aboriginal children unless the child or family do not want them to be involved and then ACSASS will not have direct contact with the family but will still advise the agency.

Family group conferencing and decision making are part of the case planning and this is a form of decision making which has particular application to Indigenous communities and could be extended and developed in Aboriginal communities. An evaluation of Aboriginal and Torres Strait Islander family decision making in the Hume region found a high level of cultural fit and effectiveness in the program run in that region⁹⁹. Some of the positive aspects of this program include the way in which it drew on the strengths of families and communities, the involvement of elders, the improved understanding by families of what was required and how they could meet the requirements to keep children safe, the improved understanding by government agencies of families needs. A significant reason identified for the success of the Hume region model was the involvement of community and particularly elders in developing and making the model and an effective and strong community organisation which could support its development.

Western Australia

In Western Australia child protection is presently governed by the *Child Welfare Act* 1947 although this is set to be replaced by the *Children and Community Services Act* 2004 scheduled for proclamation in March 2006.¹⁰⁰

In 2002 Gordon, Hallahan and Henry released a report known as the 'Gordon Inquiry'¹⁰¹ which examined family violence and child protection in Aboriginal

⁹⁹ Linage International, A.T.S.I. *Family decision making program evaluation – Approaching Families Together*, Rumbalara Aboriginal Corporation and DHS Victoria

¹⁰⁰ Note section 102 has already taken effect as of 22 January 2005, s102 – leaving a child unsupervised in a vehicle which makes it an offence to leave children unsupervised in a vehicle where they are likely to suffer emotional distress or temporary or permanent injury to their health. The new *Children and Community Services Act 2004* can be viewed at

<http://www.slp.wa.gov.au/statutes/YrByYr.nsf/2c010fb704a430a348256865002a4868/fc9fdd1722be350e48256f3400200110?OpenDocument>

¹⁰¹ Gordon S; Hallahan K; Henry D., *Putting the picture together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Perth, WA: State Law Publisher, 2002,

<http://www.slp.wa.gov.au/publications/publications.nsf/Inquiries?OpenView&Start=1&Count=30&Expand=9#9>; See also D'Eatough TR, "Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities (the Gordon Inquiry)", (2002-2003) 5 *Developing Practice: The Child, Youth and Family Work Journal* 50-52, <http://www.acwa.asn.au/ACWA/publications/Journal/journal.html>

communities. The Inquiry was the next step following a report by the State Coroner in 2001 into the death of a teenage Aboriginal girl who had suffered a life of sexual abuse and violence. In that report the Coroner noted that her story was not unique and was in fact endemic in the Aboriginal communities of Western Australia. The Gordon inquiry released 197 recommendations and it was from there that the government formed a taskforce that prepared a response.

The Government's response to the Gordon Inquiry, *Putting People First* December 2003 is said to outline '*the action plan for the future direction of Government responses to addressing family violence and child abuse in Indigenous communities in Western Australia.*'¹⁰² The response included legislative reform and as noted above the *Children and Community Services Act 2004* will be enacted fully in 2006.

Indigenous children in Western Australia are more likely to be subject to a substantiation of neglect. In 2003–04, 43% of Indigenous children in Western Australia were subject to a substantiation of neglect compared with 27% of other children.¹⁰³ The Government suggests that in the first year of the Government's response to the Gordon Inquiry significant progress has been made.¹⁰⁴

The Children and Community Services Act 2004

The *Children and Community Services Act 2004* emphasises supporting family wellbeing and supporting the capacity of families to care safely for their children. Currently the Western Australia Department of Community Services is developing regulations and reviewing policies and guidelines for the implementation of the new Act.

Section 12 of the new Act relates to the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP). A placement principle has been part of WA

¹⁰² Western Australian Government, *Putting People First: the West Australian Government's Action Plan for Addressing Family Violence and Child Abuse in Aboriginal Communities – The Response to the Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, www.gordonresponse.dpc.wa.gov.au

¹⁰³ AIHW, op cit

¹⁰⁴ Western Australian Government, *Putting People First*, op cit at 2

Department policy since 1986 and regular reviews have taken place since then. This section however, puts these policies into the legislation and at present the department is reviewing its guidelines for implementing the principle and it is these guidelines that the staff will use when making a placement pursuant to s81 of the Act. Section 81 requires an officer of the Department who is Aboriginal or Torres Strait Islander to be involved in the making of a placement arrangement for an Aboriginal or Torres Strait Islander child and an Aboriginal and/or Torres Strait Islander agency must be consulted regarding the placement. This provision appears to be stronger in that it requires an Indigenous officer of the Department to be involved in the making of the placement arrangement and an Aboriginal / or Torres Strait Islander Agency to be consulted. However care will need to be taken to recognise the diversity of communities and to recognise that an Indigenous officer of the Department will not necessarily have knowledge about a particular community.

The Department has observed that the principle is linked with the Principle of Self Determination (s13) and the Principle of Community Participation (s14) in the new Act.

Section 13 provides that Aboriginal and Torres Strait Islanders should be allowed to participate in the protection and care of their children with as much self determination as possible. Again this provision is similar to the NSW provision and the proposed NT provision and issues regarding this provision are discussed in those sections. A consultative process with key Aboriginal stakeholders and community groups is reportedly being carried out to develop the process for implementing the section.

In 2005 the Government also released a response to a report that examined systems to prevent and respond to children harmed in the care of the Department. This report entitled "Protecting Children in Care – A Way Forward".¹⁰⁵ The report noted new initiatives to develop innovative and alternative models of foster care. The new initiatives are presently being researched.

¹⁰⁵ Western Australian Government, *Protecting Children in Care – A Way Forward*, May 2005

Human Resources

The Western Australian Government's response to the Gordon Inquiry included an additional 65 staff to provide direct services for children in the child protection system.

The positions included:

- 14 Aboriginal Support Workers to work with young Aboriginal people on the streets at night with five workers in the metropolitan area and nine in country areas;
- 25 Community Child Protection workers;
- An additional 14 Aboriginal Youth and Family Engagement Worker positions to follow-up with families of children who are out roaming at night in the metropolitan area;
- 10 new *STRONGfamilies* Coordinators.

In addition six new Community Capacity Building workers have been recruited.

Aboriginal and Torres Strait Islander peoples have been recruited into positions across all levels and occupations within the Department and it is implementing ways to retain and support Indigenous staff. At present Aboriginal and Torres Strait Islander staff comprises of 12 percent of the Department's staff and there are 16 Senior Officers of Aboriginal Services working in districts across the state. These Officers work alongside the District Managers and 'provide leadership in good practice for working with Aboriginal and Torres Strait Islander children and young people, their families and communities.'¹⁰⁶ The Department did not indicate that there were any Indigenous people employed in management positions.

Best Practice Models

The Department highlighted the following service delivery initiatives in Western Australia.

¹⁰⁶ Information provided by Lex McCulloch, Acting Director General of the Department of Community Services.

The Department for Community Development's Capacity Building Framework

The creation of the Department for Community Development in 2001-02 saw a change in focus from the provision of welfare and care and safety services to an emphasis on developing the capacity of individuals, families and communities to care for their children, young people and other family members, whilst at the same time providing safety services. The Department's work is underpinned by a capacity building approach involving the core principles of engagement, inclusiveness, collaboration and capacity building.

Appropriate interventions and strategies that are meaningful and appropriate to those communities are being developed. The Department highlights the fact that it is committed to working in partnership with the Aboriginal communities including in its prevention and early intervention work, safety and care responses and policy development.

Corporate Initiatives

An Indigenous Policy Directorate has been established and was launched in December 2002.¹⁰⁷ This unit coordinates Departmental policy and provides advice, analysis and information for Aboriginal and Torres Strait Islander services across the Department. It has also developed links with NGOs, other government agencies, community members and Departmental Policy offices and directorates to ensure Indigenous issues are included in Department policy as services.

The Department for Community Development highlighted the following, noting that the Directorate:

- *“Provides leadership and direction to address the needs of Aboriginal and Torres Strait Islander families, individuals and communities;*
- *Builds key partnerships across the Department, with other government and non government agencies and the community;*

¹⁰⁷ The Directorate has an Executive Director who is appointed at level 9 and there are 6 staff working in the Directorate.

- *Develops and coordinates high level across-government and community policy and planning to ensure responses are appropriate and culturally sensitive;*
- *Monitors and analyses issues and trends affecting Aboriginal and Torres Strait Islander people to ensure the Department's responses are well informed and evidence based;*
- *Coordinates reconciliation and NAIDOC activities;*
- *Ensures staff are appropriately skilled to work with Aboriginal and Torres Strait Islander peoples."*

The Indigenous Vision 2005-2009

The Indigenous Policy Directorate recently developed an Aboriginal and Torres Strait Islander strategic plan entitled The Indigenous Vision 2005–2009. Guiding Principles and an Action Plan have been developed to outline the methods for implementing, evaluating and monitoring the progress of the Vision. The Indigenous Vision instructs the Department among other things to work with Indigenous families including with Elders in all consultations with the aim that the Department improve the way it works with Indigenous families. It also focuses on the provision of more education and development opportunities for young people to ensure their resilience when moving into parenthood and adulthood.

A Capacity Building Approach to Safeguarding and Promoting the Wellbeing of Children and Young People

Still in draft, the development of this policy aims to provide staff with better ways of engaging with Aboriginal and Torres Strait Islander communities so that new partnerships can be developed to improve reporting and responses to child abuse as well as establish collaborative ways to address abuse and violence in Aboriginal communities. According to the Department, consultation with the Aboriginal community has already taken place. The goal is that these partnerships will strengthen the responses to children or young people in need of protection and recognises that community development and the principles of self determination are important to safeguarding and promoting children and young people's wellbeing.

STRONG families

STRONG families, a state-wide program, is an interagency initiative in which the Department is involved that operates under the Human Services Directors' General Group. Human services agencies including State Government and Commonwealth agencies, NGOs and community representatives oversee the programs implementation.

Essentially the program plans and coordinates services that families are receiving from a number of agencies. It is designed for families with complex needs and where it is determined that a more formal coordination process will provide better outcomes for the family. Information is shared between the various agencies, however the program only assists consenting families.

Australian Capital Territory

In the Australian Capital Territory the governing legislations for child protection is the *Children and Young People Act 1999*¹⁰⁸ and the Office for Children, Youth and Family Support is responsible for the administration of the Act.

Within the Office for Children Youth and Family Support, is the Aboriginal and Torres Strait Islander Unit, established as part of the Government's response to the Vardon report.¹⁰⁹ One of the responsibilities of the unit is to ensure statutory compliance with the Act. Other responsibilities include managing or appraising the provision of specific services to Aboriginal and Torres Strait Islander families as well as performing a consultation role. Submissions from the child or young person's community are taken into account. Staffing of this unit is by Aboriginal and Torres Strait Islander people. Within the broader human resource framework in the Office for Children Youth and Family Support, staff also complete cultural awareness training.

Children and Young People Act 1999

The following is a summary of the general principles of the *Children and Young People Act 1999*:-

- *“The best interests of the child or young person should be the paramount consideration.*
- *The primary responsibility for providing care and protection for the child or young person should lie with his or her parents and other family members.*
- *High priority should be given to supporting family members, in cooperation with them, to care for and protect the child or young person.*
- *If a child or young person is in need of care and protection and family members are unwilling or unable to provide the child or young person with adequate care*

¹⁰⁸ Amendments effective 6 March 2005

¹⁰⁹ Vardon C, *The Territory As A Parent, Review Of The Safety Of Children In Care In The ACT and of ACT Child Protection Management*, (“The Vardon Report”), 2004

and protection, it is the responsibility of government to share or take over their responsibility.

- *If intervention by government in the life of the child or young person is appropriate, the intervention should be the least intrusive consistent with the best interests of the child or young person.*
- *If removal of the child or young person from his/her existing situation is necessary or desirable in his/her best interests — first consideration should be given to the child or young person being placed with a family member or a person regarded as a family member.*
- *If the child or young person does not live with their family because of action taken in accordance with the Act — contact with people who are significant in his/her life should be encouraged.*
- *The education, training or lawful employment of the child or young person should be encouraged and continued without unnecessary interruption.*
- *The child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced and decisions or actions taken should be consistent with these values.*
- *The child or young person or anyone else involved in making decisions about them should be given sufficient information and in a language and a way they understand to allow them to take part fully in the process.*
- *If the child or young person can form and express a view about his/her well being — those views should be sought and considered, taking into account age and maturity.*
- *Others involved in making decisions about the child or young person should be given the opportunity to give their views and those views should be considered.*

- *Decisions should be made promptly having regard to the principle that it is important for the child or young person to have settled and permanent living arrangements.*”¹¹⁰

The Act also has additional provision for Indigenous children and young people in the Indigenous children and young people principles at Section 15. This states that where a decision or action in regards to an Indigenous child or young person is being made under the Act, submissions from or on behalf of any relevant Indigenous organisation about the child or young person and Indigenous traditions and cultural values of their community should be considered.

Reform

In 2004 a report was released known as the “The Territory’s Children: ensuring safety and quality care for children and young people: Report on the Audit and Case Review” (“Murray Report”).¹¹¹ The Murray Report is a detailed review of 150 children and young people, subject of a child protection report over a three-year period.¹¹² The Report released recommendations which mainly focus on practice, policy, procedures and training. Included in those recommendations was better support for children and young people who are Aboriginal and Torres Strait Islanders. In February 2005 the First Six month status report on the implementation of the Murray Report was released.¹¹³

Recommendation 3.5 and 7.4 called for the completion of social histories and family assessments for all families whose children come into the legal care of the Territory.

¹¹⁰ From Office for Children, Youth and Family Support, DHCS, ACT, *Keeping Children and Young People Safe, Reporting child abuse: a shared community responsibility*, February 2005

¹¹¹ Murray, G, *The Territory’s Children: ensuring safety and quality care for children and young people: Report on the Audit and Case Review*, July 2004 (“the Murray Report”)

¹¹² 10 May 2000 to 31 December 2003

¹¹³ See The Legislative Assembly for the Australian Capital Territory, *First Six-Month Status Report on the Implementation of the, The Territory’s Children, Ensuring safety and quality care for children and young people*, Report on the Audit and Case Review, presented by authority of Katy Gallagher MLA, Minister for Children, Youth and Family Support, February 2005.

As of February 2005, the Aboriginal and Torres Strait Islander Unit had appointed a worker to complete family history work.¹¹⁴

Recommendation 3.10 proposed that a public sector foster care program be re-established. The Government did not agree to this, however in order to meet the needs of the Aboriginal and Torres Strait Islander community and comply with recommendation 7.1, a specialised foster care service was established and is being managed by the Aboriginal and Torres Strait Islander Unit. A community reference group was also established to provide input into the development of the service. The initial training consisted of 12 applicants and five of those carers as of February 2005 had been approved.

Recommendation 7.2 proposed that all Indigenous kinship carers be thoroughly assessed prior to placement of children and that monitoring and support be provided. This was agreed to in principle and a new system for assessing Aboriginal and Torres Strait Islander kinship carers has been developed and is being implemented.

Recommendation 7.3 proposed guidelines for contact of Indigenous children who are living in out-of-home care with their relatives. The government agreed to review the Child Protection Manual and policy to ensure the safety of children and after consultation with the ACT Indigenous community new information was included in the manual including reference to the Indigenous Placement Principle in section 15. Further, additional background information about the Stolen Generation and other factors that influence decisions relating to the placement of Indigenous children were set to be included in the Protection Manual by February 2005.

Recommendation 7.5 proposed that departmental policy regarding court orders and voluntary care agreements is clearly articulated. This was agreed to and after a review of voluntary care agreements the new information will be included in the Care and Protection Manual.

¹¹⁴ Recommendation 3.5, *ibid* at 7

Recommendation 7.7 recommended a targeted intensive parenting service be provided for Indigenous families where children are being neglected or abused. The main focus of such a service would be on the impact of domestic violence, alcohol and drug abuse. This was agreed in principle however the nature and full costs of the service were being considered as of August 2004. As of February 2005, the expansion of family support services was reported in the Status of Recommendations report as being a priority in 2005-06, although no further information was provided as to what the services would entail.

Recommendation 7.8 called for a therapeutic childcare service to be established to provide full time reparative childcare for children 0-5years whose development had been compromised. This too was agreed in principle but has not yet been given full consideration.

Recommendation 7.9 proposed that Indigenous workers in the Office for Children, Youth and Family Support complete the entire standard child protection worker training, in order to increase levels of understanding of safety risks for children. As of February 2005 all staff in the specialized unit are undertaking core training.

Further, in accordance with recommendation 7.10 the implementation of a comprehensive case plan and monitoring of the care of Indigenous children is being progressed. And in accordance with recommendation 7.11 a clear referral process has been developed and incorporated in the Child Protection Manual.

Also released on 25 May 2004 was “The Territory as a Parent (Vardon) Report”.¹¹⁵ As a result of the Report the Government committed to developing amongst other things culturally appropriate, high quality standards of care and protection services for children and young people at risk and in August 2004 the Minister for Children, Youth and Family Support tabled the Implementation Strategy for the report. Included in the principles guiding this Strategy was improving service responses for Aboriginal and Torres Strait Islander children and young people and their families.

¹¹⁵ (“The Vardon Report”)

The first six month report noted that in the nine months from May 2004 to February 2005 the Government amongst other things established an Aboriginal and Torres Strait Islander Unit, and an Early Intervention and Prevention Group.

The Review recommended:

- *“That a ‘gathering’ be held to explore cross-cultural awareness and the storylines of Indigenous children and young people;*
- *That the Indigenous Unit be located structurally within the new unit in such a way that it has both policy and operational responsibilities;*
- *That the Manager of the Indigenous Unit be supported by a reference group of community agency leaders and have terms of reference from the Children’s Services Council;*
- *That the most senior position in the Indigenous Unit be at Executive Service level, as the Executive Director of Indigenous Child Protection and Family Support – an expanded unit;*¹¹⁶
- *The development of a strategy to support the recruitment of Indigenous staff including child protection workers and managers consistent with the Public Sector Management Act and relevant certified agreement that a mechanism be put in place to ensure the voices of Indigenous children and young people in care be listened to, that their views be taken seriously, and that they be involved in decisions that affect their care arrangements.*”¹¹⁷

In accordance with the recommendations the Aboriginal and Torres Strait Islander Unit was developed in consultation with the Aboriginal and Torres Strait Islander community and the staff already in the Office. Since May 2004 the Office had doubled

¹¹⁶ Recommendation 3.3, *ACT Government Response to “The Territory as a Parent” Review of the Safety of Children in Care in the ACT and of ACT Child Protection Management by Cheryl Vardon*, 25 May 2004, at 8, <http://www.childprotectionreview.act.gov.au/documents/RESPONSE.doc>

¹¹⁷ Recommendation 3.2, *ibid* at 7

its Aboriginal and Torres Strait Islander Unit's staff. Further, an increased support for Aboriginal and Torres Strait Islander staff is also reported so that the staff has access to professional development opportunities. As of 2005, 19 staff were being supported with their enrolment in the Diploma of Community Services at the Canberra Institute of Technology.

Other implementation includes a review of all the Care and Protection Policies relating to Aboriginal and Torres Strait Islander children, young people and their families as of May 2004, and maintaining the Vardon Report Reference Group for Aboriginal and Torres Strait Islander children and young people, comprising of key representatives from the community. The Office will work closely with the reference group and ACT Health to ensure the planning of a 'gathering' is done in accordance with the recommendations.¹¹⁸

¹¹⁸ See The Legislative Assembly for the Australian Capital Territory, First Six-Month Status Report on the Implementation of "*The Territory as Parent*", *Review of the Safety of Children in Care in the ACT and of ACT Child Protection Management*, Presented by authority of Katy Gallagher MLA, Minister for Children, Youth and Family Support, February 2005.

Tasmania

The *Children, Young Persons and Their Families Act 1997* provides the legislative framework for the care and protection of all children in Tasmania. Child and Family Services are responsible for services involving the protection of children including intake, assessment, case management and out of home care services. The Child Protection Advice and Referral Service (CPAARS) receive notifications of abuse or neglect.¹¹⁹

Section 8 of the Act provides that in any exercise of the powers under the Act in relation to a child:-

- (2) In any exercise of powers under this Act in relation to a child –
- (a) the best interests of the child must be the paramount consideration; and
 - (b) serious consideration must be given to the desirability of –
 - (i) keeping the child within his or her family; and
 - (ii) preserving and strengthening family relationships between the child and the child's guardians and other family members, whether or not the child is to reside within his or her family; and
 - (iii) not withdrawing the child unnecessarily from the child's familiar environment, culture or neighbourhood; and
 - (iv) not interrupting unnecessarily the child's education or employment; and
 - (v) preserving and enhancing the child's sense of ethnic, religious or cultural identity, and making decisions and orders that are consistent with ethnic traditions or religious or cultural values; and
 - (vi) preserving the child's name; and
 - (vii) not subjecting the child to unnecessary, intrusive or repeated assessments; and

¹¹⁹ <http://www.dhhs.tas.gov.au/services/view.php?id=657>

(c) the powers, wherever practicable and reasonable, must be exercised in a manner that takes into account the views of all persons concerned with the welfare of the child.

(3) In any exercise of powers under this Act in relation to a child, if a child is able to form and express views as to his or her ongoing care and protection, those views must be sought and given serious consideration, taking into account the child's age and maturity.

(4) In any proceeding under this Act that may lead to any separation of a child from his or her family, other than a proceeding under Part 4, the child's family and other persons interested in the child's wellbeing must be given the opportunity to present their views in respect of the child's wellbeing.

(5) In any proceeding under this Act in relation to a child, the child's family and other persons interested in the child's wellbeing should be provided with information sufficient to enable them to participate fully in the proceeding.

(6) All proceedings under this Act must be dealt with expeditiously, with due regard to the degree of urgency of each particular case.

In addition, section 106 provides for the declaration, variation or revocation of a recognised Aboriginal organisation at the Minister's discretion and pursuant to section 9 a decision as to where or with whom an Aboriginal child will reside may not be made except where a recognised Aboriginal organisation has first been consulted. It also provides additional principles to those outlined in Section 8 to have regard to whenever any decision or order under this Act in relation to an Aboriginal child is made. These include having regard to any submissions made by or on behalf of an Aboriginal Organisation (s9(2)(a)) or if there are no submissions, there must be regard to Aboriginal traditions and cultural values (including kinship rules) as 'generally' held by the Aboriginal community (s9(2)(b)) and have regard to the general principle that an Aboriginal child should remain with the Aboriginal community (s9(2)(c)).

The Aboriginal Child Placement principle exists in the legislation (section?) and determines that after consultation with the relevant Aboriginal service, 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.

The Circular Head Aboriginal Service is a funded non-government organisation that aims to provide an integrated holistic service to address the needs of Aboriginal clients. The services provided include domestic assistance, social support, advocacy, personal care, home maintenance, transport and day centre.¹²⁰

Conclusion

All Australian states are failing to meet International standards in regards to Indigenous child welfare and should continue to refer to the Bringing Them Home Report to ensure that these standards are met.

¹²⁰ <http://www.dhhs.tas.gov.au/services/view.php?id=1177>

Canada

History and Background

In Canada treaties exist between some Indigenous peoples and the Crown, however much like Australia, Canada has a constitutional division of powers consisting of a Federal Government and Provincial and Territorial governments. The Canadian Constitution gives the federal government exclusive power to legislate with respect to First Nations peoples of Canada.¹²¹ In 1876 the *Indian Act*, which was based upon policies of protection, guardianship and assimilation, was enacted without consultation with the Indigenous Peoples of Canada.¹²² Durst says the history of First Nations child welfare can be roughly divided into the Assimilation Period (1876-1960s), Integration period (1960-1980s) and the present period of local control (1980-present).¹²³

In the first period residential schools became the primary institution of ‘child welfare’ and children were forcibly removed from their families. By the 1960s mass removals of Aboriginal children had occurred with many of these children either being placed into non-Aboriginal foster homes or adopted to non-Aboriginal people.¹²⁴

In 1951, and following concerns over poor quality child welfare services, the Federal government amended the *Indian Act*¹²⁵ and included section 88 to allow Provincial governments to provide services in health, welfare and education to First Nations

¹²¹ The Term First Nations refers to a group of Aboriginal peoples in Canada previously known as Indians. Canada has three categories of Aboriginal peoples these being First Nations people, Inuit people and Metis people. For the purposes of this paper, a general reference to First Nations people, Aboriginal or Indigenous peoples refers to all or any Indigenous Canadians.

¹²² Boyko, J *Last Steps to Freedom: The Evolution of Canadian Racism* Watson & Dwyer Publishing, Winnipeg, 1995 cited in Bennett M, Blackstock C, & De La Ronde, R A *Literature Review and Annotated Bibliography Focusing on Aspects of Aboriginal Child Welfare in Canada*, First Nations Research Site of the Centre of Excellence for Child Welfare, 2nd ed, 2005 at 13, http://www.fncfcs.com/docs/AboriginalCWLitReview_2ndEd.pdf

¹²³ Durst D, *Self-Government and the Growth of First Nations Child and Family Service (FNCFS)*, unpublished draft paper, October 2003, <http://www.iigr.ca/conferences/archive/pdfs3/Durst.pdf> at 7

¹²⁴ Blackstock C, Clarke S, Cullen J, D’Hondt J, Formsma J, *Keeping the promise - The Convention on the Rights of the Child and the Lived Experiences of First Nations Children and Youth*, April 2004, at 70, <http://www.fncfcs.com/docs/KeepingThePromise.pdf>

¹²⁵ Bennett, Blackstock, & De La Ronde, op cit at 19,

therefore expanding child welfare services to First Nations people living on reserve.¹²⁶ As a result Provincial legislation applies to all First Nations within that jurisdiction however the funding for child welfare services on reserve remains the federal government's responsibility,¹²⁷ whereas funding for child welfare services for First Nations children off reserve is the responsibility of the provincial and territorial governments.¹²⁸ Nevertheless, First Nations agencies are funded in a variety of different ways and much depends on which Province the agency is located in.¹²⁹

First Nations have always maintained that they should have full jurisdiction over children and families¹³⁰ and it is worth noting that as of 2005 there were over 125 Aboriginal controlled agencies in Canada and many have to varying degrees been able to provide more culturally appropriate services for children, families and communities.¹³¹ However, despite this longstanding assertion by First Nations, Federal and Provincial governments continue for the most part to mandate First Nations child welfare through legislation.¹³² This means that most power exercised by First Nations children's agencies is delegated power and the agencies administer services under the authority of mainstream legislation.

On Reserve

¹²⁶ Durst (2003) op cit at 8

¹²⁷ Blackstock C & Trocme N, *Community Based Child Welfare for Aboriginal Children: Supporting Resilience through Structural Change*, <http://www.cecw-cepb.ca/DocsEng/communityBasedCWAboriginalChildren.pdf>, 2004, at 5

¹²⁸ Sinclair M, Bala N, Lilles H & Blackstock C, "Aboriginal Child Welfare" in Bala N, Zapf MK, Williams RJ, Vogl R & Hornick JP (eds) *Canadian Child Welfare Law: Children, Families and the State* 2nd ed, Thompson Educational Publishing, Toronto, 2004, cited in ibid. See also First Nations Child and Family Caring Society of Canada ("FNCFCS"), Standing Senate Committee on Human Rights, *A Chance to Make a Difference for this Generation of First Nations Children and Young People; The UNCRC and the Lived Experience of First Nations Children in the Child Welfare System in Canada*, February 7, 2005, www.fncfcs.com

¹²⁹ Bennett M & Blackstock C, *A Literature Review and Annotated Bibliography Focusing on Aspects of Aboriginal Child Welfare in Canada*, First Nations Research Site of the Centre of Excellence for Child Welfare, 2002, at 50, <http://www.fncfcs.com/docs/LitReviewEntire.pdf>

¹³⁰ For example see Nisga'a Final Agreement – allows for Nisga'a to develop child welfare laws; the Indian child welfare legislation drafted by First Nations child and family service agencies in Saskatchewan and in British Columbia, the Saplumcheen band by-law. See & ibid at 30

¹³¹ Bennett, Blackstock & De La Ronde, op cit at 27

¹³² Association of Native Child and Family Services Agencies of Ontario, 2001 cited in Blackstock & Trocme, op cit, at 31

After the enactment of section 88 the Federal government began to enter into agreements with the provinces whereby they paid the provinces to provide child welfare services to Indigenous Peoples.¹³³ The use of residential schools for substitute care and the adoption of First Nations children into white families grew without the informed consent of the natural parents.¹³⁴ With ten provinces and three territories all with legal jurisdiction over child welfare, Canada's child welfare system is certainly not cohesive.¹³⁵

From the 1980s provincial/federal agreements with Indian bands and tribal councils began to emerge¹³⁶ and bilateral and even tripartite agreements grew dramatically. First Nations peoples were understandably eager to gain more control and some entered into the agreements. The *Ontario Child Welfare Act* 1984 was the first Provincial Act to concede the need for more culturally sensitive services and community participation. In the province of Manitoba, First Nations people rapidly negotiated agreements so that by 1984 nearly all their children were under local Aboriginal control. On the other hand Saskatchewan First Nations peoples did not enter into any agreements because they believed this new form of control was merely tokenistic¹³⁷ and to them this was unacceptable.

Many agreements were signed which resulted in a dramatic increase in the number of children entering into care. This was primarily the result of the fact that Aboriginal people were more comfortable with the new culturally appropriate services and therefore more likely to report incidences of child abuse or neglect. This resulted in significantly greater costs to the Federal government.¹³⁸ Durst points out that many of the agencies struggled with poorly trained and poorly experienced staff, inadequate

¹³³ Bennett, Blackstock , & De La Ronde, op cit at 45

¹³⁴ Durst, 2003, op cit at 8

¹³⁵ Swift K, & Callahan M, *Partnerships for Children and Families Project, Problems and Potential of Canadian Child Welfare*, June 2002, at 2

¹³⁶ Armitage A, "Family and Child Welfare in First Nation Communities" in B Wharf (ed) *Rethinking Child Welfare in Canada* McClelland & Stewart Inc, Toronto, 1993, at 153 cited in Durst., 2003, op cit at 9

¹³⁷ Durst, 2003, op cit at 10

¹³⁸ Armitage, op cit at 156, cited in Durst 2003, op cit at 10

funding, poorly planned services and little thought was put into evaluation processes.¹³⁹ Although the services were more culturally sensitive they remained modelled after standard child welfare services.¹⁴⁰ First Nations children in Canada remain more likely than the national average to enter substitute care.¹⁴¹

As a result of a policy review in 1986¹⁴² the Department of Indian and Northern Development implemented a policy in 1991 known as “Directive 20-1”.¹⁴³ Durst notes that the Directive was an attempt to control escalating costs associated with new First Nations agencies. All First Nations child and family agencies have been forced to comply with the policies set out in this directive.¹⁴⁴ The Directive has procedures for accounting, evaluation and administration and funding based on the number of children “in-care” rather than use of services such as respite care, childcare in-home support or other preventative programmes. Durst notes that this policy appears to encourage the placement of children in care which “reinforces past practices of apprehension and temporary substitute care.”¹⁴⁵

Under the Directive, First Nations must accept the Provincial legislation and must therefore enter tripartite agreements. The original intention of the Directive was to ensure services were comparable with those for other Canadians. The delegated model allows First Nations to manage and deliver their own child welfare services. However, design and policy remains with the Provincial authorities which has been problematic for First Nations Peoples because laws and policy vary from province to province, so that many First Nations peoples continue to suffer inequality in services.¹⁴⁶ In addition, the services are based on the Anglo rather than Indigenous framework. The Directive,

¹³⁹ Durst , ibid

¹⁴⁰ Ibid

¹⁴¹ Recent research indicates between 30% -40% of children in care in Canada, are Aboriginal. See Farris-Manning C & Zandstra M, *Children in Care in Canada - A summary of current issues and trends with recommendations for future research*, Foster LIFE Inc, 2003. See also Armitage op cit at 164 cited in Durst 2003, op cit at 11

¹⁴² And the resulting document entitled *Indian Child and Family Services Management Regime: Discussion Paper*, Department of Indian and Northern Affairs, 1989

¹⁴³ With the exception of Ontario, which operates under a separate agreement. First Nations Child and Family Caring Society of Canada, [op](#) cit

¹⁴⁴ Durst, 2003, op cit at 11-12, provides an explanation of Directive-20

¹⁴⁵ Ibid at 13

¹⁴⁶ Ibid

whilst facilitating the development of over 100 First Nations child and family service agencies serving on reserve communities, has been criticised for its inequitable funding compared to Provincial child welfare providers and in addition the emphasis it places on supporting child removal as opposed to providing funding and resources for family support.¹⁴⁷ While First Nations have challenged the jurisdiction of the Provinces over their children, the Supreme Court of Canada has ruled¹⁴⁸ that section 88 of the *Indian Act*, which delegates federal powers to the provinces, is valid.¹⁴⁹

In 1999 a review was initiated by the Indian and Northern Affairs Canada called the “First Nations Child and Family Services Joint National Policy Review”¹⁵⁰ and 17 recommendations were made for improvement to the policy. Durst comments, in agreement with the Review findings, that Directive 20-1 is based on delegated authority but that the transfer of full jurisdiction to the First Nations over child welfare is needed. He notes that a national framework that recognizes regional differences is necessary. And states that:-

“A significant finding was that the Directive is inflexible, outdated and provides insufficient resources. A new funding formula is required that addresses regional variations in work load, case work analysis, agency size and population demographics. There is a need to move from intrusive, disruptive and reactive services to alternative preventive and proactive programs. There is a need to move towards multi-year block funding agreements. Needs for evaluation and information systems to monitor services are also recommended. ...In conclusion, A new policy to replace current Directive 20-1 (Chapter 5) must be developed in a joint process that includes all stakeholders and ensures funding support for that process to the following action plan. (FNCFS National Policy Review, Executive Summary, p.17)”

¹⁴⁷ McDonald RJ & Ladd P et al, *First Nations Child and Family Services Joint National Policy Review: Draft final report*, Prepared for the Assembly of First Nations with First Nations Child and Family Service Agency Representatives in Partnership with the Department of Indian Affairs and Northern Development, Ottawa, ON: AFN and DIAND, June 2000

¹⁴⁸ In 1975

¹⁴⁹ Durst, 2003, op cit at 13. So long as it does not violate federal legislation.

¹⁵⁰ Published in June 2000

While Directive 20-1 relates to on-reserve First Nations peoples, it is worth monitoring the implementation of the Review findings, because they may provide experience relevant to Australian Indigenous child welfare, such as the recommendation with respect to block funding and evaluation mechanisms. As of 2002 PD 20-1 had not been changed due to the lack of financial resources allocated to support the implementation of the recommendations. Bennett and Blackstock note that:- *“It is critical that recommendations from these types of studies are implemented in order to establish a framework for a healthy and respectful future for children and families. Doing nothing reinforces the status quo which for First Nations children, youth, families and Nations is entirely unacceptable.”*¹⁵¹ This observation clearly has relevance to Indigenous peoples and Governments in Australia.

¹⁵¹ Bennett & Blackstock, op cit at 56

Self Government

The story of Indigenous Peoples in Canada is much like the story of Indigenous Peoples throughout the world. In Canada, Indigenous Peoples lived as sovereign nations for thousands of years and did not concede this with European settlement.¹⁵² However with the introduction of the *Indian Act* in 1876, Aboriginal people in Canada found themselves being imposed with a new set of laws, regulations and European values. Despite this, First Nations peoples in Canada continue to assert their right to self determination which includes the right to control or ‘self govern’ the affairs relating to their children and families.¹⁵³ Whilst the right to self determination has not been recognized, elements of self government rights on the other hand are being recognised in varying degrees.

Aboriginal rights and treaty rights in Canada are recognised within section 35 of the *Constitution Act* 1982. Despite this the courts have been unable to resolve the scope of these rights and governance powers and consequently the rights and responsibilities of the Federal and Provincial governments and First Nations peoples remains uncertain.¹⁵⁴

First Nations peoples in Canada are living in a diverse range of situations¹⁵⁵ and self government for First Nations in Canada has progressed in many ways. There is no one self government template and each group has their own unique self government arrangements. Self government provisions may include, education, housing, property rights, justice services and health care and social services including child welfare. Self government therefore, can only be considered within the context of each group.¹⁵⁶ As such, the way self government affects child and family services also needs to be viewed

¹⁵² Durst D, “The Circle of Self-Government: A Guide to Aboriginal Government of Social Services” in R Delaney, K Brownlee & MK Zapf (eds) *Issues in Northern Social Work Practice*. Northern Social Work Collection. Vol 2. Thunder Bay, ON: Centre for Northern Studies. Lakehead University. (1996)

¹⁵³ First Nations Child and Family Task Force, *Children First, Our Responsibility*, The Queen’s Printer, Winnipeg, 1993 at 47; See also Bennett, Blackstock, & De La Ronde, op cit

¹⁵⁴ Self government landscape, BC Treaty Commission
http://www.bctreaty.net/files_3/issues_selfgovernment.htm

¹⁵⁵ For example much depends on which province a group is located in.

¹⁵⁶ Bennett, Blackstock & De La Ronde op cit

from the perspective of each Aboriginal community.¹⁵⁷ For example in some provinces such as Alberta, Manitoba and Saskatchewan, First Nations are endeavouring to expand self governance powers through existing treaties. Other First Nations such as in British Columbia, are developing land claims and new treaties, and it is through these instruments that they are negotiating self government within those frameworks. On the other hand other First Nations, particularly those without a land base, are achieving self government, or levels of it through community based initiatives. It would appear however, that no matter what the situation, all are acting with limited and insufficient resources which is particularly significant when compared to Federal and Provincial governments who have considerably more resources. There are few academic resources devoted to research into how to obtain full self governance over initiatives such as child welfare.¹⁵⁸ Nonetheless, there are a number of initiatives throughout Canada where jurisdiction is being expanded or transferred to Aboriginal communities. The following section looks at some of the relevant provinces and reviews some of the initiatives.

Manitoba

In Manitoba, the Assembly of Manitoba Chiefs has pressed for self determination through two initiatives. One is at the Federal level the other is Provincial, and whilst separate initiatives, they are both having an effect on the way child and family services are delivered in that province. The Manitoba Framework Agreement 1994 is the Federal initiative and with the dismantling of Indian Affairs new self government initiatives are being developed.¹⁵⁹ At the Provincial level, the Aboriginal Justice Inquiry – Child Welfare Initiative negotiations were conducted between the Province, First Nations Peoples and Metis Peoples and has resulted in shared jurisdiction between Aboriginal peoples and the province over child welfare.¹⁶⁰

Federal Initiatives

¹⁵⁷ Ibid

¹⁵⁸ Ibid at 49

¹⁵⁹ Ibid at 53

¹⁶⁰ Ibid at 52

Manitoba

*“The 1994 Manitoba Framework Agreement is a federal initiative that involves dismantling Indian Affairs and developing various areas of self-governance including child welfare.”*¹⁶¹

As a result two child and family service projects transpired with the aim to restore full power and authority to First Nations over child welfare in Manitoba.¹⁶² The current system is viewed as an interim measure until First Nations’ goal of full jurisdiction is realised. The Department of Indian and Northern Affairs Development with the First Nations people in Manitoba commenced negotiations on a “Child and Family Agreement-in-Principle” similar to the Blood Tribe agreement in Alberta.¹⁶³ Negotiations are centred on a jurisdiction and governance model¹⁶⁴ but at the time of writing an agreement has not been reached.¹⁶⁵

Off Reserve – State Initiatives

The situation relating to First Nations children living off reserve in Canada may be more directly relevant to families living in Victoria. Bennett and Blackstock note that, *“there is a need to research and develop funding methodologies that coordinate with on reserve funding regimes so as to avoid exacerbating service inequalities based on residence.”*¹⁶⁶

In 1991 the Manitoba Aboriginal Justice Inquiry (conducted in 1988) released a report concluding that a number of changes to First Nations child welfare were necessary. They noted: *“Tremendous advances’ had (sic) been made in the delivery of child and family services for Aboriginal families living in on-reserve communities.Aboriginal*

¹⁶¹ Ibid at 53

¹⁶² Bennett, M “Independent First Nations Child Welfare Law in Manitoba” in J Oakes, R Riewe, M Bennett & D Chisholm (eds) *Pushing the Margins: Native and Northern Studies* Native Studies Press, Winnipeg, Manitoba 2001 in Bennett, Blackstock& De La Ronde op cit at 53-54

¹⁶³ Discussed below

¹⁶⁴ Bennett, M *Transforming Child Welfare: A Look at Two First Nation Initiatives in the Province of Manitoba*, unpublished paper submitted to Professor Denis Bracken for course 047.722, Faculty of Social Work, University of Manitoba, April 2002 cited in Bennett, Blackstock& De La Ronde, ibid at 54

¹⁶⁵ Bennett, Blackstock& De La Ronde ibid at 54

¹⁶⁶ Ibid at 56

children and families living off-reserve continue to be served by mainstream child and family service agencies.”¹⁶⁷ Some of their recommendations included:-

- “Amend Principle 11 of the Child and Family Services Act [Manitoba] to read: ‘Aboriginal people are entitled to the provision of child and family services in a manner which respects their unique status, and their cultural and linguistic heritage;
- Expand the authority of existing Indian agencies to enable them to offer services to band members living off reserve; and
- Establish an Aboriginal child and family services agency in the city of Winnipeg to handle all Aboriginal cases”¹⁶⁸

The AJI-CWI recommended that Aboriginal Authorities should have the major responsibility for the design and delivery of services off reserve. In 1999 the Province of Manitoba decided to implement the Inquiry’s recommendations and in August 2000, jurisdiction was extended to Aboriginal child welfare authorities off-reserve with the signing of separate Memorandums of Understanding between the Manitoba Métis Federation, the Assembly of Manitoba Chiefs (representing southern First Nations), the Manitoba Keewatinowin Okimakanak (representing First Nations), and the Province of Manitoba commenced on the restructure of the child and family services system in Manitoba.¹⁶⁹ The four parties then signed a Service Protocol Agreement which is the framework for the planning process.¹⁷⁰ The Manitoba initiative is different to all previous reforms in that the policy-making process was jointly developed, and the government, rather than being the primary policy maker, was one of four policy-making partners.

¹⁶⁷ Government of Manitoba 2001, at 8 in McKenzie B & Morrissette V, “Social Work Practice with Canadians of Aboriginal Background: Guidelines for Respectful Social Work ” (2003) 2(1) *Envision: The Manitoba Journal of Child Welfare* 13-39 at 20

¹⁶⁸ Ibid

¹⁶⁹ Holnbeck C, DeJaegher S & Schumacher F, Metis Child and Family Services, “Developing Child Welfare Services from the Ground Up: A Multidisciplinary Approach”,(2003) 2(2) *Envision: The Manitoba Journal of Child Welfare* 17-27

¹⁷⁰ See Hudson P & McKenzie B, “Extending Aboriginal Control Over Child Welfare Services – The Manitoba Child Welfare Initiative”, (2003) 51 *Canadian Review of Social Policy/Revue Canadienne de Politique Sociale* 49-66 at 52

A Conceptual Plan released in 2001 followed.¹⁷¹ The plan outlined the restructuring of child welfare services. With legislation enacted in 2002,¹⁷² four new child and family services Authorities have been created, a Métis Authority, a First Nations of Southern Manitoba Authority, a First Nations of Northern Manitoba Authority, and a General Authority (non Aboriginal).¹⁷³ These new Authorities are the driving force for implementing the new child welfare policy and management of child welfare services in Manitoba.¹⁷⁴ The four Authorities are charged with the responsibility to develop policy, and practices and procedures that are culturally appropriate. Two of the authorities are First Nations, there is one Metis child and family service authority and the General Authority is responsible for delivery of services to other (non-Aboriginal) children and families.¹⁷⁵ All are responsible for the delivery of services under the *Child and Family Services Act* 1985 and *The Adoption Act* C.C.S.M. c. A2 as well coordinating services and funding community based agencies.¹⁷⁶

¹⁷¹ Joint Management Committee, 2001

¹⁷² The *Child and Family Services Authorities Act* 2002; see also *ibid* at 54

¹⁷³ First Nations of Northern Manitoba Child and Family Services Authority; First Nations of Southern Manitoba Child and Family Services Authority; Metis Child and Family Services Authority; and The General Child and Family Services Authority. AJI-CWI, August 2001:13 cited in Bennett & Blackstock *op cit* at 52

¹⁷⁴ Holnbeck, DeJaegher & Schumacher, *op cit* at 17

¹⁷⁵ Aboriginal Justice Inquiry – Child Welfare Initiative, <http://www.aji-cwi.mb.ca/>

¹⁷⁶ McKenzie & Morrisette, *op cit*

How is it structured?

The *Child and Family Services Authority Act 2002* recognises the new Authorities' rights and responsibilities. It is the responsibility of each Authority to design and manage service delivery, policy development, and the administration of funding to the agencies under their jurisdiction. The new authorities are currently subject to the *Manitoba Child and Family Services Act 1985 (CSF)* while the new legislation that will replace the *CFS and The Adoption Act C.C.S.M. c. A2* is developed. The drafting of this legislation was still pending as of November 22, 2004.

As part of the structure an Executive Committee, a Joint Management Committee, Implementation Committee, and Working Groups were developed to devise a set of principles and recommendations to implement the new legislation and associated program delivery. For example the Implementation Committee formed seven working committees to review topics such as legislative changes, fiscal arrangements and service delivery. The reviews and recommendations were then put together to form the Conceptual Plan.

Each committee comprises of various people and organisations. For example, “the Executive Committee comprises of the signatories to the Memoranda of Understanding and the Child Family Services Protocol; The Implementation Committee comprises of the Chief Executive Officers from each of the Child and Family Services Authorities, one representative from the Child Protection Branch, and one representative from the Strategic Initiatives and Program Support Branch; and The Joint Management Committee is comprised of the following representatives selected by the signatories to the MOUs;

- Two provincial government representatives - one representative from the Department of Family Services and Housing; one representative from the Department of Aboriginal and Northern Affairs.
- One representative from the Assembly of Manitoba Chiefs
- One representative from Manitoba Keewatinook Ininew Okimowin

- Two representatives from the Manitoba Metis Federation
- One portfolio Chief selected by the Assembly of Manitoba Chiefs
- One Métis woman selected by the Manitoba Métis Federation
- One representative of Winnipeg Child and Family Services.”¹⁷⁷

Vision and mission statements¹⁷⁸ confirm the “distinct rights” and “unique status” of First Nations and Métis populations and refer to community based child and family services.¹⁷⁹

The Detailed Implementation Plan (“DIP) is designed to provide a framework to implement the new initiative. A key feature of this plan is that it is a “rolling document” designed to accommodate any changing circumstances. The document consists of over 200 pages with 21 sub-projects including:-

- Authority Development;
- Service Transition;
- Human Resource Services; and
- System governance and supports.¹⁸⁰

There are five phases developed by the Joint Management Committee. The five phase plan was due to be completed in 2004 however the dates were meant as targets and it was also envisaged that dates would be adjusted from time to time to ensure the system responds to children and families appropriately. The five phase plan as taken from the website is as follows and was last updated on May 30, 2005:-

- Phase 1: September 2000 to December 2000 -Working Groups struck to develop proposals and recommendations for the draft plan.

¹⁷⁷ <http://www.aji-cwi.mb.ca/eng/background.html>

¹⁷⁸ See Appendices

¹⁷⁹ Government of Manitoba 2001, op cit at 10, in McKenzie & Morrissette, op cit at 21

¹⁸⁰ Detailed Implementation Plan at 3 <http://www.aji-cwi.mb.ca>

- Phase 2: January 2001 to July 2001 - Implementation Committee prepares consolidated draft conceptual plan based on Working Groups proposals and recommendations to be submitted to the Executive Committee.
- Phase 3: August 2001 to April 2003 - Completion of the public feedback process, development of the Detailed Implementation Plan (DIP), and transition into Phase 4.
- Phase 4: February 2003 to June 2005 - Plan substantially implemented.
- Phase 5: June 2005, to December 2005 - Stabilization of changes implemented.

Caseloads, resources, and assets are being transferred from the previous child welfare departments to the “most culturally appropriate authority” and their agencies. Under the old system non-Aboriginal agencies provided services to Aboriginal families. The ‘general authority’ and their associated agencies will be downsized as cases are transferred to the mandated First Nations and Metis authorities. This will only occur once the Aboriginal Authorities and Agencies are ready to assume these responsibilities.

McKenzie and Morrissette observe the enormity of the transfer.¹⁸¹ There is an assumption that most people will want to be served by their respective authority and there are some restrictions on the ability to choose or change authorities.¹⁸² This assumption appears to be correct as Elsie Flette, CEO of the Southern First Nations Child Welfare Authority has noted that 70% of children in care in Manitoba are Aboriginal and 86% of families are choosing their culturally based authority, (Northern First Nations, Southern First Nations, Métis, or mainstream).¹⁸³ Choice of authority has been a contentious issue. The Minister’s position was that people were entitled to freely chose their agency whereas Aboriginal stakeholders believed that the Province,

¹⁸¹ Aboriginal Justice Inquiry- Child Welfare Initiative 2003. McKenzie and Morrissette note that out of 15,000 Manitoba families receiving child welfare services in Manitoba in 2003, an estimated 5000 will choose to transfer to a new Aboriginal agency revealing the enormity of the transfer, McKenzie & Morrissette, op cit at 21

¹⁸² Hudson & McKenzie, 2003,op cit at 54-55; see also AJI-CWI, August 2001 at 19

¹⁸³ Blackstock & Trocme op cit at 8, citing a personal conversation with Elsie Flette, CEO of the Southern First Nations Child Welfare Authority. This model is extremely respectful to the cultural identity of clients and will be an important model to monitor over time.

by trying to stop First Nation authorities from reclaiming their members, was compounding the harm caused by removing children's identity in the first place.¹⁸⁴

The Intake services are structured in such a way that the four authorities jointly manage the services but through designated agencies. In Winnipeg there is a joint intake response unit as the first point of contact and outside of Winnipeg a number of designated agencies are charged with the responsibility. There is a separate agency designed to provide emergency services, identify the Authority which holds records and refer clients to the ongoing services. It is also envisaged that information sharing including information regarding abuse will take place and that common registries will be established for that purpose.

Funding is also being transferred to the new Authorities. The Manitoba government provides funding to the Authorities and this is then distributed to their agencies. An additional one off payment was also made to cover additional expenses for things such as training, transitional costs, transfer of caseloads and other administrative costs.

Why is Manitoba better than other systems?

A large body of opinion suggests that Aboriginal people have a right to define and deliver their own services. Hudson and McKenzie observe "*When assessed in relation to these trends, Manitoba's new initiative to extend Aboriginal jurisdiction for child and family services to people living off-reserve appears quite innovative.*"¹⁸⁵ Blackstock and Trocme¹⁸⁶ argue that, "*the risks posed to Aboriginal children were often the result of structural decisions made by those outside of their communities.*" And it is well known that Aboriginal children have suffered ongoing effects of colonial policies. In that regard they suggest that the Manitoba Aboriginal Justice Inquiry Child Welfare Initiative is the most progressive model because it is "*extremely respectful to the cultural identity of clients.*"¹⁸⁷ While there are many models that claim to be culturally

¹⁸⁴ Hudson & McKenzie, 2003, op cit at 60

¹⁸⁵ Ibid at 51

¹⁸⁶ Blackstock & Trocme, op cit at 2

¹⁸⁷ Blackstock & Trocme, op cit at 8

respectful or appropriate the provincial Manitoba initiative offers a well-structured system that can be developed to accommodate changing circumstances. The following discussion seeks to explain why the Manitoba system is innovative.

Firstly, the model is based on the inherent right of First Nations and Metis peoples to culturally appropriate services¹⁸⁸ and the concepts of collaboration, participation and righting the wrongs of the past are at the core of the initiative.¹⁸⁹ The restructured system was driven by First Nations and Metis peoples and it is unique in that regard particularly because Provincial government representatives were in the minority rather than majority. Another striking feature is the fact that jurisdiction is shared and the Manitoba government has been willing to share some aspects of its child welfare jurisdiction. The Authorities along with their agencies have “concurrent jurisdiction” which contrasts to the previous system. In the past child and family service agencies had responsibility only within a fixed geographical location.¹⁹⁰ Conversely the new system means that the responsibility for child and family services in the whole of the province is shared as a way of providing the most culturally appropriate services, regardless of where a child or family resides.¹⁹¹

As discussed, the enormity of the transfer is clear. It is for this reason that the model was developed as a five phase plan with timelines that can be updated and amended to ensure the quality of the responses. In particular the transfer stage appears to be well thought out with transfers being made on a region-by-region basis, with the aim that each authority and agency will have time to prepare and ensure they are ready to accept

¹⁸⁸ See The Aboriginal Justice Inquiry –Child Welfare Initiative Report <http://www.mkonorth.com/ajchildwelfare.html>, MKO 22nd Legislative Government House Annual General Assembly Opaskwayak Cree Nation September 9,10,11, 2003.

¹⁸⁹ Bennett, Blackstock& De La Ronde op cit at 52

¹⁹⁰ As of September 2000 there were nine mandated First Nations child and family services agencies serving 62 First Nations in Manitoba. Intertribal Child and Family Services and Sagkeeng First Nations were not incorporated under the CFS Act, but provided services through an administrative arrangement with mandated agencies. There are currently two Aboriginal agencies providing a range of non-mandated services in Manitoba. Ma Mawi Wi Chi Itata Centre Inc. provides services to status and non-status Indians and Métis living in Winnipeg. Manitoba Métis Child and Family Support Services serves Métis people throughout the province. (The Role of Provincial and Territorial Authorities in the Provision of Child Protection Services - CFS Information Child and Family Services, March 2002 Report prepared by: Secretariat to the Federal/Provincial/Territorial)

¹⁹¹ Bennett, Blackstock& De La Ronde op cit at 53 and the AJI-CWI, August 2001 at 19

the responsibilities entrusted to them. This is particularly relevant to the Métis Authority because up until this time they have had no system in place, unlike mandated First Nations agencies which have been set up in some form over the past two decades.¹⁹²

The benefits of the Metis Child and Family Services (MCFS), in particular the fact that it can begin its structuring with a clean slate, have been highlighted.¹⁹³ One point raised has been that this has enabled them to develop their IT systems as they develop rather than merely as an afterthought.¹⁹⁴ However the need for the Metis agency to build its services from the ground up also means that they will be faced with unique challenges. These challenges have been outlined as being:-

- (a) The need to engage in more basic levels of planning than other partners;
- b) The need to rely upon a number of external resources; and
- c) The need to develop both a Metis Authority and Agency simultaneously.¹⁹⁵

A labour adjustment strategy is being used to address Human Resource issues. This includes *The Workforce Adjustment Process Guidelines* (WFA), which are a set of agreements made between the Province of Manitoba and non-Aboriginal child and family service agencies and their staff and unions. *The Master Human Resources Framework Agreement* (MHRA) is a set of agreements between Aboriginal and non-Aboriginal child welfare agencies and the Province of Manitoba and looks at the secondment of employees including Aboriginal and non-Aboriginal employees from the previous agencies. An education and training initiative is also being developed over a five year period to ensure the workforce is qualified and culturally competent. The joint training unit is responsible for developing the curriculum in conjunction with educational institutions, as yet however this is still pending.

¹⁹² See Hudson & McKenzie, 2003, op cit at 55

¹⁹³ See Holnbeck, DeJaegher & Schumacher op cit at 17-18

¹⁹⁴ Ibid at 22

¹⁹⁵ Ibid at 17-18

One of the benefits of the Manitoba initiative is that it is highly adaptable and can therefore be structured around regional differences. Although some issues may have been missed at the conceptual stage, the structure means it can more readily accommodate changes in the future. It also appears to offer a structure that can be adapted to other contexts and countries. The following offers a discussion of the critiques that have been made of the Manitoba reforms. These critiques offer the opportunity for other States to benefit from the lessons learnt from the development of the Manitoba reforms and to improve an already highly innovative, well developed and promising reform process.

Critique

Firstly, some writers have criticized the planning of the Manitoba initiative suggesting that there was little public consultation and not enough planning.¹⁹⁶ For example early intervention was promoted in the planning but it doesn't elaborate on any particular service model. Other commentators point out that many of the ideas are not flawed but require further thought.¹⁹⁷

Secondly, despite the fact that the Manitoba initiative has been heralded as innovative, some commentators have reservations as to whether the reforms are sufficient. While First Nations peoples have the authority to restructure and deliver the services to their people, the Manitoba Province continues to have the ultimate authority and the ultimate responsibility for the protection of children in Manitoba.¹⁹⁸ McKenzie and Morrissette note that there are many positive results with service models such as this but warn that there are limitations. In particular they observe that: “*...jurisdictional control has been limited by the required adherence to mainstream legislation and standards in child welfare, a requirement that contradicts the views of many Aboriginal people regarding*

¹⁹⁶ See Hudson & McKenzie, 2003, op cit and MacDonald F, *Restructuring Rights: Exploring the Implications of Privatization for Minority-Rights Based Initiatives*, paper presented at the Annual Meeting of the Canadian Political Science Association, June 2004, <http://www.cpsa-acsp.ca/papers-2004/MacDonald,%20Fiona.pdf>

¹⁹⁷ Hudson & McKenzie, 2003, op cit at 62

¹⁹⁸ Bennett, Blackstock & De La Ronde, op cit at 53

*the inherent right to self government and the fiduciary responsibility of the federal government.”*¹⁹⁹

Self Determination and Self Government

Like Indigenous people in Australia, First Nations peoples in Canada have suffered the oppression that has occurred with colonialism. As MacDonald explains, rejection of traditional ways of child-rearing and practices has led to many interventions including legal ones such as the forced removal of their children, placement into colonial schools and long-term intervention of provincial child and family services.²⁰⁰ There is no doubt that this has left First Nations groups in Canada with a deep mistrust of the welfare system. MacDonald notes that the desire and call for autonomous child welfare is therefore not surprising. White and Jacobs state, “*In the long run, recognition of our inherent right to self-government and ...our family law provide the only framework for dealing with the protection and strengthening of our families and children.*”²⁰¹ MacDonald suggests the community has the cultural knowledge and capabilities to work with First Nations children.²⁰²

But instead of real self determination governments have offered First Nations communities a delegated authority or what McDonald describes as a type of ‘middle-man’ role.²⁰³ For First Nations people this is unacceptable because firstly it is simply not enough and secondly it may actually interfere with any future goals of self determination.²⁰⁴ Given that there is confusion as to what self determination and self government means, if First Nations people don’t achieve the types of results expected of them any hope of having power truly returned may be thwarted due to the potential for colonial views to be perpetuated, that being that they are unable to handle the problems themselves.²⁰⁵

¹⁹⁹ McKenzie & Morrissette, op cit at 17

²⁰⁰ MacDonald, op cit at 19

²⁰¹ White L & Jacobs E *Liberating Our Children: Liberating Our Nations*, Ministry of Social Services, Victoria, BC 1992 at 35 in ibid

²⁰² MacDonald, ibid

²⁰³ See ibid

²⁰⁴ Ibid at 30-31

²⁰⁵ Ibid at 31

The Manitoba system appears to offer more than a ‘middle man’ role in that there is an increase in rights and responsibilities transferred to First Nations.²⁰⁶ But MacDonald suggests that even though it appears to offer a real transfer of responsibility, in reality it is merely the privatisation of services.²⁰⁷ Like all the systems before it, the Province continues to retain the legislative power, and through ministerial policies and Anglo-Canadian values, the Province will continue to remain the ultimate authority.²⁰⁸ Unfortunately it is this that will limit the holistic change needed.²⁰⁹ Services that are culturally appropriate are fundamental but when the cultural divide is so large, it will be difficult for real change to occur when the ‘western’ legislative and administrative structures are retained even if modified and administered by First Nations Authorities and Agencies.²¹⁰ Alfred writes, “[T]he rusty cage may be broken, but a new chain has been strung around the indigenous neck; it offers more room to move, but it still ties our people to white men pulling on the strong end.”²¹¹ Despite these fears, it would appear that First Nations peoples do not view the AJI-CWI Initiative as a barrier to the goal of full jurisdiction over child welfare, but merely as an interim measure and see the Manitoba Framework Agreement Initiative as the place for this goal to be realised.²¹² This is also made clear in the *Child and Family Services Authority Act 2002* which states that the Act should not abrogate or derogate Aboriginal rights to other self government agreements or the treaty rights affirmed in section 35 of the Canadian Constitution.

Funding

Another contentious issue is whether sufficient resources will be provided to the new authorities.²¹³ Although First Nations Authorities will have existing funds and resources

²⁰⁶ Aboriginal Justice Inquiry- Child Welfare Initiative, op cit at 23

²⁰⁷ MacDonald, op cit at 22

²⁰⁸ White & Jacobs, op cit at 35 in MacDonald, ibid at 23

²⁰⁹ Alfred T, *Peace, Power and Righteousness: An Indigenous Manifesto* Oxford University Press, Don Mills, ON, 1999 and Monture A, *Journeying Forward: Dreaming First Nations Independence* Fernwood, Halifax, FS, 1998 in MacDonald, ibid at 24

²¹⁰ Alfred, ibid and Monture, ibid in MacDonald, ibid at 24

²¹¹ Alfred ibid at xiii in MacDonald, ibid

²¹² Bennett, Blackstock & De La Ronde op cit at 53

²¹³ Hudson & McKenzie, 2003, op cit at 56

transferred to them to allocate to agencies,²¹⁴ they remain hamstrung because the funding will continue to be approved by the Province.²¹⁵ While they have the discretion to spend their funds they remain reliant on the Province to determine how much funding they will receive. The concern is that the Province remains the ultimate authority but benefits from the fact that its power is less transparent. Macdonald suggests that the new structure gives the impression that First Nations have increased autonomy but in reality they have more responsibility and accountability with virtually the same amount of autonomy as before.²¹⁶ MacDonald says the “*State gets the best of both worlds so that it looks like its doing the right thing but gets to distance itself from the ‘hardest’ child welfare cases in the eyes of the broader Canadian citizenry.*”²¹⁷ Hudson and McKenzie reveal that the “*Province recognizes a funding imbalance but is counting on the Authorities and agencies in the restructured system to find their own ways of shifting resources from protection to community building without significant increases in funding.*” However they note that this is better than in British Columbia where the restructuring is seen as a cost-saving strategy.

In Canada, and it is true also of Australia, Governments appear to be beginning to appreciate that issues such as child welfare and juvenile justice do not exist in isolation but rather are part of a bigger picture relating to issues such as poverty, education, health and housing.²¹⁸ Clearly what is needed is a holistic approach to these issues and while this is being more readily understood²¹⁹ the changes in developing holistic approaches and services appear to be slow. The problem with this is that if Indigenous child welfare is returned to its people, but in a piece meal fashion, Indigenous people are going to be left to solve the problems but they will be constrained by the legislative and funding structure imposed upon them. Further it would appear that from past experience that Aboriginal Child & Family Service Agencies have been expected to fix

²¹⁴ *Promise of Hope: Commitment to Change*, <http://www.ajicwi.mb.ca/eng/Phase3/promisefofhope.html>

²¹⁵ MacDonald, op cit at 24

²¹⁶ Ibid at 25

²¹⁷ Ibid at 25

²¹⁸ Trocme N & Wolfe D, *Child Maltreatment in Canada: Canadian Incidence Study of Reported Child Abuse and Neglect, Selected Results* National Clearinghouse on Family Violence, Canada 2001 at 30 in Hudson & McKenzie, 2003, op cit at 63

²¹⁹ MacDonald, op cit at 30

the inherited problems and have had unrealistic expectations put on them.²²⁰ It seems unfair to expect Indigenous organisations to return miracle results in a system that is firstly fragmented, secondly not completely their design or choice, and thirdly with inadequate funding. MacDonald notes that by returning child welfare to First Nations communities, its ‘natural’ place, in the way that has occurred in Manitoba, First Nations are being given the responsibility for “*a set of issues that extend far beyond the actual jurisdiction and decision-making power they have been granted*”.²²¹

Dealing holistically with child welfare for all children by incorporating it with other issues of ‘social concern’ makes sense but when you are talking about a group of people who are suffering from poverty, unemployment, and substance abuse to name but a few problems, then it seems that only a holistic approach will deliver the best outcomes for families and ultimately their children. To address these broader issues requires not only a transfer of authority over these matters but also a review of funding.²²² Hudson and McKenzie agree that it is not just a matter of shifting resources from one service modality to another. The Financial and Service Delivery Working Groups are aware that preventative services take time and cost more and have noted that more funding will be required. One of the goals of the Authorities in relation to funding is to, “*develop interim funding arrangements, secure transition funding, and develop a future funding model as part of the restructuring of the child and family services system.*”²²³

It must also be considered that it is likely that with a transfer of authority it is possible that the costs will increase considerably due to the increase in referrals.²²⁴ It is highly likely that Indigenous people will feel more trust and be more comfortable reporting suspected cases of child abuse to organisations run by their own people as has been seen in Canada in the past.²²⁵ The First Nations Child and Family Caring Society of Canada note in their report to the Standing Senate Committee on Human Rights: -

²²⁰ Hudson P & Taylor-Henley S, “First Nations Child and Family Services 1982-1992” (1995) 12(1) *Canadian Social Work Review* 72-84 in Bennett & Blackstock, op cit at 38

²²¹ MacDonald, op cit at 29

²²² Ibid at 30 and also Hudson & McKenzie, 2003, op cit

²²³ <http://www.aji-cwi.mb.ca/eng/Phase4/funding.html>

²²⁴ Armitage, op cit at 156 in Durst, 2003, op cit

²²⁵ Armitage, ibid at 164 in Durst, ibid

*“Within every government, there are competing funding priorities – but surely ensuring equitable resources are made available to the most vulnerable of children in our society should be the top priority.”*²²⁶

Another issue regarding funding in the Manitoba initiative is the method used for funding new agencies. The Financial Working Group have looked at a formula that is based, *“partially on needs in the population to be served, rather than children in care”*. However Hudson and McKenzie suggest that it lacks detail and limited attention has been given to block funding.²²⁷ Agencies have in the past endorsed block funding due to the greater flexibility it provides.²²⁸ The West Region child and family services provides one example of this flexibility. The West Region CFS is a non-governmental First Nations Child Welfare Agency in Western Manitoba with a board of directors made up of Chiefs from nine different communities. In 1998 it won an award for innovation revolving around block funding which facilitated a holistic and cultural approach to providing services for children in care. Money that was not used on child maintenance costs was put into other preventative and supportive services.²²⁹

According to Durst however block funding could be problematic for two reasons. Firstly new agencies could find it difficult to determine the amount of funding required and secondly smaller agencies could be vulnerable to the rise and fall of demand for services, and as a result they could find finances quite restricted in later years.²³⁰ McKenzie suggests a couple of options to overcome this difficulty. These include a national framework which allows for regional variations or the establishment of a national project to determine the best procedures to enter into block funding agreements which would require an evaluation of agencies experiences over several years.²³¹

²²⁶ Submitted by: First Nations Child and Family Caring Society of Canada, op cit at 5

²²⁷ Hudson & McKenzie, 2003, op cit at 57

²²⁸ McKenzie B, *Block Funding Child Maintenance in First Nations Child and Family Services: A Policy Review* Kahnawake Shakotiiia'takehnhas Community Services, Kahnawake First Nations, 2002 at 69 in Durst, 2003, op cit at 16

²²⁹ Flette E “Block Funding of Child Maintenance: A Medicine Wheel Approach to the Protection of Children at Risk”, (1999) *Canada's Children*, Spring, 23-27 in Bennett, Blackstock & De La Ronde op cit at 135

²³⁰ Durst, 2003, op cit at 16

²³¹ McKenzie, op cit at 85 in Durst, ibid at 17

Appropriate funding is an issue in current and new child welfare systems. According to Ah Kee and Tilbury²³² in Australia, “...about 10% of alternative care funding goes to indigenous agencies whereas 25% of children in alternative care are indigenous.” Clearly this is not equitable and new arrangements need to be considered. There are also economic benefits in investing in Aboriginal child welfare. The University of Western Ontario found that,

*“[I]nvestment of Canadian governments at all levels in social services directed at this serious social problem represents only a small fraction of the billions of dollars lost each year. A well planned and thoughtful investment of significant public funds in early detection, prevention and treatments of all forms of child abuse is not only a moral necessity for Canadian society, it is also sound fiscal policy that would directly benefit all.”*²³³

Nevertheless, even with issues with funding and questions over whether the Manitoba system provides sufficient autonomy, people in Canada appear hopeful that the Manitoba system’s adaptability means that it will be able to meet the challenge of generating meaningful ways of delivering child and family services.²³⁴

Funding of course does not act in isolation and some of the other issues discussed below are also to some degree entangled in the funding concern.

Jurisdiction versus Service Delivery

Even though the Federal Government is the major funder of existing First Nations Agencies in Canada, both First Nations groups and the Province failed to involve the Federal Government in the new initiative.²³⁵ Given that the main responsibility for child welfare in Australia falls under the States’ jurisdiction this issue is not really

²³² Ah Kee M & Tilbury C, “The Aboriginal and Torres Strait Islander Child Placement Principles About Self Determination”, (1999) 24(3) *Children Australia* 4-8 8

²³³ Bowlus A, McKenna K, Day T & Wright D, *The Economic Costs and Consequences of Child Abuse in Canada: Report to the Law Commission of Canada*, 2003 in Standing Senate Committee on Human Rights, [op cit](#)

²³⁴ Honbeck, Jaegher & Schumacher, *op cit* at 23

²³⁵ Hudson & McKenzie, 2003, *op cit* at 56

relevant to Australia however it is a reminder that all stakeholders should be included in the development of any new system. Unfortunately it appears that the consultation process was not extensive at all in Manitoba. In fact there was a limited public consultations process which had only a short timeframe and only 11 written submissions were received.²³⁶ Existing service providers were also largely excluded from the development process and it has been suggested that a broader consultation process may have provided potential solutions to the existing problems such as inter-sectoral linkages and the design of appropriate mechanisms for accountability.²³⁷ However the Manitoba Inquiry, which was the impetus for this change, did involve extensive consultation.

It would seem that the focus in fact was on jurisdictional questions rather than new ways of service delivery. By and large the Manitoba initiative is a major jurisdictional shift and Hudson and McKenzie warn that if the existing service delivery issues are not addressed the changes may not make much difference.²³⁸ It would appear that the analysis on the prior system's weaknesses revolved primarily around issues of race and culture and little attention it seems was given to gender and class biases.

Of course the policy change is important because First Nations Authorities are the administrators of policy and service development for Aboriginal people and they can develop appropriate services in their own way.²³⁹ However looking at the problems at a wider level to include further issues such as poverty and gender inequality in the old system may have provided a better starting point to work with.²⁴⁰ It may be that the First Nations Authorities felt they could deal with these issues but at least looking at the problems before the transfer occurred may have offered a better starting point and this could have been one less financial burden for the First Nations Authorities to worry about post transfer.

²³⁶ Ibid. See also <http://www.ajic.mb.ca/consult.html> and <http://www.ajicwi.mb.ca/eng/Phase3/p3townhall.html>

²³⁷ Hudson & McKenzie, 2003, *ibid* at 64

²³⁸ *Ibid* at

²³⁹ *Ibid* at 55

²⁴⁰ *Ibid* at 61

Essentially Hudson and McKenzie suggest an even more radical approach to child welfare is needed, suggesting that the changes fail to address the core reasons that contribute to child abuse and neglect. Restructuring welfare services so that Aboriginal people regain control is imperative but it would seem that more attention could have been given to the wider issues relating to First Nations children and families in Manitoba. In saying that however it is clearly understandable why First Nations people would make transfer of jurisdiction a high priority and given the flexibility of the system there appears to be no reason why these issues cannot be addressed under the new structure.

Intake services and out of home services

As discussed above the issue over choice of authority was a contentious issue and in the end the First Nations Authorities won the right to structure the intake services. However there appears to be little discussion over what happens for example when families belong to different authorities. As discussed above First Nations people can choose their authority, but as Hudson and McKenzie point out the plan doesn't address how the right to choose works where it is in conflict with the jurisdictional rights of First Nations Authorities which appear to be the main focus of the initiative.²⁴¹ No doubt this will be addressed in due course and when the issue arises but it is something to consider if other jurisdictions decide to use this model. The issue of individual rights vs. the collective interests of the group is a recurring issue. It would seem that the key to acceptable outcomes where these disputes do occur is an authoritative and widely accepted dispute resolution process.

Further the way third party providers operate was not incorporated into the plan and as such the issue of how group homes and institutions are to be run was also not addressed although as with the other issues this can be addressed at a later stage.²⁴²

Human Resources

²⁴¹ Ibid at 60

²⁴² Ibid at 55

First Nations Authorities in Manitoba can now create their own work force standards and are free to choose their workforce. MacDonald notes however that the lack of funding will again be problematic to the new authorities. Given the fact that mainstream systems are under funded as it is, MacDonald notes that the same set of problems will merely be transferred to the new authorities.²⁴³ This is only compounded by the fact that First Nations Authorities will be dealing with the most difficult and therefore generally the most expensive cases. There is concern that First Nations will inevitably fail due to lack of funding and the heat will be taken off the government as a result and put onto First Nations.²⁴⁴

Other human resource issues not directly related to funding have also been raised. The Manitoba system has developed a protocol for staffing new agencies and locating alternative employment for existing staff in the mainstream authorities. However writers have suggested that problems are likely to occur. Current agencies are being downsized but because First Nations Authorities understandably opposed a simple transfer of employees from the mainstream system to the new authorities it is likely that staff shortages will be the result. Another result is that new positions for existing mainstream staff will be needed.²⁴⁵ Writers also suggest that applying generalized stereotypes to staff within mainstream agencies needs to be considered because there are many good staff in the mainstream system who could be beneficial to the First Nations Authorities.

The transitional solutions have been outlined as follows; -

- Aboriginal staff in the current system can transfer to new agencies;
- Staff from existing system will be seconded to new agencies;
- A labour adjustment strategy is to be established to locate alternate employment for displaced staff or staff that complete the secondment term and wish to return to a former agency or provincial government.²⁴⁶

²⁴³ See White & Jacobs, op cit in MacDonald, op cit

²⁴⁴ MacDonald, ibid at 26

²⁴⁵ Hudson & McKenzie, 2003, op cit at 58

²⁴⁶ Ibid at 58

Unfortunately it has been pointed out that the first option does little to assist in staff shortages because there are already limited Aboriginal workers in the mainstream. The second strategy is acceptable so long as Aboriginal stakeholders have control over the process and the third strategy whilst important does not assist the staff shortages that the First Nations Authorities are likely to experience.²⁴⁷

Education is extremely important as a medium and long-term solution including short certificate programmes. However there is concern over the fact that in current programmes there is insufficient content on Aboriginal culture and community based service approaches and it important that this is recognized and resolved.²⁴⁸ Further, there is concern by some Aboriginal stakeholders over the value of professional training and qualifications and the belief that primary credentials should be cultural background and knowledge.²⁴⁹ The Human Resources Working Group noted that “*First Nations/Metis agencies recognize the importance of life experience and competency as opposed to academic credentials*”. However a combination of life skills and competency and professional education are also important.

Currently the Faculty of Social Work at the University of Manitoba has a distance education option within its B.S.W. programme and there is consideration for undergraduate specialized training in child and family services.²⁵⁰

Evaluation

²⁴⁷ Ibid

²⁴⁸ See also Sinclair R, “Aboriginal Social Work Education in Canada: Decolonizing Pedagogy for the Seventh Generation”, (2004) 1(1) *First Peoples Child and Family Review* 49-61 49-61. In particular see at 51 where the writer cites Weaver HN, “Indigenous People and The Social Work Profession: Defining Culturally Competent Services” (1999) 44(3) *Social Work* 217-225; Hart M, “An Aboriginal Approach to Social Work Practice” in T Heinonen & L Spearman (eds) *Social Work Practice: Problem Solving and Beyond*, Irwin, Toronto, 2001; Morrisette V, McKenzie B & Morrisette L, “Towards an Aboriginal Model of Social Work Practice: Cultural knowledge and traditional practices” (1993) 10(1) *Canadian Social Work Review* 91-108 and in particular Stalwick H, “What was said?” *Study Guide One, Demonstration of Strategies for Change: A review of Indian and native social work education in Canada*, Social Administration Research Unit, Faculty of Social Work, University of Regina, 1986 at 16 who says: - “*We need to address the problem of how we train an Indian social worker. I have some very serious doubts about the ability of existing social work schools to do that – to really meet the needs of native people. I don’t think they’re capable of that. Not because they’re not teaching and doing good things, but I don’t think they understand native people*”.

²⁴⁹ Hudson & McKenzie, 2003, op cit at 58-59

²⁵⁰ Ibid at 58

It appears that the conceptual plan did not cover the need to monitor the policy change. While it is important not to base evaluation methods solely on standard criteria,²⁵¹ evaluation mechanisms are important and thought needs to be put into culturally appropriate systems.²⁵² Writers acknowledge the difficulty in developing culturally appropriate service evaluation but believe that it is possible as they are being developed elsewhere citing The First Nations Child and Family Caring Society as a good example. The Society is developing its own evaluation and research capacity²⁵³ and has developed the first peer-reviewed journal to support First Nations children, young people and families.²⁵⁴ The journal articles are available on their website.²⁵⁵

Of course the fact that an evaluation method was not included in the conceptual plan does not mean that the new authorities will not implement one. And the design process has actually been praised including the fact that there is a basis for structured process evaluation.²⁵⁶ What is clear is that ongoing review of the new model is critical to ensure the best services are being delivered to First Nations communities. The Manitoba model is based around the ability to change and develop as new realities present themselves and it is suggested that a well-developed evaluation system is essential to ensure this is done properly.²⁵⁷

Ah Kee and Tilbury²⁵⁸ note that “*performance measurement is an important evaluation tool. We have to be prepared to make changes if existing strategies are not making a difference to outcomes. Clearly over representation will continue to increase unless there is consistent, concentrated and specific attention and monitoring of services for Aboriginal and Torres Strait Islander families.*”²⁵⁹

²⁵¹ Such as benefit to cost considerations

²⁵² Hudson & MacKenzie, 2003, op cit at 56

²⁵³ Ibid

²⁵⁴ *First Peoples Child and Family Review*, A Journal on Innovation and Best Practices in Aboriginal Child Welfare Administration, Research, Policy and Practice, First Nations Research Site On-line Journal

²⁵⁵ <http://www.fncfcs.ca/>

²⁵⁶ Honbeck, Jaegher & Schumacher, op cit

²⁵⁷ Honbeck, Jaegher & Schumacher, op cit at 23

²⁵⁸ Ah Kee & Tilbury, op cit

²⁵⁹ Ibid at 8

First Nations Agency

Another example of promising child welfare practice in the province of Manitoba is the West Region Child and Family Services (WRCFS). The child welfare agency serves nine Manitoba First Nation communities, and provides an example of a successful Indigenous-controlled agency. The agency provides child protection and family support services and community satisfaction with the agency is high. In a 1994 evaluation, the average score by community respondents when rating the agency's success was 3.9 (out of 5). This is very high for a service with such a difficult mandate as child protection. One of the two most important goals for the agency, as nominated by the community respondents, was "to deliver community-based culturally appropriate services".²⁶⁰ The agency's stated goals were closely aligned with community feeling on these issues. Three important agency principles, which were also used as evaluation criteria, are: Aboriginal control; cultural relevance; and community-based services. Overall, it was concluded that WRCFS's holistic approach to service-delivery was effective. Important factors considered to contribute to agency success were: autonomy and control over services and policies, flexibility, creativity; sound, supportive, progressive leadership; and a collaborative approach involving community which was empowering.²⁶¹

Conclusion

Writers appear to be in agreement that the new Manitoba Child Welfare initiative has the ability to "generate meaningful yet flexible ways of delivering child and family services." The West Region Child and Family Services (WRCFS) offers an example of a First Nations controlled child welfare agency and in the new system it appears likely that more culturally appropriate child and family services will be provided for Aboriginal communities in Manitoba. As discussed there are a number of possible challenges and no doubt numerous issues ahead of Aboriginal authorities in the Canadian Province of Manitoba. However there seems to be a great amount of

²⁶⁰ McKenzie B, "Connecting Policy and Practice in First Nations Child and Family Services: A Manitoba Case Study" in Pulkingham J & Ternowetsky G, (eds) *Child and Family Policies: Struggles, Strategies and Options* Fernwood, Halifax, 1997 at 112 in Libesman, op cit

²⁶¹ Ibid

optimism that the model's adaptability will provide the ability for the authorities to meet these challenges.

British Columbia

First Nations peoples in British Columbia have not had the benefit of treaties or compensation for dispossession and so their rights have developed in a more ad hoc manner.

In 1980 for example the Spallumcheen First Nations in BC were able to create the Spallumcheen By-Law after asserting their right to operate their own child welfare programme by conducting a live in protest at the home of the then Minister. A by-law under the mandate of the *Indian Act* gave them exclusive jurisdiction over their own children living on or off reserve from 1980. They are the only First Nations community in Canada not subject to Provincial child welfare laws and in this regard their situation is unique because it is the only instance where the Federal government has recognized First Nations jurisdiction over child welfare.²⁶² The by-law has been challenged and upheld by Canadian courts numerous times, but attempts by other First Nations to emulate similar child welfare by-laws have been unsuccessful.²⁶³

Spallumcheen children's connection to their families and community is extremely important and it is a requirement that children remain within their community. The chief and council are made guardians of first instance for a Spallumcheen child in need of protection and a placement principle is used to determine the placement of the child.

²⁶² Fournier S & Crey E, *Stolen from Our Embrace: The Abduction of First Nations Children and the Restoration of Aboriginal Communities* Douglas McIntyre Inc, Vancouver, 1997 in Bennett & Blackstock, op cit at 50. See also Walkem A& Bruce H, *Calling Forth our Future: Options for the Exercise of Indigenous Peoples' Authority in Child Welfare*, Union of B.C. Indian Chiefs, 2002 at 56, <http://www.ubcic.bc.ca>

²⁶³ See Walkem & Bruce, ibid at 57 and MacDonald JA, "The Spallumcheen Indian Band By-law and its Potential Impact on Native Indian Child Welfare Policy in British Columbia" (1983) 4(1) *Canadian Journal of Family Law* 75-95 in Bennett M, *A General Profile on First Nations Child Welfare in Canada, First Nations Fact Sheet*, <http://www.fnfcfs.com/> Cases: - *Alexander v Maxime*; *S.(E.G.) v Sapplumcheen Band Council*.

The Nisga'a Final Agreement signed in 1999, has four heads of agreement: Land Resources, Fisheries and Wildlife, Finance, and Programs and Service including child and family, and justice services. It is a constitutionally protected agreement.²⁶⁴ Probably the most positive feature in the agreement is that the Nisga'a have exclusive authority over child welfare matters on reserve with the power to make their own laws.²⁶⁵ Accordingly, Nisga'a Children and Family Services is an autonomous, Nisga'a controlled and operated service. The Province retains jurisdiction for emergencies involving children at risk, although Nisga'a resumes jurisdiction once the emergency is over. As a whole however laws passed have precedence over Provincial laws so long as they are "comparable to Provincial standards".²⁶⁶ Off reserve however is a different matter. Although there are consultation provisions, the ultimate decision making power for those children living off reserve remains with the Province.

A more recent example of agreement making in British Columbia is seen in the Sechelt Indian Band Self Government Agreement which contains provisions relating to the Sechelt's ability to pass child welfare laws although as yet new child welfare laws have not been created.²⁶⁷ The Sechelt are no longer bound by the *Indian Act* and can make their own laws.

In British Columbia The *Child, Family and Community Service Act* (CF&CS) is the legislative authority for child protection services generally. The Ministry for Children and Families' (MCF) administers services through operating agencies attached to ministry offices in 11 regions. Formal agreement making with Aboriginal communities for the provision or delegation of child and family services is encouraged and the MCF is striving for Aboriginal communities to provide child and family services to their own communities by developing Aboriginal agencies that have full delegation of authority.²⁶⁸²⁶⁹ Where an investigation involves an Aboriginal child the community is

²⁶⁴ http://www.bctreaty.net/files_3/issues_selfgovern.html; a copy of the agreement can be found at http://www.ainc-inac.gc.ca/pr/agr/nsga/nisdex12_e.pdf

²⁶⁵ Walkem & Bruce, op cit at 61-62.

²⁶⁶ Ibid

²⁶⁷ Ibid at 63.

²⁶⁸ Secretariat to the Federal/Provincial/Territorial Working Group on Child and Family Services Information, *Child Welfare in Canada 2000: The Role of Provincial and Territorial Authorities in the Provision of Child Protection Services* - CFS Information, Child and Family Services, March 2002 ,

involved in the assessment or investigation pursuant to the specific agreement between the Ministry and the Community. Where there is no agreement an Aboriginal community can still be involved with the consent of the parents.

As of September 1, 2000, six First Nations Child and Family Service Agencies with delegated authority provide services to 53 Bands. Other First Nations Agencies have partial delegated authority with some authorized to provide voluntary care service and foster home recruitment only whereas other Agencies have the sole responsibility of providing support services and foster care recruitment. The Aboriginal Services Branch is part of the MCF and is responsible in assisting Aboriginal communities in capacity building. This includes assistance in developing policies and standards and includes a quality assurance program.

There are specific provisions within the *CF&CS Act* concerning Aboriginal children and families. Within Part 1 of the Act:-

- Section 2(f), states that "the cultural identity of Aboriginal children should be preserved";
- Section 3(b), states that "Aboriginal people should be involved in the planning and delivery of services to Aboriginal families and their children"; and
- Section 4(2) states that "if the child is an Aboriginal child, the importance of preserving the child's cultural identity must be considered in determining the child's best interests."

There is a child placement principle for children placed in out of home care with priority given to the child's extended family or Aboriginal community (71(3)). And where an Aboriginal child is identified as requiring permanent removal the child's Aboriginal community must be notified. A community member also has standing to participate as a party in court proceedings including participation in alternative dispute

<http://www.hrsdc.gc.ca/en/cs/sp/sdc/socpol/publications/reports/2000-000033/rpt2000e.pdf>, ('Child Welfare in Canada 2000'). This report covers all the provinces and provides information such as Department roles, Service Delivery, Assessment and Case Planning, and Protective orders. Much of the following information is gleaned from this report

resolution processes where they can also propose alternative plans of care. Although participation in the alternative dispute resolution, is conditional on whether all parties agree.

Child protection workers are required to hold a Bachelor of Social Work degree or equivalent and new workers must also participate in an 11 week training programme although those graduates with a specialist Bachelor of Child Welfare degree are not required to sit this additional training. There is also an Aboriginal training strategy developed by the MCF's corporate services division which supports First Nations Child and Family Service Agencies in their delivery of services.

Custody and Guardianship

Voluntary Agreement

In British Columbia families who are unable to provide care for their child in their family home and are in temporary crisis can transfer to the Director as much guardianship as they voluntarily agree to under a voluntary care agreement. A voluntary care agreement must take into account the child's wishes and their best interests and must use the least disruptive measures available to the child and their family. British Columbia also has provision for a Special Needs Agreement use when in-home services or other less disruptive services are not adequate or available. Special Needs are verified by a professional assessment of the child's needs.

Court Ordered Protection

Where a child has been removed from the family home their case needs to be brought before the court within a specific time frame depending on the type of order sought. An Interim Order can be made pending a formal protection hearing. A Formal Hearing must be brought before the court within 45 days. A court can make a Supervision Order where appropriate in which case the child is left in the custody of the parents but is supervised by the Director under specific terms that are preferably agreed upon by the parents. A Custody Order will be made where the child's safety cannot be assured but it is probable that the child will be able to return home. A Continuing Custody

order can be made where the Temporary Custody Order is due to expire or for other reasons such as where parents can not be located or where more permanent arrangements need to be made. British Columbia also has provision for a Protective Intervention Order used to protect the child from another person. Like Protective Intervention Orders in other Provinces, this order aims to:-

”a) prohibit contact and interference or entrance to a premises that the child attends;

b) prohibit a person from residing in or entering the child’s residence, including a premises owned or leased by the subject of the order; and

c) orders the subject to enter into a recognizance, report regularly to the court, produce documents, or include any terms necessary to implement the order.”²⁷⁰

Ontario

Ontario was one of the first provinces in Canada to enact legislation that considered Aboriginal identity of children in child welfare decisions. First Nations child and family services in Ontario are governed by the *Child and Family Services Act, R.R.O 1990, Reg.70 as of July 30, 2002*. Under the Act the Ministry of Community and Social Services (MCSS) has responsibility for child welfare services in Ontario.

The purpose of the Act in the statement of principles, which at the time of writing in 1984 was quite pioneering, says,

“To recognize that Indian and native people should be entitled to provide, wherever possible, their own child and family services, and that all services to Indian and native children and families should be provided in a manner that recognises their culture, heritage and traditions and the concept of the extended family.”²⁷¹

²⁷⁰ Ibid at 166-167

²⁷¹ 2000, c.2, s.1

This provision and other purposes of the Act are subject to the best interests, protection and well-being of children (s1(1)). In determining the best interests of the child, cultural considerations must be taken into consideration (s37(4)) so long as they are consistent with the best interests of the child. S37(4) refers to the best interest of the child and the “*recognition of the uniqueness of Indian and native culture, heritage, and traditions, of preserving the child’s cultural identity.*” Placement principles apply when the Province deems it necessary to remove an Aboriginal child (s57(5) and 61(2)). The community must be advised of decisions made (ss34, 35 & 36) and copies of the child’s assessment must be provided to the child’s Band or community (s54). Further notice provisions exist so that where a child is placed up for adoption, the child’s native community or band must be advised of this intention (s140).

Child welfare service delivery is monitored by CASs²⁷² and other contract service providers. Qualifications vary with some CASs requiring a Bachelor of Social Work degree while others do not. There are nine regional offices with 53 CASs, five of which are Aboriginal child welfare agencies designated as CASs. They are: Tikinagan, Payukotayno, Weechi-it-te-win, Abinoojii Family Services, and Dilico. These agencies are required to consult with their band or Aboriginal communities about matters affecting their children including the placement of children, provision of family support services, preparation of care plans, temporary care and special needs agreements.²⁷³ Under Part 10 of the *CFSA* the Minister is permitted to enter into agreements with designated communities. These communities can then delegate service delivery to a child and family service authority and at the discretion of the minister, function as a CAS with full or partial delegation of authority under the *CFSA*.²⁷⁴

In March a report on the 2005 review of the *Child and Family Services Act* was released by the Ontario Ministry of Children and Youth Services, its first review of the new Act, which came into effect in 2000.²⁷⁵ The report noted that submissions made

²⁷² Children’s Aides Societies – they are provincial organisations that provide advice and assistance to the Ministry and Societies.

²⁷³ Child Welfare in Canada 2000, op cit at

²⁷⁴ Ibid

²⁷⁵ Ministry of Children and Youth Services, *Report on the 2005 Review of the Child and Family Services Act (CFSA)*, March 2005, Ontario

recommendations that policies and practices for placing First Nations children in First Nations foster homes or communities were made clear, legislation and policy with respect to customary care is made clear and notice to bands in specific circumstances are enforced.²⁷⁶

The Ontario Native child welfare system operates differently to the other provinces. The PD 20-1 Directive does not apply to Ontario, rather the 1965 Indian Welfare Agreement (IWA) is a formula-based funding agreement and the federal government reimburses the province for social services provided to First Nations. This also means however that provincial standards and guidelines must be adhered to.

Unfortunately the funding agreement does not include funding for services under Part X²⁷⁷ and commentators have suggested that this is inequitable because it is formula-based and not needs based and First Nations agencies have to address many unique challenges without access to extra funding. This includes serving people who are only accessible by air, or have high service needs such as addictions.²⁷⁸ Pre-mandated Aboriginal Child and Family Service Agencies are agencies that provide preventative services and they also face funding issues where they have to find their own funding.²⁷⁹ According to Bennett and Blackstock, funding challenges are great and cause a '*whole host of challenges*'.²⁸⁰

A further issue in Ontario was created when the Provincial government in conjunction partly with the Federal government put a moratorium on the development of new

²⁷⁶ It is unclear from the report however, who made the submissions.

²⁷⁷ Bennett, Blackstock & De La Ronde, op cit at 44. Part X pertains to 'Indian and Native Child Family Services'

²⁷⁸ Association of Native Child and Family Services Agencies of Ontario, *Pre-mandated Native Child and Family Services Agencies: Issues and Recommendations* July 2001 in Bennett & Blackstock, op cit at 52. The pre-mandated framework is viewed as a capacity building measure that exists until such time as the First Nations Peoples in their area receive jurisdiction over child welfare, either by way of a delegated model or treaty authority. See Blackstock C, *Aboriginal Child Welfare: Jurisdictional Models of Service Delivery*, Paper prepared for the First Nations Child and Family Caring Society, Ottawa, Ontario 2003.

²⁷⁹ Association of Native Child and Family Services Agencies of Ontario, *ibid* cited in Bennett and Blackstock, *ibid*

²⁸⁰ Bennett & Blackstock, *ibid* at 53

Aboriginal agencies pending the release of a review of the existing Native agencies.²⁸¹ Confidence in government has apparently been eroded since the moratorium because it went against the principle in the *Child and Family Services Act R.S.O 2000*. The main purpose of the review was “to determine whether Aboriginal children were safe and whether the agencies were complying with the standards of good practice, an Aboriginal perspective, and the expectations that these services would be provided in the most proficient manner.”²⁸² The report found that agencies were acting above standards and recommended that the Province implement ways in which Aboriginal agencies can deliver quality services including Aboriginal training initiatives.²⁸³

One First Nations controlled child and family service agency in Ontario is Kunuwanimano. The agency is a non-profit organization incorporated in 1989 and is funded by the Ministry of Community, Family and Children’s Services. The agency provides family support services to families and children under Part X of the *CFS Act*. The services they provide, which include counselling, family support and prevention services, advocacy and alternative care, are all culturally based. They operate under a strengths base perspective and this includes identifying their clients’ skills and abilities.²⁸⁴ Negative views such as “problems” and “risk” have been removed and replaced with positive views, ‘recognising and honouring individual, community and cultural strengths’.²⁸⁵

Their work has included community members including Elders who have taken a primary role in the process, such as board membership. In developing the process, the agency has ensured that the Elders and the community as a whole have understood and

²⁸¹ Association of Native Child and Family Services Agencies of Ontario, op cit in Bennett & Blackstock, *ibid* at 53-54

²⁸² Ministry of Community and Social Services, Ontario, *Aboriginal Child Welfare Review*, unpublished paper – not officially released, 1999 cited in Bennett & Blackstock, *ibid* at 53

²⁸³ *Ibid*

²⁸⁴ See Early TJ, & GlenMaye LE, “Valuing Families: Social Work Practice with Families from a Strengths Perspective”, (2000) 45 *Social Work*, 118-130 in Hardisty V, Martin G, Murray K, & Ramdatt J, “Kunuwanimano Means “Keeping Our Own”: Practicing from a Perspective of Strength” *Promising Practices in First Nations Child Welfare Management and Governance*, at 3, <http://www.fncfcs.com/docs/KUNUPromisingPractice.pdf>

²⁸⁵ Hardisty V, Martin G, Murray K, & Ramdatt J, *ibid* at 4

accepted the strength perspective and utilized a wide range of awareness raising mechanisms such as public relations material including pamphlets, workshops and community consultations. A strong trusting relationship with the community is seen as integral to the process's success and social workers although from the community, are not seen as the expert but rather as a resource of assistance and support.

The process does not seek to ignore client issues and problems, but rather explore strengths as a way of addressing the issues. Aboriginal culture is central to the process, and traditions, customs, knowledge and ways of healing for example are all identified as integral to working with clients, as is respect for each individual, family and community. The goal of the agency is to empower clients rather than foster dependency.

In the majority of cases, clients are voluntarily coming to the agency to receive help and in many instances clients are referring new clients. Client turn over is high and this is seen as positive, as is client recidivism when it does occur, because it indicates that clients are recognizing the need for help and seeking assistance. Each time a client seeks assistance this is viewed as a positive step towards helping not only them, but also their families and the community as a whole.

Service delivery is consistent with existing standards and legislation, but despite this one of the Agency's major challenges is dealing with the mainstream systems where there is little understanding of Aboriginal people and their culture. This requires a great deal of ongoing education of the mainstream system including judges, lawyers, police and social workers and ongoing success requires that mainstream leaders understand and promote it.

This type of service could be adapted to Aboriginal people and communities in Australia in a way that acknowledges their own unique cultural strengths. The strengths based perspectives allows people to identify what they do well, so they can attempt to deal with challenges and in many cases very serious issues. It promotes dignity and respect and helps the clients uncover their successes in what may appear to be a lifetime of failures.

Another First Nations agency in Ontario with a good record is Weechi-it-te-win Family services.²⁸⁶ Weechi-it-te-win Family Services (WFS) is a regional tribal agency responsible for delivery of child and family services, including child protection, to ten Ontario First Nations reserves. WFS was the first Aboriginal agency in Ontario. It is funded by the Ministry of Community and Social Services, Ontario and the Department of Indian Affairs. Some funding was transferred from the mainstream Provincial service to WFS in 1986, and full responsibility for child welfare was assumed by the agency in 1987. WFS's service model emphasises family preservation and community development work to assist in the healing of the whole community, with minimal formal intervention and substitute care. A consensual system of "customary care" was established, with a local Tribal worker, a WFS worker and the family and/or other community members drawing up a "Care and Supervision Agreement" together for each case. The Agreement is formally sanctioned by a resolution of the Chief and Council of the First Nation. Under the WFS system, consensus may be achieved by: (a) agreement between the family and the family services worker; (b) agreement between the committee and the family; and (c) referral to the First Nation's council. Between 1988 and 1995, at least 85 per cent of placements were arranged through Agreements rather than through mandatory mainstream methods. Where agreement is not reached, WFS applies for a hearing in a family court. WFS operates under the Provincial Ontario Child and Family Services Act. Its principles include a stated focus on tradition, family and extended family, and community control and orientation. A review team consisting of four representatives from each of the WFS and the provincial Ministry of Community and Social Services concluded that WFS had made considerable progress towards its goals of First Nations participation, creating community awareness and trust, developing a community-tribal partnership in service delivery, and providing

²⁸⁶ See Ferris P, Simard E, Simard G & Ramdatt J, "Weechi-it-te-win Family Services: Utilizing a Decentralized Model in the Provision of Bi-Cultural Services", *Promising Practices in First Nations Child Welfare Management and Governance*, 2005, <http://www.fncfcs.com/docs/WFSPromisingPractices.pdf>

support for community members through consensual and customary arrangements for child care and family support.²⁸⁷ WFS achieved this, in spite of inadequate funding.

Custody and Guardianship Orders

The *CSFA* advocates that the least intrusive and appropriate intervention is used when dealing with families and children so long as it is in accordance with the paramount purpose of the Act.

Voluntary Agreements

There is the provision for Voluntary Service Agreements to be made between families and service providers with the approval of CAS but without the intervention of the Court. A Voluntary Service Agreement can be provided so that a family is provided services in the family home. This agreement may be used where a child is subject to abuse or neglect but where the safety of the child can be assured.²⁸⁸

Where it is necessary for the child to be removed from the home there are two voluntary agreements that can be entered into. They are:- A Temporary Care Agreement which allows for the temporary transfer of custody of the child to the Agency and with the voluntary agreement of the parent and with the child's consent where the child is over the age of 12 years. The other type of voluntary agreement is a Special Needs Agreement which is used where a parent is unable to meet any special needs of the child. This type Services can be provided in the child's home or for care and custody by the Minister.

Court Ordered Protection

²⁸⁷ Weechi-it-te-win Family Services Inc & Ministry of Community and Social Services *Building Healthier Communities: A Report of the Operational Review of Weechi-it-te-win Family Services*, Unpublished report prepared by the Operational Team, Ontario 1995 at vi, cited in Bennett & Blackstock, op cit at 232. See also Jourdain LW *Customary Care: Culture Perspectives for Aboriginal Child Welfare*, Weechi-It-Te-Win Family Services Inc, Paper prepared for the Canada's Children, Canada's Future 2002 Conference, Toronto, ON cited in Bennett & Blackstock, op cit at 216

²⁸⁸ There was no indication as to what type of situations this agreement would be used.

One of four court orders can be made where a child is in need of protection and a Voluntary agreement is not suitable. Under a Supervision Order the child is placed or remains with a parent or relative under the supervision of a CAS and the court may specify the terms and conditions of the supervision of the child. Under a Society Wardship Order a child is placed in the care and custody of a CAS for up to 12 months including transfer of guardianship. A Crown Wardship Order places the child in the permanent care of the Director of Child Welfare so that the role and responsibilities of the parent are transferred to the Director.²⁸⁹ In all cases the CFSA directs the CAS to choose a residential placement that is the least restrictive, respects differences such as linguistic, religious and cultural heritage and takes into account the child's wishes. Where a child is Indian or native they would be placed with a relative, a member of the child's band or another Indian or Native family where possible.²⁹⁰

Nova Scotia

In Nova Scotia the protection of children is governed by the *Children and Family Services Act (CFSA)*. Service delivery for the Department of Community Services is divided into four regions: Eastern, Northern, Central and Western. The department funds regional administrators with block funding and 20 agencies and offices are responsible for delivering services. Mi'kmaw Family and Children's Services is the sole agency to provide child welfare and family services to First Nations families. It has two main agencies, one on the mainland and the other at Cape Breton, and most reserves have satellite offices. It provides a full range of services to on reserve First Nations people, including prevention, family support, and crisis programs. The agency also provides support to those not living in First Nations communities and advice to the agencies responsible for services to them. An interesting feature of the agency is the fact that under the tripartite agreement the three parties meet each quarter to discuss issues, monitor and evaluate agreements and negotiate protocols.

Sections 36 and 68 of the CFSA relate to First Nations children. Section 36(3) states that: "where the child who is subject of a proceeding is known to be Indian or may be

²⁸⁹ Child Welfare in Canada 2000 op cit at 93-94

²⁹⁰ Ibid at 94

Indian, the Mi'kmaw Family and Children's Services of Nova Scotia shall receive notice in the same manner as a party to the proceedings and may, with its consent, be substituted for the agency that commenced the proceeding". Section 68 of the *CFSA* relates to voluntary placements and if the Mi'kmaw agency is not directly involved in an adoption they must be notified of the prospective placement.

Custody and Guardianship

Voluntary Agreements

A parent may enter into an agreement to transfer care to the Director for up to six months²⁹¹ to have the child temporarily placed in a foster home, group home or residential facility. This is called a Temporary Care Agreement and allows families time to resolve problems that could eventuate in the child becoming subject to abuse or neglect. During the Temporary Care Agreement the parents retain guardianship.

A Special Needs Agreement is an agreement that a parent or guardian may enter into with the Director for the care and custody of the child for the provision of services. A special need is defined in the *CFSA*'s regulations as "a need that is related to, or caused by, a behavioural, emotional, physical, mental or other handicap or disorder". This agreement can be made for up to one year and with the approval of the Minister may be renewed for further periods of one year.²⁹²

Court Ordered Protection

An application can be made to the Family Court or the Supreme Court – Family Division for an order for the care of a child who is in need of protective services. The time frames are set out in sections 39-41 and Section 45 of the *CFSA*. The court may make one of the following orders: a Supervision Order; a Temporary Care and Custody Order; or a permanent Care and Custody order.

²⁹¹ This can be extended to 12 months.

²⁹² Child Welfare in Canada 2000, op cit at 40

A Supervision Order stipulates the terms and conditions of the care and supervision of a child. The child may remain with a parent or guardian, or with a caregiver under the supervision of the Agency. A Temporary Care and Custody Order is for a specific time.²⁹³ A Permanent Care and Custody Order transfers the guardianship of the child to the Agency until the child reaches 19 years. Any party to proceedings of the Permanent Order (including the child if over the age of 16 years) may apply to have the order terminated.

In some situations a Protective-Intervention order can be applied for as an alternative to removing a child from their home. Pursuant to s30 of the *CSFA* Protective Intervention Orders direct the person who is being abusive to cease residing in the same place as the child, or not have any contact with the child. This order can be made for a period of up to six months although the Court can extend for further periods of up to six months or terminate or vary the order. Contravention of such an order is an offence. It is a summary conviction with a fine of not more than \$5,000 or a maximum gaol sentence of one year.²⁹⁴

Yukon

Child welfare in the Yukon Territory is governed by the *Children's Act*. Whilst there are non bilateral or tripartite agreements, Kwanlin Dun First Nation and the Kaska Tribal Council are the two non-delegated First Nation social service agencies in Yukon. In collaboration with the Department of Health and Social Services they deliver services to First Nations Band members. In February 2005 Kwanlin Dün First Nation in Whitehorse and the governments of Canada and Yukon however signed the First Nation's final land claim and self government agreements.²⁹⁵ Over half of Yukon's First Nations have self government agreements ratified by the First Nations and Provincial and Federal governments which are in force with federal legislation. In 1984 the

²⁹³ A Supervision Order may not extend beyond 12 months from the date of the initial order for a child under six years and 18 months for children between the ages of six and 12 years.

²⁹⁴ Child Welfare in Canada 2000, op cit at 41

²⁹⁵ Kwanlin Dän Ch'a, A newsletter for and about the Kwanlin Dün people, Issue 1 Volume 1, May 2005, http://www.kwanlindun.com/new/documents/KDFN_web_newsletter.pdf

Yukon *Children's Act* was amended, giving delegated authority to First Nations groups but to date only the Champagne/Aishihik band has entered into an agreement.

Child abuse investigations involving First Nations children involve collaboration and liaison with the child's First Nations community and include joint investigation. The department, along with Ross River Dena Council and the Carmacks Little Salmon First Nation has developed child protection protocols. First Nations representatives can also be involved in the planning and placement of children from their community, and Placements must be consistent with the child's cultural and spiritual identity.

An early intervention service offered to all families in Yukon, and implemented in 1999 is entitled "Healthy Families". While not specific to Aboriginal children it is designed to offer culturally appropriate, home-based family support service to new parents who are at "overburdened" or what has been previously referred to as "at risk". Policies and procedures are in place to ensure the delivery of culturally sensitive services and that staff employed reflect the cultural background of the families who they service. Currently there are 12 staff in the program of which five are First Nation. Of the five First Nations staff there is one supervisor and four family support workers. The service is only offered in Whitehorse to approximately 22,000 people and the Aboriginal population makes up approximately 25-30 percent of this population. Prenatal referrals are completed and Community Health Nurses follow up with newborns and families within 24-48 hours of birth to identify families for their home visit program and complete the screening/assessment component for healthy families.²⁹⁶ Programs such as the Healthy Families Program are authorized under the *Children's Act* and the *Health Act* in particular, the *Children's Act*, FS.Y.1986, c.22 as amended provides that: "*The Director has the statutory authority to develop programs to promote family units and shall take reasonable steps to promote family conditions that lead to good parenting.*"²⁹⁷

²⁹⁶ Information supplied by Brad Bell Manager, Early Childhood, Healthy Families Programme, Yukon see also <http://www.yukonchildrensact.ca/>. See also Child Welfare in Canada 2000, op cit at 187

²⁹⁷ The Health Act has a similar clause, c.36. Information provided by Brad Bell, Manager, see also <http://www.yukonchildrensact.ca/>

The Kwanlin Dun First Nation has been providing positive programs to their community. One such program is the implementation of the Healthy Families program funded by the National Crime Prevention Council but run by Kwanlin Dun Health Department and has been developed to suit the their community's needs.²⁹⁸

Use of the service is voluntary and while primarily offered to pregnant women and their families and new parents, it can be extended up to five years where necessary. The department also offers families child protection respite care which is a preventative service for parents in periods of stress or crisis. Despite the fact that the First Nation has experienced a high staff turnover, which they have attributed to lack of training, pressure to meet stringent evaluation processes and ultimately to a lack of funding, the First Nations department is reporting some positive outcomes. Their client caseload has increased so that 65% of families entering the program are at pre-natal stage. Moreover, in their last annual evaluation they found that parent's belief in corporal punishment had decreased and their knowledge of child development had increased. The average length of participation in the program is two years and while the client base is relatively small,²⁹⁹ with adequate funding and resources there appears to be no reason why the program could not be delivered to suit larger Indigenous communities.³⁰⁰

A formal evaluation of the program has not been made, however the department has been given a certificate of credential by Healthy Families America. The certification included an in depth review including the programs operations and management. These types of programmes could be beneficial to Aboriginal people in Australia and would be best developed and delivered by their own communities to ensure they are appropriate to their families and children.³⁰¹

The Kwanlin Dun First Nation's (KDFN) Health Department, states on that their goal is "*To eliminate the health and safety crisis in the Kwanlin Dun First Nation.*" In addition to the Healthy Families program, the department also runs the Ashea Head Start

²⁹⁸ <http://www.kwanlindun.com/New/health.asp>

²⁹⁹ At the time of writing, there were 23 see <http://www.kwanlindun.com/New/health.asp>

³⁰⁰ <http://www.kwanlindun.com/New/health.asp>

³⁰¹ <http://www11.hrsdc.gc.ca/en/cs/sp/hrsdcsocpol/publications/bulletins/2000-000039/page11.shtml>

Program and the Community Wellness program which is part of the Aboriginal Healing Foundation.³⁰²

Ashea Head Start and the Daycare programs work with a Child Development Centre to provide development support for children. First Nations language and culture is the cornerstone of the program and traditional laws and culture are imparted on a daily basis. There is a Family support worker to support parents, teachers, and children and an early intervention team that assess children's needs, provides individual program plans and assists staff in the implementation.

Custody and Guardianship

Voluntary Agreements

In Yukon there is provision for a Temporary Care and Custody Agreement with the Director so that the child is placed in the Director's temporary care and custody although these types of agreements will not normally be used in the case of neglect or abuse.

Court Ordered Protection

Where the Department has concerns over the welfare of a child although it is not believed that the child at immediate risk of harm, the Department may serve a Notice to Bring. This notice is most often used in cases where chronic neglect is suspected. The Notice to Bring requires the parent and child to appear before a judge who either orders that the child is in need of protection or in need of medical tests to ascertain if the child is in need of protection. A judge or a justice of the peace may issue a Supervision Order, an Order for Temporary Care and Custody or an Order for Permanent Care and Custody. In the latter case permanent care and custody is transferred to the Director of Family and Children's Services until the child is 18 years or 19 years if the child is attending school full time or is incapacitated.³⁰³

³⁰² The Aboriginal Healing Foundation is discussed below.

³⁰³ Either physically or mentally. See Child Welfare in Canada, 2000, p. 186

Saskatchewan

Child and Family services in Saskatchewan is developed and delivered by the Department of Social Services. The *Adoption Act* and The *Child and Family Services Act (CFSA)* are the governing legislation. Section 61(1) of the CFSA relates to First Nations child welfare agreements and allows the Minister to enter into agreements with a Band or 'other legal entity' to provide child welfare services to First Nations people on reserve. As of September 2000, there were 17 agencies in operation.

Where a child is apprehended, case workers will contact and consult with Bands or agencies. There is a notice provision relating to court hearings which provide that where a First Nations Status child is the subject of a child protection hearing involving a permanent or long term order, notice must be given to the child's band or First Nations agency (s37(10)). A court can select an individual as a "person of sufficient interest" and where this occurs, that person can be considered as a placement option (37(11)). A First Nations agency, Band Chief or delegate may appear as a party to proceedings (s23(1)(b)).

Child welfare staff are required to have a Bachelor of Social Work or Bachelor of Indian Social Work degree from a recognized university as the minimum qualification for employment. There is also comprehensive training for new or reassigned child welfare staff which is also available to staff and supervisors of First Nations Child and Family Services Agencies.

While First Nations families and children are currently subject to provincial legislation, negotiations between the Federation of Saskatchewan Indian Nations (FSIN) and Canada with regards to self government are underway with child and family services selected as one of the first areas to be considered. As well as the *CFSA* the FSIN has also developed the *Indian Child Welfare and Family Support Act* established as a framework for Bands to develop and deliver child welfare services. Under this framework and the *CSFA*, the First Nations Child and Family Services Agencies provide services including child protection to children and families on reserve and consult and plan for families living off reserve. Whilst the services provide the same range of services to families on reserve and consultation and planning for those off

reserve as the Saskatchewan Social Services provide they also provide culturally relevant standards of practice.

Custody and Guardianship

Voluntary Agreements

A Parental Services Agreement can be created. It provides for the intervention of services on a voluntary basis and sets the parameters for those services. Another type of voluntary order in Saskatchewan is a Residential Care Agreement (s9 of the CSFA). Under such an agreement the Minister assumes care of the child, but not the guardianship, for up to a year which can be extended but to a maximum of 24 months. Whilst the Minister has the care of the child, the parents are required under this type of agreement to have an active involvement in the planning.

Court Ordered Protection

Court ordered protection will usually occur where a voluntary agreement cannot be reached or where a worker decides that a child would not be safe at home, although in some circumstances a child can remain at home under a protection order. The orders in the Saskatchewan Province are as follows:-

An Order to Return the Child to the Parent will be used to ensure a child either remains or is returned to the parents, in situations where another order is in place such as where the Department has a supervision order in place. An Order to Place the Child in the Care of a Person Having a Sufficient Interest requires the designation of an alternative carer such as a long time friend or family member to care for the child. Parents may be granted access although this is at the discretion of the judge. A Temporary Committal Order transfers custody of the child to the Minister of Social Services for a maximum period of six months with extensions allowed not exceeding 24 months in total unless it is in the best interests of the child for this to occur. Custody as well as Guardianship of the child and all parental rights and responsibilities will be transferred to the Minister with a Permanent Committal Order either by a protection hearing (s37(2)) or a voluntary committal (s.46). Under this order a Minister has the right to place the child up for Adoption. A Long-Term Order to Age 18 may be used where a child requires

long term care but because of the specific circumstances make it unlikely for the child to be adopted (such as age). Under such an order the parents may have access to the child but lose guardianship. In Saskatchewan there is the provision for a Protective Intervention Order (s.16) that prohibits a specific person from having contact with the child. The final type of hearing is an Interim Order which would be used where a protection hearing is adjourned. The Act allows for any party to the original proceedings to apply for a variation to the existing order (s39) where there is a change in circumstances or it is in the best interests of the child to vary the orders.³⁰⁴

Alberta

Child Welfare in Alberta is governed by the *Child Welfare Act (CWA)* and the *Protection of Children Involved in Prostitution Act (PChIP)*. There are no specific provisions relating to Aboriginal children however there are provisions allowing for the delegation of 18 Child and Family Services Authorities (CFSA's) in Alberta with the authority to design and deliver services to their geographical region. There is one authority comprising of 8 Métis communities across the province. There are also 13 First Nations Child Welfare Agencies with the responsibility for providing services on reserve operating under bi-lateral or tri-lateral agreements. First Nations Child Welfare administration and services vary between communities and some have committees that assist and support child welfare workers in a variety of instances such as investigation and planning while others have multidisciplinary teams that investigate child welfare matters.³⁰⁵

There are a number of non-delegated First Nations agencies that work in partnership with the local CFSA to provide support services.

Child welfare workers are required to have as a minimum, a Bachelor of Social Work degree and there are a range of staff development courses such as mediation skills and investigating sexual abuse.³⁰⁶

³⁰⁴ Child Welfare in Canada 2000, op cit at 126-128

³⁰⁵ Ibid at 137 & 140

³⁰⁶ Ibid at 139

Similar to other provincial legislation there are procedures to be followed for Aboriginal children with status (s73 and 62(1)) and consultation provisions regarding child placement (73) (see also s62 relating to adoptions). Adoptions can occur outside a registered child's community, however s73(5) requires the adoptive parents to inform the child of their status when the child is capable of understanding.³⁰⁷

In April 2000, the Blood Tribe/Kainaiwa and Canada Framework Agreement was signed. Limited to on reserve lands of the Blood Tribe, it sets out a process of exercising jurisdiction over child welfare. It requires that the Blood Tribe meet provincial standards in the delivery of child welfare services and it provides the Blood Tribe with the ability to provide culturally appropriate services, it also has consultation provisions requiring the Tribe to involve the province. In recognition of the jurisdiction of the province the agreement states:-

*“The Blood Tribe recognizes the prevailing policies and procedures of the Province of Alberta on child welfare matters, pursuant to the Child Welfare Act and the Blood Tribe affirms that it is prepared to enter into discussions with the Province of Alberta with respect to matters involving provincial jurisdiction, responsibilities and service delivery arrangements in the area of child welfare.”*³⁰⁸

This type of agreement could be adapted by Indigenous Peoples and the Victorian government as an interim measure, until a more comprehensive self government agreement is developed. It would provide Indigenous communities with the immediate legal authority to develop and deliver their own child and family services but with the added support of the Victoria government. The Blood Tribe/Kainaiwa and Canada Framework Agreement however is an agreement for an on reserve community and for this reason the Aboriginal Justice Initiative – Child Welfare Inquiry initiative in Manitoba would offer a similar interim measure by way of a phase, but in a long term, broader and more structured framework. The Manitoba agreement is more adaptable and could be more readily developed by Indigenous peoples in Australia because it is not restricted to land based communities.

³⁰⁷ Ibid at 139-140

³⁰⁸ Section 4.3

In Alberta's 2005 budget, the Children's Services Business Plan 2005 listed as one of its goals, to promote and support the well-being and self-reliance of Aboriginal children, youth, families and communities so that they are comparable to that of other Albertans. The Alberta government observes in the plan, that '*First Nations, Métis and other Aboriginal peoples have the desire, ability and commitment to improve outcomes for and the success of Alberta's children, families and communities*'. They expect the outcomes of their plan will result in a reduced number of Aboriginal children represented in the child intervention caseload and Aboriginal children, youth and families receiving culturally-appropriate services. The following strategies have been highlighted.

“4.1 Continue to implement the Ministry's Aboriginal Policy Initiative strategies to address gaps and improve the quality of services designed to meet the needs of Aboriginal children, youth and families.”³⁰⁹

4.2 Strengthen the involvement of First Nations communities in planning for their children through First Nations Designates.

4.3 In collaboration with all the partners, review provincial policies and programs to ensure that they are working towards meeting the needs of First Nations, Métis and other Aboriginal communities.

4.4 Develop a province wide suicide prevention awareness and education campaign targeting Aboriginal youth and implement strategies within Aboriginal communities to prevent and reduce the incidence of youth suicide.

4.5 Promote and improve access to the Ministry's bursary and mentoring programs to help increase the educational attainment of Aboriginal children and

309 The Aboriginal Policy Framework (APF) was approved in 2000, by the Government of Alberta. The Aboriginal Policy Initiative (API) is one of the ways in which the government implements the APF. The Hon. Pearl Calahasen Associate Minister of Aboriginal Affairs noted in the foreword to Strengthening Relationships – The Government of Alberta's Aboriginal Policy Framework, that “*The Aboriginal Policy Framework, including its commitments to action, proposes a path along which the Government of Alberta, First Nation, Metis and other Aboriginal communities, other governments and stakeholders can move together to address important challenges, including significant socio-economic disparities between Aboriginal and other Alberta households and communities and the need for clarity around provincial, federal and Aboriginal government roles and responsibilities.*”

youth in care, to support vocational and educational pursuits and contribute to the supports they need for a successful transition to adulthood.

4.6 In collaboration with First Nations representatives, continue to strengthen the accountability framework for Child, Youth and Family Enhancement Act agreements that support First Nations communities in the governance, delivery and evaluation of child intervention and permanency planning services for Aboriginal children and youth.

4.7 Promote joint planning and action between the Ministry, the Métis Nation of Alberta Association and Métis Settlements General Council respecting equitable participation and involvement of Métis peoples in the programs, policies and standards that affect Métis children.”

Despite these aims and the introduction of amendments in 2002, commentators have noted that inequities in services are particularly acute in Alberta. Their criticism stems from the fact that the new legislation expands the responsibilities of all child welfare agencies including First Nations agencies, to provide a wider range of least disruptive measures. Unfortunately they observe that the government has failed however, to ensure that First Nations agencies can access the resources needed to meet their newly expanded responsibilities.³¹⁰ Notwithstanding this, the Alberta Government’s aims and strategies are a useful source of information for Australia, in particular their recognition that Aboriginal communities have the desire, commitment and importantly, the ability to delivery services to their communities.

Custody and Guardianship

Voluntary Agreements

The Minister may enter into five types of voluntary agreements with a child’s parent or guardian. They are:- Voluntary Support Agreements which allow for the provision of services so that a child can remain safely in the home. A person need not have

³¹⁰ Submitted by First Nations Child and Family Caring Society of Canada, op cit

guardianship only the custody to enter into one of these agreements. A worker visits the home regularly and monitors the progress and safety of the child. A parent is expected to pay for the services as much as possible. Under a Custody Agreement a parent retains guardianship of their child, continues to make as many decisions for the child as possible and pays for as much as possible. Custody and care of the child is however delegated to the Director so that a child can be given a safe place to reside. A Custody Agreement must include terms that prescribe the plan for care including the services to be provided, the visits or access between the child and their guardian, the extend of the delegation of authority, and the guardian's contributions including financial contributions to the Director. In addition to ensuring that the child is protected the family also receives services so that the child can return home. The maximum duration of this type of agreement is six months although the agreement can be reviewed to be varied or extended, and the agreement can be ended at any time either by the worker or parent. A Permanent Guardianship Agreement relates to an agreement to relinquish guardianship to the director for the purposes of adoption. Other agreements include Access, Maintenance or Consultation Agreement or a Care and Maintenance Agreement. The latter agreement is an agreement not between the Minister and parents, but rather a young adult who has previously received child welfare services. The contract is intended to assist the young adult to achieve unmet goals of the service plan and support them into adulthood and independence.³¹¹

Court Ordered Protection

In Alberta court ordered protection will be provided where less intrusive measures are inadequate to protect the child. A social worker will apply for one of the following orders. A Supervision Order allows child family services to monitor and supervise the family in their home and provide specific services for a maximum of six months, although this may be extended where necessary. A child would remain in the home under this order. A Temporary Guardianship Order is used where a child cannot remain safely in the family home. The Director receives both the Custody and Guardianship under this order although Guardianship is in fact shared with the parent. A Permanent Guardianship Order is used where there likelihood of the child's guardian

³¹¹ Child Welfare in Canada 2000, pp.146-147

being able to ensure the child's security, survival or development within a reasonable time. Other court orders include a Restraining Order which prevents a specified person from having contact with a child or residing in the same place as the child for up to six months (although it may be renewed). Where family violence is an issue an abusive person may be removed from the family home. In addition a police officer or Director may obtain an Emergency Protection Order by way of phone as well as a warrant which allows a police officer to enter a home.³¹²

Prince Edward Island

The *Child Protection Act* is the governing legislation that mandates child protection services in Prince Edward Island. There are two First Nations Bands, Lennox Island and Abegweit and regional offices have the responsibility to deliver services to them. Funding is through a bilateral funding agreement between the Department of Indian Affairs and Northern Development. A proposal was made in 1999 to make Lennox Island and Abegweit full partners in the funding and delivery of child welfare services to their community members. The *Child Protection Act* 2000 replaced the *Family and Child Services Act* [1988] and contains new notice provisions and the requirement that the development of care plans for Aboriginal children are by their First Nation.

Child protection workers are required to have a Bachelor of Social Work degree as a minimum qualification and comprehensive in house training exists.

Custody and Guardianship

Voluntary Protection

Custody of a child can be transferred from the parents to the Director by a Voluntary Agreement for Temporary Custody. Such an order is typically used in situations such as a family crisis, alcohol abuses or family violence.³¹³

³¹² Child Welfare in Canada 2000, op cit at 147-148

³¹³ Child Welfare in Canada 2000, op cit at 22

A Voluntary Agreement for Temporary Guardianship transfers the legal guardianship from the parents to the Director for a period of up to six months. Guardianship under the F&CSA s1(i), is, “*the authority and responsibility for possessing the child physically and providing for the daily requirements related to the life and development of the child*”. This type of agreement is most often used where a parent is not available for a period of time to make guardianship decisions. This type of agreement may be extended for two further six month periods. This type of agreement gives the Director full responsibility for the child to make all major decisions for the child including who has custody, consent to medical treatment, and education decisions. However, the Director cannot place the child up for adoption.

Court ordered protection

The Supreme Court of Prince Edward Island has the authority pursuant to the F&CSA to make a Warrant of Apprehension, an Interim Custody Order, a Supervision Order, a Temporary Order for Custody and Guardianship and a Permanent Guardianship Order.

Under the Permanent Custody and Guardianship Order, the Director becomes the sole guardian until the child attains the age of majority, marries, is adopted, or the order is terminated by the judge. For example if a child is under a permanent order and has been for at least one year, they may on attaining the age of 16 apply for the court to terminate the order.

Northwest Territories

The *Child and Family Services Act* [1997] (*CFSA*) is the legislative authority for the provision of child protection and prevention services in the Northwest Territories. The *CFSA* has provision for Community Agreements and authority can be delegated to persons and groups external to the Department of Health and Social Services (see ss56 to 59). There are a number of requirements for a Community Agreement which must :

- Delegate the authority to the corporate body for any matter set out in the *CFSA*;

- Specify the community(ies) and the Aboriginal children that the corporate body may act for;
- Establish a Child and Family Services Committee; and
- Establish the committee's terms of office and the method that it exercises its powers and duties under the Act.

Community Agreements also allow the corporate body to establish their own set of standards to be used to determine the standards to ensure children's needs are appropriately met as well as whether a child requires protection.³¹⁴

Most new employees have a Bachelor of Social Work degree.

Custody and Guardianship

Voluntary Agreements

In Northwest Territories there is provision for Voluntary Support Agreements that ensure families in need receive preventive services to enable them to maintain their family unit. Under this agreement a child over 12 years can be involved in the agreement making and implementation. Generally the child would remain in the home however the agreement could also provide for short-term care and custody by the Director. The Act also allows youth between 16 and 19 to receive support services by entering into a Support Services Agreement for a maximum period of six months although the agreement can be renewed until the youth reaches majority age. It is not an alternative to a Plan of Care or court processes but rather it is an agreement to provide services to the child where it is believed the child is not in need of protective services.³¹⁵

Plan of Care Agreements

Plan of Care Agreements are created by a Plan of Care Committee which is made up of the persons with lawful custody of the child, the child if over 12 years³¹⁶, the CPW, and

³¹⁴ Child Welfare in Canada 2000, op cit at 194. As of September 2000 however no community agreements had been signed.

³¹⁵ Ibid at 198

³¹⁶ The child is invited however they are not required to attend.

a member of the Child and Family Services Committee³¹⁷. The Committee must meet within 15 days of the CPW receiving a referral otherwise the matter is referred to the Child and Family Services Committee. Section 19 of the CFSA provides that a Plan of Care Agreement for a child may include provision for a broad range of issues such as where and with whom the child will live and other issues such as the support services they will receive and the child's education and recreational activities.³¹⁸

Court Order Protection

There is provision in the Northwest Territories for a Supervision Order, a Temporary Custody Order and Permanent Custody Order.

Nunavut

Nunavut is a self governing, First Nations Territory.³¹⁹ The separation of Nunavut from the Northwest Territories began with a 1992 territorial referendum and concluded with the establishment of the new territory on April 1, 1999. Nunavut has an elected 19-member assembly, which will assume all governing powers by 2009. One senator and one representative attend the national parliament. Paul Okalik, an Inuit, was elected by the assembly as Nunavut's first premier and was re-elected in 2004. It has adopted laws from the Northwest Territories. There is a paramount objective to promote the best interests, protection and well-being of the child which includes the recognition and respect of cultural values and practices.

Employment as a CSSW requires a Social Work Certificate with two years' relevant experience.

Custody and Guardianship

The agreements and Court Ordered Protections are the same as the Northwest Territories.

³¹⁷ If one exists in the community. See Child Welfare in Canada 2000, op cit at 198

³¹⁸ Ibid at 198-199

³¹⁹ Hawkes D, "Indigenous Peoples: self government and intergovernmental relations", (2001) 53(167) *International Social Science Journal* 153-157, <http://www.blackwell-synergy.com/links/doi/10.1111/1468-2451.00304?cookieSet=1>, See also Durst, 2003 op cit.

Newfoundland and Labrador

In Newfoundland and Labrador, the *Child, Youth and Family Services Act (CYFSA)* is the legislative framework governing the Children's Services. The *CYFSA* does not contain any statutory provisions specific to First Nations and there are no agreements with First Nations people concerning the administration of services although some communities in Labrador have committees made up of elders, community members and CYFS staff for that community. The committees discuss problem cases and solution and may also be asked to assist with voluntary supervision. Under the *CYFSA* the best interest of the child is the paramount consideration in child protection cases and s.9 outlines the relevant factors to be taken into account including cultural heritage.

In Newfoundland and Labrador there is one delegated First Nations agency under supported by Conne River Health and Social Services. Most Departmental offices in Labrador have a First Nations person on staff to assist Child, Youth and Family Services personnel in providing culturally sensitive services.³²⁰

Early intervention is seen in the province as imperative to promote positive outcomes for children and as well as ensuring the safety and well-being of the child the aim is to support communities in meeting the needs of children and families.³²¹

Custody and Guardianship

Where a child requires protection in the form of out-of-home care the least intrusive measure is preferred and in the best interests of the child according to the *CYFSA*. Where it is determined that a child cannot remain with his/her family a Temporary Order transfers custody and guardianship to the Director. A Temporary Order is used where there is a likelihood of the child returning home. The initial period of the term cannot exceed three months if the child is less than five years, four months if the child is between the ages of four and 12 and six months if the child is more than 12 years old.

³²⁰ Child Welfare in Canada 2000, op cit at 2

³²¹ Child Welfare in Canada 2000, op cit at 10

A maximum of three orders can be made although an additional term can be made where there are exceptional circumstances but this extended term cannot exceed four terms. A judge can adjourn a protective hearing to enable a pre-trial settlement conference, a family conference, mediation, or other alternative dispute resolution mechanisms. Under a Temporary Order, the Director cannot consent to medical procedures, although a Court can make an order for a medical procedure to be undertaken.³²²

Where it is found that the child cannot return to the parent, a Judge can make a Continuous Custody Order which places the child in the custody of the Director so that all parental rights are removed from the parents. A Judge may rescind a continuous custody order where it is in the best interests of the child.³²³

New Brunswick

The *Family Services Act* governs child welfare in New Brunswick including child welfare services on First Nations reserves.

The child welfare services on First Nations reserves fall within the mandate of the *FSA*. On reserve child welfare service are provided under a tripartite agreement. All 15 First Nations have signed agreements and all communities have delegated child and family service. There are protocols in place which address linkages with First Nations child welfare services on reserve and services which fall under provincial jurisdiction.

Off reserve Aboriginal children however continue to receive services from the general agency in their area.

Custody and Guardianship

Voluntary Agreements

The Department of Family and Community Services may enter into a Voluntary Custody Agreement with a parent for a period of up to one year, although in

³²² S32 of the CYFSA.

³²³ Child Welfare in Canada 2000, op cit at 8-9

exceptional cases only an extension can be made. Under a Voluntary Custody Agreement the parent retains guardianship of the child. A Guardianship Agreement can be made voluntarily where the parent relinquishes a child for adoption.³²⁴

Court-Ordered Protection

A worker will apply to the Queens Bench where they consider that voluntary measures are not suitable and the Court can make one of the following orders.

A Supervisory Order authorises the Department of Family and Community Services to supervise the child, the child's family and the family home for a period of up to six months with further six month extensions available where necessary. Under this order the parent retains guardianship of the child.

Where the removal of a child from the family home is deemed necessary, a Custody Order can be made for a period of up to six months with allowable extensions of six-month periods to a maximum of 24 months. Under this order custody and control is transferred to the Department although guardianship is retained by the parent. Where all care, custody and control of the child including all parental rights and responsibilities is transferred to the Minister, this is done under a Guardianship Order.

In New Brunswick a Protective Intervention Order can also be made where a court is of the opinion that a person is a danger to the child's security or development. The order prohibits a person from residing at the same place as the child and also may prohibit the person subject to the order from having contact with the child for a period of up to six months.

New Brunswick also has a Place of Safety Order which can be made for children over the age of 12 who are considered at risk of doing harm to themselves or others.³²⁵

³²⁴ Ibid at 55

³²⁵ Ibid at 56

Another form of agreement entitled a Post Guardianship Agreement can be made with the young person who has been under the permanent guardianship with the Department. This type of agreement is available if the young person is a former child under the guardianship of the Minister, has turned 19, has left the care of the Minister and is accepted by an educational institution for full time study prior to his/her 21st birthday. Where the young person enters into a voluntary agreement with the Department they will be provided with ongoing support and care that cannot be extended beyond the age of 24 years.

Quebec

Quebec has a distinct legislative framework with a Charter of Human Rights and Freedoms and a Civil Code of Quebec. Delegation of authority to a First Nations band council or chief is not allowed for in the *Youth Protection Act* (YPA), the Act governing child welfare amongst other things, although under section 33 of the YPA a First Nations agency staff can be authorized to “*perform one or more of the Director’s duties except those listed in section 32*”. The YPA is administered by a team, and in First Nations communities they are often led by an Aboriginal person trained in social work.³²⁶

Custody and Guardianship

Voluntary Agreements

Voluntary Agreement making and the involvement of parents and children is the stated preferred option in Quebec. In negotiating an agreement the decision making capacity of the parents must be considered and taken into account. This is likely due to the fact that Voluntary agreements are legally binding and provide for the requirements of care the parents need to meet and the services the DYP is required to provide. A Voluntary Agreement may last up to a year although if the situation appears to be improving a new agreement can be made.

³²⁶ Ibid at 67

Court Ordered Protection

The Youth Division of the Court of Quebec is required to make decisions on the child's security and protection where a voluntary agreement is not appropriate. Both court orders and voluntary agreements can be reviewed by the DYP to ensure they are being adhered to or alternatively are still appropriate.

Transfer of Guardianship

A DYP may file a motion with the Superior Court of Quebec to seek the guardianship of a child to the DYP or a recommended person. The meaning of the term Guardianship in Quebec means complete responsibility for a minor. Where the DYP or other person has the guardianship then any interested person may apply to the Court for the guardianship so long as it is the child's best interests.

The Aboriginal Healing Foundation and Aboriginal ways of social welfare

Aboriginal communities in Canada and the United States are demonstrating the strength of their cultural beliefs and practices in child welfare and social welfare practices. First Nations welfare agencies are offering their communities culturally appropriate services by incorporating Indigenous knowledge and using cultural tools such as the healing circle, sharing circles, talking circles and family meetings. Elders are seen as respected members of the community and are actively included in services such as board management, program design and evaluation of services. Healing Circles, Talking Circles or Sharing Circles are being reintroduced by Aboriginal communities and provide a means of support for people dealing with addictions, violence, grief and trauma.

The Aboriginal Healing Foundation is an organization that provides resources for healing initiatives for Aboriginal communities throughout Canada affected by the legacy of physical and sexual abuse in residential schools including intergenerational impacts. In 1998 the Department of Indian Affairs and Northern Development agreed to fund the initiative with \$350 million and in February 2005 the Canadian government announced a further \$40 million would be committed. The 1998 funding agreement

listed the following measures as examples as to how the Foundation would meet its objectives:-

- a) *“Promotion of linkages to other federal/provincial/territorial/aboriginal government, health and social services programs;*
- b) *Focus on early detection and prevention of the intergenerational impacts of physical and sexual abuse;*
- c) *Recognition of special needs, including those of the elderly, youth and women; and*
- d) *Promotion of capacity-building for communities to address their long-term healing needs.”*

In June 1999 the Aboriginal Healing Foundation announced that 35 projects would be funded using \$2,053,307, including sex offender programs, education, counselling, and training initiatives for community members. The projects throughout Canadian Aboriginal communities have continued to grow from there, with healing programs being delivered throughout the provinces with a total of 1345 grants worth \$377,045,949.11.³²⁷

The Community Wellness program in Kwanlin Dün First Nation is offering programs such as arts and crafts in the context of program enhancement, the delivery of alcohol and drug education workshops for KDFN staff and a regularly held Residential School Survivor Group/AA Group.

Another program within the Aboriginal Healing Foundation framework that has been highlighted is the Native Women’s Shelter of Montreal where healing circles are used.³²⁸ In their aim to address the negative impacts of Residential schools on women and children they have implemented:-

- *“In-house programs for children and for women;*

³²⁷ See http://www.ahf.ca/newsite/english/funded_projects/funded_projects.php

³²⁸ See Stevenson J, “The Circle of Healing”. (1999) 2(1) *Native Social Work Journal* 8-21, in Bennett & Blackstock, op cit at 33

- *Implementation of a long-term, supervised apartment with on-site therapeutic programs to provide a transition between the shelter and complete autonomy;*
- *Implementation of a summer Healing Lodge for Aboriginal women and children with intensive healing programs to continue their healing process in a natural setting;*
- *Communication tools and information sharing;*
- *Training for staff.”*³²⁹

In the Third interim evaluation report of Aboriginal Healing Foundation Program activity published in 2003 some promising practices were noted.³³⁰ The report observed that there were many different approaches employed by communities in order to promote healing and provided a brief description of some of the best practice models.

The evaluation noted that the distinction between western, traditional and alternative therapies and provided the following table (Table 1) to show the different types of approaches used.³³¹ The evaluation observed that reclaiming culture, speaking the language and embracing traditional practices such as harvesting and eating traditional food and using art offered the participants the ability to celebrate the Aboriginal self by “*learning who they are*”.³³² They noted that traditional and western therapies were offered with “a great deal of creativity”, and observed that not all approaches were suitable for everyone.

³²⁹ http://www.ahf.ca/newsite/english/funded_projects/pull_project.php?id=3838.00

³³⁰ Kishk Anaquot Health Research, *Third Interim Evaluation Report of Aboriginal Healing Foundation Program Activity*, Aboriginal Healing Foundation, June 2003
http://www.ahf.ca/newsite/english/pdf/interim_evaluation3.pdf

³³¹ Ibid at 68

³³² Ibid at 72, citing AHF National Process and Impact Evaluation Survey 2002, survey respondent #45.

Table 1

Western	Traditional	Alternative
Counselling (group, individual, family, couples)	Circles	Neuro-linguistic programming
Psychotherapy	Sweats	Time-line therapy
Life skills	Ceremonies (Pipe, Naming, Honour)	Message therapy
Mental health promotion	Feasts	Huna therapy
Art therapy	On-the-land activities	Breath work
Christian spirituality	Fasting	Bio-field (hands-on healing)
Psychiatry	Metis wailers	Reiki
Rogerian therapy	Cultural celebrations	Acupuncture
Psycho-social development	Traditional food harvesting and preparation	Energy release work
Inner Child therapy	Speaking the language	Vibration healing
Attachment theory	Rites of passage	
Genogram charts	cleansing	

Finding and securing skilled people was viewed as a “*prescription for success*”. The evaluation noted one project that recognized “*compassion fatigue through regular debriefings where team strengths, limitations and early signs of stress related symptoms were openly discussed*”, and addressed. Another project implemented a wellness plan, of which all staff had to undertake due to the recognition that the work was emotionally draining.

Other projects included learning opportunities for participants to reclaim traditional parenting skills and other life coping skills. One project utilised a video production which was seen as their most powerful contribution because it facilitated learning and understanding in a popular format. Overall, engaging the community was seen as a practical strategy that could guarantee sustainability, including enlisting local political leaders and talented role models. One

community actively sought out participants for its program, rather than waiting for the participants to come to them and networking between communities saw good results for some projects. Also highly valued was the involvement of survivors and Elders into governance structures and program decision-making.

Overall the evaluation report noted that “*in general, when western and traditional practices were used consecutively or blended, they allow for most individuals to find a philosophy that works for them.*”³³³

Aboriginal peoples have developed their own approaches to helping each other for centuries. Michael Hart is a social worker and PhD candidate at the University of Manitoba and is a Cree member of the Fisher River First Nation in Manitoba and he observes that many Aboriginal social workers are using these approaches in their practices.³³⁴ Bennett and Blackstock observe that the Canadian Association of Social Workers has identified the need for greater acceptance of these types of Aboriginal practices.³³⁵

Another Aboriginal scholar in social services, Lyle Longclaws, espouses the benefits of the Anishinaabe Medicine Wheel Framework. Whilst not a model of social work, he suggests that it could be used as a teaching tool. The framework comes from the teachings of the Anishinaabe Elders of Waywayseecappo First Nation community in Manitoba, who teach that through four laws given to the Anishinaabe people, they can obtain balance and harmony. Longclaw stresses the importance of Elders, along with ceremonies, spirituality and family and comments that these practices may be the most useful way of restoring balance and harmony.

³³³ Ibid at 81

³³⁴ Hart MA, *Seeking Mino-Pimatisiwin: An Aboriginal Approach to Healing* Fernwood Publishing, Halifax, 2002 and also Hart MA. “Seeking Mino-pimatisiwin (the Good Life): An Aboriginal Approach to Social Work Practice” (1999) 2(1) *Native Social Work Journal* 91-112, see Bennett & Blackstock, op cit at 32 & 74. See also articles by Hart in O’Meara S & West DA, (eds), “Our Eyes: Learning From Indigenous Peoples”, 1996, and in T Heinonen & L Spearman (eds) *Social Work Practice: Problem Solving and Beyond*, 2001, both cited in Bennett & Blackstock, op cit at 33

³³⁵ Bennett & Blackstock, op cit at 32-33

Early Intervention and Aboriginal Head Start Initiative

The Head Start Program and early childhood intervention program, began in the United States in 1965 and is still widespread there today. In response to the following recommendations from the Royal Commission on Aboriginal Peoples which states: “[B]y seeking greater control over schooling, Aboriginal people are asking for no more than what other communities already have: the chance to say what kind of people their children will become,” the Canadian federal government established Aboriginal Head Start and early childhood development program for First Nations, Inuit and Métis children and their families in 1995 and expanded it in 1998 to those living on reserve. The primary goal of the initiative is to “demonstrate that locally controlled and designed early intervention strategies can provide Aboriginal children with a positive sense of themselves, a desire for learning, and opportunities to develop fully as successful young people.” There are currently 126 AHS sites in urban and northern communities across Canada.³³⁶

How is the Program delivered?

The program is generally a half-day program that operates five days a week for children between the ages of three and five. Projects are locally designed and controlled, and administered by non-profit Aboriginal organizations. Parents and communities are directly involved in the management and operation of the projects and elders are highly respected along with their wisdom. In particular, parents are seen as the child’s most influential teacher and for that reason they are supported in their roles as parents, and elders are highly respected

The program is adapted to the communities needs but there appear to be a number of principles emphasized in all project sites. They are: - Aboriginal culture and language, social and physical development including health promotion; nutrition and social support, education and school readiness, and parental involvement.

³³⁶ http://www.phac-aspc.gc.ca/dca-dea/programs-mes/ahs_overview_e.html

Benefits to Child Welfare

Head Start does not specifically target child abuse and neglect. However, research into the effects of early intervention programs indicates many benefits including some linked to child abuse and neglect issues, including: support for families; better relationships between parents and children; improved social and emotional stability in participating children; and enhanced community capacities.³³⁷ Evaluation of another early intervention program found that it was also successful, enhancing life for children and families. The project was piloted in seven urban Ontario communities, targeting high risk Aboriginal three to five-year-olds.³³⁸ Children involved demonstrated improved confidence, better behaviour, improved language skills, and better communication and expressiveness. In September 2002, the Canadian Federal Government reaffirmed its commitment to early intervention programs for First Nations children. The Canadian Government has committed a further \$320 million over five years to enhance Aboriginal Head Start, First Nation and Inuit Child Care Programs, and to address Fetal Alcohol Syndrome/Fetal Alcohol effects in First Nation Communities.³³⁹

Conclusion

Aboriginal children in Canada are not coming into the welfare system at disproportionate rates due to abuse, sexual or physical, but rather for neglect. Researchers in Canada have found that if poverty, poor housing and substance abuse were controlled it would be likely that Aboriginal children would no longer be over-represented in the child welfare system.³⁴⁰ They have found that strategic

³³⁷ Health Canada, *Aboriginal Head Start Initiative: Principles and Guidelines Canada*: Health Canada, 1998

³³⁸ (Becker and Galley 1996)

³³⁹ Libesman, op cit at 33

³⁴⁰ Trocme N, Knoke D & Blackstock C, "Pathways to the Overrepresentation of Aboriginal Children in Canada's Child Welfare System" (2004) 78(4) *Social Service Review* 577-600, see also Shangreux C & Blackstock C, *Staying At Home: Examining the Implications of Least*

investments in family support services to address these problems would go a long way towards addressing the high proportion of Aboriginal children in care. Aboriginal families in Canada are receiving less services overall than other Canadian families and earn considerably less money.³⁴¹ Nadjiwan and Blackstock have reported that the voluntary sector receives \$90 billion in annual funding to provide services to Canadians but that there is little evidence that First Nations children and families on reserve are receiving any benefits.³⁴² The FN Caring Society argues that if these conditions were applied to any group in Canada they would likely suffer the same effects.

First Nations Agencies and communities are providing their people with culturally relevant services in child welfare and family services. Overall however, they are faced with entrenched issues such as poverty, education, unemployment, and family violence, and internalised oppression, and they neither have the funding nor mandate to address these serious issues.³⁴³ The solution is not simple and requires a great deal of resources.

Despite this and the fact that commentators have raised some concerns over the Manitoba Child Welfare Initiative the Initiative appears to offer a structure in which First Nations peoples can begin to address issues of child welfare within a holistic framework.

Disruptive Measures in First Nations Child and Family Service Agencies, FNCFCFS, March 31, 2004, at 12-15,

http://www.fncfcs.com/docs/Staying_at_Home.pdf

³⁴¹ FNCFCFS study 2003, Nadjiwan S & Blackstock C, *Caring Across the Boundaries: Promoting Access to Voluntary Sector Resources for First Nations Children and Families*, First Nations Child and Family Caring Society of Canada, Ottawa, Ontario, Canada 2003, see also Beavon and Cooke, 2001. See also Shangreux & Blackstock, op cit

³⁴² Nadjiwan & Blackstock ibid in Shangreux & Blackstock, ibid at 14

³⁴³ Bennett, Blackstock, & De La Ronde, op cit at 34

United States of America

The United States is a federation, however since 1978, national legislation, the *Indian Child Welfare Act 1978 (ICWA)*, has provided Indigenous peoples with some autonomy over child welfare with respect to Native American children.

History of child and family services

In recognition of the sovereign rights of Indigenous nations and Native Americans' concerns over the loss of their children, the *ICWA* was enacted. Between 1850 and 1960 Native American children were forcibly removed from their families and communities and put into residential homes. Under the *ICWA*, the inalienable right of Native American children to grow up with their own tribe is acknowledged and stipulated and as a result almost 85 percent of all American Indian children are being reared in Indian homes.³⁴⁴

Limited tribal jurisdiction over Tribal Courts was first recognized in the United States as early as 1820 and is closely linked to Indian Nations and Indian treaty rights. *Cherokee Nation* and *Worcester*³⁴⁵ were both cases contesting the right of the State of Georgia to make laws which undermined the Cherokee Nation's laws and which contravened the Hopewell and Holston treaties. The limited jurisdiction recognised in these early cases has been affirmed in legislation. In the case of *Fisher v District Court of Rosebud County*³⁴⁶, the Supreme Court of the United States affirmed tribal authority in child placement cases where all parties were members of the tribe and resided on the tribe's reservation.³⁴⁷

³⁴⁴ Nadjiwan & Blackstock, op cit in Shangreux & Blackstock, op cit at 14

³⁴⁵ *Cherokee Nation v Georgia* 30 US (5 Pet) 1 (1831); *Worcester v Georgia* 31 US (6 Pet.) 515 (1832)

³⁴⁶ *Fisher v District Court of Rosebud County* 424 U.S. 383 (1976)

³⁴⁷ Libesman, op cit at 7-8

Core principles found in the *ICWA* such as the recognition of exclusive tribal jurisdiction in child welfare matters, where parties reside on reserve and dual interests of individuals can be seen in cases such as *Fisher*. However, as tribal jurisdiction was tested in State Courts competing and sometimes contradictory principles developed. This conflicting case law and as noted above, Native Americans' concern over large and disproportionate removal of their children caused the passing of the *ICWA*.

The *ICWA* is one of the most litigated acts in the United States, however it has ensured that the majority of Native American children remain with their tribal group and is often heralded by Indigenous peoples in other countries as a model for consideration.³⁴⁸

In the mid 1970s the United States Congress Commission was established to review American Indian policy including child welfare. It was found that an estimated 25-35 percent of all Indian children were being raised by non-Indian families or institutions and as a result those children were suffering severely in terms of identity and life crises. The *ICWA* was passed with the purpose of protecting the best interests of Native American children as well as ensuring the cultural survival, and thus stability and security of Indian tribes, communities and families.³⁴⁹

The legal and philosophical framework in the United States between the Federal and State Governments and Tribes are underpinned by two concepts, “tribal sovereignty” and “federal trust responsibility”. Tribal Sovereignty refers to the fact that tribes are independent sovereign nations and as such each tribe has rights and powers regarding the citizens under their control. Federal trust responsibility

³⁴⁸ Nadjiwan & Blackstock, op cit in Shangreux & Blackstock, op cit at 14 and Libesman, op cit at 7

³⁴⁹ *Indian Child Welfare Act* 1978, 25 USC s 1902 in Libesman, ibid at 8

refers to the federal government's responsibility to American Indian tribes with respect to helping tribes meet their social service needs.³⁵⁰ According to this responsibility, the Bureau of Indian Affairs (BIA)³⁵¹ and the Indian Health Services (IHS)³⁵² were established to provide direct services to tribes as well as funding to ensure tribes can provide their own health and social services. Whilst these concepts have been upheld through legislation, treaties and courts, differing interpretation has led to different infrastructures in the states so that ultimately tribal child welfare services vary greatly.

Indian Child Welfare Act 1978

The ICWA provides that Tribal courts have the authority and in fact exclusive jurisdiction over Indian child welfare where the child resides or is domiciled on the child's respective reservation³⁵³ and for over half of all Indian children who are living off reserve jurisdiction is shared between Tribal and State courts.

Proceedings in a state court must be transferred to a Tribal Court, unless there is good cause not to transfer the proceedings if a transfer is requested by a parent or the tribe.³⁵⁴ In addition a parent can refuse the transfer of proceedings to a Tribal Court.³⁵⁵ The tribe, Indian custodian and parents, all have full standing in matters involving Indian children in state courts. The Act also encourages and ensures the tribe's role in the State court's jurisdiction and a child's tribe and the Act imposes standards on the states proceedings to ensure the tribe has meaningful input.³⁵⁶ Where a foster care placement or termination of parental rights of an Indian child is being sought in a State Court, the party seeking the orders has to demonstrate

³⁵⁰ James Bell Associates, Inc. Arlington, VA, *Implementation of Promoting Safe and Stable Families by American Indian Tribes, Final Report* Vol 1, February 27, 2004, at vi

³⁵¹ Within the U.S. Department of the Interior (DOI)

³⁵² Within the U.S. Department of Health and Human Services (HHS)

³⁵³ *Indian Child Welfare Act* s1911 (a) domiciled or residing on reserve

³⁵⁴ *Indian Child Welfare Act* s1911 (b)

³⁵⁵ *Indian Child Welfare Act* s1911 (a)

³⁵⁶ See Goldsmith DJ, "In the Best Interest of an Indian Child: The Indian Child Welfare Act", (2000) (Fall) *Juvenile and Family Court Journal* 11

that positive efforts to provide assistance to prevent the breakdown of the relationship has been undertaken. The child's parent or Indian custodian has the right to a court appointed lawyer and the child may be appointed a separate representative at the court's discretion. State courts are also required to follow an order of placement where Indian children are being adopted or fostered, "...*which will reflect the unique values of Indian culture....*" The order of placement is as follows:-

- a) With a member of the child's extended family;
- b) With other members of the child's tribe;
- c) With another Indian family; and if the above three options are not possible,
- d) With a non-Indian family.

There are provisions for the removal of an Indian child under State law for a limited time where the placement is considered to be an emergency or the child is in imminent physical harm.³⁵⁷

There are a number of agencies including NGOs, Tribal Agencies and State and Federal Agencies that deliver child welfare services to Native American children. In 1986 the American Indian Law Centre drafted the "Model Tribal-State Indian Child Welfare Agreement. This model and the ICWA itself are often used in the US for 'intergovernmental child welfare agreements' which generally which are made between a tribe/tribes and a state department. In addition Tribes sometimes develop their own Tribal Resolutions.

Off Reserve state or county child protective services conduct CAN investigations the same way they would with non American Indian families. However a requirement of the Act is to ensure that tribes are notified and in addition a tribal worker may at all times unofficially accompany a protective services worker

³⁵⁷ For a brief overview of the provisions and legal summary see Baker DR, "Indian Child Welfare Act", (1994-1995) 15 *Children's Legal Rights Journal* 28

during an investigation. Whilst the Act imposes certain conditions on states it would seem that not all states are adhering to its principles with as much rigour. It has been suggested that state courts should ensure that a child's tribe receive proper notice as early as possible in that early communication between the state and the tribe provides for the greater likelihood that common ground will be found so that good planning can be implemented and the child's placement can be the most appropriate available.³⁵⁸

The *Indian Child Welfare Act* incorporates the best interests of the child test and provides that the best interest of an Indian child is to protect "...the rights of the...child as an Indian."³⁵⁹ With that, the tribe's decision making role is protected by the Act. However, as noted above there are some states that "resist the notion that a child's tribe is often in an equal, if not better, position than a state court to make decisions that consider the totality of the child's best interests."³⁶⁰ When the *ICWA* was enacted, it seems that Congress observed the fact that states had historically failed to take into account Indian child rearing practices and social norms when deciding what was in the 'best interest of the child'. In that regard the *ICWA* endorses the fundamental importance of culture to an Indian child's life and is probably the most significant piece of legislation concerning American Indian child welfare and mandates the traditional definitions of family as a guide for child welfare. The recognition that American Indian definitions of family differ from mainstream definitions rather than being inferior to them is a fundamental shift in child welfare thinking.

Case law

The *ICWA* is one of the most litigated pieces of legislation in the United States but it has ensured that almost 85% of Native American children are reared in

³⁵⁸ See Goldsmith, op cit at 11

³⁵⁹ Ibid at 9

³⁶⁰ Ibid at 11

Native American homes.³⁶¹ Jurisdictional questions have been challenged in the US courts. Disputes have centred around what it means to reside or be domiciled within a reservation and a constructed and contested doctrine the ‘existing family exception’. *Mississippi Band of Choctaw Indians v Holyfield* is the only case with respect to interpretation of the term ‘domiciled’ which has been decided by the US Supreme Court.³⁶² In *Holyfield*, Indian parents who resided on the Choctaw reservation made arrangements to have their twin babies two hundred miles from the reservations, and to adopt the children to non Indian parents off the reservation. The adoption of the twins to the Holyfields was given effect by the Local County Court with no reference to the ICWA or to their Indian background. Two months later the Tribe challenged the adoption. The adoption was upheld on two grounds by the Chancery Court and then by the Supreme Court of Mississippi. The mother had gone to some lengths to have the babies off the reservation and to organise for their immediate adoption, and the babies had never lived on the reservation. The Tribe appealed to the Supreme Court of the United States. Justice Brennan delivered the decision of the Court. The case turned on whether the children were domiciled on the Reservation. The ICWA does not provide a definition of domicile. The Court found that the parents at all times, and this was not disputed, were domiciled on the reserve. On this basis the Court found that the twins were domiciled on the reserve. The Court noted, “*Tribal jurisdiction under s1911(a) was not meant to be defeated by the actions of individual members of the tribe, for Congress was concerned not solely about the interests of Indian children and families, but also of the impact on the tribes themselves of the large numbers of Indian children adopted by non-Indians.*” The Court noted that three years had passed between the birth of the twins and their placement in the Holyfield home and the hearing in the Supreme Court, and that a separation at this point in time ‘would doubtless cause considerable pain.’ However the Supreme Court found that the ICWA placed the determination of this

³⁶¹ Fournier S & Grey E, *Stolen from our Embrace: The Abduction of First Nations Children and the Restoration of Aboriginal Communities*, Douglas and McIntyre Ltd, Vancouver, 1997 in Bennett, Blackstock & De La Ronde, op cit at 55

³⁶² Supreme Court of the United States, 1989, 490 U.S. 30. 109 Sct. 104 L.Ed.2d29

custody proceeding in the hands of the Choctaw Tribal Court and said, ‘...we must defer to the experience, wisdom and compassion of the tribal courts to fashion an appropriate remedy.’ The Choctaw Tribal Court decided that it was in the best interests of the children to remain in their adoptive home and decreed the Holyfield’s adoption a matter of tribal law.

Existing Indian Family exception

Some state courts have read into the *ICWA* an implied ‘doctrine’ which they have called the ‘existing Indian family’ exception to the Act. Their claim being that if a child and their parents do not have a social, political or cultural relationship with the tribe, then the *ICWA* does not apply to the case. The exception was first devised by the Kansas Supreme Court in *Re Adoption of Baby Boy L.*³⁶³ While at least 10 American states have adopted the exception numerous have also rejected it and in some states such as California there are conflicting decisions from the Supreme Court.³⁶⁴ The Indian family exception is often invoked in cases where a non-Indian mother gives the child up at birth, and wants the baby adopted by a non-Indian family, and the Indian father or Tribe object.³⁶⁵ The existing family objection has been found on different basis in different jurisdictions. The most compelling of these has been the Supreme Court of California’s decision in *Re Bridget R.*³⁶⁶ In this case the Court held that the *ICWA* would be unconstitutional on due process, equal protection and Tenth Amendment grounds, if the existing family exception was not applied. The argument with respect to the equal protection provisions of the constitution being that a distinction based exclusively on biological grounds amounts to racial discrimination. The distinction and differential treatment of Indian children under the *ICWA* is permissible on the basis that the legislative classification is based on political rather than racial grounds. This interpretation is consistent with Supreme Court rulings on

³⁶³ 643 P.2d 168 (Kan 1982).

³⁶⁴ Decisions from the Alaskan, Idaho, Arizona, Utah, Michigan Supreme Courts and some decisions by the Californian Supreme Court reject the existing Indian family exception.

³⁶⁵ For a review of existing family exception cases see Hahn Davis T, “The Existing Indian Exceptions to the Indian Child Welfare Act” (1993) 69 *North Dakota Law Review* 465 at 478-494

³⁶⁶ 49 cal. Rptr.2d 507 (Cal Ct. App. 1996)

permissible differential laws, even where the law may have an adverse impact on particular litigants, if the rule was intended to benefit the class to which the plaintiff belongs.³⁶⁷ On this interpretation, if there was no existing family to protect, as was the argument in *Re Bridget*, the only claim to the application of the ICWA in *Re Bridget* was the biological heritage of the twin girls, then the ICWA does not apply to them. The Court also found that the twins had a fundamental interest, under the Due Process clause of the Constitution, in maintaining their relationships with their adoptive family. Applying this interpretation, the ICWA could only be applied in a *Re Bridget* circumstance if there is a compelling state interest in the matter. The Court found that there was no compelling state interest in *Re Bridget* as the parents were ‘assimilated’ Indians and they had voluntarily relinquished the babies for adoption. However the existing family exception seems to thwart a key objective of the ICWA: protecting the tribe’s interests in Indian children and defining who Indian children are. The existing family exception, as noted by the Utah Supreme Court, undermines a central objective of the ICWA this being to redress historical policies of removal which have denied Indian people engagement with their Indian culture.³⁶⁸

Service Delivery

Early Intervention

The United States Head Start Program was founded in 1965. Like the Canadian model it is an early intervention initiative targeting at-risk children of pre-school age. In the 1960s the United States initiated a number of early intervention programs on the assumption that learning problems are best treated early and before formal schooling and early enrichment would have a lasting positive impact on children’s later school years.

³⁶⁷ See for example *Fisher v District Court* 424 U.S.382 (1976) per curiam and *Morton v Mancari* 417 U.S. 535 (1974) and more recently *Rice v Cayetano* 538 U.S. 494 (2000) where the Supreme Court struck down a Hawaiian voting scheme which granted eligibility to vote on the basis of ancestry.

³⁶⁸ *In re D.A.C.*, 933 p.2d 993, 1000 (Utah App. 1997)

Typically the program provides preschool education, nutritional advice and medical services. Parental involvement is considered as a core principle of the program where they sit on councils and contribute to the planning and delivery of the preschool program as well as receiving services relevant to their own needs.

The success of the program has been considerable, and approximately 40 years on, the program is still widespread in the United States today.³⁶⁹ Studies have shown that children who received early childhood intervention were less likely to be placed in special-education classes, less likely to be retained a grade and more likely to graduate from high school. Additionally an association has been made with the reduction of delinquency, teenage pregnancy and a greater probability of employment.

Family Preservation Models

Family Preservation Services models in child welfare are being increasingly seen throughout the United States as an alternative to the removal of children from their families. Broadly, family preservation service models have developed in the United States because of three different pieces of federal legislation. They are: - The *Indian Child Welfare Act* 1978; the *Adoption Assistance and Child Welfare Act* 1980; and the *Adoption and Safe Families Act* 1997 (*ASFA*). In 1997, The Promoting Safe and Stable Families program was introduced as part of the *ASFA*. It adds to the previous program's services, and targets funding for two new categories, namely time-limited family reunification and adoption promotion and support services.³⁷⁰

³⁶⁹ Zigler EF & Styfco S, "Head Start and Early Childhood Intervention: The Changing Course of Social Science and Social Policy" in EF Zigler, SL Kagan & NW Hall (eds) *Children, Families and Government: Preparing for the Twenty-first Century* Cambridge University Press, New York, 1996 in Libesman, op cit at 32. See also Marks E, Moyer M, Roche M, & Graham E, *Head Start Research - A Summary of Research and Publications on Early Childhood for American Indian and Alaska Native Children*, prepared for Carole Kuhns, Mary Bruce Webb, Child Outcomes Research and Evaluation Office of Planning, Research and Evaluation Administration for Children and Families U.S., Department of Health and Human Services, March 2003

³⁷⁰ James Bell Associates, Inc. op cit at iv. The report notes that, "*Tribes are required to make expenditures in at least one of these categories, while states are required to expend significant portions within each category or provide a rationale.*" Tribes are also exempt from the 10% cap

Funding is administered at a Federal level by the Administration on Children, Youth and Families (ACYF), U.S. Department of Health and Human Services (HHS) and at the state and tribal levels by state child welfare agencies or the tribe responsible for administering child welfare services.³⁷¹ Those eligible to receive funding were allocated funds using a formula based on the amount of children in the tribe. Tribal PSSF funding was found on average to be allocated to family support (42%), family preservation (14%), time-limited family reunification (8%) and adoption promotion and support (4%).³⁷²

Commentators have tended to classify family preservation models into numerous categories. One study has identified two models, those geared toward “the provision of intensive brief services” to children in immediate danger and a family support model that provides a range of primary prevention services to families in need of support.³⁷³ Another has classified family programs into three different categories to include:-

- 1) Family resource, support and education services;
- 2) Family-centred services that provide clinical services such as case management, counselling, education and advocacy; and

on program administration and training requirements placed on states. It should be noted that the Adoption Act’s other aims of streamlining the permanency planning of Indian children has been criticized for blurring the status of family preservation services for American Indians, failing to recognize American Indian definitions of family, extended family and community and it does not respect customary tribal aspects of guardianship. See Shangreaux & Blackstock, op cit at 17

³⁷¹ James Bell Associates Inc, op cit vol.1 at iv

³⁷² Ibid at xi

³⁷³ See McGowan & Botsko, 2000 in Red Horse J, Martinez C, Day P, Day D, Poupart J & Scharnberg D, *Family Preservation Concepts in Indian Communities* National Indian Child Welfare Association, 2000,

http://www.nicwa.org/policy/research/NICWA_FamilyPreservation.pdf in Shangreaux, & Blackstock, op cit

3) Intensive family-centred crisis services.³⁷⁴

Another is called the Homebuilders Model designed to address the needs of families with children in “imminent danger” of placement to provide flexible, short term, intensive support.³⁷⁵ And yet another model is the Wrap Around model, developed to achieve family preservation and facilitate services integration – similar to multidisciplinary child protection teams where professionals come together to discuss options.³⁷⁶

In another study McCroskey and Meezan divided family-centred services into two main categories, Family Support and Family Preservation services. These two categories were viewed as part of a range of family and children’s services that varied depending on the family situation. They have been broken down as follows³⁷⁷:-

1. All Families/Healthy Families

Potential Services: Advocacy, Income supports, Housing, Health care, Child care, Family-centred work policies, Parent education, Development-enhancing education, Recreation, Family planning services, School-linked health and social services, information and referral services.

³⁷⁴ Mannes M, “Linking Family Preservation and Indian Child Welfare: A historical perspective and the contemporary context in Mannes M (ed), *Family Preservation and Indian Child Welfare* American Indian Law Center, Inc, Albuquerque, 1990, in Shangreux & Blackstock, op cit at 17-18

³⁷⁵ Red Horse, Martinez, et. al, op cit in Shangreux & Blackstock, at 18

³⁷⁶ Burns BJ & Goldman FR (eds) “Promising practices in wraparound programs for children with serious emotional disturbances and their families” in *Systems of Care: Promising Practices with Children’s Mental Health* 1998 series Vol IV, Washington, DC: Center for Effective Collaboration and Practice, Institute for Research, 1999, at 19 in Shangreux & Blackstock at 18

³⁷⁷ See Shangreux & Blackstock 2004 at 19

2. Families needing additional support/facing minor challenges

Potential Services: Family Support centres, Family resource programs, Home visiting programs, Family counselling, Parent aide services, Support groups, Services for single parents.

3. At-Risk Families needing Specialised Assistance/facing serious challenges

Potential Services: Alcohol and drug treatment, Respite child care, Special health services, Special education services, Adolescent pregnancy/parenting services, mental health services, Services for developmentally disabled and emotionally disturbed children and their families.

4. Families in crisis or at risk of dissolution placing children at serious risk

Potential Services: child protective services, Intensive family preservation services, Services for chronically neglectful families, Services for runaway children and their families, Domestic violence shelters, Domestic violence counselling.

5. Families in which children cannot be protected within the home/needing restorative services

Potential Services: Diagnostic centres, Foster family homes, Therapeutic foster homes, Group homes, Therapeutic group homes, Residential treatment centres, reunification services.

6. Families who cannot be reunified

Potential Services: Adoption services, Independent living services.

In the U.S, the Administration on Children, Youth and Families (ACYF) funded James Bell Associates, Inc. (JBA) to conduct a study into the Implementation of Promoting Safe and Stable Families by American Indian Tribes in September

2001.³⁷⁸ The report provides case studies of a number of tribal service delivery models implemented under the PSSF funding.³⁷⁹ Title IV-B, subpart 2, provides the following statutory definitions for Family support services and Family preservation services.

“Family support services: ‘Community-based services to promote the well-being of children and families designed to increase the strength and stability of families (including adoptive, foster and extended families), to increase parents’ confidence and competence in their parenting abilities, to afford children a stable and supportive family environment, and otherwise to enhance child development.’ In FY02 this definition was amended to include programs to strengthen parental relationships and promote healthy marriages.”

“Family preservation services: ‘Service designed to help children, where appropriate, return to families from which they have been removed, or be placed for adoption, with a legal guardian or...in some other planned, permanent living arrangement; pre-placement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain with their families; service programs designed to provide follow-up care to families to whom a child has been returned after a foster care placement; respite care of children to provide temporary relief for parents and other caregivers (including foster parents); and services designed to improve parenting skills (by reinforcing parents’ confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health and nutrition.’ In FY02, this service was amended to include infant safe haven programs”

³⁷⁸ The study was conducted in conjunction with Three Feathers Associates of Norman, Oklahoma, and Dr. Eddie Brown, Director of the Kathryn M. Buder Centre for American Indian Studies, Washington University, St. Louis, Missouri and Dr. Gordon Limb.

³⁷⁹ Unless otherwise noted the following U.S American Indian Tribal service delivery examples are taken from this report.

And the ASFA's two new service categories are defined as follows:-

“Time-limited family reunification services: ‘Services and activities...that are provided to a child that is removed from home and placed in a foster family home or a child care institution and to the parents or primary caregiver of such a child, in order to facilitate the reunification of the child safely and appropriately within a timely fashion, but only during the 15-month period that begins on the date that the child...is considered to have entered foster care.’ The legislation describes the services included in this definition as: individual, group and family counselling; inpatient, residential or outpatient substance abuse treatment services; mental health services; assistance to address domestic violence; services designed to provide temporary child care and therapeutic services for families, including crisis nurseries; and transportation to or from any of the services described above.”

“Adoption promotion and support services: ‘Services and activities designed to encourage more adoptions out of the foster care system, when adoptions promote the best interests of children, including such activities as pre- and post-adoptive services and activities designed to expedite the adoption process and support adoptive families.’” ³⁸⁰

Despite these definitions, the PSSF legislation does not provide funding for a specific model, giving both mainstream agencies and tribes greater flexibility to develop appropriate services. Tribes are given even more flexibility to develop programs that are consistent with their needs, and this greater flexibility appears to be in keeping with their unique status. Nevertheless, the legislation and subsequent guidance by the ACYF expected that tribes and states examine their services to identify service gaps, recognize the importance of planning, focus on parental and community involvement in the process and the importance of

³⁸⁰ James Bell Associates Inc, op cit, vol1 at 2-3

collaboration with other programs such as maternal and child health, education and Head Start is emphasised. This latter point was included in recognition that the level of funds available under the legislation would not be sufficient and pooling of funds and resources to establish a coordinated service delivery plan would provide better service to children and families.³⁸¹

As discussed above, the concepts of “tribal sovereignty” and “federal trust responsibility although being upheld through legislation, treaties and courts, the various interpretations have led to different infrastructures in the states. This has resulted in a number of challenges for different tribes in the delivery of child welfare services including, dependence on external child welfare services, turnover in tribal leadership, inconsistent funding, lack of youth services, difficulty delivering needed services to families in isolated villages, a lack of infrastructure for monitoring and evaluating programs and planning and service implementation issues between tribes and states. In their research findings James Bell Associates reported that it was within this context of policy and challenges that saw tribes undertaking PSSF planning and implementation efforts.³⁸²

The report found that tribes strove to ensure they were consistent with the federal guidelines. However it also noted that in regards to collaboration, success seemed to “*be largely dictated by each site’s pre-existing working relationships*”.³⁸³ The active involvement of tribes in state planning was also highlighted as an area needing improvement.

Case Studies

The report noted that there were some promising and innovative approaches. The following information is gleaned from Volume 1 and Volume 2 of the Report and includes those programs they specifically included as promising:-

³⁸¹ James Bell Associates Inc, op cit, vol 1, at 3-4

³⁸² Ibid at ix, this last sentence is virtually word for word.

³⁸³ Ibid at 46-47

Family Preservation - Navajo Nation (in-home intensive family services)

Referrals to this program could only be made by tribal investigative workers, so that services are reserved for those families and children at the highest risk. All other referrals to child welfare and related services including referrals to family reunification services are administered through a multi-disciplinary worker who assesses families. Intensive in-home services average at three to six-months, with one six-month extension allowed. Caseworkers had a maximum caseload of six families. A curriculum developed by the tribe titled the “Family’s Journey to Harmony, Navajo Based Parenting Curriculum” was used which incorporated Services incorporate traditional teaching and values.³⁸⁴ Under the family preservation program regular assessments were made to ensure families were progressing adequately and child safety was maintained.

Parent Aide – Hopi Tribe (in-home parent training)

The Hopi Tribe conducted a five-year planning process for the initial Family Preservation/Family Support program and found that substance abuse was the major contributor to the deterioration of the Hopi family and in particular identified that young people who had grown up with substance abuse in the family were unable to distinguish between dysfunction and non-dysfunctional behaviour.

This program was developed for isolated, reluctant families in need of tribal social services. The parent-aide (“PA”) was a former client of the child welfare system and was trained to provide in-home parenting education. This was seen as a non-threatening way to get to know the family and once trust was built she could then help families access other social services. The PA noted that this was a challenging position and reaching out to families required skill and required considerable time and energy and it was found that the aide needed additional support.

³⁸⁴ Ibid at 57

Parent Education Program – Kiowa Tribe

The Kiowa Tribe was one of the four tribes as part of the research that funded home-based service programs focusing on parent training. Unlike intensive family service programs that target families at immediate risk of foster care placement or in need of additional services to facilitate reunification, parent training programs were targeted at a broader population. For example those families known to the child welfare system that were in need of short term services and support, as well as families experiencing parent/child conflict, those with youth involved in truancy or gangs, those experiencing stress relating to blended families or substance abuse and those who were resistant to needed services.

The Kiowa Tribe sought to incorporate native values and child-rearing techniques. For example it included an elder during in-home visits to teach families about traditional child rearing practices, housekeeping and keeping a family budget.³⁸⁵ The programs are less intensive than the intensive family services programs and incorporated two visits per week initially which decreased to one visit per week for total service duration of four weeks.³⁸⁶

The report noted that assessment of these programs focused on the family's progress with improved parenting and communication skills.³⁸⁷

Adolescent Parenting Education – Menominee Tribe (in-home parent training)

This program provides services to parents, providing information and support on issues such as gang involvement, truancy, adolescent development and effective parenting techniques for teens. The program was initiative because during on site visits stakeholders were expressing concern with the high-risk behaviour of tribal youth. Participation in the program is either voluntary or court ordered.

³⁸⁵ Ibid at 58

³⁸⁶ Ibid at 59

³⁸⁷ Ibid at 58

Youth Advocacy Program – Menominee Tribe (in-home case management)

Youth were referred to this program primarily by a specialised court designed to hear truancy cases and are given the option of either participating in the program or receiving a fine.

Once in the program, youth are assessed to ascertain their involvement and risk in substance abuse, physical and mental health, family and peer relations, education and vocational skills and aggressive behaviour and delinquency. The program then developed and coordinated a service plan which included initially a simple set of individual goals and rewards and progressed in challenge and family involvement.

Strengthening Family Partnership Program – Omaha Tribe (centre-based services)

The Four Hills of Life Wellness Centre provided programs for infancy, youth, adulthood and the old age. The Centre offered services including, nutritional programs addressing issues such as diabetes education and treatment, prenatal smoking education, alcohol prevention, and youth mentoring and development.

In addition to these services the centre operates the Strengthening Family Partnership Program. This program targets families who are on the verge of eviction and referrals come from the Tribe's housing agency. Families are engaged in culturally relevant activities that empowered them to make healthy decisions. Issues such as family violence, substance abuse, mental health and identifying family support networks are addressed with the aim of preserving the family unit.

Tribal Youth and Family Specialists – Tanana Chiefs Conference (TCC) (facilitation and support of conventional child welfare services)

The TCC is a non-profit association that provides health and community services to 43 small and isolated villages and tribes. PSSA funds were used primarily to help support the salary of the child protective services coordinator, who

supervised and trained child welfare caseworkers stationed with individual villages.

Evaluation

Research has also found that family preservation services are effective for families and children who receive them.³⁸⁸ One study noted that placements were avoided for more than 90% of children of families who received family preservation services³⁸⁹, and another claims an 88% success rate.³⁹⁰ Evaluations have indicated modest but significant outcomes in parent-child interactions, living conditions, parenting skills, family cohesion, children's school attendance, hyperactivity, and delinquent behaviour to name a few.³⁹¹ Family preservation programs are producing good results.³⁹² In spite of this, not enough emphasis appears to be placed on such programs, with a bulk of public funding still being put towards protection and child placement. Even in the United States where the Indian child welfare policy focuses on protecting children and preserving culture, Indian children are still being removed from their families at alarming rates, because the *ICWA* is primarily a vehicle for child placement rather than strengthening and preserving families and “*reaffirming extended kin families*”.³⁹³ Family preservation initiatives are considered to be particularly compatible for some Indigenous communities such as Native American communities particularly

³⁸⁸ See Watchel A, *The State of The Art in Child Abuse Prevention, Report*, Health Canada, Ottawa, ON, 1999 in Shangreux & Blackstock, op cit at 21

³⁸⁹ See McCroskey J & Meezan W, *Family-Centered Services: Approaches and Effectiveness* (1998) 8(1) *The Future of Children* in Shangreux & Blackstock, ibid at 21. Note the authors noted that this study lacked control groups.

³⁹⁰ *Keeping Families Together*, ICFS Corporate Brochure, Richmond, VA, 2004 – in Shangreux & Blackstock, op cit at 21

³⁹¹ See McCroskey & Meezan, op cit in Shangreux & Blackstock, ibid at 21-22

³⁹² Commentators warn against having a single outcome measure and that evaluating family preservation programs needs a “...*systematic investigation of the impact of services on multiple aspects of family and child functioning, including child safety and family stability*”. See McCroskey & Meezan, ibid in Shangreux & Blackstock, ibid at 21-24

³⁹³ See Red Horse, Martinez, et al, op cit in Shangreux & Blackstock, ibid at 23, see also Mannes M, “Seeking the Balance between Child Protection and Family Preservation in Indian Child Welfare”, (1993) 72(2) *Child Welfare* 141-152 in Cunneen and Libesman, 2002, op cit at 27

the home-based nature of services³⁹⁴ and Indigenous communities undoubtedly as a whole in favour of the programmes.³⁹⁵

Despite this, commentators warn that family preservation programs should not be used as a complete replacement of removing children from high risk situations.³⁹⁶ They note that to be effective, family preservation programs need to be well designed, have effective screening mechanisms, and be adequately resourced, culturally relevant and adaptable to the needs of individual families and children. They cite one children's rights advocates as saying, "*too often the implementation of family preservation services meant nothing more than leaving children with parents, regardless of the problems in the home and without providing sorely needed services to support those families that are salvageable.*"³⁹⁷

On the other hand, the report of a Manitoba community consultation clearly provides a strong argument for family support services:

"It is difficult to understand why children are taken out of homes, then, perhaps some time later, placed back in the home where the problems began. The problems do not go away. Why not fix the home, [First Nations people] wonder, but there is little or no funding allocated to services for families...[the community] perception is that government will pay astronomical costs for someone else to give custodial care to their

³⁹⁴ Ronnau J, Lloyd J, Sallee A, & Shannon P, "Family Preservation Skills with Native Americans" in Mannes M, *Family Preservation and Indian Child Welfare* American Indian Law Center, Albuquerque, New Mexico 1990 at 79-99,; Tafoya, N, "Home-Based Family Therapy: A Model for Native American Communities", in M Mannes, 1990 op cit at 59-79, in Cunneen & Libesman, 2002, op cit, Part Two

³⁹⁵ See Anderson K, "A Canadian child welfare agency for urban natives: The clients speak" (1998) 77(4) *Child Welfare* 441-460 in Libesman, op cit at 29

³⁹⁶ Larner MB, Stevenson CS & Behrman RE, "Protecting Children from Abuse and Neglect: Analysis and Recommendations", (1998) 8(1) *The Future of Children* 4-22, http://www.futureofchildren.org/usr_doc/vol8no1ART1.pdf in Shangreux & Blackstock, op cit at 23

³⁹⁷ Lowrey M, "Commentary on Children's Rights", (1998) 8(1) *The Future of Children*, http://www.futureofchildren.org/usr_doc/vol8no1ART1.pdf in Shangreux & Blackstock, ibid at 23

*children while they stand by in helpless poverty because someone else controls the money and has the power to make decisions about their children”.*³⁹⁸

Culturally Appropriate Services

For those living off reserve more culturally appropriate services are increasingly being offered throughout the United States. An example of such services can be seen in California where the Indian Child and Family Services (“ICFS”), part of the Southern California Indian Center is working to improve service delivery to Native American families. According to the National Indian Child Welfare Association the ICFS is working towards strengthening families, making the child welfare system fairer and its staff more supportive.³⁹⁹ Funded partially through the Community-Based Child Abuse Prevention Program⁴⁰⁰, it also provides training to others.

Services are also provided largely by Native American staff who are highly skilled. They receive intensive training to seek to provide culturally appropriate services. This includes being trained to work at the client’s pace and striving to build trust with client. This includes working on issues that require immediate attention such as health and school related issues or issues with parenting. The program is also designed so that clients can see immediate support with tangible issues so that the level of trust can be built up so that they can then start to work on the less tangible things.

The staff provide case management, as well as a whole range of other services including family support, assessments, and referrals to families in the system. Families continue to receive support after the initial assessment to ensure the

³⁹⁸ First Nations Task Force, op cit at 49 in Cunneen & Libesman, 2002, op cit, Part Two

³⁹⁹ Jones N, *Friends Learning Tool 8*, Native Americans and Child Welfare, Information Sheet

⁴⁰⁰ Title II of the *Child Abuse Prevention and Treatment Act (CAPTA)* as amended by the *Keeping Children and Families Safe Act* of 2003

<http://www.acf.hhs.gov/programs/cb/laws/capta03/index.htm>

services are accessed and assisting them in advocating for themselves. The aim of staff is to assist client's to develop the skills they need to access services themselves at a local, state and federal level, so that they become more self sufficient, competent and stable.

A focus of preserving families where appropriate is taken and where this is not possible on proving permanence for children through reunifications, adoption, guardianship, or placement with kin. In-home services are provided for the amount of time that is needed and as often as necessary and appropriate. A collaborative and holistic approach is taken, and staff involve and inform court personnel and lawyers and other community agencies to ensure American Indians receive the highest level of support at all levels.

This includes a program entitled WIND (Walking In A New Direction), which provides mental health and substance abuse-related services to Native American adults and adolescents, including prevention, intervention and aftercare. The program is delivered in a culturally appropriate way and includes workshops and educational materials on issues such as mental health, stress and anger management, domestic violence prevention, relationships and parenting.⁴⁰¹

Conclusion

New Zealand

New Zealand, like Canada, has a treaty-based relationship. It differs however, in that New Zealand has a single treaty, the Treaty of Waitangi, 1840. New Zealand has a centralised child welfare system and the *Children, Young Persons and Their Families Act* 1989, national legislation, governs child welfare and juvenile justice. The Act applies to all children and families in New Zealand, whether Maori or not, and as such its principles and procedures are applied equally to all families.

⁴⁰¹ The information was gleaned from information sheets provided by Native Americans and Child Welfare and there was not evaluation information provided.

However, there is some decision making within the framework of the family group conferencing, delegated to Maori families and communities. The family group conferencing model is central to this legislation and it has been used and adapted in many other parts of the world.

History of Indigenous child and family services.

Like other countries, New Zealand had a policy of assimilation between 1847 and 1960, although this did not include forced removals. Up until the 1960s Maori children's welfare needs were generally left to the Maori extended family (the *whanau*), but this changed when mainstream child welfare legislation began to be applied from the 1960s onwards. This had devastating effects on the *whanau*, which was not recognized or supported by the child welfare system. Instead, the *Pakeha* child protection services began an increasing involvement with Maori children, one that would prove unsuccessful. The first recorded statistics of Maori children in need of care were produced in 1981, and it was reported that 49.2 per cent of children in need of care were Maori.

In the 1980s and 1990s the *Children and Young Persons Act 1974* (NZ) was criticized as being inappropriate. This led to the establishment of a committee and on the planning and delivery of services to Maori communities and a document called *Puao-te Ata-tu* (Daybreak).⁴⁰² The report revealed major concerns about New Zealand child welfare services and found that institutionalised racism permeated the Department of Social Welfare. Amongst other things it found that child welfare legislation did not take into account Maori understandings of family and highlighted the fact that the welfare of the Maori child could not be separated from that of the family, that children belonged not

⁴⁰² *Puao-te-ata-tu* consisted of 13 recommendations and sought to meet the goal of 'advising the Minister of Social Welfare on the most appropriate means to achieve the goal of an approach which would meet the needs of Maori in policy, planning and service delivery in the Department of Social Welfare' – Ministry Advisory Committee on a Maori Perspective for the Department of Social Welfare, 1988 at 5

only to their parents but also to the *Whanau*, and that social workers did not understand children's cultural needs.⁴⁰³ It consequently called for a new system and recommended the recognition of biculturalism as a way of providing more culturally inclusive practices. This culminated in the enacting of the *Children, Young Persons, and Their Families Act 1989* which emphasised the importance of family and cultural identity.

The Children, Young Persons, and Their Families Act 1989 & Family Group Conferencing

The *Children, Young Persons, and Their Families Act 1989* (New Zealand) incorporates both child protection and juvenile justice in a single piece of legislation. Its objective is the wellbeing of children and young persons in the context of their families, whanau (kin group), hapu (extended kin group with many whanau), iwi (descent group with many hapu) and family groups so that families should be maintained and strengthened wherever possible. The Act ensures that in the exercise of power under the Act the family, whanau, hapu, and iwi should participate in decisions⁴⁰⁴ affecting the child wherever possible and the stability of the child's family, whanau, hapu, iwi and family group must be considered in child welfare decisions and asserts that child welfare is primarily a private rather than a state concern.⁴⁰⁵ In planning for the child's welfare the family receives information from professionals about the nature of their concerns however the state agency and professionals are expected to give effect to the

⁴⁰³ Ibid

⁴⁰⁴ Section 5

⁴⁰⁵ See Pakura, S, *The Family Group Conference 14-Year Journey: Celebrating the successes, learning the lessons, embracing the challenges*, Paper from 'Building a Global Alliance for Restorative Practices and Family Empowerment, Part 3', the IIRP's Sixth International Conference on Conferencing, Circles and other Restorative Practices, March 3-5, 2005, Penrith, New South Wales, Australia, Paper originally presented at the American Humane Association's Family Group Decision Making Conference and Skills-Building Institute, 6-9 June 2004, in Harrisburg, Pennsylvania, USA, at 114, http://www.familypower.org/library/au05_pakura.html

family's process and the plans they create unless to do so would be 'clearly impracticable or clearly inconsistent with the principles of the Act.'⁴⁰⁶

The child's best interests must also be taken into account,⁴⁰⁷ and section 13 outlines the principles applying to children in need of care and protection. These principles affirm that in ensuring the child or young person's safety the least intrusive intervention in a child or young person's family life should be used. This includes the principle of family maintenance and the provision of services to the family should be provided where possible, so that the child can remain with their family. Services must have, '*particular regard to the values, culture and beliefs of Maori people*'⁴⁰⁸. If however remaining with the family is not possible and the child needs to be placed in out of home care, the child should be placed with a member of the child's hapu or iwi⁴⁰⁹ wherever practicable, or if this is not possible, with a person who has the same tribal, racial, ethnic or cultural background and who also lives in the same locality as the child. Under section 110 of the *Children, Young Persons, and Their Families Act 1989*, Guardianship or custody can be assigned to the child's community.⁴¹⁰ Guardianship of children is defined at section 15 of the *Care of Children Act 2004* which came into force 1 July 2005 and reforms and replaces the *Guardianship Act 1968*.⁴¹¹ However, a court is prevented from making a guardianship order under the *Guardianship Act*

⁴⁰⁶ Section 34, see Pakura S, *The Family Group Conference 14-Year Journey: Celebrating the successes, learning the lessons, embracing the challenges*, Paper from 'Building a Global Alliance for Restorative Practices and Family Empowerment, Part 3', the IIRP's Sixth International Conference on Conferencing, Circles and other Restorative Practices, March 3-5, 2005, Penrith, New South Wales, Australia, Paper originally presented at the American Humane Association's Family Group Decision Making Conference and Skills-Building Institute, 6-9 June 2004, in Harrisburg, Pennsylvania, USA, Saturday, p. 114,
http://www.familypower.org/library/au05_pakura.html

⁴⁰⁷ The "welfare and interests of the child" are defined in section 6

⁴⁰⁸ Section 7

⁴⁰⁹ But preferably with the hapu

⁴¹⁰ *Children, Young Persons, And Their Families Act 1989* s. 110 (1)(b), For a discussion on the issues of Guardianship of Children in New Zealand see Pitama, D, Ririnui, G, Mikaere, A, *Guardianship, Custody And Access: Maori Perspectives And Experiences*, This report was commissioned by the Ministry of Justice and Department for Courts from Strategic Training and Development Services and Ani Mikaere, Ministry of Justice, First Published August 2002,
<http://www.justice.govt.nz/pubs/reports/2002/guardianship-custody-access-maori/index.html>

⁴¹¹ See *Children, Young Persons, and Their Families Act 1989*, Section 2 – Interpretation.

1968 if an order for guardianship has already been made under the *Children, Young Persons, and Their Families Act 1989*.⁴¹²

The fact that there is no legislative guidance as to how the principles of family maintenance and the best interest of the child should be resolved where there is conflict between the two principles has been criticised and resulted in legal challenges before the New Zealand High Court and Court of Appeal. It has been held that the principles in sections 5 and 13 of the Act are subject to the “over-riding arch” of the “welfare and interests of the child” as defined in s 6.⁴¹³

The conflict between the collective interests of the community and the individual interests of the child have also been raised in a number of jurisdictions. However, in many instances the dichotomy is false as the collective interest of the group is complementary with the child’s interest in a secure cultural identity. The weight placed on a child’s identity and the extent to which this impacts on the best interests of the child may be influenced by cultural values and experience of the decision makers and decision making institutions.

The involvement of the Maori family including that of extended families within decisions affecting Maori children are incorporated into the act in an attempt to include the principles of self determination. This feature has received criticism because it requires sufficient resourcing to address underlying problems and it has been noted that the reality of family empowerment depends on resources and support.⁴¹⁴ Moreover, family group conferences in child welfare matters rather than the use of a forum subject to public scrutiny has been criticised in that there is a potential for it to exacerbate the vulnerability of weaker family members.⁴¹⁵

⁴¹² Section 120

⁴¹³ *The Matter of an Application about the L Children FC Wanganui*, CYPF 1/95, 7 April 1998 at 10

⁴¹⁴ See Libesman, *op cit*

⁴¹⁵ Review – The Mason Report, *The Report of the Ministerial Review Team to the Minister of Social Welfare the Hon Jenny Shipley (The Mason Report)*, 1992 and Gilling M, Patterson L & Walker B 1995 “Family Members Experience of Care and Protection Family Group Conferences”

The Mason Report⁴¹⁶ which reviewed the *Children, Young Persons and Family Act* 1989, found that: “*The idea of bringing the wider Whanau and other players under the umbrella of the Act has increased the number of competing interests, and in our view has rendered the child or young person increasingly vulnerable.*” Consequently the Review recommended that: “*The Act be amended to make it clear that any Court or person who exercises any power conferred by the Act shall at all times treat the interest of the child or young person as the first and paramount consideration*”.⁴¹⁷

Whilst similar issues arise under the *Indian Child Welfare Act* 1978, the ICWA has the added protection of judicial decision-making. The implementation of self determination processes is important, however it is equally important that where new forms of decision making are implemented for vulnerable people, the structural and preferably the legislative framework are ‘*clear, well resourced and well defined*’.⁴¹⁸

The following problems with family group conferencing were identified by the Social Policy Agency Study:⁴¹⁹

- “*Inadequate information for families about the type of situations which give rise to care or protection concerns and the family group conferencing process;*
- *The need to wait for the family group conferencing process to commence before receiving help;*

in Social Policy Agency Study, Ministry of Social Development, Wellington, New Zealand in Libesman, op cit

⁴¹⁶ The Mason Report, 1992 at 12

⁴¹⁷ The Mason Report, 1992 at 12

⁴¹⁸ Libesman, op cit

⁴¹⁹ Gilling, Patterson & Walker, op cit in Libesman, ibid

- *Difficulties regarding the process for inviting participants to the conference;*
- *Inadequate management of relationships between participants at family group conferences;*
- *Undue influence of officials and some family members in the decision making process;*
- *Failure to ensure decisions meet the needs of the child and address the underlying issues;*
- *Resourcing in family group decisions;*
- *Unequal participation of attendees; and*
- *Lack of effective monitoring of implementation and failure to address non-implementation.*⁴²⁰

Pakura observes that it is hardly surprising that mistakes in the ‘...*process of implementing the law and its procedural requirements...*’ have occurred, given ‘...*there were no existing models to study*’. The author suggests that if they were at the starting point again, there would be a number of things she would address. She observes that their experience shows that better plans eventuate from FGC when there are significant numbers. She points out that this is often not possible because most families involved in the child welfare system poverty or low income is a significant issue which impacts of the level of attendance preventing families from travelling, and be absent from work, sometimes for days on end.⁴²¹ She

⁴²⁰ See Libesman, op cit, and also Burford G & Pennell J, *Family Group Decision Making Project: Implementation report summary*, St.John’s, Newfoundland, Canada: Family Group Decision Making Project, School of Social Work, Memorial University of Newfoundland, 1995, Lajeunesse T, *Community Holistic Circle Healing: Hollow Water First Nation* Ottawa: Minister of Supply and Services, 1993 and Tafoya op cit, in Mannes, op cit, at 59-79 in Cunneen, & Libesman, 2002, op cit

⁴²¹ At 120 Pakura notes that the advancement of technology has enabled families to connect where members are unable to travel. Pakura, op cit

notes that the failure to recognise this has had a significant negative impact of the process. She would preserve and build the funds available for the plans arising out of the FGC noting that the failure to do this has resulted in funding being transferred to support the increasing costs of care. Core capacity would be built upon to ensure sustained and intensive work with families already engaged in the system rather than merely focusing on managing or deflecting intake. The need for kinship care to have its own ‘policy, services and resources framework’ rather than incorporating it into a framework that is designed for care by strangers needs to be recognised. And finally, the establishment and management of service coordinators would be better managed including allowing them adequate time to work with communities.⁴²² She observes that funding issues have resulted in coordinator’s roles being reduced to basically case-related activities at the expense of public education and community building roles which were initially envisaged by the Act. It has also been pointed out that despite the introduction of a new legislative framework in 1989, inspired by Maori concepts embedded in the Puaote-ata-tu report, different service delivery methods based on Maori concepts were not so readily accepted⁴²³ and thereby it would seem, watering down Puaote-ata-tu’s intention. In order for FGC to succeed in the future amongst other things, Pakura suggests that funding needs to be used creatively and there must be an awareness of the risk of FGC being corrupted into something that is ‘organisationally and professionally more comfortable’. Pakura suggests that there may be a need to take the whole system back to its roots in Puaote-ata-tu, so that the core principles and philosophies are revisited and staff can be invigorated.⁴²⁴

Despite these issues, the author praises the FGC model and suggests that it has had meaningful results. They are:-

⁴²² Ibid at 119

⁴²³ Walker P, “Partnership Models Within a Maori Social-service Provider”, (2004) 13 *International Journal of Social Welfare* at 158-169

⁴²⁴ Pakura, op cit at 121. See also Brown MJA., *Care and Protection is about adult behaviour, The Ministerial Review of the Department of Child, Youth and Family Services, Report to the Minister of Social Services and Employment, Hon Steve Maharey, December 2000*

- *“The Crown has recognized [sic] that there is more than one worldview...;*
- *Fewer children live outside the care of their extended family networks;*
- *Arrangements for protection and care have mostly been better;*
- *Fewer young people enter the formal criminal justice system and its potential to enhance the development of offending careers;*
- *The percentage of Maori children having a youth justice FGC is falling – from 41 percent in 1995 to 37 percent in 2002^{11 425};*
- *Family resolutions are practical, cost-effective and respect Maori and Pacific peoples’ cultural norms;*
- *Provided that family representation is wide enough, family decision making is usually better than decisions taken by social workers alone. The fear that ‘dysfunctional’ families would use the law in dangerous and abusive ways has proved to be a myth;*
- *Courts and police support the process, which now forms a vital part in any judicial involvement in protection, care or youth justice matters.⁴²⁶*

Finally, in regards to FGC’s beneficial outcomes, most children and their families only have one FGC and their issues can be dealt with in meaningful and respectful private ways, outside the courts and other formal systems.⁴²⁷

The Maori FGC model is now being tried and implemented into various jurisdictions including the UK and the US.⁴²⁸ In fact in 2003 more than 20

⁴²⁵ Preston D, *The Family Group Conference: What have we learned?* Unpublished paper presented to the Department of Child Youth and Family Services. Wellington, NZ: Department of Child Youth and Family Services”, 2003 at fn.11

⁴²⁶ Pakura, op cit at 119-120

⁴²⁷ Pakura, ibid at 121

countries were expected to implement family group decision making initiatives.⁴²⁹ Countries are attempting to use the Maori model and adapt it to their circumstances and needs.⁴³⁰ In a pilot programme in Victoria it was found that ‘extended families can and do make protective plans and offer care for children at risk of harm,’ and found that most people who participated in the project experienced a greater sense of control.⁴³¹ Practice issues not dissimilar to those issues raised in regards to the Maori FGC model were however highlighted as problematic. Noted were:-

- *“The need for time, place and skills to manage the mediation of large groups;*
- *The reluctance of statutory workers to relinquish power over decision making;*
- *The difficulty of ensuring professional follow through on decisions; and*

⁴²⁸ Jack G & Stepney P, ‘The Children Act 1989 – protection or persecution? Family support and child protection in the 1990s’, (1995) 43 *Critical Social Policy* 26-39, Marsh P & Crow G, ‘Family Group Conferences in Child Welfare Services in England and Wales’, in J. Hudson, A. Morris, G. Maxwell & B. Galaway (eds) *Family Group Conferences: Perspectives on Policy and Practice*, The Federation Press, Annandale, New South Wales, 1996, Campbell L, ‘Family involvement in decision making in child protection and care: four types of case conference’, (1997) 2 *Child and Family Social Work* 1-11 at 4. See also Lajeunesse T, *ibid*, cited in Cunneen & Libesman, 2002, *op cit*

⁴²⁹ Merkel-Holguin L, ‘Practice diversions and philosophical departures in the implementation of family group conferencing’, , p. A-10 in G Burford & J Hudson (eds), *Family group conferencing: Perspectives on policy practice and research*, Aldine de Gruyter, Hawthorne, NY2003, cited in Chandler SM & Giovannucci M, ‘Family Group Conferences, Transforming Traditional Child Welfare Policy and Practice’, (2004) 42(2) *Family Court Review* 216-231 at 220

⁴³⁰ See Waites C, Macgowan MJ, Pennell J, Carton-LaNey I & Well M, ‘Increasing the Cultural Responsiveness of Family Group Conferencing’, (2004) 49 *Social Work* 291-300 Also notes that the FGC is based on Maori culture, citing Love C, ‘Family Group Conferencing: Cultural origins, sharing, and appropriation – A Maori reflection’, in Burford & Judson (eds), *ibid* at 15-30. See also Chandler & Giovannucci, *ibid*. This paper provides an overview of some of the underlying themes in FGC at 219-220. See also Nixon P, Burford G, Quinn A, *A Survey of International Practices, Policy & Research on Family Group Conferencing and Related Practices*, May, 2005, http://www.americanhumane.org/site/DocServer/FGDM_www_survey.pdf?docID=2841, this paper provides a survey of the world wide web in 2003 and 2004 of FGC Models.

⁴³¹ Swain, P, *Safe in Our Hands: the Evaluation Report of the Family Decision-Making Project: Mission of St. James and St. John*, Melbourne, 1993 cited in Campbell L, ‘Family involvement in Decision Making in Child Protection and Care: Four Types of Case Conference’, (1997) 2 *Child and Family Social Work* 1-11 at 5; see also Gilling, Patterson & Walker, *op cit*

- *Dubious suitability in situations where ‘threats of violence had been made, where the family denied that there was a protective concern at all, or where the family involved opposed wider family participation’.*⁴³²

Chandler and Giovannucci, note that there have been no experimental research designs to test the effectiveness of FGC but that there are several states in the process of conducting evaluation studies. They do however note that there is process evaluation research that to date shows that FGC is successful in bringing families into the child protective process and it helps families identify strengths within the family or extended family unit. It also noted that new and appropriate resources within the family and community are more likely to be identified and families for the most part feel more informed and more satisfied with the process. The authors further observe that there is some evidence to suggest that FGC improves the relationships between the courts, and agencies because all sectors are included and kept informed about the process. In contrast however the authors suggest that what is not known is more crucial, because it is not known whether children are actually safer.⁴³³ Whilst the criticisms add weight to the concerns over the effectiveness of the New Zealand Act and FGC as a whole, evaluating the success of FGC compared with traditional methods of child protection is not possible unless comparative information under the previous legislation is used which as noted above, was criticised as a form of institutionalised racism.⁴³⁴

FGC is being experimented with and implemented at national and international levels and different components of FGC are being used.⁴³⁵ This makes research and evaluation difficult. It is important to ensure that any new practice innovation

⁴³² Ban P & Swain P, “Family group conferences: Part 2 – Putting the ‘family’ back into child protection”, (1994) 19 *Children Australia* 11-14 at 11-12 cited in Campbell op cit at 5

⁴³³ Chandler & Giovannucci, op cit at 227, and also at 229 - 230

⁴³⁴ Rine MH *Te Mana Te Kawanatanga, The Politics of Maori Self Determination*, Oxford University Press, 1998

⁴³⁵ Adams P & Chandler SM, “Building Partnerships to Protect Children, A Blended Model of Family Group Conferencing”, (2002) 40(4) *Family Court Review* 503; Pennell J, *Mainstreaming Family Group Conferencing: Building and Sustaining Partnerships*, International Institute for Restorative Practices, http://www.iirp.org/library/vt/vt_pennell.html

is evaluated properly and Chandler and Giovannucci outline the problems with not clearly defining a new intervention properly such as where a programme has excellent results in one area and not in another, probably due to the fact that it has been varied. Again, this makes it difficult to know what is being tested.⁴³⁶ The authors use as an example the fact that all blood relatives are invited to attend and participate in the FGC in New Zealand but in Family Unity Meetings in Oregon a parent is permitted to veto the participation of any other family and in fact in other parts of the US where the FGC concept is used, parents are not well informed about this aspect of the model and this important aspect of the model which is not being implemented.⁴³⁷ This may reflect the fact that non-Indigenous societies have different concepts of family to Maori and in fact Indigenous societies in general. It highlights the concerns of Pakura that FGC is not corrupted into something else without anyone even being aware that it has happened.⁴³⁸

Overall the FGC model has benefits to Maori families and communities, however lack of resources appears to have placed strain on the implementation of the model and combined with the privatisation of the model and therefore lack of public scrutiny seems to have led to the exploitation of vulnerable parties and consequently the possibility that children are not being protected appropriately. As noted above, it is imperative that new forms of decision making have adequate levels of resourcing and are clearly defined, preferably under a legislative model.

Service Delivery

Despite more control over decision making, issues relating to power imbalances between the state agencies and Maori organisations still appear to exist so that partnerships are not at their best and it would seem that the struggle towards

⁴³⁶ Chandler & Giovannucci, op cit at 227

⁴³⁷ Chandler & Giovannucci, ibid. See also Ney T, *Mandatory Dispute Resolution in Child Protection: A Survey of Jurisdictions*, submitted to Cathy Tait, M.P.A. Assistant Deputy Minister's Office, Justice Services Branch, B.C. Ministry of Attorney General at iii, http://www.bcjusticereview.org/working_groups/family_justice/survey_07_15_04.pdf

⁴³⁸ Pakura, op cit at 121

community control over child welfare is still an issue for Maori.⁴³⁹ Service delivery programs tend to be general in nature rather than specifically for Maori or Pacific Islander people. However a number of iwi based social services organisations have developed with some offering genuine alternatives to state child welfare and protection services within their iwi.⁴⁴⁰ The following provides some examples of State run programmes being delivered to people in New Zealand.

Early Intervention Programmes

Early Intervention Programmes are being focussed on in New Zealand with the Government recently allocating \$43.7 million over the next four years in their 2005 budget towards early intervention proposals for vulnerable families and children. The initiatives funded are:-

- Family Start;
- Early Childhood Centre Based Parent Support pilot;
- Parenting support pilot that builds on the core Well Child health service;
- Services for Children who Witness Family Violence; and
- Family Court parenting information program.

Family Start

Family Start is a home visiting program for families with young children who have the greatest needs and provides intensive cross-government support to parents. Before new services were set to commence early 2005 consultation with service providers – iwi, Pacific communities, local government and community

⁴³⁹ Walker P, “Partnership Models Within a Maori Social-service Provider”, (2004) 13 *International Journal of Social Welfare* 158-169.

⁴⁴⁰ Pakura, op cit at 121. For example, Ngaiterangi Iwi Social Services, <http://www.ngaiterangi.org.nz/page5.html>

organisations to ensure the program would fit with existing services.⁴⁴¹ The program is called Early Start in Christchurch. Part of the funding has been allocated to increasing the qualification levels of Family Start Family/Whanau workers.⁴⁴²

Early Childhood Education pilot

A pilot project that is being launched in December 2005. It will provide free high quality early childhood education to approximately 1,750 children in Family Start or Early Start. The pilot will cost \$8.4 million over four years and on-going funding of \$2.1 million per year has also been committed.

Parenting Support Pilot

\$2.1 million has been invested over the next four years to pilot and evaluate a universal parenting support service for parents of young children. The program focuses on preventing early behaviour problems in children, identifying parenting/family problems at an early stage and improving access to targeted specialised services. It will commence with a small trial from January 2006.

The pilot provides one individual parenting session for parents when babies are around eight months old. The session aims to increase parent's awareness of normal child behaviour and social development. Two sessions with groups of parents are offered when children are around 12 to 15 months. These sessions focus on ways to encourage desirable behaviours as well as parenting skills to cope with behaviours such as aggression or general misbehaviour.

Services for Children who Witness Family Violence

\$12 million dollars has been allocated over four years to improve services for children who witness family violence. This includes providing child advocacy

⁴⁴¹ <http://www.msd.govt.nz/media-information/budget-2004-fact-sheets/family-start.html>

⁴⁴² Centre for Child and Family Policy Research, Auckland UniServices Limited, *Outcome/impact evaluation of Family Start, Final Report – Summary*, Ministry of Social Development Te Manatu Whakahiato Ora, prepared for Centre for Social Research and Evaluation, Te Pokapu Rangahau Arotaki Hapori, March 2005

services, and establishing a national infrastructure to provide the advocates with professional leadership, training and coordination. Training on family violence prevention for people and organisations who work with children and families and an increase in available services.

Indigenising Children's Services

Service Delivery to Indigenous communities⁴⁴³

For effective collaboration between government departments and Indigenous communities it is necessary for departments, and individuals who work within them, to have a meaningful understanding of the history and experiences which impact on the communities to be serviced. This requires personal and institutional reflection on values inherent in attitudes and presumption within individual behaviour and within service delivery models. A key issue identified for consideration when working with Indigenous communities, is an understanding of communal identity and a related whole-of-community rather than individually focused responses to child protection.

Professionals dealing with Indigenous families may be unaware of the potential effects of their “cultural blindness”. Indigenous parents tend to be disempowered in relations with professionals, who must develop strategies to increase “levels of participation”.⁴⁴⁴ In a qualitative study of social work professionals working with on-reservation Native American mothers, Kalyanpur found that although the workers were acting according to best practice, their assumptions of the universal applicability of “objective” theories was false. Kalyanpur found that although the parents in the study had perceived parenting deficits according to professional criteria, they were raising their children “*to become competent adults within their culture*” and therefore possessed appropriate parenting skills.

Partnerships and collaboration

Good partnerships and meaningful collaboration between government and Indigenous organisations are vital to the development of effective child welfare strategies which empower Indigenous communities. However, to date, power has

⁴⁴³ This section is largely from Libesman, op cit

⁴⁴⁴ Kalyanpur M, “The Challenge of Cultural Blindness: Implications for Family-Focused Service Delivery” (1998) 7(3) *Journal of Child and Family Studies* 317-332

resided almost solely with the state, as outlined by the Awasis Agency.⁴⁴⁵ *“The power structures that underlie traditional approaches to social work practice often work against collaboration decision-making with families. Even when social workers try to share decision-making power with families the power and authority attached to the role of social worker erodes this attempt.”*

Collaboration is vital for *“both understanding the specific limitations and ineffectiveness of existing services and programs, and for identifying the changes necessary to create culturally appropriate solutions”*.⁴⁴⁶

In describing a number of Native American child and family services entities considered exemplary, one report identifies collaboration as the key feature to their success. Several of these organisations had complex partnerships between various combinations of state agencies, tribal organisations, and non-governments organisations.⁴⁴⁷

A project conducted by the American Humane Association⁴⁴⁸ examined sources of conflict and collaboration in areas of child welfare in which both tribes and government agencies have an interest. Project sites were located on five reservations covering seven tribes in three states – Arizona, North Dakota and Washington. The research found North Dakota was an exemplary case for positive tribal-state relations. Some of the qualities which contributed to this status were: the long history of tribes and government working together; mutual understanding of history and cultural context; recognition of the “sovereignty nationhood” of tribes by government; provision of training on the means to obtain federal funds; and a collaborative approach.

⁴⁴⁵ Awasis Agency of Northern Manitoba, *First Nations Family Justice: Mee-noo-stah-tan Mi-ni-si-win*, Thompson, Manitoba: The Agency, 1997 at 24-25

⁴⁴⁶ Aboriginal Family Healing Joint Steering Committee, *For Generations to Come: The Time is Now - A Strategy for Aboriginal Family Healing* Unpublished Final Report (Ontario), 1993 at ii

⁴⁴⁷ American Humane Association - National Resource Centre on Child Abuse and Neglect, *Tribal-State Relationships in Child Welfare: Ensuring High Quality Services to American Indian Children and Their Families* American Humane Association, Englewood, CO 1997

⁴⁴⁸ American Humane Association, *ibid*

The report identified that the qualities and capacity of individual people involved were a key factor in successful tribal–state relations. People consulted for the project (individually and as representatives) discussed perceived personal skills and qualities as important to good working relations between tribes and states. These were grouped and summarised, including as follows: communication skills; sensitivity to different values; cultural broker skills (“cultural brokers” have the ability to “walk in two cultures” with comfort in the different roles required); teamwork skills; and comfort in ambiguity.

In 1991, the United States National Indian Child Welfare Association produced a paper providing strategies for the development of effective cross-cultural partnerships for child abuse prevention. They found two vital factors in successful strategies to be inclusiveness and empowerment. Involvement of and consultation with community members should take place throughout the project cycle, from design through to evaluation. Natural community support networks should be used and developed, while natural helpers and natural prevention networks should be engaged. This can be achieved through attending formal and informal community gatherings, or by sponsoring joint training or public awareness events with Indigenous organisations. The history of disempowerment and attendant feelings of helplessness must be overcome by harnessing community strengths and resources.

Strategies which have been used include using the influence of Indigenous leaders to disseminate information, and seeking information and advice from Indigenous organisations. Programs should be designed so that they are sustainably incorporated into the local Indigenous culture.

Factors contributing to culturally competent work

There are a number of key issues which have been identified as relevant to culturally competent work with Indigenous people. Weaver⁴⁴⁹ discusses a number of topics important for practitioners to be aware of when working with Native Americans. These are issues which appear to also have relevance in the Australian context:

- History – Weaver⁴⁵⁰ states that interventions addressing trauma are often best approached through a group method, as a) much trauma has been perpetrated on people as a group, and b) Native American identity is focussed on groups. Community healing projects are becoming more common. Validation of historical grief is important in assessment and healing.
- Citizenship – The lack of recognition of (a) Indian nations by the state, and (b) individual Native Americans by nations, leads to problems with identity and self-esteem.
- Cultural identity – A thorough cultural assessment is essential. For example, how much does a client identify with Native American culture, or with a blend of Indian culture, or a blend of Indian and non-Indian culture?
- Sovereignty – Practitioners need to be aware of ICWA and rights of Native American agencies and communities to provide care and intervention.

⁴⁴⁹ Weaver HN, “Indigenous People in a Multicultural Society: Unique Issues for Human Services”, (1998) 43(3) *Social Work* 203-211

⁴⁵⁰ Ibid

It is important that child and family service providers are able to integrate knowledge and reflection with practical skills.⁴⁵¹

Implementing culturally competent policy

Some features of culturally competent policy, and some of the related practices that have been implemented in Canada, are outlined in Table 2. This table is an edited version of a table included in Hart⁴⁵², which was derived from a review of 15 Family Violence Prevention projects planned and implemented by Indigenous people and funded by Health Canada.

Table 2: Implementing culturally competent policy and practices in Canada

Values and characteristics of culturally competent policy and programming	Resulting practices
Recognition of the importance of ritual and ceremony	Appropriate use of rituals and ceremonies within programs
Strong sense of community and shared responsibility	Distinctive attitude to confidentiality Community effort towards healing both abuser and victim at the same time Effort to keep the abuser in the community while protecting the victim(s) Support for abusers and children who have been removed from the community
An emphasis on connectedness to land and family, resulting in a view of the individual in context	A progression through individually centred programs to those that are group or community focused Connection of concurrent programs Teaching of practical life skills together with therapeutic interventions
An objective of restoring balance	The development of programs that are positive and life-enhancing
Placing value on nurturing and mutually respectful relationships	A recognition of the loss of the traditional male role and the emergence of a role based on pervasive male

⁴⁵¹ Ibid

⁴⁵² Hart MA, *Seeking Mino-Pimatisiwin: An Aboriginal Approach to Healing* Fernwood Publishing, Halifax, 2002, see Bennett & Blackstock, op cit at 14-15

Values and characteristics of culturally competent policy and programming	Resulting practices
	<p>dominance</p> <p>An importance placed on networking among staff of different programs, even over long distances</p> <p>A collaboration between Aboriginal political leadership and service providers</p>
Honouring the central place of women	<p>A concern for the equality of women</p> <p>Recognition of the need for women to be central to the decision-making process for program design and delivery</p>
A sense of equality between service provider and service recipient	<p>Importance placed on storytelling as part of therapeutic programming</p> <p>Predominance of Aboriginal staff</p> <p>Use of simple, jargon-free language</p> <p>Use of Aboriginal language and symbols</p> <p>Staff-client relationships characterised by openness and informality</p>
A central attitude of caring	<p>A recognition of the importance of worker wellness and self-care</p>
A preference for forgiveness rather than judgement and punishment	<p>An acceptance of personal responsibility by the abuser as a starting point</p> <p>A recognition of Aboriginal mechanisms for achieving justice</p>

Client/agency relationships

The legacy of historical removals

An understanding of the impacts of trauma resulting from a history of forced and unjustified removals of children and culturally inappropriate service provision is

necessary to develop effective social services policy analysis and child welfare programs within Indigenous communities.⁴⁵³

However, the impacts of this history are seldom considered by non-Indigenous agencies. The Awasis Agency of Manitoba points out that: “*Social work cases are not looked at within the larger context of social, economic, historical, political, and cultural realities. Blame rests with the individual . . . Child and Family Services within a First Nations context must adopt a contextual perspective for service delivery to be effective.*”⁴⁵⁴

An atmosphere of taboo and shame still exists around the history of maltreatment of Indigenous children in a number of countries. Yet by “*better understanding client cognitions and behaviours that stem from this experience, treatment plans can be designed to overcome problematic parenting patterns*”.⁴⁵⁵

Strategies such as culturally appropriate placement may not resolve underlying problems. Much evidence suggests that parents who themselves spent lengthy periods in adoptive placement or residential schools as children often have parenting or substance abuse problems which lead to the removal of their children, establishing an intergenerational pattern of trauma and removal.⁴⁵⁶ Factors which contribute to a lack of parenting skills include: the absence of positive parental role models; destroyed transmission of parenting knowledge and behaviours; absence of experience of family life; and sexual abuse.⁴⁵⁷

Some program models aim to raise awareness and educate Indigenous people about how the effects of historical factors have contributed to their contemporary

⁴⁵³ McKenzie, op cit in Pulkingham & Ternowetsky, op cit

⁴⁵⁴ McKenzie, ibid at 24

⁴⁵⁵ Morrisette PJ, “The Holocaust of First Nation People: Residual Effects on Parenting and Treatment Implications”, (1994) 16(5) *Contemporary Family Therapy* 381-392at 381-382

⁴⁵⁶ Morrisette, ibid; Mannes, 1993, op cit

⁴⁵⁷ Morrisette, ibid; Horejsi C, Bonnie Heavy Runner C & Pablo J, “Reactions of Native American Parents to Child Protection Agencies: Cultural and Community Factors”, (1992) 71(4) *Child Welfare* 329-343

realities, experiences and circumstances. In so doing, these innovative models attempt to address root causes of child abuse and neglect in Indigenous communities. Healing possibilities also exist in “productive encounters with representatives of the responsible religious orders” who were involved with removals and residential schools.

Collaborative evaluation of programs

Conventional evaluation criteria and frameworks are “severely tested” in the context of Aboriginal child welfare. Beliefs and values underlying conventional approaches are those of the mainstream, not Aboriginal culture. Different belief systems can mean differences in objectives, indicators, who does the evaluation and how the information is used. Evaluation should contribute to the goals of a project, not just measure outcomes. There is a need to render values underlying evaluation processes explicit as part of the process.

Standards

Culturally inappropriate standards used for determining a child’s need for substitute care have been a major contributor to disproportionate rates of removal in Indigenous populations.⁴⁵⁸ In many places, culturally inappropriate alternate care standards lead to the placement of Indigenous children with non-Indigenous carers.⁴⁵⁹ Expanding on this point, the report of a Manitoba community consultation notes: *“The standard and procedures followed by First Nations agencies for apprehensions, placements and adoptions are provincially defined. The standards relating to foster homes on reserves are viewed from the mainstream society perspective. Most First Nations homes are unable to meet these standards ... It is not always possible to find foster or adoption homes that*

⁴⁵⁸ First Nation’s Child and Family Task Force, op cit; Mannes, 1993, op cit; Community Panel, Family and Children’s Services Legislation Review in British Columbia, Aboriginal Committee, *Liberating Our Children, Liberating Our Nations: Report of the Aboriginal Committee, Community Panel, Family and Children’s Services Legislation, Review in British Columbia*, The Committee, Victoria BC, 1992

⁴⁵⁹ First Nations Task Force, ibid; Community Panel, ibid

will pass the provincial test in the communities".⁴⁶⁰ In the United States, Native American child welfare programs have successfully developed culturally sensitive placement standards, but have had to battle with states for acceptance. Tribally-controlled kinship care placements with aunts and uncles or grandparents are often seen by the non-Native child welfare system as foster care settings, with tribal agencies struggling to assert the legitimacy of these placements.⁴⁶¹

Staffing and training issues

A factor inhibiting increased Indigenous control of child and family services, which appears likely to apply in most countries and areas including Australia, is an inadequate supply of Indigenous workers.⁴⁶²

Consultations with the British Columbia Aboriginal population found that culturally inappropriate standards for health care and social worker education have contributed to the "gross under representation" of Aboriginal people in these fields.⁴⁶³ Contributors to another community consultation, in Manitoba, argued that academic qualifications were not the most important criterion for workers, as they believed that mainstream social work curricula don't meet the needs of First Nations people.⁴⁶⁴ As well as the lack of Indigenous workers, a lack of supervision and administrative support is another impediment to the development of First Nation agencies.⁴⁶⁵ Other reasons for the short supply of Indigenous child and family services workers include difficulties in educating Indigenous social workers, especially those from isolated areas, and problems with retention of qualified First Nations staff, with few ongoing career development opportunities existing for staff at First Nations agencies.⁴⁶⁶ A review of Native American child protection teams found that permanency should be a critical factor in the choice of

⁴⁶⁰ First Nations Task Force, *ibid* at 51

⁴⁶¹ Mannes, 1993, *op cit*

⁴⁶² Durst D, *The Wellness of Canadian First Nations Children: Seeking Solutions Through Self-Government*, Unpublished Draft Research Paper, 1998

⁴⁶³ Community Panel, *op cit*

⁴⁶⁴ First Nations Task Force, *op cit*

⁴⁶⁵ Durst D, 1998, *op cit*

⁴⁶⁶ First Nations Task Force, *op cit*; Armitage, *op cit*

team members – high membership turnover brings problems with training, confidentiality and cohesion.⁴⁶⁷

The under-representation of Indigenous staff in Indigenous child and family services needs to be addressed as a priority. The British Columbia consultation found that it has led to culturally inappropriate service delivery, and the devaluing of traditional Aboriginal healing practices.⁴⁶⁸

Where non-Indigenous workers must be employed, the importance of cross-cultural training is very important. The Manitoba consultation stated that “*cultural differences created chasms between non-First Nations workers and their clients*”.⁴⁶⁹ Stereotypical views might lead to the belief that these issues and differences might not be so relevant to Indigenous people living apparently enculturated lives in cities. However, the consultation also found that the “*same concerns were expressed in urban areas as well as in First Nations communities*”.⁴⁷⁰

Cultural Competence

Cross-cultural communication problems and cultural difference militate against collaborative planning, responsibility and accountability. Cultural competence has been defined as “*a set of congruent behaviours, attitudes and policies that come together in a system, agency, or among professionals that enable them to work effectively in cross-cultural situations*”⁴⁷¹ This is of particular relevance when working with Indigenous communities. Striving for cultural competence in social services in the United States is now widespread, and occurs partly in recognition of the ethnocentric history and values of social welfare services. A culturally

⁴⁶⁷ Carr J & Peters M, *Assessment of Multi-Disciplinary Child Protective Teams in Five Western Washington Communities: Chehalis, Nisqually, Shoalwater Bay, Skokomish, Squaxin Island Thesis (M.P.A.)*, The Evergreen State College, Washington, 1997

⁴⁶⁸ Community Panel, op cit

⁴⁶⁹ First Nations Task Force, op cit at 56

⁴⁷⁰ Ibid

⁴⁷¹ Tong C & Cross T, *Cross Cultural Partnerships for Child Abuse Prevention with Native American Communities*, Northwest Indian Child Welfare Institute, Portland, Oregon 1991 at 12

competent program “*appreciates and values diversity; understands the cultural forces which impact the program; understands the dynamics which result from cultural differences; institutionalises cultural knowledge; and adapts its services to fit the cultural context of the clients it serves*”⁴⁷²

However, empirical models for cultural competence are few, and those tailored for Indigenous people are fewer still. Social work policy and practice can discourage flexibility and innovation in approaches to cultural difference.⁴⁷³ There is a great and largely unfulfilled need for practitioners, policy-makers and other professionals to be aware of the cultural specificity of policy and practice.⁴⁷⁴ Many authors who discuss cultural competence emphasise the importance of practitioners’ ability to reflect on their own personal cultural backgrounds and possible biases. Effects of the cultural incompatibility of social service models, particularly those relating to child and family services, have been overwhelmingly negative.

The culturally competent social worker has been defined as one who can effectively apply social work skills in a way that is knowledgeable and respectful of a client’s culture.⁴⁷⁵ Cultural competence is often seen as having three components: -

- (1) Knowledge of the client’s cultural context, including history and worldview;
- (2) Practitioner awareness of own assumptions, values and biases; and
- (3) Application of appropriate interventions and skills.⁴⁷⁶

⁴⁷² Ibid at 13

⁴⁷³ Ibid

⁴⁷⁴ Kalyanpur, op cit

⁴⁷⁵ Weaver, 1998, op cit

⁴⁷⁶ Browne C, Brodrick A & Fong R, “Social Work Practice with Multicultural Elders” (1993) 19 *Educational Gerontology* 511-523; Sue DW, Arrendondo P & McDavis RJ “Multicultural Counseling Competencies and Standards: A call to the profession” (1992) 70 *Journal of Counseling and Development* 477-486; Weaver HN & Wodarski JS, “Cultural Issues in Crisis Intervention: Guidelines for culturally competent practice” (1995) 22 *Family Therapy* 213-223 in Waites, Macgowan, Pennell, Carlton-LaNey, & Weil, op cit at 292

Problems with conventional social work and child welfare methods

In the United States, a number of authors and reviews suggest that social work methods impose alien cultural values of individualism, materialism and empiricism on Native American people.⁴⁷⁷ Voss et al comment on the exclusion of traditional Native American ideas from social work literature and the common characterisation of Indian people as a “problem” group. They suggest that social work practice “*rigidly reinforce a kind of clinical colonialism*”.⁴⁷⁸

Weaver⁴⁷⁹ notes that the high value placed on independence in the dominant culture has led to conditions such as “enmeshment” and “co-dependency” being regarded as dysfunctional. However, such judgements are culturally relative, and can lead to misunderstanding and misdiagnosis. “*It is not unusual for non-Indian members of the formal child welfare system to misinterpret a parent’s reliance upon extended family members for child care as a sign of neglect . . . [yet this behaviour represents] normal and healthy interdependence among Native Americans*”.⁴⁸⁰

It is important not to make generalisations about Indigenous identity and selfhood. The great diversity within Indigenous groups always calls for practitioners to obtain specific knowledge about the community, nation or client group. This information is best obtained from the client. Indigenous social services and cultural agencies are further sources of information.⁴⁸¹

The conventional individually focused models applied by child and family service agencies and treatment services are often culturally inappropriate for use with Indigenous client groups due to differences in the nature of personal and

⁴⁷⁷ Voss R, Douville V, Little Soldier A & Twiss G, “Tribal and Shamanic-Based Social Work Practice: A Lakota Perspective”, (1999) 44(3) *Social Work* 228-241; Weaver, 1998, op cit; Kalyanpur, op cit; Awasis Agency of Northern Manitoba, *First Nations Family Justice: Mee-noo-stah-tan Mi-ni-si-win*, The Agency, Thompson, Manitoba, 1997; Ricks F, Wharf B & Armitage A, “Evaluation of Indian Child Welfare: A Different Reality”, (1990) 24 *Canadian Review of Social Policy* 41-46

⁴⁷⁸ Voss et al, op cit at 233

⁴⁷⁹ Weaver, 1998, op cit

⁴⁸⁰ Ronnau et al, op cit in Mannes, 1990, op cit at 91

⁴⁸¹ Weaver, 1998, op cit, Weaver, 1999, op cit

communal identity. Individually focused treatment models often disregard the complexities of extended family networks in First Nations communities.⁴⁸²

Many authors and community consultations find that a “whole-of-community” approach to child protection and other social service and treatment interventions is more appropriate and likely to lead to success.⁴⁸³ For example, the Awasis Agency, a regionalised peak body for the Indigenous controlled child and family services of 18 northern Manitoba Aboriginal communities, integrates child protection with other services, observing that this inclusive approach mirrors the Aboriginal concept of self in that region.⁴⁸⁴

Indigenous community control

Around the world, child welfare systems and agencies are struggling to protect their reputations and carry out their responsibilities in an environment of ever-increasing reports of abuse and neglect. There is a growing consensus among professionals and the public that there is a need for fundamental change in how child protection services should be conceptualised and delivered, for mainstream as well as Indigenous populations.

In the United States the “Executive Session on Child Protection” concluded that a more collaborative, community-based approach to child protection was required.⁴⁸⁵ The Session proposed that rather than child protection service agencies bearing sole responsibility for protecting children, other agencies, parents and the public should jointly share responsibility in “community

⁴⁸² Connors E, *Healing in First Nations: The Spirit of Family in The Ecological Perspective in Family –Centered Therapy*, Edwin Mellen Press, New York 1993 at 51-65,

⁴⁸³ Manitoba Justice Inquiry 1991; Durst 1998, op cit, First Nations Child and Family Task Force, op cit

⁴⁸⁴ Awasis Agency, op cit. For a bibliography of Aboriginal and Indigenous Social Work Issues see Sinclair R, *Indigenous Research Applications in Social Work: Annotated Bibliography and Comments*, 2002, <http://www.aboriginalsocialwork.ca/research.pdf>

⁴⁸⁵ Farrow F & the Executive Session on Child Protection, *Child Protection: Building Community Partnerships*, John F Kennedy School of Government, Harvard University, Cambridge, Massachusetts, 1998

partnerships for child protection”. States including Missouri, Michigan and Florida, are developing new laws, policy and practice in response to these ideas.

The Session envisaged the development of comprehensive neighbourhood-based supports and services, which draw on family networks and other informal resources. These networks are closer to and more trusted by families in need than traditional services. The Session saw the development of formal community boards responsible for child protection as a viable alternative.

Given the parallel histories of dispossession and wholesale removal of children from Indigenous peoples in a number of colonised countries, the issue of community control is particularly important for Indigenous people.

The process of change

A report based on a review of 15 Health Canada-funded Family Violence Prevention projects planned and implemented by Aboriginal people had this to say about Indigenous control of child welfare services: *“As ownership of family-related services has increasingly passed to Aboriginal control, it has become evident that simply staffing those services with Aboriginal people is only part of the answer. The services themselves need to be designed by Aboriginal people to make them work as a reflection of the host community and the belief system found there”*.⁴⁸⁶

A First Nations task force set up in order to investigate Manitoba First Nations child and family services agencies envisaged the integration of child protection and other family services. The task force’s consultations with 15 Manitoba communities also led to the development of the idea of “Local Child Care

⁴⁸⁶ Hart R, *Beginning a Long Journey: a Review of Projects Funded by the Family Violence Prevention Division, Health Canada, Regarding Violence in Aboriginal Families Ottawa: Health Canada, 1997*, at 12

Committees”, which would play a major role in developing and/or approving case plans, as well as being involved in placement and child and family services.⁴⁸⁷

In 1993, an Ontario Aboriginal committee produced an Aboriginal family healing strategy, developed through a community consultation process involving 7000 Aboriginal people throughout the Province. The Strategy saw the empowerment of Aboriginal people as being a central component in the healing of individuals, families, communities, and Aboriginal Nations.⁴⁸⁸ The strategy required Aboriginal community control and funding for design and implementation. This process depended on a provincial government commitment to devolving authority to Aboriginal communities.

This phased handover of authority proposed in the Ontario Strategy involved the establishment of a joint management committee, with provincial government and Aboriginal community members. In the first phase, programming continued under provincial Ministry mandates while beginning to share control over family healing programs. In the medium to long term, full control will be devolved to the Aboriginal community. In 1994, the Ontario government created the Aboriginal Healing and Wellness Strategy with the signing of 13 implementation agreements with Aboriginal organizations and chiefs of First Nations. These agreements were renewed for a further five years in 1999. The Aboriginal Health and Wellness Strategy operates a number of programmes including healing lodges and treatment centres which offer traditional approaches to the treatment of sexual assault, physical abuse, addictions and family dysfunction; shelters from violence for women and children; and a recent program which focuses on child development from the prenatal stage to six years of age.

The phasing aspect of the scheme was designed to accommodate differing levels of community readiness. This aspect of the scheme may be particularly relevant to

⁴⁸⁷ First Nations Task Force, op cit

⁴⁸⁸ Aboriginal Family Healing Joint Steering Committee, op cit at iii

Australian Indigenous child welfare, as the levels of social, physical, economic and political resources and infrastructure are likely to vary considerably between communities. A relative resource deficit is not necessarily a good reason to postpone a phased handover of responsibility for children's wellbeing to Aboriginal communities. An advantage offered by the phased handover concept is that it allows for some real change and development in delivery of Indigenous child and family services without, or prior to, legislative change.

Many existing Indigenous-controlled child and family services appear to have a good record for improving child welfare outcomes in their communities. For example see Weechi-it-te-win Family services in Ontario and West Region Child and Family Services, and the Wellness Foundation discussed above.⁴⁸⁹

The literature available in this area suggests that there is a growing recognition about cultural strengths and Indigenous knowledge in child welfare.⁴⁹⁰ In that regard, Bennett, Blackstock and De La Ronde outline the benefits of Indigenous knowledge in child welfare practices and the use of Indigenous practices by many First Nations Child Welfare Agencies. However they also highlight the fact socio-economic conditions, whilst having improved over the years, still remain problematic and note that since assuming responsibility over child welfare services, First Nations Agencies have inherited a number of 'colonial legacies'. They observe that these Agencies are expected to 'treat' these legacies which are considerably greater compared with what their mainstream counterparts have to deal with, as well as having the pressure of unrealistic expectations upon them from the community. They note that their research on these pressures only touches the 'tip of the iceberg' but highlight issues such as family violence, poverty, lack of quality education, unemployment, Fetal Alcohol Syndrome and its effects, suicide, funding issues and the jurisdictional disparity involving

⁴⁸⁹ See section on Canada above.

⁴⁹⁰ See Bennett, Blackstock & De La Ronde, op citand Durst D, *It's Not What But How! Social Service Issues Affecting Aboriginal Peoples: A Review of Projects*, Human Resources Development Canada, 2000, <http://dev.www.uregina.ca/spru/spruweb/publications/review.pdf>

responsibility are but some of the issues First Nations families and child are faced with.⁴⁹¹ The factors are also relevant to Aboriginal and Torres Strait Islander families which Cunneen and Libesman point out make these families more susceptible to becoming involved with both child protection services and juvenile justice service.⁴⁹² They too point to previous government policy of assimilation, as well as their experience of racism, dispossession and marginalization which give rise to the factors outlined above.⁴⁹³ Even now, Aboriginal and Torres Strait Islander people still have to deal with a disadvantage across a range of socio-economic measures and are more likely to live in a community with inadequate and poorly maintained infrastructure and be in poor health.⁴⁹⁴

Decentralisation and community-based services

The view that Indigenous child and family service provision must get in touch with grass roots issues and circumstances by operating at the local level has been expressed repeatedly.⁴⁹⁵

*“The community requirement today is to design services from the bottom-up or from the community’s perspective, which is grounded in a more complete understanding of its social reality. The challenge is to move from mandates which emphasise efficient delivery of services to mandates that focus on effective service outcomes”.*⁴⁹⁶

This service, the Awasis Agency of Manitoba, reports that devolution of child and family services authority to the local level may improve responsiveness,

⁴⁹¹ Bennett, Blackstock & De La Ronde, *ibid* at 32-47

⁴⁹² See Cunneen C & Libesman T 2000; Stanley, Tomison & Pocock, *op cit* for further information; and see also Tomison, *op cit* at 57

⁴⁹³ Cunneen & Libesman, *op cit*

⁴⁹⁴ See Tomison *ibid* at 60; see also Blackstock, C, with assistance from Bennett, M, National Children’s Alliance, *Policy Paper on Aboriginal Children*, First Nations Child and Family Caring Society of Canada, 2003

http://www.nationalchildrensalliance.com/nca/pubs/2003/Aboriginal_ChildrenBlackstock_%20Bennett.pdf

⁴⁹⁵ Awasis Agency, *op cit*; Weechi-it-te-win Family Services, *op cit*; First Nations Task Force, *op cit*; Ronnau et al, *op cit*

⁴⁹⁶ Awasis Agency, *ibid* at 106

management, flexibility and integration of services, and increase local community support and voluntarism.⁴⁹⁷ The agency criticises centralised services on grounds that they are: unresponsive to the needs of locals; alienating due to their inaccessibility and over-specialization; and undemocratic, in the absence of community control.⁴⁹⁸

First Nations community representatives responding to a 1993 Manitoba consultation were alienated, frustrated, and angry about the centralised nature of First Nations agencies. They said that there was little local involvement, and agencies demonstrated a heavy-handed approach.⁴⁹⁹ A separate issue related to service decentralisation concerns the setting in which service delivery occurs. A number of studies suggest that services should not only be locally based, but, where possible, offered at the client's home. Several researchers found that the institutional or office environment is alienating to Native Americans;⁵⁰⁰ it is likely that this also applies to many other Indigenous people, particularly given the common legacy of traumatic past child welfare interventions. Besides their alienating atmosphere, there are several other reasons why institutional settings may not be ideal for delivery of Indigenous social services.

Norton and Manson, consultants to a domestic violence program at an urban Indian health centre, found that early attempts at providing counselling services to battered women at the clinic were unsuccessful due to problems with: inadequate child care; lack of transport; and poor rapport.⁵⁰¹ Norton started experimenting with home-based counselling, which proved successful: "*Home visits involve additional time and effort, but relative to the alternative of under utilisation of office-based interventions, home visits significantly enhance care and the*

⁴⁹⁷ Ibid

⁴⁹⁸ Ibid

⁴⁹⁹ First Nations Task Force, op cit

⁵⁰⁰ Norton IM & Manson SM, "Domestic Violence Intervention in an Urban Indian Health Center", (1997) 33(4) *Community Mental Health Journal* 331-337, ; Tafoya, op cit; Ronnau et al, op cit

⁵⁰¹ Norton & Manson, ibid

effectiveness of counselling".⁵⁰² Norton noted that the home-based approach allowed for greater flexibility, and facilitated a trusting relationship.

An assessment of six placement prevention and reunification projects in Native American communities found that the two most successful projects were home-based. By making the first contact in the client's home, the client's value in the relationship is established. The home visits also help to overcome the perceived reluctance of Native Americans and Alaskan natives to seek help outside the extended family⁵⁰³

Accountability

A number of accountability-related issues arise in the international literature on Indigenous child welfare. Political or personal interference with, and influence over, Indigenous-controlled child and family services is a very serious issue, which compromises the probity and effectiveness of some Indigenous agencies, and leaves Indigenous women and children the greatest losers. Other issues associated with devolved authority include: the problem of determining specific responsibilities where divided authority creates multiple accountability; the capacity of local services to provide assured child protection; and confidentiality.

The most critical reference to political interference found in this review related to the report of a Manitoba Indigenous community consultation. The Manitoba report cited political interference by powerful community members as an impediment to the development of First Nation child and family services agencies.⁵⁰⁴ Gray-Withers⁵⁰⁵ states that First Nation women's groups accused Chiefs of "complicity and political self-serving interference". The apparent prevalence of political interference in Canadian Indigenous child welfare matters is closely linked to the small size of many First Nations communities. Health or

⁵⁰² Ibid at 336

⁵⁰³ Smollar J & French R, *A Study of Six Native American Placement Prevention and Reunification Projects*, Prepared by CSR Incorporated and Three Feathers Associates, 1990

⁵⁰⁴ Durst, 1998, op cit

⁵⁰⁵ Gray-Withers D, "Decentralised Social Services and Self-Government: Challenges for First Nations", 1997 in Pulkingham & Ternowetsky, (eds) op cit.

social workers and police are likely to know or be related to the victim or the perpetrator. The close proximity of these various parties involved in child protection matters is likely to engender bias.⁵⁰⁶

In Canada, serious family violence problems occur in many First Nations communities.⁵⁰⁷ Although women had a powerful place in traditional First Nations culture, men dominate today. The colonising culture is a factor which has impacted on the adoption by First Nations men of negative attitudes and behaviour, including chauvinism, abuse and control of power.⁵⁰⁸ This abuse is often seen as a private family matter in Aboriginal communities. As a result, little intervention from relatives or others occurs. Support services are often unavailable, and Chiefs or council members are unlikely to be charged over domestic violence offences.⁵⁰⁹

These problems can be exacerbated by the process of instituting self government and First Nations' control of child and family services. Native women's groups have been vocal in their criticism of self government where it entails the further domination of First Nations men over the lives of women and children.⁵¹⁰ Gray-Withers also contends that this gender-based power imbalance undermines child protection: *"In many communities, the male-dominated Native leadership has hidden and perpetuated problems of child abuse ... A process of empowerment for women and their communities will need to occur to allow for true community development and the acceptance of responsibility for current problems."*⁵¹¹ Women tend to favour regional control of child welfare, in the hope that Chiefs

⁵⁰⁶ Dumont-Smith C, "Aboriginal Canadian Children who Witness and Live with Violence", in Peled, Einat; Jaffe, Peter; et al (Eds), *Ending the Cycle of Violence: Community Responses to Children of Battered Women*, Sage Publications, Thousand Oaks, CA, USA, 1995,

⁵⁰⁷ First Nations Task Force, op cit

⁵⁰⁸ Gray-Withers, op cit; First Nations Task Force, op cit

⁵⁰⁹ Dumont-Smith C, op cit

⁵¹⁰ Gray-Withers, op cit at 86

⁵¹¹ Ibid at 89

would have less influence over child welfare outcomes in the absence of local control.⁵¹²

When authority for child and family services is handed over to Indigenous agencies, accountability becomes more complicated. Armitage⁵¹³ highlights the coordination problems which often ensue between organisations and jurisdictions:

“The establishment of independent First Nation family and child welfare organisations has the effect of dividing authority between mainstream provincial agencies and independent First Nation organisations. The result is diminished accountability in the child welfare system as a whole. At a practical level single accountability for the welfare of children and advocacy for them as individuals is lost because of the fragmentation of authority.”

It is important to stress that this “diminished accountability” is not a specific result of the involvement of Indigenous organisations, but simply a result of adding to the number of stakeholder organisations. First Nations agencies may be accountable to provincial and federal governments, as well as to their people.

The last accountability issue to be dealt with is confidentiality. One Native American evaluation report points out that attempts by child welfare workers to keep information classified were not always successful. Confidentiality is difficult to maintain in small communities.⁵¹⁴

Suggested resolutions

It is important to recognise that current mainstream child welfare systems are also likely to have unresolved accountability gaps or problems. The complex

⁵¹² Gray-Withers, *ibid*; Durst D, McDonald J & Rich C, “Aboriginal Government of Child Welfare Services: Hobson’s Choice?” in Hudson J & Galaway B (eds), *Child Welfare in Canada, Research and Policy Implications*, Thompson Education Publishing, Toronto, 1995

⁵¹³ Armitage, *op cit* at 169

⁵¹⁴ Carr J & Peters M, *Assessment of Multi-Disciplinary Child Protective Teams in Five Western Washington Communities: Chehalis, Nisqually, Shoalwater Bay, Skokomish, Squaxin Island* Thesis (M.P.A.), The Evergreen State College, Washington, 1997, at 98

accountability maze which Indigenous agencies are presented with under partial or interim authority arrangements would be far simpler under full Indigenous control. Facilitating Indigenous communities to design programs and policies in line with their own needs may prove a more effective way of ensuring accountability.⁵¹⁵

The establishment of regional peak agencies may result in disputes between these bodies and their constituent community groups, however a regionalised model does appear to offer better accountability than a fully localised one.⁵¹⁶ WRCFS is a good example of a regionalised service. WRCFS has a regional abuse unit which initially investigates notifications, and assists local workers who then take responsibility for follow-up services and case management. McKenzie states: *“This model is quite effective in assuring required expertise in investigations, while protecting local community staff from some of the conflicts that can occur around initial abuse referrals in small communities.”*⁵¹⁷

The establishment of regional agencies is one possible response to some of the accountability issues facing Indigenous child and family services. Other suggested strategies and initiatives include:

- A system of accountability to an authority outside the community political leadership⁵¹⁸;
- Agency adoption of a political interference/conflict of interest protocol which involves sanctions for non-compliance⁵¹⁹;
- The creation of suitable fora for disputes and grievances to ensure fair and just process⁵²⁰;

⁵¹⁵ Gray-Withers, op cit

⁵¹⁶ Gray-Withers, ibid; McKenzie B, Seidl E & Bone N, ‘Child Welfare Standards in First Nations: A Community-Based Study, 1995’, in Hudson & Galaway, (eds), op cit

⁵¹⁷ McKenzie B, 1997, op cit in Pulkingham, & Ternowetsky, op cit at 106

⁵¹⁸ Gray-Withers, op cit; McKenzie, 1997, ibid

⁵¹⁹ First Nations Task Force, op cit

- The establishment of inter-community child protection teams where members from each community in a given area “*could help protect abused children caught in a political battle within a tribe*”⁵²¹;
- The creation of a national Indigenous child welfare commission for investigation of complaints⁵²²;
- The substitution of state or provincial legislation with comprehensive federal legislation, in order to simplify the accountability maze⁵²³; and
- Formal confidentiality agreements signed by child protection team members.⁵²⁴

Traditional healing and cultural revival

Much of the literature on Indigenous child welfare from Canada and the United States describes or advocates the use of traditional healing methods in child welfare cases. A number of authors and reports emphasise that for many Indigenous peoples, mental, emotional, spiritual and physical health are integrated, interdependent and inseparable.⁵²⁵ However, the “spirit dimension” is badly neglected in conventional social work practice. A report by the Awasis Agency of Manitoba states that “*innovative approaches to dealing with families are seldom examined . . . First Nations practice requires the adoption of an integrative approach, addressing cognitive, emotional, physical and spiritual development.*”⁵²⁶ McKenzie⁵²⁷ notes that holistic healing is important: “*because it transcends the notion of helping in the narrow therapeutic sense. Instead, it emphasises the resilience of First Nation people, and their ability to utilize self-*

⁵²⁰ Ibid

⁵²¹ Carr & Peters, op cit at 9

⁵²² Durst, 1998, op cit

⁵²³ Durst, 1998, op cit

⁵²⁴ Carr & Peters, op cit

⁵²⁵ Voss et al, op cit; Barlow A & Walkup JT, “Developing Mental Health Services for Native American Children”, (1998) 7(3) *Child and Adolescent Psychiatric Clinics of North America* 555-577; Awasis Agency, op cit; Connors, op cit

⁵²⁶ Awasis Agency, op cit at 25

⁵²⁷ McKenzie, 1997, op cit at 108

help and cultural traditions as a framework both for addressing problems and supporting future social development at the community level.” Traditional Native Americans often use Western medicine for physical conditions, and prefer treatment by traditional healers for emotional and spiritual healing. Barlow and Walkup, Horejsi et al⁵²⁸ contend that: “*The most effective parent training programs are those that blend principles derived from modern child development with the spirituality, customs, traditions and other cultural ways of their tribe.*” A successful First Nations psychotherapist has developed a model for treating First Nations sexual abuse victims, where clients are assessed prior to treatment to determine their degree of acculturation. After assessment, treatment is based on either Western psychotherapeutic practice, traditional First Nations practices, or a combination of the two. First Nations elders and psychotherapists cooperate in designing healing strategies.⁵²⁹

Strengths versus deficits

Conventional social work practice generally operates using a “deficit reduction” model of intervention, which attempts to respond to perceived weaknesses in the individual.⁵³⁰ The Awasis Agency considers this model demeaning as it is based on the client’s admission of inadequacy. Research tends to approach Native American families with a deficit model, rather than looking for strength, yet the diagnosis of Indian behaviours using Western clinical notions may in itself be iatrogenic.⁵³¹

The “strengths perspective” in social work embraces concepts of empowerment, collaboration, healing from within and suspension of disbelief.⁵³² Native American and Canadian professionals report that the strengths perspective is more compatible with their communities than prevailing social work pedagogy and

⁵²⁸ Barlow & Walkup, op cit at 335

⁵²⁹ Connors, op cit

⁵³⁰ Voss et al, op cit; Awasis Agency, op cit

⁵³¹ Red-Horse J, “Traditional American Indian Family Systems”, (1997) 15(3) *Families, Systems and Health* 243-250 at 247

⁵³² Voss et al, op cit

practice, which is generally Eurocentric.⁵³³ Indigenous child and family services will be enhanced by harnessing cultural strengths.⁵³⁴ However, as discussed with respect to accountability issues, whatever the approach there needs to be checks and balances to ensure that children's safety is prioritised.

Healing through education and decolonisation

Indigenous groups involved with child welfare agree that child abuse and neglect in their communities result to a large extent from the effects of colonisation. A Canadian service puts it this way:

*“We understand the child welfare system as a system which has evolved in the dominant culture, to deal with the problems of industrial society. Within the Native community, the child welfare system is a system that deals with the symptoms of larger social problems – racism, poverty, underdevelopment, unemployment, etc. [We regard] child welfare problems as the result of the colonial nature of relations between the aboriginal people and the Euro-Canadian majority”.*⁵³⁵

Few child welfare service models developed for or by Indigenous people respond directly to the colonial causes of problems. Helping the client to get in touch with Indigenous identities is an important part of the process. The following models consider the above issue:

“Ma Mawi Wi Chi Itata is an urban Indian social agency established in Winnipeg in 1984: Ma Mawi integrates mainstream social work practices with Indigenous traditions in its work. The emphasis is on positive relations with other agencies, advocacy, exchange and collaboration. Ma Mawi is the largest urban Native agency in Canada. They describe their

⁵³³ Voss et al, op cit; Awasis Agency, op cit

⁵³⁴ Tong & Cross, op cit

⁵³⁵ Ma Mawi Wi Chi Itata, *First Annual Meeting Report*, Winnipeg, 1985, in Armitage, op cit at 159

*practice as a process of decolonisation . . . We see this as a conscious process through which we regain control over our lives and resources*⁵³⁶

Research by Brave Heart-Jordan⁵³⁷ found that Lakota clients in the United States, who engaged with traditional healing found workshops “*made their lives more meaningful and helped to liberate them from the symptoms of ongoing neo-colonialism that may have been imposed on them by other health systems that were not aware of [the history, dynamics, and politics of the American Indian soul wound.*”⁵³⁸

Other findings included that: (a) educating people about historical trauma leads to increased awareness of its impact, and symptoms; (b) the process of sharing experiences with others of similar background leads to a cathartic sense of relief; and (c) the healing and mourning process initiated, resulted in an increased commitment to ongoing healing work at an individual and community level.

Very high proportions of respondents were favourable about the traditional healing workshops, in terms of grief resolution, and feeling better about themselves. Parenting was improved.

Rokx⁵³⁹ and colleagues in New Zealand have developed a parenting model which takes the effects of colonisation on Maori child-rearing practices into consideration. The Atawhaingia Te Pā Harakeke model is currently being delivered to male Maori clients in two New Zealand prisons. The model’s “decolonisation” process is intended to educate participants about contemporary

⁵³⁶ Ibid

⁵³⁷ in 1995, in Duran E, Duran B, Brave-Heart MYH, Yellow Horse-Davis S, “Healing the American Indian Soul Wound” in Y Danieli, (Ed), *International Handbook of Multigenerational Legacies of Trauma*, Plenum Press, New York, USA:, 1998

⁵³⁸ Ibid at 351-352

⁵³⁹ Rokx H, *Atawhaingia Te Pa Harakeke: Nurture the family*, Paper presented at the 12th ISPCAN International Congress on Child Abuse and Neglect, September 1998, Auckland, New Zealand

Maori socio-political contexts, and the role of colonial history and ongoing neo-colonial factors on them.

Participants are taught about the initial and ongoing breakdown of traditional systems, values, beliefs and practices around caring for children, and traditional family structures, which occurred as a result of white settlement. Participants gain a detailed understanding of various specific factors of influence, including: the effects of mixed marriages on family structures; introduction of Christianity; the decline of the Maori language; and the government's policy of assimilation, particularly through European schooling.

The training then moves on to focus on issues of power and control, in general, then personal terms. Participants are encouraged to position their own family backgrounds into this social history of New Zealand, and to focus on the specific circumstances of their upbringing. Participants are encouraged to set parenting goals, with a view to connecting with traditional values through improved parenting.

Community awareness raising/education

Some child abuse and neglect intervention projects attempt to bring about change through strategies involving community-wide awareness raising, as distinct from individual interventions with abuse cases. Cross and LaPlante argue that the greatest constraint to child abuse and neglect interventions in Native American communities is denial, and that grassroots community involvement is the best antidote.⁵⁴⁰ They point out that prevention can be grounded in traditional values and principles. Although acknowledging the substantial breakdown of tradition in some communities, what remains can be drawn upon. Cross and LaPlante

⁵⁴⁰ Cross T & LaPlante J, *Grassroots Prevention of Child Abuse and Neglect in Indian Communities: A Guide for the Community Organiser*, National Indian Child Welfare Association, Portland, Oregon

contend that grassroots efforts work well because “*no one knows the community better than the community itself*”.⁵⁴¹

The Hollow Water community of Ottawa began a program of community awareness and education in 1987. The environment of greater trust which followed saw a dramatic increase in the number of sexual abuse disclosures.⁵⁴²

Cross and LaPlante⁵⁴³ contend that conventional services, including tribal, have not succeeded in prevention. They say that approaches which draw on local experience are valuable. The authors cite the example of a grassroots child abuse and neglect prevention campaign developed by the Siletz Tribe in Siletz, Oregon, where there was a high rate of abuse and neglect.

They planned an awareness activity: community members were sent a blue ribbon with instructions to affix it to their cars at a designated time, to show support for child abuse and neglect prevention. Another activity was a “Family Fun Fair”, with a focus on children’s activities, but also an outside speaker who related her own experience with child abuse and neglect.

The authors make a range of suggestions for other communities considering similar interventions. These include:

- When forming a local committee, invite “key participants” such as teachers, spiritual leaders, elders, and community health workers;
- Organise the meeting in an appropriate informal environment – for example, meet over a meal;
- Set a simple and achievable agenda;
- Structure the group in a way which helps to bond committee members;

⁵⁴¹ Cross T & LaPlante J, *ibid* at 27

⁵⁴² Lajeunesse, *op cit*

⁵⁴³ Cross T & LaPlante J, *op cit*

- Boundaries of the community need to be defined, to help focus the group; and
- A needs assessment should be done to find out community strengths, weaknesses and requirements; and to determine the extent of child abuse and neglect – assessment models used by agencies and programs in the community may be available for adaptation.

Sexual abuse: Traditional healing and offender treatment

Rates of child abuse and neglect are almost universally higher in Indigenous compared with general populations. The unique histories of trauma and injustice suffered by Indigenous people under colonial regimes are clearly associated with the disproportionately high rates of sexual abuse in communities today. These specific circumstances demand consideration in health and welfare responses. Conventional approaches are, in any case, unlikely to be culturally appropriate.

Many Canadian First Nations communities are looking to more holistic methods for dealing with sexual abuse. A British Columbia community consultation recommended that courts should be empowered to offer first-time sexual abuse offenders “extensive treatment” as an alternative to incarceration, and that culturally appropriate treatment should be available to sex offenders.⁵⁴⁴ Sex offenders were regarded as needing healing rather than punishment, and contributors emphasised that the healing should take place within the community.

Many Canadian First Nations communities have recently adopted alternative strategies for dealing with sexual abuse. A number of these strategies have evolved from a 1992 sexual abuse treatment program developed by Oates for use in northern British Columbia communities. Oates’ model is based on an 18 step

⁵⁴⁴ Community Panel, op cit

consensual “Traditional Process” involving extended family gatherings (effectively a version of family group conferencing).⁵⁴⁵

Connors and Oates⁵⁴⁶ conclude that community-based responses to sexual abuse should involve the following basic elements: some esteem-enhancing form of punishment; victim protection; and treatment for all members of the family. Solutions may also include: community service; restricted access to children; native-oriented treatment program; and attendance at community support groups. The Hollow Water program, the Community Holistic Circle Healing Project (CHCH), is used with sexual abuse cases in Manitoba Indigenous communities. CHCH heals by providing support, guidance and counselling to all those affected by sexual abuse, including the victim, the perpetrator, and respective families (see Family Group Conferencing).

By dealing with the needs of all involved, CHCH is seen as healing the community, not addressing an individual problem. The method is seen as a long-term solution, as the whole process is estimated to take five years. CHCH empowers communities by allowing members to generate their own response to individual situations, in a manner which gives consideration to the specifics of each case. The Hollow Water program transfers power from the mainstream legal system to the community.⁵⁴⁷

The Hollow Water program is widely viewed as a successful example of an Indigenous-controlled sexual abuse treatment program.⁵⁴⁸ A cost-benefit analysis of the Hollow Water program found that for every \$2 which the Provincial and Federal Government spent on the program the community receives well over \$6.21 to \$15.90 worth of services. Further, the program has a very low recidivism

⁵⁴⁵ Connors, E a& Oates M, “The Emergence of Sexual Abuse Treatment Models Within First Nations Communities” in Wolfe, D, McMahon R, & Peters R, *Child Abuse: New Directions in Treatment and Prevention Across the Lifespan* Thousand Oaks, London, Dehl,i Sage, 1997

⁵⁴⁶ Connors & Oates, *ibid*

⁵⁴⁷ Awasis Agency, *op cit*

⁵⁴⁸ Connors & Oates, *op cit*; Awasis Agency, *ibid*; Lajeunesse, *op cit*

rate with only two clients re-offending over a ten-year period. (The cost benefit analysis did not take into account the costs saved from perpetrators not re-offending.) Other benefits from the program included improved holistic health for children, more people completing their education, better parenting skill, an increase in sense of safety, a return to traditional ceremony and a decrease in overall violence.⁵⁴⁹

Self Determination

The United States, Canada, New Zealand and Australia have all acknowledged the importance of Indigenous communities' control over their children and families. Despite this governments have generally retained the power or have failed to dedicate the necessary resources necessary to effect this recognition.⁵⁵⁰

The United States Indian Child Welfare Act represents the highest level of transfer of decision making authority to Indigenous peoples. And in New Zealand the Maori people have been included in the primary decision making process, the family group conference, which is mandated by the *Children, Young Persons, and Their Families Act* 1989. In Canada a move towards enacting legislation based on self determination by Indigenous people has occurred over the last few years and new legislation, treaties and negotiations are not uncommon, so that First Nations communities are achieving far greater control over their children and families.⁵⁵¹ Whilst not completely based on international understandings of self determination, the new structure in Manitoba offers a good example of a transfer of jurisdiction of child welfare.

⁵⁴⁹ Native Counselling Services of Alberta, *A Cost-benefit Analysis of Hollow Water's Community Holistic Circle Healing Process*, Solicitor General of Canada, Ottawa, Ontario, 2001

⁵⁵⁰ For a brief outline of self government programs in Canada, see Hurley MC & Wherrett J, *In Brief, Aboriginal Self-Government*, Parliamentary Research Branch, Library of Parliament, 27 September 1999, Revised 1 August 2000

⁵⁵¹ HREOC, op cit; Cunneen & Libesman, 2000, op cit

In Australia generally and particularly within the child welfare area, there appears to be a lot of misinformation and misunderstanding as to what Indigenous self determination is, to the point where it has been suggested that there has never been a clarification or a practical understanding developed of what ‘self determination’ means in practice.⁵⁵² For example, it is not enough to recruit Indigenous field officers and policy advisers, fund Indigenous organisations or implement the Aboriginal Child Placement Principle within child protection legislation.⁵⁵³ These are important elements and in fact crucial to ensuring that Indigenous people have equality of services, however there are international understandings of what Indigenous self determination means and it is important that governments and departments within Australia become aware of these international standards and understandings. For example, legislation that ‘allows’ Indigenous people ‘as much self determination as possible’ or allows the Minister to choose how much self determination can be granted does not meet International standards or those standards outlined in the Bringing Them Home Report, the Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families.⁵⁵⁴ Three states and territories have implemented ‘self determination’ provisions in their legislation. The first to do so was NSW in section 11 of *the NSW Children and Young Persons (Care and Protection) Act 1998* which provides:

It is a principle to be applied in the administration of this Act that Aboriginal and Torres Strait Islander people are to participate in the care and protection of their children and young people with as much self – determination as is possible.

⁵⁵² Gordon et al, op cit, citing Litwin J, “Child Protection Interventions Within Indigenous Communities: An “Anthropological” Perspective”, (1997) 32(4) *Australian Journal of Social Issues* 317-340

⁵⁵³ See Litwin ibid in Tomison, op cit at 63-64

⁵⁵⁴ HREOC, op cit

The NT and WA self determination provisions mirror the NSW provision. These provisions do not reflect the spirit of the NISATSIC Inquiry but rather emulate one of the problems which it identified. This being a failure on the part of state and territory departments to relinquish some of their power to Indigenous communities. These self determination provisions rely on the exercise of discretionary power by the Minister and do little to balance the unequal relationships between Indigenous decision makers and departments or to address the systemic underlying issues. Most contemporary Indigenous and international understanding of self determination go beyond acknowledging that Indigenous peoples, like other Australians, should be accorded citizenship entitlements. The implementation of self determination principles in a contemporary framework would require the transfer of aspects of control to Indigenous communities.

Recommendations

Principles to guide legislation and practice

Legislation, policy and practice for Indigenous children's well being should be guided by principles of collaboration, participation, restitution and reconciliation. The spirit driving reforms should be a commitment to right the wrongs of the past and recognition of the right of Aboriginal communities to retain and make decisions with respect to their children. This requires willingness on the part of government departments to commit resources and to relinquish some power.

Aboriginal people should be entitled to the provision of family services in a manner that recognises their unique status and which addresses their cultural heritage as experienced with all its strengths and the complexity of problems which are a legacy of the ongoing colonial experience. Designated Indigenous organisations should have a right to participate in and be informed of all decisions made with respect to Aboriginal children.

Family is central to Indigenous culture and family support should guide funding and service provision to Indigenous communities. Indigenous families' rights to equity of services with other sections of the community should be recognised. The cultural identity of all Indigenous children should be nurtured and supported. Indigenous and all children need the protection of and should be afforded a simple and well publicised process for complaining and obtaining redress for breach of their rights. These principles and the United Nations Convention on the Rights of the Child should be adopted in the *Children's Act*.

Safeguards and standards

Provision of all services and dealings with all children, whether provided by government departments, Indigenous non-government organisations, or mainstream non-government organisations, should be subject to the rights established in the UN Convention of the Rights of the Child and the principles referred to above.

All government and non government agencies should be provided with a plain language statement of their human rights obligations to all children, with particular reference to the rights specific to Indigenous children.

All Government and non Government agencies should be provided with a plain language statement of the common law and legislative duty of care which they owe to all children.

All Government and non government services should be accredited by an independent accreditation agency. Part of the accreditation process should require understanding of and compliance with cultural requirements with respect to Indigenous children.

An independent office, which employs senior Indigenous staff should monitor, report and respond to breaches of children rights with a particular brief with respect to children in out home care.

The accreditation agency should mentor and assist Indigenous agencies to develop infrastructure and expertise to meet accreditation standards where requested or necessary.

Self determination

Recommendation 43 from *Bringing Them Home*, the Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from

their Families, should be implemented. This requires that a legislative framework be established which enables and requires governments to negotiate agreements with Aboriginal communities on measures best suited to their needs with respect to children and young people, that adequate funding be made available to implement these agreements, and that the negotiations be authorised to include either the complete or shared transfer of responsibility for Indigenous children to designated Indigenous organisations.

The Director General should, prior to the transfer of partial or full jurisdiction to Indigenous organisations, have the legislative capacity to delegate functions and responsibilities with respect to Indigenous children to designated Indigenous organisations with their consent.

Designated community organisations should have the right to elect to incrementally, as their capacity develops, take on agency or departmental funding and functions.

Legislative recognition should be given to the right of designated Indigenous agencies to design, develop and deliver preventative and holistic services to families.

Legislative recognition should be given to the right of designated Indigenous agencies to participate in all levels of decision making with respect to Indigenous child welfare from the point of notification of an Indigenous child and to include case planning, voluntary and mandatory protection orders, out of home care placements, stability planning and custody and guardianship orders.

Legislative provision should be made for the recording of Aboriginality from the point of notification of a child.

Legislative recognition should be given to the right of designated Indigenous agencies to have standing in all Children's Court matters which involve

Indigenous children, to be served with all applications and notices, and to be informed of all orders and placements of Indigenous children.

A designated Indigenous agency should be charged with the responsibility of maintaining a register of Indigenous carers and records of where Indigenous children on voluntary and mandatory out of home care agreements are placed.

Legislative provision should be made for an Indigenous child placement principle. This principle should provide for Indigenous participation and ultimate power to make decisions about Indigenous child placements.

The Indigenous Child Placement Principle

Removal of Indigenous children from their families must be an action of last resort.

All placements of Indigenous children in out of home care must be approved by a designated Indigenous Agency.

The following order of placement must be followed unless it would be detrimental for the child or young person:

1. Where out of home care cannot be avoided the child should be placed with a member of their Indigenous family and if this is not possible
2. With an Indigenous family in the child or young person's community and if this is not possible
3. With an Indigenous family from another community in close geographic proximity to their family and if this is not possible
4. With a non Indigenous family or in an Indigenous home care facility.
5. A detailed case plan must be made for all Indigenous children placed with non Indigenous families which includes a review of placement options within a designated period and the measures which will be taken to ensure that the child's Indigenous culture and identity are nurtured.

6. Family support should be provided to assist the child to return to his or her family.
7. A permanent order must not be made for an Indigenous child to be placed with a non-Indigenous carer unless failure to do so would be detrimental for the child and a designated Indigenous agency recommends the making of this order.

Indigenous home facilities should be established for difficult to place Aboriginal children and youths.

Provision should be made for the staged transfer of Indigenous children in care to an Indigenous agency. Interim cultural training must be provided for Departmental and non Indigenous, non government agencies which work with Indigenous children. Special attention should be given to Indigenous children from mixed family backgrounds where the Indigenous parent/family is absent.

Family group conferencing

Family group conferencing processes should be developed to incorporate local Indigenous understandings of family. These conferences should be available for decision making and dispute resolution, with respect to informal disputes, child protection matters which are being addressed by child protection workers and for matters referred to by the Children's Court or Family court.

Guidelines for conducting family group conferences should be developed by designated Indigenous organisations in conjunction with a magistrate who has experience with and knowledge of Indigenous children's and families issues.

Training should be provided for Indigenous people to develop family conferencing convenor skills.

Legislative provisions should be made for the appointment of Indigenous family conference convenors or for the appointment of non Indigenous convenors who are approved by a designated Indigenous agency.

Staffing

An Indigenous person should be appointed at an executive level as Director of the Aboriginal unit within the Department. The Director of the Aboriginal unit should report directly to the Director General.

An audit of Indigenous staff, including their levels of seniority within the department, should be undertaken for the purpose of establishing an employment and staff development strategy which aims to represent Indigenous staff, at all level within the Department, proportionate to Indigenous contact and representation within the child protection system.

Staff development, training and support should be provided to ensure that Indigenous staff are retained, and have the capacity to manage, develop and deliver the best services possible to their communities.

Protocols should be established which demarcate the roles between child protection and family and community support work which Indigenous staff are responsible for.

Research and education

A peak designated Indigenous children's organisation should be provided with a budget to establish a centre to undertake research and provide legislative and policy advice, to the relevant government departments, with respect to Indigenous children's well being.

While this organisation should develop a research agenda the following areas of research should be undertaken as an immediate priority:

Data collection

Demographic data with respect to Indigenous communities and children in need of support should be collected for the purpose of appropriate resource allocation and the planning and delivery of services.

An independent audit of resources and services required to meet human rights obligations and citizenship entitlements in Indigenous communities should be undertaken and followed by a timetabled implementation plan.

Research in conjunction with communities should be undertaken to develop ways of dealing with problems which are specific to, or prevalent in Indigenous communities, which are a product of the colonial experience.

Dispute resolution

Research should be undertaken into alternative methods of dispute resolution and court processes which embody Indigenous decision making but retain safeguards for children and vulnerable members of families in care and protection matters and more broadly with respect to children's well being.

Education

Training programs should be designed and developed in consultation with designated Indigenous organisations, specifically for Indigenous staff who do not have the formal qualifications but work or would like to work in child protection. Indigenous staff should be provided with training with respect to governance, child development and the development of Indigenous ways of addressing children's well being. Internships to learn from Indigenous children's organisation overseas, such as in Manitoba, should be investigated.

Cultural competence training should be provided for non Indigenous staff, both within the department, and within non government organisations, and for professional who work with Indigenous children. These programs should be

provided by and preferably delivered by Indigenous people. Indigenous staff and professionals should have the option to participate in these programmes.

Service delivery

Multi purpose one stop shop service centres which are focussed on community development, support, early intervention and prevention should be supported.

The established AICCA's and MAC's should be supported and assisted to expand their capacity and services.

Funding

An audit of spending on Indigenous children, compared with all children, should be undertaken. The findings of this audit should be used to allocate proportionate financial support for Indigenous families relative to their representation in the care and protection system and the depth and seriousness of their involvement with child welfare.

Funding policies should encourage early intervention and prevention and avoid biases in the provision or availability of resources towards more invasive interventions. Families should be able to access respite care, financial support for kin care and programs to assist them when they are struggling, without the need to demonstrate child protection issues.

Funds should not be tied to a program based model of service delivery. Consideration should be given to block funding and funding policies which have flexibility. Longer term and more flexible budgets for developing care and support for Indigenous families should be developed.

There should be parity in financial support for kin carers and foster carers.

There should be greater flexibility in discretionary budgets available to assist children and families in need of care with basic requirements and in need of stop gap help.

Evaluation and monitoring

Benchmarks of citizenship and human rights to be attained by Indigenous children in Victoria should be developed by the Department in conjunction with a designated Aboriginal agency and a system for measuring and reporting on these bench marks should be implemented.

A peak designated Indigenous organisation should be resourced and empowered to co- perform, with the lead Government agency, a primary role in co-ordinating service provision for Indigenous children's well being across the government and non government sectors.

Appendices

Appendix 1

Australian States and Territories child protection legislation

Legislation and responsibility for child protection in Australia's states and territories

Jurisdiction	Department responsible	Relevant legislation	Actions or outcomes from which children are in need of protection	Restrictions to legislative grounds for intervention**	Non-maltreatment grounds for intervention
Australian Capital Territory (ACT)*	Office for Children, Youth and Family Support	<i>Children and Young People Act</i> 1999 (amendments effective 6 March 2005). <i>Adoption Act</i> 1993 (amendments effective 9 April 2004).	Abuse. Neglect. Threats to kill. Residing with a person who has previously killed a child. Sexual or financial exploitation.	Actions only. Restricted to parents who committed or were unable or unwilling to protect. Past event and future risk of an event	Serious persistent conflict. Parents dead. Breach of a protective order. Child risk taking.
New South Wales (NSW)	Department of Community Services	<i>Child Protection Legislation Amendment Act</i> 2003. <i>Children and Young Persons (Care and Protection) Act</i> 1998. Commission for Children and Young People Amendment (Child	Neglect. Physical abuse. Sexual abuse. Domestic violence. Psychological harm.	Combination of: consequences only; and actions and consequences. Not restricted to parental action or situations where parents are unable or unwilling to protect. Past event and future risk of an event.	n/a.

Jurisdiction	Department responsible	Relevant legislation	Actions or outcomes from which children are in need of protection	Restrictions to legislative grounds for intervention**	Non-maltreatment grounds for intervention
		Death Review Team) Act 2003 No. 26. Commission for Children Young People Act 1998. Crimes Amendment (Child Protection - Physical Mistreatment) Act 2001. The Ombudsman ACT 1974.			
Northern Territory (NT)	Family and Children's Services, Department of Health and Community Services	Community Welfare Act 1983 (amended May 2004). Draft proposed legislation: Care and Protection of Children and Young People Act 2005	Abandoned. Neglect. Maltreatment (physical injury, serious emotional or intellectual impairment, physical impairment, sexual abuse or exploitation) Female genital mutilation.	Combination of: action only; and action and consequences. Unable or unwilling to protect. Restricted to parents who committed or were unable or unwilling to protect. Past event and future risk of an event.	Child not subject to effective control. Child persistently engaged in conduct that is harmful or potentially harmful to the general community.
Queensland (QLD)	Department of Child Safety	Child Protection Amendment Act 2001. Child Protection	Harm - immaterial how the harm is caused. Harm caused by	Consequences only. Restricted to parents who committed or were unable or	None listed.

Jurisdiction	Department responsible	Relevant legislation	Actions or outcomes from which children are in need of protection	Restrictions to legislative grounds for intervention**	Non-maltreatment grounds for intervention
		Act 1999. Health Act 1937 (amended 2004). Commission for Children and Young People Act 2000. Education (General Provisions) Act 1989 (amended 2003).	physical, psychological or emotional abuse or neglect, sexual abuse, or exploitation.	unwilling to protect. Past or present event and future risk of an event.	
South Australia (SA)	Children, Youth and Family Services; Department for Families and Community Services	Children's Protection Act 1993 (amended 1 July 2000). Young Offenders Act 1993. Adoption Act 1988.	Sexual abuse. Physical or emotional abuse or neglect. Threats to kill. Residing with a person who has previously killed a child. Unwilling to maintain or adequately supervise child. Abandonment. Domestic violence.	Combination of: actions only; and actions and consequences. Not restricted to parental action or situations where parents are unable or unwilling to protect.. Past event and future risk of an event.	Unable to maintain or control child. Parents dead. Truancy. Vagrancy (under 15 years of age).
Tasmania (TAS)	Department of Health and Human Services	Children, Young Persons and their Families Act 1997. The Family	Abuse or neglect. Threats to kill. Residing with a person who has	Action only. Not restricted to parental action or situations where	Truancy. Parents dead.

Jurisdiction	Department responsible	Relevant legislation	Actions or outcomes from which children are in need of protection	Restrictions to legislative grounds for intervention**	Non-maltreatment grounds for intervention
		Violence Act 2004. Additional draft proposed legislation: Screening for Child-related Work 2005	previously killed a child. Neglect.	parents are unable or unwilling to protect.. Past event and future risk of an event.	
Victoria (VIC)*	Child Protection and Juvenile Justice Branch, Department of Human Services	Children and Young Persons Act 1989. Additional draft proposed legislation: Working with Children Bill 2005	Abandonment. Physical injury. Sexual abuse. Emotional and psychological harm. Neglect.	Combination of: action only, consequences only and action and consequences. Restricted to parents who committed or were unable or unwilling to protect. Past event and future risk of an event.	Parents dead or incapacitated.
Western Australia (WA)	Department for Community Development	Carers Recognition Act 2004. Child Welfare Act 1947. Welfare and Assistance Act 1961. Community Services Act 1972. Children and Community Services Act 2004.	Neglect. Ill treatment. WA have defined in policy the events from which a child is in need of protection as: sexual abuse; and physical or emotional abuse or neglect causing or likely to cause	A combination of: actions only; and actions and consequences. Not restricted to parental action or situations where parents are unable or unwilling to protect.. Past event and future risk of an event.	Parents dead. Parents insufficient means to support child or are indigent. In a subsidized facility and whose near relatives have

Jurisdiction	Department responsible	Relevant legislation	Actions or outcomes from which children are in need of protection	Restrictions to legislative grounds for intervention**	Non-maltreatment grounds for intervention
		When proclaimed in 2006 this Act will replace the current Acts. Working with Children (Criminal Record Checking) Act 2004.To be proclaimed in 2006.	significant harm (AIHW 1999).		not contributed to maintenance. Risk taking behaviour. Exposure to drugs or criminal behaviour. Dangerous employment.

Note: * Victoria and the ACT are currently undertaking a review of legislation governing the provision of statutory child protection services in their state/territory.

Note: ** Restrictions to the definition of the grounds for intervention have been coded as : 'Action only'- if an abusive or neglectful action has occurred, regardless of outcome; 'Consequences only'- if has a child experienced significant harm, regardless of cause; or 'Actions and consequences'- if a child has experienced significant harm as a consequence of a specified abusive or neglectful behaviour.

Canadian Child Welfare Legislation

Department of Justice Canada

Indian Act (Chapter I-5)

Provincial Legislation

Alberta	<i>Child Welfare Act, 2000</i> <i>Child Welfare Amendment Act, 2002</i>
British Columbia	<i>Child, Family and Community Service Act, 1996</i>
Manitoba	<i>Child and Family Services Act, 1985</i>
New Brunswick	<i>Family Services Act, 1983</i>
Newfoundland and Labrador	<i>Child Youth and Family Services Act</i>
Northwest Territories	Consolidation of <i>Child and Family Services Act</i> - Part 1 Consolidation of <i>Child and Family Services Act</i> - Part 2
Nova Scotia	<i>Children and Family Services</i> , amended 2002 <i>Adoption Information Act, 1996</i>
Nunavut	See Northwest Territories
Ontario	<i>Child and Family Services Act</i> R.R.O. 1990, Reg. 70 As of July 30, 2002. <i>Children's Law Reform Act</i> as of August 1, 2002 <i>Family Law Act</i> as of August 13, 2002
Prince Edward Island	<i>PEI Child Protection Act</i> (ch C-5.1)
Quebec	<i>Youth Protection Act</i> R.S.Q. P-34.1
Saskatchewan	<i>Adoption Regulation</i> 1990 <i>Child and Family Services Act</i> 1989-1990
Yukon	<i>Children's Act</i> chapter 31

<http://www.fncfcs.com/resources/childWelfareLaw.html>

Vision Statement

A child and family service system that recognizes and supports the rights of children to develop within safe and healthy families and communities, and recognizes that First Nations and Metis peoples have unique authority, rights and responsibilities to honour and care for their children.

http://www.aji-cwi.mb.ca/eng/joint_management_committee_vision.html.

Mission Statement

To have a jointly coordinated child and family services system that recognizes the distinct rights and authorities of First Nations and Metis peoples and the general population to control and deliver their own child and family services province-wide; that is community-based; and reflects and incorporates the cultures of First Nations, Metis and the general population respectively.

http://www.aji-cwi.mb.ca/eng/joint_management_committee_mission.html

Strategic Design Principles

There will be a common process to develop the implementation plan to restructure the system;

The distinct rights and authorities of First Nations and Metis peoples and the general population will be province-wide;

Each CFS Authority requires a skilled and appropriate workforce; and each has the right to define 'skilled', 'appropriate' and the criteria through which the workforce is hired;*

Services, administrative and financial resources in the child and family service system will be distributed in a way that achieves equitable funding and parity of service throughout the province;

There shall be a method for determining which Authority or agency can provide the most culturally appropriate services for a child and/or a family;

Intake services will be coordinated; there will be timely first response; and the intake system will ensure that no child is at risk because of gaps between the mandates or operations of agencies;

Each Authority will provide the full range of services and functions as outlined in *The Child and Family Services Act* and *The Adoption Act*; Child and family services records and processes need to be computerized; and there will be common registries for the whole system;

The system of services delivered by mandated child and family services agencies shall protect and honour children by building and empowering community, family and personal capacity through the delivery of holistic, restorative, integrated, preventive, supportive and protective services.

The province will work cooperatively with the Authorities to develop a competent workforce and maintains the capacity to ensure standards in this regard.

<http://www.aji-cwi.mb.ca/eng/strategicdesignprinciples.html>

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